

In the High Court of Judicature at Madras

Dated: 04.09.2015

Coram:

The Honourable Mr. SANJAY KISHAN KAUL, Chief Justice
and
The Honourable Mr. Justice T.S.SIVAGNANAM

Writ Petition No. 27793 of 2015

P. Rathinam, Advocate
110, Law Chambers
High Court Buildings, Chennai - 600 104. . Petitioner in person

vs.

1. Union of India
Rep. by the Secretary
Ministry of Home Affairs
New Delhi.
2. The Secretary
Ministry of Law & Justice
New Delhi.
3. The Chief Secretary
Government of Tamilnadu
Fort St. George
Chennai - 600 009.
4. State of Tamilnadu
Rep. by the Secretary
Home Department
Chennai - 600 009
5. The Director General of Police
State of Tamilnadu
Police Head Quarters
Chennai - 600 004.
6. The Director
Information and Public relations Department
Government of Tamilnadu
Chennai - 600 009.
7. M. Rajaram, Secretary
Information and Public Relations Department
Government of Tamilnadu
Chennai - 600 009.

8. All India Anna Diravida Munnetra Kazhagam
Rep. by its General Secretary
226, Avvai Shanmugam Salai
Royapettah, Chennai - 600 014.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, a) directing respondents 3, 4 and 5 to ensure the registration of First Information Report against the 6th respondent and others on the basis of the representation dated 28.05.2015 of the advocates and social activists and to form a special investigation team consisting of higher level police officials known for their integrity and efficiency with the concurrence of this Honourable Court; (b) directing the 8th respondent to pay the entire amount incurred by the government exchequer for the advertisements issued so far after the judgement delivered by the Honourable Supreme Court of India in Common Cause vs. Union of India, dated 13.05.2015 in violation of the mandate focusing the leader of the ruling party (AIADMK); and (c) directing the 1st and 2nd respondents to issue the appropriate directions to the Government of Tamilnadu to give up such practices of using public money for promoting the image of the ruling party by focusing the personality of the Chief Minister as if she is the revolutionary leader and the mother (Amma) Tamilnadu.

For Petitioner : Mr. P. Rathinam
Party-in-person

For Respondents: Mr. G. Rajagopalan
Addl. Solicitor General
assisted by Mr. B. Rabu Manohar
Sr. Panel Counsel for Govt. of India
for R1 & R2.
Mr. A.L. Somayaji
Advocate General
assisted by Mr. S.T.S. Murthi
Govt. Pleader & Mr.V.Shanmugha Sundar
Govt. Advocate for R3 to R7.

O R D E R

(Made by The Hon'ble The Chief Justice)

The petitioner has filed the present writ petition, alleging violation of the judgment passed by the Honourable Supreme Court in Common Cause vs. Union of India [(2015) 7 SCC 1] qua the aspect of regulation of Government advertisements. In this behalf, a Committee was appointed by the Honourable Supreme Court to prepare draft guidelines and with certain modifications, those draft guidelines were approved. The Central Government, State Governments, their

Departments and Instrumentalities were called upon to implement the directions to put forth a mechanism for its implementation. We may note that one of the modifications made by the Honourable Supreme Court as enunciated in paragraph 28 was the issue of permissibility of publication of photographs where, contrary to the recommendations of the Committee, it was felt that the same should be permissible only for the President, Prime Minister and Chief Justice of the Country, who may themselves decide the question. Even insofar as the recommendations for appointment of Ombudsman is concerned, the Honourable Supreme Court has refrained from naming specific persons and left the exercise to be performed by the Union Government. The operative portion in paragraphs 33 and 34 reads as under:

"33. We close the matters on the aforesaid note by approving and adopting the recommendations of the Committee except what has been specifically indicated above with regard to:

- (1) Publication of photographs of the government functionaries and political leaders along with the advertisement(s).
- (2) Appointment of an Ombudsman.
- (3) The recommendation with regard to performance audit by each Ministry.
- (4) Embargo on advertisements on the eve of the elections.

34. We also make it clear that the present directions issued under Article 142 of the Constitution cannot be comprehensive and there are several aspects of the matter which may have escaped our attention at this stage. In this regard, we would like to clarify that it is not the intention of the Court to attempt to lay down infallible and all comprehensive directions to cover the issue at hand. The gaps, if any, we are confident would be filled up by the executive arm of the Government itself inasmuch as the attainment of constitutional goals and values enshrined in Part IV of the Constitution is the conjoint responsibility of the three organs of the State i.e. legislative, executive and the judiciary, as earlier discussed."

2. The observations in paragraph 33 therefore clarify that there was no intention of the Court to lay down a comprehensive guideline and direction and it was left to the executive arm of the Government to fill up the areas which might have been left unattended.

3. In the aforesaid context, this Court would have to peruse the materials placed on record by the petitioner. Such materials consist of totally three advertisements, out of which one is in respect of the Prime Minister at the stage of launch of Interoperable Electronic Toll Collection (ETC) System on National Highways through FASIAG. This is certainly not affected by the guidelines, as an exception has been made in the case of the Prime Minister.

4. The petitioner, an advocate in person, states that he has filed that advertisement only for purposes of showing that that photograph was published in The Hindu, while the other two advertisements were not published in The Hindu. Insofar as this aspect is concerned, suffice to say that whether The Hindu was willing to advertise the same or not is best known to the Government and The Hindu, about which the petitioner would really have no knowledge.

5. In the aforesaid context, we have to see the other two advertisements published in the "Indian Express" and "The Hindu" (Tamil). There is no photograph of the Chief Minister. They refer to certain schemes of the Government. They do refer to "Under the dynamic leadership of Selvi.J.Jayalalitha as Chief Minister". What appears to trouble the petitioner is the line "Amma's rule for ever". He submits that this is offensive and no one can rule for ever. Whether a person can rule or not or how long is decided by the electorate. Insofar as that advertisement is concerned, we may note an aspect which we did bring to the notice of the petitioner in reference to the context of the advertisement being published on 26.05.2015. The judgment of the Honourable Supreme Court was delivered on 13.05.2015. The advertisement is just 13 days after the judgment. In a system or culture where earlier there was no prohibition to publish photographs, it will take some time to appreciate the contents of the judgment and to implement it in its true spirit. The two advertisements are too close a proximity of the time to the judgment, to go into the details as to what would constitute offensive material in the context of the principles laid down in the judgment. No advertisement thereafter has been annexed in the typed-set to show any continuing cause in this behalf.

6. At this stage, the petitioner states that an advertisement was issued for the Independence Day celebrations. It appears that the full advertisement has not been annexed and has been cut off. A copy which was handed over to the Court by the learned Advocate General shows that it mentioned the time of hosting of the flag by the Chief Minister. The petitioner states that he has objection to the use of the word "Puratchi Talaivi". The exact translation for the said expression is stated to mean "Revolutionary Leader". It is a prefix as a laudatory reference at best to the Chief Minister and we cannot call this as violation of the guidelines.

7. In the absence of any cogent material, we find no ground to exercise jurisdiction in this petition.

8. Thus, the writ petition stands dismissed. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

ATR

Copies to;

1. The Secretary
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Ministry of Home Affairs
New Delhi.
2. The Secretary
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5. The Director General of Police
State of Tamilnadu
Police Head Quarters
Chennai - 600 004.
6. The Director
Information and Public relations Department
Government of Tamilnadu
Chennai - 600 009.

7. M. Rajaram, Secretary
Information and Public Relations Department
Government of Tamilnadu
Chennai - 600 009.

+1 cc to Mr.L.P.Shanmugasundarm, Advocate, sr.47829
+1 cc to Mr.P.Rathinam, Advocate, sr.48010
+1 cc to Government Pleader, sr.48199
+1 cc to Mr.B.Babu Manohar, Advocate, sr.47829

W.P. No. 27793 of 2015

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