
(2012) 12 DEL CK 0285

In the Delhi High Court

Case No : Writ Petition (C) No. 2926 of 2012

Umesh Mohan Sethi

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Constitution of India, 1950 — Article 202, 203, 204, 226, 266(3)

Citation : (2013) 1 AD 537

Hon'ble Judges : D. Murugesan, C.J;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Ruchir Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This writ petition filed in public interest avers that an expenditure of about Rs. 30/- crores was incurred by the public exchequer between the years 2009-2011 on print advertisements on the birth and death anniversaries of Sh. Rajiv Gandhi and Smt. Indira Gandhi; other political figures are also known to allow huge expenditure out of public funds on projects identified by them/their political parties; instance is given of Rs. 685/- crores having been spent on the statues in the park at Noida at the instance of the then Chief Minister Kumari Mayawati. The petition also objects to naming of various public schemes launched again at expense of public funds, after leaders of the political party in power. Instance is given of Rajiv Gandhi Equity Scheme. It is further pleaded that on complaints being made, the Election Commission took a stand that it had no jurisdiction to regulate such deliberate and inadvertent misuse of naming of a scheme of development and growth, national programmes in the names of leaders of a certain political parties as its jurisdiction was only limited to election times. It is the contention of the petitioner that expenditure so incurred, propelled for mileage to the political parties in power, is wasteful. It is yet further pleaded that even the Delhi Lokayukta though had expressed concern but could not do anything owing to lack of jurisdiction in the matter. It is the

contention of the petitioner that public funds cannot be utilized by the political parties in power for building their own brand. Accordingly, the following relief"s are claimed in the writ petition:

(i) In future any their expenses related to such advertisements--print or otherwise--which are published on the birth or death anniversary or any event related to the life, of political leaders--dead or alive, of any functioning political party be not allowed to be spent from the funds of public exchequer in any form.

(ii) This need not include leaders of freedom struggle/formation of India which although may have been part or associated with political party but have been instrumental in freedom of India and to whom India owes its identity. Even in such cases the expenses need should be controlled and not more than an amount which is reasonable and adequate--perhaps allowing for advertisements in 1 English daily and 3 vernacular dailies.

(iii) Amounts spent till now which the Ministries have revealed in the RTI may be recovered from the political parties in question if the Hon"ble Court so feels justified. A description of funds and income of political parties available in public domain is provided.

(iv) Such expenses may directly brought under the ambit of CAG to be compulsorily examined every year that the funds of public exchequer are not misused for promotion of leaders--dead, or alive of the party which is ruling the centre or state.

(v) Investigation of the government officials who approved of such expenditure and whether they did so under any political pressure or directive and who gave such directives and to judge if these acts can be seen as innocent acts or whether they violate 3 self evident provisions of law which come to mind.

(vi) In case of schemes: since the Rajiv Gandhi Equity scheme or like named scheme has just been announced, its name be immediately changed to a neutral or another name. In all other earlier schemes/institutions mentions, a mechanism/solution may be considered where a disclaimer is asked to be put on any billboard, any publicity material advertising such scheme by government--in future and even for existing ones if the Hon"ble Court so pleases. Such that the disclaimer makes clear in unequivocal terms that public money has been spent on the schemes and no personal effort/funds or relationship with any person dead or living exists of said scheme/institution. No further scheme/Programme/institution public property be allowed to be named in this manner.

When the petition came up first for hearing, we expressed a desire to hear on the issue raised before considering issuance of notice.

2. The counsel for the respondents has today in Court handed over a counter affidavit. However need is not felt to deal therewith as the contention of the counsel for the respondents is that a writ petition being W.P.(C) No. 83/2005 titled Manzoor Ali Khan Vs. Union of India filed in the Supreme Court with the

same relief"s and same prayers was dismissed vide order dated 10.01.2011 which may be reproduced herein below:

The present petition is filed in public interest. It seeks a writ in the nature of mandamus directing the Union of India, various States in India and Public Sector Undertakings (PSUs) to produce the respective records regarding expenditure incurred for giving advertisements. According to the petitioners, the said expenditure is a wasteful expenditure. According to the petitioners, such advertisements are given to enhance images of political leaders. In short, petitioners seek to challenge the authority of Union of India and various States as also PSUs, in the matter of their incurring expenditure on advertisements. We find no merit in this petition. Firstly, we find that detailed Guidelines have been framed by Union of India - Directorate of Advertising and Visual Publicity (DAVP), which is the nodal agency of the Government of India for advertising by various Ministries and organizations of Government of India. Similarly, in each State there is a Department of Information which is the nodal agency for releasing advertisements. Since guidelines have been framed by DAVP as well as Director of Information in each of the States, we see no reason to interfere. The matter is also squarely covered against the petitioners by judgment of the Bombay High Court in the case of Laxman Moreshwar Mahurkar Vs. Balkrishna Jagannath Kinikar and Others, . Accordingly, the writ petition stands dismissed.

3. It is further the stand of the respondents that the aforesaid Manzoor Ali Khan had earlier also filed W.P.(C) No. 527/2004 in the Supreme Court which was disposed of vide order dated 01.10.2004 as under:

The petition seeks direction from this Court for good governance of the States by avoiding wasteful expenditure. However, the manner in which this petition is drafted indicates that the petitioners are targeting a particular event which gives an impression that the petitioners have not filed this petition with the intention of seeking in general relief in the interest of public.

The petitioners, however, plead that their intention is only to seek a general direction for good governance and they have no intention of targeting any particular party or State and are willing to delete such statements in the petition which gives that impression. In this background, the petitioners seek permission to withdraw this petition with liberty to file a fresh petition by making a common governance of all instances of wasteful expenditure by all States concerned including the Union government. We grant permission to the petitioners to withdraw this petition with liberty to file fresh petition seeking proper prayer.

4. The counsel for the respondents states that the present petition also is primarily directed against one particular party and not generally.

5. Though the petitioner appearing in person has contended that the petition is not against one political party only but save for the reference to Kumari Mayawati and which is also in the context of development of a park, the other allegations relating to expenditure on media and naming of Schemes are against one

political party only.

6. We are also tempted to quote from the judgment aforesaid of the Division Bench of the Bombay High Court relied upon supra by the Supreme Court. It was inter alia held as under:

5. Apart from that, it seems to us that a tax payer has no right to challenge expenditure of public monies by Government. In this connection, our attention was invited by Mr. Phadke to the decision of this Court in *The Municipal Corporation for the City of Bombay Vs. Govind Laxman Savant*, in which a Division Bench of this Court allowed a rate payer of Bombay to challenge the spending of municipal funds by the Bombay Corporation contrary to the provisions of the City of Bombay Municipal Corporation Act. In that case the learned Chief Justice followed an Irish decision, *The Queen v. Drury*, (1894) LR 2 Ir. 489, and held that a rate payer can, without establishing special injury to himself, come before the Court u/s 45 of the Specific Relief Act and ask for the issue of a writ corresponding to a high prerogative writ issued by the High Court, restraining a public authority from mispending public funds. A distinction must however be drawn between the powers of a municipal corporation and the powers of the Government of a State. The municipal funds vest in the corporation as trustees on behalf of the public and they are by statute required to expend those funds only for purposes permitted by the statute. The position of a Government is however different. The powers of a State Government are much wider as would appear from Article 282 of the Constitution which runs thus:

The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

This provision confers a very wide discretion on a State Government. It is for the State Government to decide what is public purpose and what is not a public purpose. It is true that Rule 189 is one of those rules which has been framed by the Government for indicating a public purpose for which public funds may be expended by it. But that rule, though it should be observed as far as possible by the Government in its dealings, is not one which curtails the powers of the Government conferred upon it by Article 282 of the Constitution. It can only be regarded as a rule for the guidance of Government servants and nothing more. If the Government purports to spend money for a purpose which it characterises as a public purpose though in point of fact it is not a public purpose, the proper place to criticise the action of the Government would be the legislature or the Appropriation Committee. The Courts are not the forum in which the Government's action could be sought to be criticised or restrained. Wide as the powers of the High Court are under Article 226 of the Constitution, they do not extend as far as the petitioner would like them to go. The business of governing the State is entrusted by the Constitution to the executive government. How to spend public monies is part of the executive functions of the Government and it is not permissible to the High Court to interfere with the powers of the

Government in this respect.

6. By way of analogy we may refer to the following passage from Willoughby on the Constitution of the United States, volume I, second edition, page 21 quoted from *Frothingham v. Mellon*, (1923) 262 US 447 :

The interest of a taxpayer of a municipality in the application of its moneys is direct and immediate and the remedy by injunction to prevent their misuse is not inappropriate... The reasons which support the extension of the equitable remedy to a single taxpayer in such cases are based upon the peculiar relation of the corporate taxpayer to the corporation, which is not without some resemblance to that subsisting between stock-holder and private corporation.....But the relation of a taxpayer of the United States to the Federal Government is very different. His interest in the moneys of the treasury--partly realized from taxation and partly from other sources--is shared with millions of others, is comparatively minute and indeterminable, and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity.

The administration of any statute, likely to produce additional taxation to be imposed upon a vast number of taxpayers, the extent of whose several liability is indefinite and constantly changing, is essentially a matter of public and not of individual concern. If one taxpayer may champion and litigate such a cause, then every other taxpayer may do the same, not only in respect of the statute here under review, but also in respect of every other appropriation act and statute whose administration requires the outlay of public money, and whose validity may be questioned. The bare suggestion of such a result, with its attendant inconveniences, goes far to sustain the conclusion which we have reached, that a suit of this character cannot be maintained. It is of much significance that no precedent sustaining the right to maintain suits like this has been called to our attention, although, since the formation of the government, as an examination of the acts of Congress will disclose, a large number of statutes appropriating or involving the expenditure of moneys for non-federal purposes have been enacted and carried into effect.

It seems to us that these observations would apply to the case before us.

7. Mr. N.L. Abhyankar, the learned Special Government Pleader, who appeared before us at our request though no rule was formally issued in this case, has drawn our attention to the decision of the Supreme Court in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, in which the question was whether in the absence of any statute permitting the Government to do so it was open to the Government to spend public monies for running a trading corporation or undertaking trading activities. Before their Lordships reliance was placed upon certain Australian cases in which apparently it was held that under the Constitution of Australia public monies could not be spent for similar purposes.

Their Lordships however were of the view that those cases were of no assistance because the provisions of the two Constitutions were not analogous. Their Lordships pointed out that

the functions of a modern State like the police States of old are not confined to mere collection of taxes or maintenance of laws and protection of the realm from external or internal enemies. A modern State is certainly expected to engage in all activities necessary for the promotion of the social and economic welfare of the community.

Their Lordships then referred to the procedure followed by Parliament in regard to the expenditure of public money and observed as follows:

What is generally done in such cases is, that the sums required for carrying on the business are entered in the annual financial statement which the Ministry has to lay before the House or Houses of Legislature in respect of every financial year under Article 202 of the Constitution. So much of the estimates as relate to expenditure other than those charged on the consolidated fund are submitted in the form of demands for grants to the legislature and the legislature has the power to assent or refuse to assent to any such demand or assent to a demand subject to reduction of the amount (Article 203).

After the grant is sanctioned, an Appropriation Bill is introduced to provide for the appropriation out of the consolidated fund of the State of all moneys required to meet the grants thus made by the Assembly (Article 204). As soon as the Appropriation Act is passed, the expenditure made under heads covered by it would be deemed to be properly authorised by law under Article 266(3) of the Constitution.

It may be, as Mr. Pathak contends, that the Appropriation Acts are no substitute for specific legislation and that they validate only the expenses out of the consolidated funds for the particular years for which they are passed; but nothing more than that may be necessary for carrying on of the trade or business. Under Article 266(3) of the Constitution no moneys out of the consolidated funds of India or the consolidated fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

The expression "law" here obviously includes the Appropriation Acts. It is true that the Appropriation Acts cannot be said to give a direct legislative sanction to the trade activities themselves. But so long as the trade activities are carried on in pursuance of the policy which the executive Government has formulated with the tacit support of the majority in the legislature, no objection on the score of their not being sanctioned by specific legislative provision can possibly be raised. Objections could be raised only in regard to the expenditure of public funds for carrying on of the trade or business and to these the Appropriation Acts would afford a complete answer.

Now, these observations make it clear that an expenditure by Government will be deemed to be authorised if in the budget and in the Appropriation Acts there is a necessary provision for spending money on the particular acts. It is not suggested that no allotment has been made in the budget for expending money for the defence of Government servants. When provision is made in the budget under different heads, it is impracticable to provide for expenditure of money for the defence of particular individuals because their cases may not have arisen at all at that time and may arise in future. The Government has thus the discretion to spend money on individual cases as and when occasion arises. After the expenditure has been incurred, in the subsequent, year it will be included in the accounts and then it is for the legislature to decide upon the propriety of the expenditure or otherwise. The Appropriation Act which would be passed in the subsequent year would cover the expenditure actually incurred by the Government. It is therefore not correct to say that such expenditure is unauthorised.

8. Looking at the matter therefore from either angle from the point of view of the interest of the taxpayer or from the point of view of the powers of the Government, it seems to us that the petition is misconceived. We accordingly reject it. There will be no order as to costs since we have not issued a formal rule to the Government.

9. Petition dismissed.

We therefore do not find any merit in this petition which is dismissed.

No costs.