

(2014) 04 SC CK 0058

In the Supreme Court Of India

Case No : Writ Petition (Civil) No. 13 of 2003 and 197 of 2004 (Under Article 32 of the Constitution of India)

Common Cause

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 23-04-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 32
Law Officers (Conditions of Service) Rules — Rule 189

Citation : (2014) 4 AWC 3502 : (2014) 5 JT 367 : (2014) 5 SCALE 485 : (2014) 6 SCC 552 : (2014) 5 SCJ 677

Hon'ble Judges : P. Sathasivam, C.J.;Ranjan Gogoi, J;N.V. Ramana, J

Bench : Full Bench

Final Decision : Allowed

Judgement

P. Sathasivam, C.J.I.

1. These writ petitions are filed in public interest, Under Article 32 of the Constitution of India, to throw light on the enduring issue of use of publicly funded government advertising campaigns as de facto political advertising canvass which is violative of Articles 14 and 21 of the Constitution. With the increasing awareness and emphasis on transparency in the governance of the country, the public senses the need to restrain the misuse of public funds for furthering the political motives. These petitions have been brought as a class action by certain registered societies viz., Common Cause and Centre for Public Interest Litigation seeking a writ in the nature of mandamus restraining the Union of India and all the State Governments from using public funds for advertising in a manner so as to project the personalities, parties or particular governments and for laying down binding guidelines which will prevent the abuse of public funds by such advertising.

2. The immediate cause of filing these writ petitions in 2003 and 2004 respectively is stated to be the numerous full page advertisements in the print

media and repeated advertisements in the electronic media by the Central Government, State Governments and its agencies, instrumentalities including public sector undertakings which project political personalities and proclaim the achievements of particular political governments and parties at the expense of the public exchequer. It is also the assertion of the Petitioners that such advertisements become more blatant and assumes alarming proportions just before the announcement of the general elections. Accordingly, it is the stand of the Petitioners that such deliberate misuse of public funds by the Central Government, State Governments, their Departments and instrumentalities of the State is destructive to the rule of law. Further, it allows the parties in power to patronize publications and media organizations affiliated to the parties in power and also to get favourable media coverage by selective dispersal of the advertising bonanza.

3. It is projected that the use of public funds for advertising by public authorities to project particular personalities, parties or governments without any attendant public interest is mala fide and arbitrary and amounts to violation of Article 14 of the Constitution of India. It is also highlighted that use and wastage of public funds in political motivated advertisements designed to project particular personality, party or Government by wasting public money is also in violation of the fundamental rights Under Article 21 because of diversion of resources by the governments for partisan interests. Such violation, therefore, attracts the remedy Under Article 32 for the enforcement of fundamental rights of the citizens. It is the stand of the Petitioners herein that a writ of mandamus in such a situation, if it is to be effective, needs to be accompanied by guidelines regulating the same and we accede to the stand of the Petitioners.

4. On the other hand, Union of India and various States submitted the necessity of advertisement in the print and electronic media for dissemination of information in a democratic setup and further pointed out that since similar issues have already been raised earlier and adjudicated upon by this Court as also some High Courts such as Bombay and Delhi, hence akin grounds should not be entertained in these petitions. With these averments and in the light of the earlier decision of this Court in *Manzoor Ali Khan and Anr. v. U.O.I. and Ors.* [Writ Petition (Civil) No. 83 of 2005] decided on 10.01.2011, the Respondents herein prayed for dismissal of both the writ petitions.

5. Heard Ms. Meera Bhatia, Mr. Prashant Bhushan, learned Counsel for the Petitioners and Mr. K. Radhakrishnan, learned senior Counsel for the Respondent-Union of India. We also heard respective counsel for various States.

Discussion:

6. Let us, at the outset, consider the objection raised by the Respondents regarding the maintainability of the petitions primarily before we would deliberate on the contentions on the merits.

7. In the counter affidavit filed on behalf of the Union of India, it has been stated

that the issues raised in the present petitions are no longer *res integra* but are in fact *res judicata* in the light of earlier decision of this Court in *Manzoor Ali Khan (supra)* and other matters decided by the High Court of Delhi in *Umesh Mohan Sethi v. Union of India and Anr.* [Writ Petition (Civil) No. 2926 of 2012] decided on 12.12.2012 and the Bombay High Court in *Laxman Moreshwar Mahurkar Vs. Balkrishna Jagannath Kinikar and Others*, .

8. In response to the objection raised, learned Counsel for the Petitioners submitted that the principle of constructive *res judicata* cannot be made applicable in each and every public interest litigation and relied on the judgment of this Court in *Rural Litigation and Entitlement Kendra Vs. State of U. P.*, , wherein it was held that:

16. ...We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the Court. Even if it is said that there was a final order, in a dispute of this type it would be difficult to entertain the plea of *res judicata*....

Thus, in the light of the above, learned Counsel for the Petitioners submitted that the decision rendered in *Manzoor Ali Khan (supra)* should not prevent this Court from deciding the issues raised in the present petitions.

9. Further, it is the stand of the Petitioners that a petition filed in public interest cannot be held to be an adversarial system of adjudication and the Petitioners in their case merely brought it to the notice of the Court as to how and in what manner the public interest is being jeopardized by arbitrary and capricious action of the authorities and, therefore, the principle of constructive *res judicata* cannot be made applicable in each and every public interest litigation, irrespective of the nature of litigation itself and its impact on the society and the larger public interest, which is being served. Placing reliance on the reasoning rendered in the aforesaid verdict the objection raised herein stands overruled.

10. In the light of this, now let us examine the submissions of the Petitioners on merits. The decision of this Court in *Manzoor Ali Khan (supra)* was based on two premises, firstly, that guideline governing the same subject matter already exists as framed by the Directorate of Advertising and Visual Publicity (DAVP) as well as Department of Information in each of the States and secondly, that the matter is squarely covered against the Petitioners in view of the judgment of the Bombay High Court in the case of *Laxman Moreshwar Mahurkar (supra)*. It is the stand of the Petitioners that the DAVP guidelines relied upon by this Court in the *Manzoor Ali Khan (supra)* and by the Respondents in its counter affidavit in the present case are irrelevant for the consideration of the issues raised in the present writ petitions. Further, it was submitted that the decision in *Laxman Moreshwar Mahurkar (supra)* is clearly distinguishable with the facts and issues raised in the present public interest litigation. We shall analyse both these grounds in detail in

the ensuing paragraphs.

11. Primarily, objection against admitting these writ petitions was that there exists substantive guidelines regulating the Governments' advertisements issued by the DAVP and thus the task of this Court will be rendered infructuous. Mr. K. Radhakrishnan, learned senior Counsel for the Union of India reiterated the stand taken by the Government in their counter-affidavit filed in the year 2003 as well as in 2013 and brought to our notice the New Advertisement Policy [with effect from 02.10.2007] formulated by the Ministry of Information and Broadcasting, DAVP, which is the nodal agency of the Government of India for advertisement by various Ministries and organizations of Government of India including public sector undertakings and autonomous bodies. It is seen from the Advertisement Policy of 2007 that the primary objective of the Government is to secure the widest possible coverage of the intended content or message through newspapers and journals of current affairs as well as Science, Art, Literature, Sports, Films, Cultural Affairs, etc. The Policy further states that in releasing advertisements to newspapers/journals, DAVP does not take into account the political affiliation or editorial policies of newspapers/journals. However, it states that DAVP would avoid releasing advertisements to newspapers/journals, which incite or tend to incite communal passion, preach violence, offend the sovereignty and integrity of India or socially accepted norms of public decency and behaviour. The Policy dated 02.10.2007 supersedes all earlier orders and the same is the New Advertisement Policy of the Government of India. The said Policy contains 27 clauses. A reading of these clauses shows that the Government advertisements are not intended to give financial assistance to the newspapers/journals. DAVP maintains a list of newspapers/journals approved for release of advertisements by empanelling acceptable newspapers/journals. It further reinforces that due care is taken to empanel newspapers/journals having readership from different sections of the society in different parts of the country. The Policy also makes it clear that all Central Ministries/Departments/attached and Subordinate offices/field offices shall route their advertisements, including display advertisements, through DAVP. It also maintains a Panel Advisory Committee (PAC) for considering applications of newspapers/journals for being empanelled for publishing Government advertisements. This Committee shall be headed by the Director General, DAVP and shall include the Additional Director General (Media & Communication)/Deputy Director General (Media & Communication) in the Press Information Bureau (PIB), Press Registrar/Deputy Press Registrar and Director/Deputy Secretary/Under Secretary in the Ministry of Information and Broadcasting dealing with Print Media. The Committee will also have one representative each from the Association of big, medium and small newspapers. The recommendations of the PAC as accepted by the DG, DAVP regarding empanelment of a newspaper shall be final. It also shows that all empanelled newspapers/publications will be asked to enter into a rate contract, which will be valid for a period of three years. It further provides that the rate structure for payment against advertisements released by DAVP will be worked

out as per the recommendations of the Rate Structure Committee. The rates depend on certified circulation of a newspaper.

12. A perusal of various clauses in the Advertisement Policy of the Government of India dated 02.10.2007 as elaborated in the aforesaid paragraph shows that all the norms as mentioned in various clauses are to be adhered to in overall media strategy of the Ministries and Departments to ensure maximum coverage at optimum cost. Thus, it is vividly clear that the DAVP guidelines, which are available in the public domain, only deal with the eligibility and empanelment of the newspapers/journals or other media, their rates of payment, and such like matters. Besides, it only specifies that in releasing advertisement to newspapers/journals, the DAVP would not take into account the political affiliation or editorial policies of newspapers/journals. Hence, it is evident that there is no policy or guideline to regulate the content of Government advertisements and to exclude the possibility of any mala fide use or misuse of public funds on advertisements in order to gain political mileage by the political establishment.

13. As far as the second objection with regard to applicability of the decision in Laxman Moreshwar Moharkar (supra) is concerned, we have analyzed the same and are of the cogent view that the said decision of the Bombay High Court is clearly distinguishable from the facts and issues raised in the present petitions. The aforesaid case pertains to applicability or non-applicability of a particular rule viz., Rule 189 of the Law Officers (Conditions of Service) Rules and Rules for the Conduct of the Legal Affairs of the Government whereas the issues raised in these writ petitions are not pursuant to violation of any specific rule or law rather a question of public importance has been raised as to whether the State, which is duty bound to allocate its resources for the maximum public good, can cavalierly spend huge sums of public funds in order to derive political mileage. Thus, the ratio laid down in Laxman Moreshwar Moharkar (supra) is not relevant for consideration of issues raised in these writ petitions.

14. Learned senior Counsel for the Respondent-UOI also made reference to the decision in Umesh Mohan Sethi (supra) rendered on 12.12.2012 by the Delhi High Court which pertained to similar issues as raised in these writ petitions to substantiate their stand. In Umesh Mohan Sethi (supra), it was held that if the Government purports to spend money for a purpose which it characterizes as a public purpose though in point of fact it is not a public purpose, the proper place to criticize the action of the Government would be the legislature or the Appropriation Committee and Courts are not the forum in which the Government's action could be sought to be criticized or restrained. Besides, the Delhi High Court relied on the decision of Manzoor Ali Khan (supra) rendered by this Court and dismissed the petition as misconceived.

15. Learned Counsel for the Petitioners responded to this contention by asserting that any government activity has to satisfy the test of reasonableness and public interest and while dealing with public funds and property, public interest is of paramount consideration. In Kasturi Lal Lakshmi Reddy, Represented by its

Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, , this Court has held as under:

12. ...Any action taken by the Government with a view to giving effect to any one or more of the Directive Principles would ordinarily, subject to any constitutional or legal inhibitions or other over-riding considerations, qualify for being regarded as reasonable, while an action which is inconsistent with or runs counter to a Directive Principle would incur the reproach of being unreasonable.

*** **

14. Where any Governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost, of the State; such an action would be both unreasonable and contrary to public interest....

16. In Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , this Court unequivocally rejected the argument based on the theory of absolute discretion of the administrative authorities and immunity of their action from judicial review and observed:

It can no longer be doubted at this point of time that Article of the Constitution of India applies also to matters of Governmental policy and if the policy or any action of the government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

Similar reasoning was rendered in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and in Col. A.S. Sangwan Vs. Union of India (UOI) and Others, . Hence, it was submitted that judicial review of Government policies is permissible if it does not satisfy the test of reasonableness and against the public interest.

17. Although, as asserted by the Respondents herein that it is not the prima facie jurisdiction of this Court to examine what constitutes as "public purpose" or not however, as per judicial precedents in Kasturi Lal Lakshmi Reddy (supra) and other case laws as stated above, this Court is duty bound to interfere whenever the Government acts in a manner, which is unreasonable and contrary to public interest. In succinct, the Government cannot act in a manner, which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The present writ petitions challenge the Government advertisements of political nature at the cost of the public exchequer on the ground that they are in violation of Articles 14 and 21 of the Constitution. We shall examine and scrutinize the situation as portrayed by the Petitioners as to whether there is need for specific guidelines to be issued by this Court to regulate the same.

18. The Petitioners further submitted that advertisement campaigns are undertaken ostensibly to advertise certain public works and almost all these advertisements contain photographs of the Ministers and important political personalities of the Government, which clearly show that these advertisement are framed for the purpose of highlighting the achievements of the incumbent government and aim to create an impression that those particular political personalities were directly responsible for providing public benefits to the people. In succinct, the use of public office and public funds for personal, political or partisan purposes is clearly malafide, illegal and not permissible under the Constitution. Thus, it is the stand of the Petitioners that expenditure on such advertisements is blatant misuse of public funds by the Central Government, State Governments, their departments and instrumentalities of the State as it fosters wastage of scarce funds of the exchequer in promoting private partisan interests as against public interest that is destructive of the rule of law.

19. Conversely, the Government of India, in their counter-affidavit claimed that 60% of the advertisements released by the Directorate of Advertising and Visual Publicity (DAVP) on behalf of various Ministries/Departments/Public Sector Undertakings (PSUs) of the Central Government relate to classified or display/classified category such as UPSC/SSC or recruitment, tender and public notices, etc. The Respondents asserted that government advertisements sometime carry messages from national leaders, Ministers and dignitaries accompanied with their photographs. However, it is their stand that the purpose of such advertisements is not to give personal publicity to the leaders or to the political parties they belong to rather the objective is to let the people know and have authentic information about the progress of the programmes/performance of the government they elected and form informed opinions, which is one of the fundamental rights of the citizens in our democracy as enshrined in the Constitution of India. The composition of advertisements issued by DAVP during the years 2000-01, 2001-02 and 2002-03 in respect of various Ministries/Departments is given in the form of annexure to the counter-affidavit. It is the stand of the Government that the objective of displaying the advertisements issued by DAVP on behalf of the Ministries/Departments of the Government of India is to create awareness among the people about various policies, programmes and achievements of the Government and advertising is an integral part of dissemination of information, which is essential in a democracy.

20. The contentions raised by the Respondents are based on clear principle that is bound to be accepted on the face of it. The stand that Government advertising is a mode for the Government to disseminate to the members of the public, of information about a government program, policy or initiative, or about any public health or safety or other matter(s), that is funded by or on behalf of a Government agency, is an outright fact and is a must in our democratic setup. This Court, in its Constitutional wisdom, understands that it is only through such advertisements that the Government communicates with its citizens which plays an important role in efficiently and effectively achieving the goals of public policy.

21. At the same time, the stand of the Petitioners in these writ petitions is also not entirely misconceived. Since the primary cause of government advertisement is to use public funds to inform the public of their rights, obligations, and entitlements as well as to explain Government policies, programs, services and initiatives, however, when these requisites are not fulfilled in a Government advertisement than the whole purpose would be frustrated. The Petitioners through annexures have brought to the notice of this Court numerous Government advertisements released by the Central Government, State Governments, their departments and instrumentalities of the State which fail to disseminate any information to the public of their rights and entitlements in the Government policies rather only glorifies the accomplishments of a particular Government. The Petitioners herein have disputed only such advertisements, which they plead to be wastage of public exchequer for political mileage. While the boundary lines can blur, we need to distinguish between the advertisements that are part of Government messaging and daily business and advertisements that are politically motivated. It is yet further pleaded that even the Election Commission of India though had expressed concern but could not do anything owing to lack of jurisdiction in the matter.

22. Although this issue of concern may be new to India but not for other countries. Governments around the world spend huge amount of money yearly for advertisements in their local media and most of the countries have faced similar fate of situation as portrayed in these petitions. The solution to this crisis was arrived at by framing the Government advertising guidelines, which set out the policies and processes that apply to Government advertisement. Few countries which adopted Government advertising policies are as under:

Australia

Australia adopted new policy to regulate Government advertisement in response to nearly a decade of abuse, during which public advertising was corruptly used to promote a partisan agenda. The focus of policy recommendations is to depoliticize public advertising, prevent conflict of interest, and devolve power in such a way that no person or group can easily exploit public advertising funds for individual or political gains.

Canada

Canada also has strict conflict of interest guidelines, which promote transparency, accountability and separation of authority to discourage abuse of public advertising funds for individual, financial or political gains.

Similar policies exist in almost all developed countries to check the abuse of Government advertisements for private benefits.

23. There are five principles laid down in Guidelines On Information and Advertising Campaigns by Australian Government Departments and Agencies, which will be applicable to all Government advertising campaigns.

24. In these circumstances, conceding that the existing DAVP policy/guidelines do not govern the issues raised in these writ petitions and do not lay down any criteria for the advertisements to qualify for "public purpose" as opposed to partisan ends and political mileage, there is a need for substantive guidelines to be issued by this Court until the legislature enacts a law in this regard. The Petitioners through their written submissions have proposed guidelines in this regard, however, on going through the same, we recognized that the Petitioners herein have basically adopted the proposed guidelines verbatim from other jurisdiction viz., Australia. Accordingly, we do not think that it will be appropriate for this Court to adopt the guidelines of other country without application of mind and appreciation of situation in our country.

25. Keeping in mind that the time available to this Court is limited and the subject matter for which guidelines are to be framed is sensational and significant, we deem it proper to constitute a Committee consisting of three members to undertake the task of suggesting guidelines to this Court after an intricate study of all the best practices in public advertisements in different jurisdictions and to submit the same before this Court preferably within a period of three months. The Committee will consist of the following members:

- 1) Prof. (Dr.) N.R. Madhava Menon, former Director, National Judicial Academy, Bhopal
- 2) Mr. T.K. Viswanathan, former Secretary General, Lok Sabha
- 3) Mr. Ranjit Kumar, Senior Advocate

In order to coordinate and render assistance to the Committee, we appoint the Secretary, Ministry of Information and Broadcasting as Member Secretary.

26. The matter be posted for further direction before this Court on the expiry of three months from today along with the suggestions as may be submitted by the Committee pursuant to this judgment.