**Foundation for Media Professionals**

**v.**

**Union Territory of Jammu and Kashmir & Anr.**

Date of Judgment: May 11, 2020

Case Number: WP (C) Diary No. 10817 of 2020

Judicial Body: Supreme Court (Apex Constitutional Court)

Type of Law: Constitutional law

Themes: Access to internet, public order

Tags: right to internet, 4G internet, internet shutdown, public order, national security

Mode of Expression: Electronic/ Internet-based communication

Outcome: Declaratory Relief

**Case Summary and Outcome**

The Supreme Court of India directed the constitution of a Special Committee to review the government orders issued in the Union Territory of Jammu and Kashmir, restricting the speed of internet to 2G. The peculiar circumstance and prevalent situation in Jammu and Kashmir which is strife with insurgent activities and terrorist attacks, required a delicate balancing of national security concerns with human rights. While examining the executive orders, the Court applied the test of reasonableness and proportionality to determine the necessity in restricting speed of internet in the entire geographical territory of Jammu and Kashmir as opposed to imposing such a restriction only in select territories which were more prone to the insurgent acts. The Court also observed that cyber terrorism is increasing in modern times, necessitating the need to impose restrictions subject to satisfaction of the test of reasonableness and proportionality.

**Facts**

Three writ petitions were filed before the Supreme Court of India, challenging the restriction imposed by the Union Territory of Jammu & Kashmir (**UT**), restricting speed of mobile internet to 2G in Jammu and Kashmir. Jammu & Kashmir (**J&K**) is an Indian territory bordering Pakistan that has been the subject matter of turbulence between the two countries and a main ground for insurgent activities. The special status that was guaranteed to J&K upon succession by India in 1954, was ultimately revoked by the Indian government in August 2019. Following the revocation, the Union of India imposed restrictions on access to internet and movement in the territory of J&K to restore peace and public order. In the later days, UT imposed restrictions on speed of internet, limiting it only to 2G connection, which has been challenged in the present petitions.

The Petitioners argued that in view of the Covid- 19 pandemic and nationwide lockdown, the restriction on speed of internet affected right to health, right to education, right to business and right to freedom of speech and expression. Lack of effective and speedy internet affected the access to medical services and information on containment strategies applied to Covid prone areas. Restriction on internet speed violated the right to receive information, also directly affecting the right to education of students who accessed e-learning classes using internet. Therefore, access to 4G mobile internet in Jammu and Kashmir was a fundamental necessity as per the Petitioners. [para.5] Further, the Petitioners submitted that actions of UT violated the directions laid down by the Supreme Court in *Anuradha Bhasin v. Union of India*, WP (C) No. 1031/2019 (**Anuradha Bhasin**) and the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 (**Telecom Suspension Rules**) as no Review Committee had been constituted by J&K. The blanket ban issued by the UT indicated non-application of mind and failure to establish any reasonable nexus between restriction on the internet speed and national security. Lastly, the Petitioner suggested that if the Respondents apprehended misuse of data services, then the internet could only be restricted in the problematic areas or the UT could provide 3G/4G internet to certain regions on trial basis. [para. 6]

The Union of India, one of the Respondents, submitted that courts should not step into issues of national security as they lay in the domain of ‘policy making’ [Reliance on The Zamora, (1916) 2 AC 77 (PC)]. While weighing balances between breach of fundamental rights, the larger public interest of protecting the security of the state must outweigh fundamental rights. Further, in view of the prevailing circumstances with increased insurgent movements, terrorist activities and widespread fake news aimed at inciting violence, it was not possible to provide internet services in J&K. [para. 7] It was further argued that the authorities had strictly complied with earlier directions passed by the Supreme Court. As no restriction was imposed over fixed line internet, all information relating to Covid-19 could be received through internet as well other forms of print and electronic media, radio broadcasts as well as social media. [para. 8] The authorities had calibrated the reasonable restrictions on use of internet after analysing the grave and volatile situation in J&K. [para. 9]

**Decision Overview**

The Supreme Court’s decision attempts to balance citizen’s fundamental rights with national security concerns. The peculiar circumstance and prevalent situation in J&K required a delicate balancing of national security concerns with human rights. [para. 12]

The Court first considered the steps undertaken by the UT since its last decision in Anuradha Bhasin. The UT had permitted fixed line connectivity with media access control binding to access all websites without any speed restriction. In addition to this, 2G mobile internet for post-paid customers and verified prepaid customers was also available in n J&K. [para. 12] Statistics on increasing insurgent activities in J&K, including incidents of cyber terrorism were considered by the Court. It was mindful of the fact that insurgent groups had issued warnings in the past to wage ‘information warfare’ on Kashmir, after the revocation of special status of J&K. [para. 13]

In view of the turbulent situation in J&K, the Court held that “while it might be desirable and convenient to have better internet wherein there is a worldwide pandemic and national lockdown” and the Petitioner’s submissions merit consideration in normal circumstances, the fact that “external forces are trying to infiltrate the border and destabilize the national integrity, could not be ignored.” [para. 14] In reiterating its decision in ***Anuradha Bhasin***, the Court noted that “the degree of restriction and the scope of the same, both territorially and temporally, must stand in relation to what is actually necessary to combat an emergent situation.” While orders issued by the UT were for a limited period, they failed to provide any reason to support that such a restriction was necessary to be imposed in all districts of J&K. [para.16]

For meaningful enforcement of the decision in Anruradha Bhasin, it was incumbent upon the authorities to pass orders only with respect to limited areas where such a restriction was necessary. As per Anuradha Bhasin, every order restricting internet, issued under Rule 2(2) of the Telecom Suspension Rules, was to be placed before a Review Committee which would ensure that adequate procedural and substantive safeguards are followed so that the restrictions are narrowly tailored. However, as the present case included issues impacting the UT as well as whole of the Indian territory, the Review Committee consisting only of state level officers would not be in a position to satisfactorily address the complex situation. Accordingly, the Court directed the constitution of a Special Committee consisting a total of three executive members both from national and state level, to look into the prevailing circumstances in J&K and determine the necessity of continuation of the restrictions in the UT on an immediate basis. [Para. 23] The Special Committee would examine the Petitioner’s case and also determine the appropriateness of limiting the restrictions to only certain areas where it was necessary while allowing faster internet services in other areas of J&K. [Para. 24] In view of this, the petitions were disposed of.

**Decision Direction**

**Mixed Expression**

The Court attempts to balance the national security concerns with citizen’s right to access internet and the need for such uninterrupted access to the internet during the Covid- 19 pandemic. While the Court observes that the executive orders in restricting access to internet falls short of meeting the test of proportionality, it treads its steps with caution as the concerns of national security outweigh the individual right to free speech. It is noteworthy that the Court has taken into consideration the steps undertaken by the government in restoring internet in the territory of J&K since its last decision in Anuradha Bhasin. However, at the same time, without rendering a conclusive opinion on the validity of the restrictions imposed by applying the test of ‘legitimacy’, ‘reasonableness’ and ‘proportionality’, it assigned the work to the Special Committee to examines the issues raised by the Petitioner. Further, the Special Committee constituted by the Court only comprises of executive members, which executive is responsible for imposing restrictions on the internet in J&K. For this reason, the judgment remains a subject matter of criticism in the Indian legal circle.

In June 2020, the Petitioners alleged that the government has failed to constitute the Special Committee as directed by the Court and filed a contempt petition before the Supreme Court.[[1]](#footnote-1) The Supreme Court upon hearing the contempt petition on June 16, 2020, granted a week’s time to the Union of India and Union Territory administration to file a response to the contempt petition.

1. **Global Perspective**

**Related International and/or regional laws**

* The Zamora, (1916) 2 AC 77 (PC)]

**National standards, law or jurisprudence**

* India, Const. art. 19
* *Anuradha Bhasin v. Union of India*, WP (C) No. 1031/2019
1. **Case Significance**

**The decision establishes a binding or persuasive precedent within its jurisdiction.**

The decision was given by a three-judge bench of the Indian Supreme Court. Therefore, it establishes a binding precedent on all Courts within, unless overruled by a larger bench of the Supreme Court.

**LINKS:**

* <https://thewire.in/law/supreme-court-4g-jammu-and-kashmir>
* <https://scroll.in/article/961792/by-ordering-panel-to-review-demand-for-4g-internet-in-j-k-supreme-court-has-abdicated-its-duty>
* <https://www.outlookindia.com/newsscroll/contempt-petition-in-sc-over-no-panel-to-review-jampk-internet-curbs/1860888>
1. Foundation for Media Professionals v. Ajay Kumar Bhalla, Conmt. Pet. (C) 0041/2020 [↑](#footnote-ref-1)