(2016) 01 DEL CK 0296

In the Delhi High Court

Case No : W.P. (C) 1095/2014

Samachar Dhara APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2016) 227 DLT 23

Hon'ble Judges : Rajiv Sahai Endlaw, J.

Bench : Single Bench

Advocate : M.M. Singh, Advocate, for the Appellant; Dev P. Bhardwaj, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Rajiv Sahai Endlaw, J.—1. This petition, by a newspaper being published from Varanasi and Dehradun, was filed i) seeking mandamus to the Ministry of Information and Broadcasting, Government of India and to the Directorate of Advertising Visual Publicity (DAVP) of the Government of India to empanel the Dehradun edition of the petitioner newspaper in terms of the policy formulated by the DAVP; ii) seeking a direction to the respondents to issue a rate contract of Dehradun edition of the petitioner in terms of the policy formulated by DAVP; and, iii) mandamus directing the respondents to issue advertisement regularly to Varanasi edition of petitioner in terms of the policy formulated by DAVP.

2. Notice of the petition was issued and pleadings have been completed.

3. The counsel for the petitioner states that the first two of the three reliefs claimed in this petition stands satisfied with the Dehradun edition of the petitioner newspaper having been empanelled with the DAVP and a rate contract having also been entered into with respect to the said edition of the newspaper. He contends that now only the last relief of a mandamus directing the respondents to issue advertisement regularly to the petitioner newspaper in

terms of the policy formulated by the DAVP survives. It is further stated that though at the time of filing of the petition the said relief was claimed with respect to Varanasi edition which then was the only edition empanelled and having a rate contract but now that the Dehradun edition of the petitioner newspaper has also been empanelled and has a rate contract with the DAVP, the said relief is claimed with respect to both editions of the newspaper. Attention in this regard is also drawn to the order dated 1st May, 2015 in this petition directing the petitioner to file the particulars in this regard and to the affidavit dated 29th May, 2015 filed in compliance therewith.

4. Upon being asked to show the policy of the DAVP regarding issuance of advertisement, attention is drawn to Annexure-P2 to the petition at pages 39 to 41 and which classify the newspapers into five categories on the criteria of total page size and which prescribes the ceiling of advertisements space for which advertisements are to be issued for two categories leaving the other three categories without any such ceiling and provides "....it is necessary to follow rotation principle and equal distribution and as far as practical, in view of space. There should be no favouritism". The counsel for the petitioner then draws attention to the affidavit to show that though the petitioner has a circulation of 74,660 daily but has been issued only four advertisements but another newspaper also issued from Varanasi viz. Gandiva has been issued as many as 61 advertisements, during the period 1st January, 2014 to 31st December, 2014. It is thus contended that the petitioner newspaper is being discriminated against.

5. Per contra, the counsel for the respondents has controverted that Annexure-P2 is the policy for release of advertisements. He has in Court handed over a document downloaded from the website of DAVP and issued by the Ministry of Information and Broadcasting, Directorate of Advertising and Visual Publicity proclaiming to be the New Advertisement Policy with effect from 2nd October, 2007. Attention is particularly invited to Clauses 7 of the said policy which classifies the newspapers into three categories depending upon the circulation and to clause 25 which provides as under:

"Release of Advertisements

As soon as requisitions for release of advertisements are received from various Ministries and Departments. DAVP will prepare a suitable media list keeping in view the objectives of the client Ministries / Departments, the contents, target audience for the advertisement and availability of funds in consultation with the client Ministries / Departments."

6. It is also contended that most of the Ministries which forward their advertisements to DAVP for releasing in the newspaper also specify the newspaper which they desire the advertisement to be published in, keeping in view the target audience for the advertisement and availability of funds.

7. I have wondered what direction can be passed insofar as the third of the aforesaid reliefs claimed by the petitioner is concerned and have enquired about

the same from the counsel for the petitioner also. I have further put to the counsel for the petitioner as to how, from the number of advertisements released to the petitioner being four as against 61 stated to have been released to another newspaper, can this Court gauge whether there has been any discrimination. It is quite possible that the advertising space of the 61 advertisements is the same as of four advertisements released through the newspaper of the petitioner. Also, ordinarily the advertiser has freedom of choice of the medium for advertising and if chooses the said medium to be newspaper, the newspaper to advertise. The advertiser would ordinarily make this choice depending upon the reach and circulation of the newspaper in the locality/area towards residents whereof the advertisement is directed. The said decision as aforesaid has to be of the advertiser only who is best concerned with these issues.

8. However when the advertiser is the government, which is one of the biggest advertisers in the newspapers and since the advertising charges constitute bulk of the revenue of newspapers, the need to ensure that the government does not indulge in pick and chose and does not exercise the said choice to strangulate freedom of press of newspapers critical of the Government and the policies of the Government, arises. At the same time, Government as the advertiser cannot be compelled to, for the sake of even distribution of advertisements, advertise in newspaper which no one reads or whose circulation is namesake or not amongst the target audience.

9. Attention of the counsels is invited to the recent dicta of the Supreme Court in Common Cause Vs. Union of India 2015 SCC online SC 479, though concerned primarily with content of Government advertisements. However the Court noted that connected facet of the matter which cannot be ignored is the power of the Government to give advertisements to selected media house and the concomitant issue of freedom of press. It is held in para 10 of the judgment that the Government, in the matter of giving/awarding advertisements should avoid patronizing any particular media house(s) and that award of advertisements should be on equal basis to all newspapers who may however be categorised depending upon their circulation. The Supreme Court, vide orders in the said petition reported in , (2014) 6 SCC 552 constituted a Committee to evolve best practices on the subject and which committee submitted report and draft guidelines which were considered by the Court and the petition was disposed of by directing the Government of India to act in accordance with observations of the Court in the Judgment.

10. However neither counsel is aware of the further guidelines if any issued in pursuance to above.

11. I may however for the sake of completeness mention a) that earlier the Supreme Court in Manzoor Ali Khan Vs. Union of India , (2014) 7 SCC 321 dismissed a Public Interest Litigation for regulating expenditure incurred by Government in giving advertisements, observing that in view of detailed

guidelines framed by DAVP and in the light of judgment of Bombay High Court in Laxman Moreshwar Mahurkar Vs. Balkrishna Jagannath Kankar , AIR 1961 Bom 161 there was no need to interfere. The Division Bench of the Bombay High Court, in the said judgment held that a tax payer has no right to challenge expenditure of public monies by Government and that the Government has discretion to spend money on individual cases and that the said expenditure will be included in the accounts and it is for the legislature to decide upon the propriety of the expenditure or otherwise.

12. I may however, with respect, add that the judgment aforesaid of the Bombay High Court is of the era prior to evolution by the Supreme Court of the tool of Public Interest Litigation and the ratio thereof does not appear to be good law today, though myself, speaking for the Division Bench of this Court, and following Manzoor Ali Khan (pronounced on 10th January, 2011) supra, in Umesh Mohan Sethi Vs. Union of India dismissed a PIL with respect to huge expenditure of public funds on projects identified with political parties.

13. Since, the Supreme Court in Common Cause supra has held that reasonableness and fairness consistent with Article 14 would be the ultimate test of all State activities and deployment of public funds in any Government activity which is not connected with a public purpose would justify judicial intervention.

14. The petitioner, in the pleadings in the petition, has however not established a case from which we can conclude that the Government''s release of advertisements is discriminatory of the petitioner. Thus, no case for judicial interference is made out.

15. Moreover, Supreme Court in Common Cause supra has directed for constitution of a three member body (Ombudsman) for implementation of the directions otherwise issued in the judgment. One of such direction is, fairness and even dispensation to all media/publisher house to be maintained by the Government. We feel that the petitioner, even if able to make out a case of violation of said direction of the Supreme Court, should approach the Ombudsman directed to be appointed by the Supreme Court.

16. The petition, insofar as the third relief is concerned, is thus disposed of reminding the respondents of the direction of the Supreme Court and to abide by their policy as indeed they are expected to and with liberty to the petitioner to approach the Ombudsman for redressal of its grievances.

No costs.

