

## COMMON CAUSE *versus* UNION OF INDIA: CASE COMMENT

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### COMMON CAUSE v. UNION OF INDIA

WRIT PETITION (CIVIL) NO. 13 OF 2003 on May 13, 2015.

**Relevant Laws Involved:** Article 14, 21, 32 & 142 of the Constitution of India

**Relevant case laws Discussed:** *Manzoor Ali Khan & Anr. v. Union of India & Ors.* (2014) 7 SCC 321, *Umesh Mohan Sethi v. Union of India & Anr.* (Delhi High Court) (WP (C) No.2926 of 2012 decided on 12.12.2012)

### FACTUAL SITUATION

Common Cause and Center for Public Interest Litigation have approached the court to restrain the Union of India and all State Governments from using public funds on Government advertisements, which are primarily intended to project individual functionaries of the Government or a political party.

They have also prayed for laying down of appropriate guidelines by this Court to regulate Government action in the matter so as to prevent misuse/wastage of public funds in connection with such advertisements.

### ISSUES OF LAW

Whether the issues of large-scale advertisements pertain to governmental policies and executive decisions? and;

Whether it is appropriate for this Court to lay down binding guidelines under Article 142?

### ARGUMENTS FOR PETITIONER

#### 1. *Personification Of Party Leaders:*

In the garb of communicating with the people, in many instances, undue political advantage and mileage is sought to be achieved by personifying individuals and crediting such

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individuals or political leaders (who are either from a political party or government functionaries) as being responsible for various government achievements and progressive plans.

## *2. Harmful Results:*

It leads to gross wastage of public funds, misuse of government powers and derogation of Fundamental Rights as enshrined in Article 14 and 21 of the Constitution.

## **ARGUMENT FOR THE RESPONDENT**

Issues sought to be raised pertain to governmental policies and executive decisions in respect of which it may not be appropriate for this Court to lay down binding guidelines under Article 142. They relied on *Manzoor Ali Khan & Anr. v. Union of India & Ors.* and a pronouncement of the Delhi High Court in *Umesh Mohan Sethi v. Union of India & Anr.*

## **BACKGROUND OF THESE AFOREMENTIONED WRIT PETITIONS: RELEVANT TO THE CASE AT HAND**

There is no dispute that “*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.*”

It was further held that only such government advertisements, which do not fulfil the above requisites, would fall foul of the area of permissible advertisements. This Court acknowledged the fact that the dividing line between permissible advertisements that are a part of government messaging and advertisements that are “politically motivated” may at times gets blurred.

Keeping in view the prevailing scenario in other jurisdictions across the globe, this Court felt the necessity of constituting a Committee to go into the matter and submit a report to the Court. In terms of the order of this Court, the Committee was duly constituted and after full deliberations in the matter, a report had been submitted by the Committee suggesting a set of guidelines for approval of this Court.

## **PLEA OF THE PETITIONER**

It is the plea of the petitioner that the said guidelines should be approved by this Court and

directions be issued under Article 142 of the Constitution of India for enforcement of the said guidelines until an appropriate legislation in this regard is brought into effect by the Parliament.

## **OBSERVATION OF THE SUPREME COURT**

Bench observed that in a situation where the field is open and uncovered by any government policy, to guide and control everyday governmental action, surely, in the exercise of jurisdiction under Article 142 of the Constitution, parameters can be laid down by Supreme Court consistent with the objects enumerated by any of the provisions of Part IV of the Constitution.

It observed that such an exercise would be naturally time bound till the Legislature or the Executive, as the case may be, steps in to fulfill its constitutional role and authority by framing an appropriate policy.

Holding that it was a fit case for using its power under Article 142 of the Constitution, the Bench observed:

*Article 38 and 39 of the Constitution enjoin upon the State a duty to consistently endeavour to achieve social and economic justice to the teeming millions of the country who even today live behind an artificially drawn poverty line. What can be the surer way in the march forward than by ensuring avoidance of unproductive expenditure of public funds. This is how we view the present matter and feel the necessity of exercise of our jurisdiction under Article 142 of the Constitution to proceed further.*

## **VERDICT**

*(1) Publication of photographs of the Government functionaries and political leaders along with the advertisement(s).*

The Supreme Court banned the Centre and states from using photographs in government advertisements of ministers or political leaders, except the President of India, the Prime Minister and Chief Justice of India to glorify its achievements. The bench banned the publication of photographs of chief ministers/ministers and governors in advertisements to commemorate a project or an event. The bench permitted advertisements with photographs to

mark anniversaries of acknowledged personalities like the Father of the Nation or a departed leader.

**Reasoning:** - The publication of government advertisements with photographs of leaders in power leads to “personality cults”, also;

The legitimate and permissible object of an advertisement, as earlier discussed, can always be achieved without publication of the photograph of any particular functionary either in the State or of a political party.

*(2) Appointment of an Ombudsman.*

To sort out the problems of that are bound to show from time to time the government should constitute a three member body consisting of persons with unimpeachable neutrality and impartiality and who have excelled in their respective fields.

*(3) The recommendation with regard to performance audit by each Ministry.*

There is no need for any special audit as of now because the machinery available is adequate to ensure due performance as well as accountability and proper utilization of public money.

*(4) Embargo on advertisements on the eve of the elections.*

As long as advertisements do not violate any norms of equality, etc there is no need to curb the advertisements on the eve of elections. It rejected the Central government’s plea that the judiciary should not tread into policy decisions, saying the courts can step in if there is no policy or law in place.

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