

(2013) 08 AHC CK 0028
In the Allahabad High Court
Case No : Misc. Bench No. 7444 of 2013

Ashok Pande (P.I.L.)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Citation : (2013) 100 ALR 598

Hon'ble Judges : Shiva Kirti Singh, C.J.;Devendra Kumar Upadhyaya, J

Bench : Division Bench

Judgement

Shiva Kirti Singh, C.J. and Devendra Kumar Upadhyaya, J.—Heard Mr. Ashok Pande, the petitioner who has appeared in person and learned Counsel for the Union of India. Mr. Pande also happens to be an Advocate of this Court. The prayer made in this writ petition filed as a public interest litigation is to issue a mandamus directing the Cabinet Secretary and Secretary, Ministry of Information and Broadcasting (respondents No. 1 and 2) of the Government of India to prohibit all the departments and Public Sector Undertakings from publishing photographs of political leaders who are not holding any Government office and that such prohibition should also cover photographs of Ms. Sonia Gandhi because she is holding no post in the Union of India but is actually the Chairperson of United Progressive Alliance, in various advertisements which are published by different departments from time to time in the Newspapers, Television or anywhere else. There is further prayer to direct the respondents No. 1 and 2 to recover part of the cost of advertisements issued with the photographs of Ms. Sonia Gandhi during last nine years, from her party, the Indian National Congress. The last prayer is to quash the order or letter dated 6.8.2013 of respondent No. 2 along with the note of Directorate of Advertising and Visual Publicity (D.A.V.P.), respondent No. 3 dated 22.7.2013 on the ground that in the note dated 22.7.2013, there are materials to indicate that D.A.V.P. itself does not have any authority in the matter raised by the petitioner.

2. A similar writ petition was filed by the petitioner bearing writ petition (M./B.)

No. 4102 of 2013. That was also filed as a public interest litigation. As appears from the order dated 17.5.2013 contained in Annexure-3 to the writ petition, that writ petition was dismissed as premature because the petitioner had rushed to this Court immediately after raising his grievance through a representation dated 15.5.2013. However, this Court granted liberty to the petitioner that, if so advised, he may approach this Court after reasonable time, such as two-three months.

3. As noticed above, the main response of the respondent communicated to the petitioner is the note of D.A.V.P. dated 22.7.2013 contained as part of Annexure-5. That note acknowledges that the comments were on account of reference dated 20.5.2013 received from the Cabinet Secretariat on representation of the petitioner on the subject noticed above. Paragraph-1 of that note simply indicates the role of D.A.V.P. in publishing different kinds of advertisements received from various departments of Union of India. Paragraph-2 discloses two reasons in support of the Governmental action under challenge. First stand is that the contents of the publicity material is the prerogative of individual Ministry/Department and D.A.V.P. has no role to play in it. The second stand is that the achievements and programmes of the Government are publicized through the advertisements and it is an acceptable and established practice to include the photographs of the leaders under whose benign guidance and leadership such achievements have been made.

4. The petitioner has submitted that the second point made out in the notice dated 22.7.2013 only talks of acceptable and established practice to justify the publication of photographs of leaders without disclosing any law which may support or permit such an action. With regard to first point in paragraph 2, the petitioner has criticized the respondents that when the contents of publicity material is prerogative of individual Ministry/Department, the representation should not have been sent to D.A.V.P. and should not have been disposed of by the Ministry of Information and Broadcasting, respondent No. 2 on the basis of said note, rather the matter should have been decided by the competent authority, such as Cabinet Secretary who represents respondent No. 1, the Union of India.

5. Learned Counsel for the Union of India, on the other hand, has replied that executive authority of the Union of India is as wide as its legislative authority and it is not necessary that each executive decision must be in terms of some statutory provision or law. According to him, it is for the petitioner to show and establish that the impugned action is contrary to the constitutional or statutory provisions in existence. With regard to the issue of competence of the D.A.V.P. to reply the representation, it has been submitted that the note itself discloses that the matter was referred to D.A.V.P. by the Cabinet Secretariat and, therefore, it has taken the stand that it is acceptable and established practise to include the photographs of leaders whose guidance and leadership are required to be acknowledged.

6. So far as the legal issue as to whether any law is required to permit the Union of India to issue such advertisements which" have been objected to by the petitioner, we are in respectful agreement with the submissions made on behalf of the Union of India that it is within the powers of the Union of India to take appropriate executive decisions and the only limitation on such powers is that the decisions must not run counter to any constitutional or statutory provisions which prohibit the respondents from deciding the contents of publicity material or to include as an acceptable and established practice the photographs of some leaders whose guidance and leadership are considered fit to be acknowledged.

7. The contents of the note, too, do convey that the D.A.V.P. has no control over the contents of the publicity material but since a reference was made by the Cabinet Secretariat, it has endeavoured to answer the objection raised in the representation of the petitioner by referring to acceptable and established practice. It cannot be held, in such circumstances, that the D.A.V.P. has acted without jurisdiction in taking a stand with regard to grievance of the petitioner in his representation.

8. Some affairs of the Union of India may relate to more than one departments and when the Cabinet Secretariat refers a representation to a particular department, reply of such department cannot be quashed on the ground that it is without jurisdiction. In executive and administrative matters, such flexibility is required in the interest of working of the Government and an issue on this kind of allocation of responsibility can be made or raised only if some law is shown to have been violated.

9. Ultimately, in a public interest litigation, the petitioner is required to show that the prayer, which he is seeking, shall promote public interest. It is very difficult for the Court, considering the set of facts and controversial issues, to come to any final conclusion that the petitioner's prayer, if granted, shall promote public interest. Functioning of a democracy in a healthy and vibrant manner requires establishment of healthy practices and conventions. All such matters cannot be governed by statutory law. For example, one can see the functioning of Government of United Kingdom. England has no written constitution but its system is known to be mother of all democracies. It is the responsibility of those in power to establish healthy practices and conventions which can alone be the root of democracy in this country, which has achieved independence recently. It would not be proper for this Court to interfere in such matters of policy.

10. So far as the issue of wastage of public funds is concerned, it is not the case of the petitioner that Government cannot issue advertisements in Newspapers or Television. Admittedly, different Governments at different levels have been doing so since long time. If visual image is published or telecast in a format which includes more than one or two photographs then as to how much additional financial burden would be involved, is difficult to be ascertained or appreciated.

11. Further, it will be hazardous to lay down, in concrete terms, the ideal

relationship between the party in power and the Government which it has provided. That relationship is itself a tender and delicate relationship which should not be disturbed by extraneous forces. Only exceptional situation can invite intervention of the Court when the constitutional provisions are under threat or have been breached. We do not find any good reasons to grant the prayers made in this writ petition. The writ petition is, therefore, dismissed.