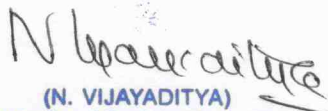


In the matter of: Yahoo India (Pvt.) Ltd.

ORDER

1. **WHEREAS** the Controller of Certifying Authorities (CCA) is a statutory authority under the Information Technology Act, 2000 and has been given powers under section 28 of the Act to investigate any contravention of the provisions of this Act, rules or regulations made thereunder.
2. **AND WHEREAS** CCA has been receiving such requests/references from Intelligence Bureau, Ministry of Home Affairs, Government of India on regular basis on sensitive issues related to national security, integrity and defence. On receipt of such specific requests/references, CCA sends notices under section 28 of the Act to various service providers/intermediaries seeking details for the purpose of investigations.
3. **AND WHEREAS** several notices have been issued by the Office of Controller of Certifying Authorities to Shri Amitabh Lal Das, Legal Director & General Counsel, Yahoo India Pvt. Ltd. (the company) on following dates: (i) 07.1.2011 & 19.1.2011, (ii) 28.1.2011, (iii) 9.2.2011, (iv) 24.3.2011, (v) 18.4.2011, (vi) 6.5.2011, (vii) 16.5.2011, (viii) 24.6.2011, (ix) 29.6.2011, (x) 08.07.2011, and (xi) 13.07.2011 under section 28 of the Information Technology Act, 2000 for the purpose of investigation of any contraventions committed under the Information Technology Act, 2000.

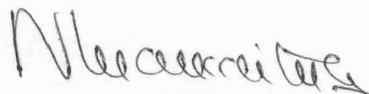

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4. **AND WHEREAS** the company failed to respond to the above said notices from the Office of Controller of Certifying Authorities during the last six months, which led to avoidable delays in sensitive investigations. That only on 19.07.2011 the company collectively replied to the notices submitting that the Controller is not the competent authority to seek disclosure of user information.

5. **AND WHEREAS** CCA issued a show cause notice, dated 21.07.2011 to the company stating why a penalty of Rs. One Lakh Fifty Thousand for each such failure should not be imposed on the company under section 44(a) of the Information Technology Act, 2000, for its failure to furnish information and/or documents as directed by the Office of Controller of Certifying Authorities. The said notice further stated that by not complying with aforesaid notices, the company has committed contempt of the lawful authority of a public servant, which is an offence punishable under section 174 and 175 of the Indian Penal Code, 1860.

6. **AND WHEREAS** in response to the show cause notices, dated 21.07.2011 the company represented by Shri Amitabh Lal Das, Legal Director & General Counsel, Yahoo India Pvt. Ltd. and Shri Vijay K. Sodhi, Shri Sanjay Kumar, & Shri Anirban Bhattacharya, Advocates, Luthra & Luthra appeared before the CCA on 01.08.2011 and submitted written submissions, dated 28.07.2011 duly signed by Shri Arun Tadanki, Managing Director, Yahoo India Pvt. Ltd., which were taken on record. Further, ample opportunity was given to the representatives of the company to make oral submissions as well and the company reiterated the same.

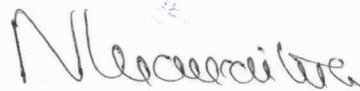


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7. **AND WHEREAS** the company submits the following:

- (a) that the allegations levelled against the company in the show cause notice are totally devoid of merit and legally untenable; the company has duly replied to all notices vide its letter dated 19.07.2011, except the notices dated 24th and 29th June which were not received by the company.
- (b) That while the notices admittedly are simpliciter requests under section 28 of the Act, requesting for information pursuant to request for the same from Intelligence Bureau, Ministry of Home Affairs, in the show cause notice, the same have been sought to be referred to as being under section 28 of the Act "for the purpose of investigation of certain contraventions committed under the Act".
- (c) That there was no investigation underway of any contravention of the provision of Act, when the aforementioned notices were served upon the company.
- (d) That if the company was to accede to your persistent demands on behalf of the Intelligence Bureau for personal information relating to various user ids and their accounts, the company may be guilty of infringing the provisions of section 72A of the Act pertaining to disclosure of information in breach of lawful contract by an intermediary, while your good self may be similarly guilty under section 72 thereof which covers cases of breach of confidentiality and privacy.



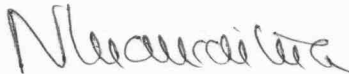
(N. VIJAYADITYA)
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- (e) That there is no contravention under the Act that may attract the provisions of section 44(a) of the Act. The threatened invocation of sections 174/175 of the Indian Penal Code, 1860, besides being legally untenable in the facts of the present case, reeks of highhandedness and a deplorable tendency to coerce.
- (f) That CCA office, which is supposed to ensure that the provisions of the Act are not violated, is in this case pressing the Company to commit violation thereof under threat of fine and prosecution. Such a sad state of affairs deserves to be condemned.
8. **AND WHEREAS** the undersigned has carefully considered the written submissions made and also heard the Company's authorized representatives.

On the submissions made, the following questions arise for my consideration:

- (i) Whether the Company's contention is correct that the notices are simpliciter requests under section 28 of the Act, requesting for information pursuant to request for the same from Intelligence Bureau, Ministry of Home Affairs, while in the show cause notice, the same have been sought to be referred to as being under section 28 of the Act for the purpose of investigation of any contraventions committed under the Act?
- (ii) Whether the Company's contention that there was no investigation underway of any contravention of the provision of Act, when the aforementioned notices were served upon the company is correct?


(N. VIJAYADITYA)
Controller of Certifying Authorities
Government of India
Min. of Communications and Information Technology
Electronics Niketan
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- (iii) Whether the Company by disclosing user details as requested under various notices would be violating provisions of section 72A and also make the office of CCA liable under section 72 of the Act?
- (iv) Whether the Company is liable under section 44(a) of the Act for its failure to furnish information and/or documents as directed by the CCA and also under the provisions of sections 174/175 of the Indian Penal Code, 1860?

Re: Questions (i), and (ii)

9. It is submitted by the company that it has been in receipt of notices sent by the office of CCA, except the notices of 24th and 29th June, 2011. In other words, the company admits that it received eight notices. However, it has been brought to my notice that Speed Post delivery notices available on India Post website confirm that communications dated 24th and 29th June 2011 have also been delivered. That is, the company did receive all the eleven notices sent by the Office of CCA under section 28 of the Act. While the first notice was sent in January 2011, and repeated notices every month thereafter, yet the company only chose to respond after a gap of almost six months without giving any reason for delay vide letter dated 19.07.2011. It clearly indicates the company's disinterest to respond to a statutory authority, even when it was duly informed vide various notices that the Office of CCA has received a reference from the Intelligence Bureau, Ministry of Home Affairs, Government of India.

N. Vijayaditya

(N. VIJAYADITYA)
Controller of Certifying Authorities
Government of India
Min. of Communications and Information Technology
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10. It is also admitted by the company that all these notices have been issued under section 28 of the Act, which states:

Power to investigate contraventions – (1) The Controller or any officer authorized by him in this behalf shall take up for investigation any contravention of the provisions of this Act, rules or regulations made thereunder.

(2) The Controller or any officer authorized by him in this behalf shall exercise the like powers which are conferred on Income tax authorities under Chapter XIII of the Income-tax Act, 1961, and shall exercise such powers, subject to such limitations laid down under that Act.

The aforesaid section makes it abundantly clear that the Controller or any officer authorized by him in this behalf has power “to take up for investigation” contravention of the provisions of this Act, rules or regulations made thereunder. Therefore any notice issued under section 28 of the Act would be “for the purpose of investigation of certain contraventions committed under the Act” In fact, all the notices have been issued to the company under section 28 of the Act. The relevant portions of such notices issued by the Office of CCA are extracted below:

“We have received a reference from the Intelligence Bureau, Ministry of Home Affairs.

Under Section 28 of the Information Technology Act, you are requested to provide the account creation details, profile of the user, mail box and login IP addresses in respect of the above.....at the earliest”.

With regards,

Yours Sincerely,

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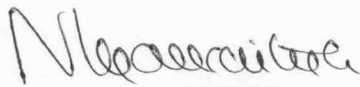


(N. VIJAYADITYA)
Controller of Certifying Authorities
Government of India
Min. of Communications and Information Technology
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6, CGO Complex, New Delhi-110003



11. It is evident from above that every time the company received such a notice, the company had knowledge that the notice has been issued under section 28 of the Act, which empowers the Controller or any other officer authorized by him in this behalf to investigate contraventions. Thus the company's contention that the show cause notice referring section 28 of the Act "*for the purpose of investigation of certain contraventions committed under the Act*" is not in the spirit of earlier notices is incorrect. The company's contention that since the words "*for the purpose of investigation of certain contraventions committed under the Act*", have not been used in the notice, making it a request simpliciter, is untenable. It is significant to note that all the notices and show cause notice made reference to section 28 of the Act only. Once a notice is issued under section 28 of the Act, it is but obvious that the information is required "*for the purpose of investigation of certain contraventions committed under the Act*". The notices issued to the company made it clear in no uncertain terms that under section 28 of the Act, the company is to provide certain details and it is always to the knowledge of the company that the said section gives CCA or any officer authorized by him the power to investigate any contravention of the provisions of this Act, rules or regulations made thereunder; and therefore also the authority and competence to seek information, which has been questioned by the company.

12. That the Office of CCA repeatedly sent notices to the company under section 28 of the Act requesting user details of certain email Ids as per reference from the Intelligence Bureau, Ministry of Home Affairs, Government of India. Only on receipt of such specific references, the Office of the Controller issued notices for investigation under section 28 to the company, which the company repeatedly failed to comply.


(N. VIJAYADITYA)
Controller of Certifying Authorities
Government of India
Min. of Communications and Information Technology
Electronics Niketan
6, CGO Complex, New Delhi-110003

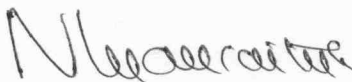


13. In my view, the legislative intent is very clear regarding section 28(1) of the Act as it provides that "*The Controller or any officer authorized by him in this behalf shall take up for investigation.....*", meaning thereby that this power, if CCA deems fit, can be exercised either *suo moto* or at the request/reference of any person/agency. Therefore, in the present case the CCA is exercising its power of investigation under section 28 vis-à-vis the reference of Intelligence Bureau which happens to be the nodal agency involved in protecting national security, integrity and defence.

14. It was clear that the information required was for investigation purpose only. The user details sought are neither figment of imagination of the Intelligence Bureau, nor of the Office of Controller. This information has been sought for protecting national security, integrity and defence. Hence, the company's plea that there was no investigation underway of any contravention of the provision of Act, when the aforementioned notices were served upon the company is untenable and incorrect. The company has failed to give any coherent reason why it came to a conclusion that there was no investigation underway of any contravention of the provision of Act, when the aforementioned notices were served upon the company.

Re: Question (iii)

15. That the company's contention that by disclosing user details as requested under various notices it would be violating provisions of section 72A and also make the office of CCA liable under section 72 of the Act is unsustainable. Such a contention would make section 28 redundant, which cannot be the legislative intent. Section 72 and 72A permit disclosure of information as provided under the Act, and there are various provisions in the Act, which give various authorities


(N. VIJAYADITYA)
Controller of Certifying Authorities
Government of India
Min. of Communications and Information Technology
Electronics Niketan
6, CGO Complex, New Delhi-110003



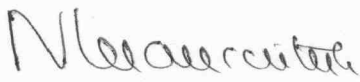
the power to seek information from intermediaries, including section 28. When information is sought by the Controller under section 28 of the Act, it is covered by the saving clause as specified in section 72A, and would not make the company liable under section 72A.

16. Section 72 also provides the same saving clause, permitting disclosure of information as provided under the Act. The CCA cannot be made liable under section 72 for exercising the authority entrusted upon him under section 28 of the Act. Further, section 84 of the Act grants protection to the Controller or any person acting on behalf of him for anything which is in good faith done or intended to be done in pursuance of the Act or any rule, regulation or order made thereunder. All the notices as well as the show cause notice have been issued to the company without malafide intent and in good faith in the background of context and circumstances. The allegations of highhandedness and tendency to coerce are uncalled for.

17. I am of the opinion that the company on receipt of a lawful notice/order under section 28 of the Act is bound to disclose details of any such user account to the Controller or any officer authorized by him in this behalf. In the present case, various notices issued to the company under section 28 of the Act have been lawful.

Re: Question (iv)

18. In view of above, it is very much evident that the company despite being given multiple notices to disclose user details has wilfully and deliberately ignored such notices despite having the knowledge that such details/information are sensitive and needed for the purposes of investigation. The notices issued to the company clearly mentioned the details/information sought. In fact, by seeking such details/information, it was clear that the Office of CCA had initiated


(N. VIJAYADITYA)
Controller of Certifying Authorities
Government of India
Min. of Communications and Information Technology
Electronics Niketan
6, CGO Complex, New Delhi-110003



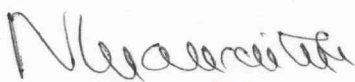
search for material and facts in the form of investigation (under section 28 of the Act) in order to find out whether or not any contravention under the Act or any rule, regulation or order made thereunder has been committed. Not responding to such notices quickly enough and thereafter raising the question of competency of the Controller to initiate such investigations, even though the company was aware of sensitiveness and seriousness of the matter amounts to extreme casual attitude of the company towards the law of the land.

19. In my view, such a complete disregard of statutory authority by the company is reprehensible and condemnable. The company's plea that the Controller is not a competent authority in its delayed response to the notices, is incorrect in the view of the stated position of law under the Act, wherein section 28 empowers the Controller or any officer authorized by him the power to investigate any contravention of the provisions of this Act, rules or regulations made thereunder. There is an inherent contradiction in the company's submission, on one hand it recognizes that the Office of CCA is competent under section 28 of the Act to investigate, and on other, it challenges the competency of the Controller or any officer authorized by him to issue notices under section 28 of the Act.

20. That section 44(a) of the Act provides:

Penalty for failure to furnish information, return, etc. – If any person who is required under this Act or any rules or regulations made thereunder to –

- (a) furnish any document, return or report to the Controller or the Certifying Authority fails to furnish the same, he shall be liable to penalty not exceeding one lakh and fifty thousand rupees for each such failure;


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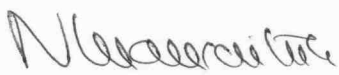


That it is admitted by the company that it received multiple notices under section 28 of the Act. All such notices pertain to separate email ids and sought user details, including account creation/registration details, login IP addresses and contents of mail box of the same. In view of above, the company knowingly and deliberately committed multiple failures under section 44(a) of the Act by not furnishing information/document as directed by the Office of CCA. The company has been made aware by such notices repeatedly that it was to provide such user details at the earliest under section 28 of the Act.

21. Since the Controller, the Deputy Controller and the Assistant Controller under section 82 of the Act, deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860. I am of the view, that by knowingly not-complying with aforesaid notices, duly signed by the Deputy Controller/ Assistant Controller, the company is further liable as it has committed contempt of the lawful authority of a public servant, which is an offence punishable under section 174 and 175 of the Indian Penal Code, 1860.

Conclusion

22. In the light of the above discussion, I, therefore, hold that the company knowingly and wilfully ignored all the eleven notices sent to it by the Office of CCA under section 28 of the Act. The company knowingly committed multiple failures under section 44(a) of the Act by not furnishing information/document as directed by the Office of CCA. Such a complete disregard of a statutory authority by the company is reprehensible, condemnable and regrettable. Further, the company has committed contempt of the lawful authority of a public servant under section 174 and 175 of the Indian Penal Code, 1860.

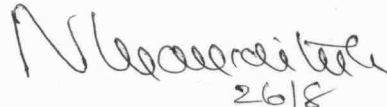

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Controller of Certifying Authorities
Government of India
Min. of Communications and Information Technology
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23. Accordingly, a fine of Rs. One Lakh per such failure to furnish information/document under section 44(a) of the Act is hereby imposed on the company. Since, the company has failed to furnish the requisite information as requested in all the eleven notices sent to it by the Office of CCA under section 28 of the Act, a cumulative fine of Rs. Eleven Lakhs is hereby imposed on the company. Further, with regard to company's contempt of the lawful authority of a public servant under section 174 and 175 of the Indian Penal Code, 1860, I am issuing a strict warning to the company without presently initiating any punitive action under the relevant provisions of the Code, that any future disregard of the lawful authority of the Controller, Deputy Controller or Assistant Controller would be dealt with severely.

24. The company is hereby ordered to pay the penalty amount of Rs. Eleven Lakhs within Twenty (20) days from the date of this order and deposit the same in the form of a demand draft in the name of "Pay & Account Officer, DIT", payable at New Delhi.

Date: 26th August, 2011


26/8

(Controller of Certifying Authorities)

Department of Information Technology

Ministry of Communications & Information Technology

Government of India

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