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201-WP513.2018.DOCX

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.513 OF 2018

Editors' Forum

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. S. B. Talekar a/w Ms. Madhavi Ayyappan, Mr. Chagan Thakare and Ms. Neha Lalsare for Petitioner.

Mr. Abhay Patki, Addl. G. P. for Respondent Nos.1 to 5, 7 to 11 and 14.

Ms. Heena Shaikh i/b. M. V. Kini for Respondent No.6-BEST.

Mr. Dhruti Kapadia a/w Ms. Anuja Tirmali for Respondent No.12-BMC.

Mr. B. B. Sharma for Respondent No.16-CIDCO.

Mr. Prashant Chawan, Senior Counsel a/w Ms. Poonam Sheth for Respondent No.17-MIDC.

Mr. Milind Bafna, Dy. Public Relations Officer, BMC present.

Mr. Rajendra Rane, Dy. Director from office of Director General of Information and Public Relations present.

Mr. Prakash Deshpande, Asst. Director from office DGIPR present.

CORAM : M. S. SONAK &
JITENDRA JAIN, JJ.

DATED : 18th OCTOBER 2024

P.C.:

1. Heard learned counsel for the parties.
2. This petition is instituted by the Editors' Forum, complaining that the Government Resolutions (GRs) dated 1 May 2001, 13 August 2008, 31 August 2009, and 19 October 2015 issued by the General Administration Department of the State of Maharashtra regarding several issues concerning advertisements to be released to the print and electronic media are being flouted with impunity.

3. The petition provides several instances of the alleged breaches. There are complaints about violations of the rotation policy in distribution, the release of advertisements to non-approved newspapers and channels, the release of advertisements without involving the Director General of Information and Public Relations (DGIPR) regarding empanelment, non-approved creative agencies, etc.

4. The petition alleges several breaches not only by the State but also by agencies such as Bombay Municipal Corporation (BMC), City and Industrial Development Corporation (CIDCO), Maharashtra Housing and Area Development Authority (MHADA) and Maharashtra Industrial Development Corporation (MIDC) etc. The Petitioner seeks mandamus for scrupulous observance of the GRs issued by the Government on this vital subject. In addition, the petition seeks the Constitution of a Commission to enquire about the illegalities committed by DGIPR and other government agencies and local authorities. The petition also seeks departmental action and criminal prosecution against all those involved in breaching the GRs and frittering away public funds.

5. Mr. Talekar, learned counsel for the Petitioner, heavily relied on the decision of the Hon'ble Supreme Court in the case of *Common Cause Vs. Union of India*¹ and *Centre for Public Interest Litigation Vs. Kewal Kumar Sharma & Ors.*² to support his contentions.

6. During the hearing, we enquired from the learned Additional Government Pleader about the constitution of a three member body as was directed by the Hon'ble Supreme Court in the case of *Common*

1 (2015) 7 SCC 1

2 (2017) 16 SCC 715

Cause (supra). Mr. Patki, learned Additional Government Pleader placed before us the latest Government Resolution on the subject of advertisements by the State and its agencies dated 20 December 2018. Mr. Patki, learned Additional Government Pleader referred to the committee at clause 4.3.1 of the GR dated 20 December 2018 and tried to suggest that this would be the committee in terms of the decision of the Hon'ble Supreme Court in the case of ***Common Cause (supra)***.

7. Clause 4.3.1 of the GR dated 20 December 2018 refers to a committee of the following members: -

1.	Director General, Information and Public Relations	..	Chairman
2.	Director (Information) (Administration)	..	Member
3.	Director (Information) (Report)	..	Member
4.	Concerned Divisional Director/Deputy Director	..	Co-opted Member
5.	Deputy Director (Report)	..	Member
6.	Senior Assistant Director (Advertisement)	..	Member
7.	Superintendent, Books and Publications	..	Member Secretary

(officially translated copy)

8. 4.3.1 of the GR dated 20 December 2018 provides that the above committee is constituted to include and delete newspapers' names from the approved list. Accordingly, we are satisfied that the above committee has no nexus with the committee as contemplated by the Hon'ble Supreme Court in the case of ***Common Cause (supra)***.

9. In ***Common Cause (supra)***, the issue was about the utilisation of public funds for issuing advertisements by the Government and its instrumentalities through print and electronic media. One of the concerns which was addressed was the misuse of publicly funded

advertising campaigns through print and electronic media by the Government and its instrumentalities for furthering political motives of the political party in power by projecting political personalities and their political parties and proclaiming their achievements, as being malafide, arbitrary and violative of Articles 14 and 21 of the Constitution of India.

10. The Hon'ble Supreme Court issued several directions addressing the concerns expressed based upon the recommendations of a High Power Committee that was constituted for the purpose. One of the recommendations was the appointment of an Ombudsman to ensure that there is no abuse or misuse of public funds for issuing advertisements for extraneous purposes.

11. Paragraph No.29 of the ***Common Cause (supra)*** is relevant in the context of the Ombudsman / three-member body, and the same reads as follows:-

“29. Insofar as the recommendation with regard to the appointment of Ombudsman is concerned, we are of the view that for ironing out the creases that are bound to show from time to time in the implementation of the present directions and to oversee such implementation the Government should constitute a three-member body consisting of persons with unimpeachable neutrality and impartiality and who have excelled in their respective fields. We could have but we refrain from naming the specific persons and leave the said exercise to be performed by the Union Government.”

12. Since several directions issued by the Hon'ble Supreme Court in ***Common Cause (supra)*** were not complied with, the Centre for Public Interest Litigation and Common Cause instituted a Contempt Petition before the Hon'ble Supreme Court. The order dated 28 April 2016 was made in this contempt petition of the ***Centre for Public Interest Litigation (supra)***. In Paragraph No.6 of this order, the Hon'ble

Supreme Court has held that the spirit of the judgment of this Court dated 13 May 2015 (common cause judgment) would require States also to constitute their respective committees, which shall now be done. If the States so desire, the committee formed at the Central level referred to in the affidavit of Union of India may be entrusted with overseeing the publication of advertisements in the States. The Hon'ble Supreme Court held that this committee would be responsible for ironing out the creases that may show from time to time with the implementation of the directions of the Court and also for overseeing such implementation. Further, the Court clarified that if necessary, the committee cannot render effective and meaningful service for any reason, it is always open for an aggrieved party or a conscious citizen to approach Court once again.

13. Mr. Patki submitted that the State of Maharashtra constituted one committee in 2018. However, this committee is no longer functional after and due to the COVID-19 pandemic.

14. The complaints referred to in the petition could require investigations. If the committee directed by the Hon'ble Supreme Court were to be in place, we would have had no difficulties directing it to look into these instances of violations alleged in the petition.

15. There is no justification for not having a committee in the State of Maharashtra. The Hon'ble Supreme Court, in the case of *Common Cause (supra)* and *Centre for Public Interest Litigation (supra)*, has issued directions for the constitution of a three-member body consisting of persons “*with unimpeachable neutrality and impartiality and who have excelled in their respective fields*”. Accordingly, we direct the State Government to constitute such a three-

member body as expeditiously as possible and in any event before 14 December 2024.

16. We post this matter on 16 December 2024 to consider compliance. Once a three-member body consisting of persons with unimpeachable neutrality and impartiality and who have excelled in their respective fields is in place, we can consider referring the instances of violations to this committee.

17. The Chief Secretary, State of Maharashtra, shall personally ensure that such a three-member body is constituted. This is because a direction for the constitution of such a three-member body was issued on 13 May 2015 and reiterated on 28 April 2016. In compliance, as submitted by Mr. Patki, such a committee was constituted. However, from 2020 onwards, such a committee has been disbanded or has not been functional.

18. Article 144 of the Constitution of India provides that all authorities, civil and judicial, in the territory of India shall act in the aid of the Supreme Court. The State of Maharashtra, therefore, is duty-bound to constitute this three-member body as expeditiously as possible.

19. Besides, we also direct that the GRs dated 20 December 2018 and 11 October 2024, issued by the State of Maharashtra itself, should be complied with. In particular, the Chief Secretary, State of Maharashtra, must ensure that the State of Maharashtra releases no advertisements violating the directions and guidelines issued by the Hon'ble Supreme Court in the case of *Common Cause (supra)*.

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20. The BMC, CIDCO, MIDC, MHADA, BEST, and Municipal Corporation of Nagpur, who have been impleaded as Respondents in this petition, as well as the other Respondents in this petition, must ensure that no advertisements are released in violation of guidelines/directions issued by the Hon'ble Supreme Court in the case of *Common Cause (supra)*.

21. If the petitioner encounters any violations between today and the next date, it is free to file an affidavit recording such instances. The petitioner and Additional Government Pleader are directed to send a copy of this order to the Chief Secretary of the State of Maharashtra at the earliest since this order places the onus of ensuring compliance upon the chief secretary.

22. List this matter on 16 December 2024.

[JITENDRA JAIN, J.]

[M. S. SONAK, J.]