



THE FIRST NLUJ-NHRC MOOT COURT COMPETITION, 2023

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ANTONIUS PIUS V. UNION OF MARWAR

1. The Union of Marwar was famous for its rich traditions and heritage. After years of colonial rule, and a long freedom struggle, it got independence in 1947.
2. Mr. Antonius Pius was an engineer who was better known for courageous investigative journalism. He had uncovered a lot of scams and was responsible for bringing a lot of wrong doers to the doors of justice. During one such instance in the year 2009, his ways crossed with some important figures of the power corridors, which led to his exit from the media house he was working for.
3. ZouTube was a new and raging phenomenon at that time, where one could open a channel and upload videos which could be seen by the public at large. Mr. Antonius Pius continued his investigative journalism and started uploading videos on his ZouTube channel. Very soon, his followers and views boomed and it became a widely followed channel.
4. ZouTube was controlled by Akshar Pvt Ltd (“**Akshar**”) a company incorporated under the laws of Marwar. The said company also controlled other platforms like Doodle, Ginsta, BookTime, Inkedin, Howapp, and Writter.
5. All these platforms required a person to sign-up for access, and while such sign-up was free, however without a sign-up access was not possible to any of these platforms. Sign-up was a onetime affair which required an Aadhar based One-time Password (“**OTP**”) login mapped to a device by its Media Access Control (“**MAC**”) identity. As soon as device was changed, one had to do a fresh sign-up. To avoid any misuse, intelligent artificial intelligence (“**AI**”) based mechanisms were in place to stop people from allowing anyone else to use their sign-up or device.
6. Promoters of Akshar were part of the Jagatseth family, one of the richest families in Marwar. The said promoters had always believed in professional management of their companies and none of them interfered in the day-to-day functioning of Akshar.

7. The ownership of these platforms was through layers of subsidiaries, where each of these platforms was directly owned by a company incorporated in the British Virgin Islands, and the shares of these seven companies were parked in a Trust registered in Marwar, and all trustees of the said Trust were promoters of Akshar.
8. The 2011 edition of Rhyme Magazine named Akshar as the company of the year, and labelled its platforms as 'Internet-Giants' which have greatly impacted the human civilization as a whole. Zoutube, Doodle, Ginsta, BookTime, InkedIn, Howapp, and Writter were market leaders in their individual segments with over 95%-98% market share.
9. In 2012, Mr. Antonius Pius was offered a job by Mandore Telecom Nigam Limited, a wholly state-owned company, in its 4G engineering department, which he readily accepted. In January 2013, Akshar launched a new internet service called Airfone, which offered free gigabit speed internet for a year to all its subscribers who had to pay a one-time yearly subscription fee of 49 Marwar Rupees. This led to the tumbling of share prices of its competitors and also impacted the proposed roll-out of similar services by the Mandore Telecom Nigam Limited.
10. Mr. Antonius Pius did a story in February 2013 on the free gigabit internet offer of Airfone and its effect on its competitors, and uploaded on his ZouTube channel. The substance of his story was how certain employees of Akshar had withdrawn huge amounts of cash and about the same time, the roll-out of 4G services by State telecom companies like Mandore Telecom Nigam Limited was deferred. While the story did not connect these two aspects in any manner, it went viral and the rumour mill was rife about how bribes have been paid to defer the said rollout, with several other Zoutube channels speculating about these aspects. One of the notable channels was of Mr. Kavish Kumar who was known for his independence, threadbare analysis, and objective reporting.

11. As it hurt the image of Akshar, it filed a criminal complaint in December 2013 for Defamation and Extortion against Mandore Telecom Nigam Limited and Mr. Antonius Pius. Mr. Kavish Kumar as listed as a prime witness.
12. On its part, Mandore Telecom Nigam Limited suspended Mr. Antonius Pius, and also started a disciplinary inquiry against him, labelling his video on Akshar as an act of misconduct and insubordination, and a show cause notice was issued in May 2015, and a chargesheet was issued in December 2015. Awaiting the outcome of pending Trial, the disciplinary proceedings were kept on hold but suspension of Mr. Antonius Pius was not revoked.
13. In a very curious turn of events, Mr. Antonius Pius found that his access to Zoutube, Doodle, Ginsta, BookTime, InkedIn, Howapp, and Writter was limited by Akshar. Mr. Antonius Pius was neither able to do any internet searches on Doodle, nor could he share/upload his images or videos on Zoutube, Ginsta, BookTime, InkedIn, Howapp, and Writter. On Writter and Howapp, he could send/share text messages but could not share/upload any photos or videos. His participation in Howapp groups was limited to a read-only mode, where he could not even send text messages in groups on Howapp. Likewise, he was unable to update his professional profile on InkedIn, and a banner with bold red “suspended employee” was shown on his InkedIn and BookTime profile. He also found that portions of his private data were leaked on the internet. Such leaks included his search queries, sites he browsed, Zoutube, Ginsta and other activity, location history, and purchases made online. It also contained some parts of offline conversations he had, which seemed to be recorded by the Assistant feature of Doodle. Forensic analysis conclusively established that this leak was done by an employee of Akshar.
14. Mr. Antonius Pius filed a writ petition in May 2016 before the Hon’ble Supreme Court of Marwar (“**the Court**”). In his writ petition, he prayed for his suspension by Mandore Telecom Nigam Limited to be set aside, as well as directions to the Union of Marwar to

regulate the functioning of the Internet-giants. In his writ, he claimed that given the wide and pervasive use by humankind of platforms like Zoutube, Ginsta, BookTime, InkedIn, Howapp, and Writer; the Court must declare them as performing a public-duty, whereunder they must comply with Part III and other rights enshrined under the Constitution of Marwar and proscribe them from arbitrarily suspending access. He further sought a declaration that in present times, it is difficult to imagine life without the use of one or the other of these platforms, and these platforms have grown so big that they have billions of users, and hence there must be an independent third party body that must oversee the functioning of these portals to stop monopolistic abuse, and such body must decide the policies under which these platforms can deny access to any individual or access the private data of any user. He further prayed that the proposed body must also formulate and dynamically review the terms-of-use as laid down by these platforms. He also sought compensation for violation of his privacy due to leaking of his chats.

15. Finding that the matter involved determination of substantial questions affecting a large number of persons, the Court decided to issue notice to Union of Marwar. Mandore Telecom Nigam Limited, and Akshar were also issued notice. The Court refused to grant any interim relief. Service to all respondents, and completion of pleadings took some time, and in the meantime, the trial proceeded.
16. During trial, Mr. Kavish Kumar did not support the prosecution's version and was declared hostile, and on this ground giving benefit of doubt to Mr. Antonius Pius and Mandore Telecom Nigam Limited, they were acquitted by a judgment pronounced in December 2022. No appeal was filed thereagainst, and the matter attained finality.
17. Basis his acquittal, Mr. Antonius Pius made a representation through proper channel for the disciplinary proceedings to be dropped. However, the said prayer was not acceded to, and in the disciplinary proceedings, Mr. Antonius Pius was not given any benefit of the

acquittal in criminal case, citing his acquittal to be on technical grounds, and not being an honorable acquittal.

18. Mr. Antonius Pius was permitted to amend his pending writ petition, to bring these subsequent developments on record. By way of amendment, Mr. Antonius Pius raised additional grounds to the effect that under criminal jurisprudence and the substantive and procedural criminal laws, there are no defined categories of acquittal known to a trial court to enable it to categorize the acquittal as honorable or technical. Claiming that the term honorable acquittal slipped into criminal jurisprudence from martial law entirely by accident, he further prayed that service laws cannot permit bureaucrats and similarly placed executives to speculate on a judicial adjudication in a trial- as to whether the acquittal is honorable or technical, as a trial is about adducing proof of guilt by prosecution, and not proof of innocence by an accused. He asserted that an accused has a fundamental human right to be always presumed innocent until proven guilty, and innocence is an absolute concept and there are no shades of innocence under the laws of evidence and criminal/penal codes. If service laws are allowed to permit such adjudication ex-post a trial, then it will be akin to executive adjudicating over a judicial verdict, which will violate the doctrine of separation of powers. At the same time, an accused who has been acquitted does not have any chance of appeal, to seek a correction from a technical acquittal to be converted to honorable acquittal, which revolts against the canons of fair-trial and condemns them unheard on this aspect.

19. These amendments were allowed, and finding that the matter involves an interpretation of the Constitutional provisions, the Court directed for the matters to be heard by a Constitution Bench in terms of applicable constitutional provisions, on the following issues, inter-alia:

I. On internet giants:

- a. Whether there are well established mechanisms under existing regulatory regime dealing with grievances sought to be raised, and hence this Court should not entertain the present writ?
- b. Whether denial of access to the named internet platforms can be held to be a violation of any human rights? Conversely, having accepted the terms of use and service, of the platforms in question, is the Petitioner bound by the same?

II. On due process:

- a. Whether the categorization of an acquittal as honorable or otherwise is illegal, and in violation of fundamental and human rights guaranteed under Constitution and applicable international covenants/conventions?
- b. Conversely, whether in absence of any statutory provision enshrining presumption of innocence, can the Petitioner claim any relief? And, whether honorable /technical acquittal being a long-established aspect embedded in service jurisprudence and well accepted by Courts over decades, it would not be prudent to disturb the same at this stage?

Notes:

1. All references are fictional. The legal system and legal history of India, applies mutatis mutandis to Marwar, with all its laws (including subordinate legislation), international obligations and judgments. For the sake of argument, please assume Doodle is equivalent to Google, Ginsta as Instagram, BookTime as Facebook, Inked in as LinkedIn, Howapp as Whatsapp, and Writer as Twitter or X; and Central CCS-CCA Rules as available on dopt.gov.in, are deemed to apply to the disciplinary proceedings.
2. Participants stand advised to devise a 'litigation strategy'. The issues can be argued in the alternative/without prejudice, be divided into sub-issues, **and can be added to or amended upon**. Written submissions/memorials must address all the issues.
3. Any citations, **without actual para/page references**, will invite negative marking. Unnecessary citations and *passim* references are to be avoided. In case of oral arguments, primary references for all case-laws being referred to **is mandatory** and no participant will be allowed to cite a case-law from secondary sources like text-books or commentaries. Primary reference may be made to select treatises which are treated as authorities in their own right.