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MADRAS HIGH COURT ON PRIVACY RELATING TO EMPLOYEE MATTERS

The Madras High Court (“**HC**”), in *Mr. Gopal Vittal, Bharti Airtel Ltd.*, case,¹ held that circulation of list of persons who are not vaccinated against Covid-19 does not tantamount to circulation of sensitive personal data (“**SPD**”) and therefore does not violate privacy nor constitutes an offence under the provisions of the Information Technology Act, 2000 (“**IT Act**”).

Brief Facts

A petition² was filed by the petitioners i.e., Bharti Airtel Ltd. and its officers (“**Airtel**”) seeking quash of proceedings before the court of Judicial Magistrate No. 1, Udumalpet, Tamil Nadu (“**TC**”). The TC proceedings were on account of it taking cognizance of a private complaint filed by Kamatci Shankar Arumugam (“**Arumugam**”). He alleged commission of offences by Airtel under Sections 43A³ and 72A⁴ of the IT Act read with Sections 52⁵ and 199⁶ of the Indian Penal Code (“**IPC**”) (“**Complaint**”).

Airtel had advised its employees to get vaccinated against the Covid-19 during the pandemic. It was done for the welfare of Airtel employees and in compliance with the then prevailing government mandate. Arumugam, then an employee of the Airtel, refused to get vaccinated.

A list of employees remaining unvaccinated was circulated by Airtel and Arumugam’s name was included. He objected to his name being in the list contending that his SPD was being circulated by Airtel and therefore, his right of privacy was being violated.

A representation was made by Arumugam to the Chief Human Resources Officer (“**CHRO**”) of Airtel alleging that he was being forced to wear a face mask, get tested for Covid-19 and get vaccinated. The CHRO replied that Arumugam was not compelled to vaccinate himself. He could

¹ *Mr. Gopal Vittal, Bharti Airtel Ltd. & Ors. v. Mr. Kamatci Shankar Arumugam*, 2024:MHC:6072 passed on February 2, 2024 (“**Judgment**”). Copy available [here](#).

² Under Section 482 of the Criminal Procedure Code, 1973 providing for “*Saving of inherent powers of High Court*”.

³ *Compensation for failure to protect data*.

⁴ *Punishment for disclosure of information in breach of lawful contract*.

⁵ Defines “*good faith*” as “*nothing is said to be done or believed in “good faith” which is done or believed without due care and attention.*”

⁶ *False statement made in declaration which is by law receivable as evidence*.

continue to work through online mode and if required at the office then apply for leave or abstain from work on loss of pay. On grounds that Arumugam unauthorisedly absented himself he was terminated.

Airtel's Contentions

- No offence was made out in the Complaint.
- Cognizance was taken by the TC without application of mind.
- The Complaint was filed out of vengeance against them for terminating Arumugam's services.
- A petitioner was outside the territorial jurisdiction of the Trial Court⁷ and therefore, an inquiry as mandated under Section 202(1)⁸ of the Criminal Procedure Code, 1973 ("Cr.P.C") ought to have been conducted.
- The action of Airtel was in consonance with government mandates and was solely to safeguard its employees during the pandemic.

Arumugam's Contention

His right to privacy was infringed by Airtel by circulating the list of employees remaining unvaccinated containing his SPD.

HC's Judgement and Reasoning

Allowing the Petition, the HC noted that Section 43A of the IT Act is not categorised as an offence under the IT Act and is more of a tort. It also held that holding of an inquiry, as mandated under the Cr. P.C,⁹ is mandatory. In this case the TC failed to do so.

The HC relied on *Jacob Puliyel* judgement¹⁰ of the Supreme Court which held that: "*A person cannot be compelled to vaccinate himself or herself. However, an organization must necessarily take into consideration the welfare of majority of its employees and therefore, a person, who does not vaccinate and follow the Covid-19 Safety Protocol, cannot be allowed to have access to others in a public sphere, as, between the rights of an individual and a larger group of persons, it is the right of larger group of persons, which will take predominance....*". It held that the "[s]tep taken by the petitioner company (Airtel) cannot be considered to be coercion or compulsion inflicted on the respondent..."

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⁷ Based in Delhi.

⁸ Provides for "Postponement of issue of process"

⁹ Section 202(1) *ibid*

¹⁰ *Jacob Puliyel v. Union of India* [2022 SCC OnLine SC 533]

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