

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10738 of 2015

Nagrik Adhikar Manch through its Settler, namely Shiv Prakash Rai, Son of Late Nageshwar Rai, Resident of village- Gali No.2 Dhobighat Charitarwan, Buxer, P.S-Town, P.S-Buxer, District- Buxer.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Secretary, Information and Public Relation Department, Government of Bihar, Soochna Bhawan, Patna.
4. The Union Government of India through the Home Secretary, Govt. of India, New Delhi.
5. The Secretary, Personnel and Training Department, Union Government of India, New Delhi.
6. The Director, C.B.I., New Delhi.
7. The Election Commission of India through Chief Election Commissioner, New Delhi.
8. The Chief Election Commissioner, Election Commission of India, New Delhi.
9. Sri Nitish Kumar, Son of Late Ram Lakhan Singh, Chief Minister, Bihar, 7 Circular Road, Patna and Permanent Address- R/o Village- Hakikatpur, P.S.- Bakhtiyarpur, District- Nalanda.

.... Respondents

Appearance :

For the Petitioner	:	M/s Dinu Kumar, Rajesh Kumar Singh, and Shiv Kumar Prabhakar, Advocates
For the State	:	Mr. Lalit Kishre, PAAG Mr. Bishwa Bibhuti Kumar Singh, AC to PAAG
For Union of India	:	Mr. Ram Anurag Singh, CGC
For C B I	:	Mr. Sanjay Kumar, SC, CBI

**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HEMANT GUPTA**

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA

Date: 03-03-2016

In the present *Public Interest Litigation*, the petitioner, a registered Trust, has invoked the writ jurisdiction of this Court to restrain the State of Bihar and the respondent authorities from using public funds on advertising, publicity and projecting Shri Nitish Kumar, Chief Minister of Bihar, on campaign "*Badh*



Chala Bihar” launched on 12th June, 2015, and to remove photographs of the Chief Minister and the politicians concerned from the booklet and from hoarding, all over Bihar, containing photographs of the Chief Minister and other Ministers. The petitioner claims a direction to recover costs of such advertisement from the Chief Minister and other concerned politicians and officials and also sought for an enquiry into the role attributed by the officials concerned at whose instance, the programme was launched.

2. “*Badh Chala Bihar & BIHAR @ 2025*” is a booklet consisting of 24 pages (inclusive of cover pages) bound with thick paper. The back of the front page has a message from the Chief Minister; whereas on the first page, there is a message from the concerned Minister to the citizens of Bihar. The brochure deals with different subjects, like infrastructure, economic progress, law and order, education, health, transport and women empowerment. Except the photograph of the Chief Minister on the back page of the front cover, and also of the Minister on the first page of the booklet, there is no other photograph of any person in the entire booklet.

3. On 28th July, 2015, this Court passed the following order :-

“

We have gone through the Brochure printed by the Government, which, inter alia, provides engagement of 407 mobile trucks fitted with audio-visual equipment, and supported by the campaign mobilizer. It is stated that effort is only to collect data for formulation of future projects. It is further stated that the Rural Development Department has already furnished data of 298427 projects.

We are, prima facie, of the view that the exercise undertaken by the State at this stage is not that important and

immediate. At the same time, if the intention is only to collect data, it does not need audio-visual equipment, much less the campaign mobilizer.

We, therefore, direct the Information and Public Relation Department (IPRD) that the work undertaken by them shall only be to the extent of collection of data. Under no circumstance, it shall display in live or static photograph of any person whatsoever, nor they shall indulge in audio-visual campaigning."

4. It is explained that 400 trucks have not been purchased, but the figure 405 relates to 'Tata 407' truck and that a service provider was engaged for collecting feedback from students, businessmen, intellectuals, residing outside Bihar, to get their comment on the inclusive development of the State. It is an effort of the State Government, centralizing its focus on direct communication with the citizens of Bihar to get their feedback on government policies, ongoing and upcoming, with an intention to engage and involve all the citizens of Bihar for good governance and administration of citizens' causes based on the aspiration and expectation of citizens of Bihar for development of the State and welfare of the society. It is further said that vision document titled "*Badh Chala Bihar*" is to collect data in respect of all Departments after multifaceted discussions between the Government, civil society members and citizens of Bihar, using traditional and new age media to reach out to farmers, big and small business owners, students, educators, Self Help Groups, Anganwari workers, NRIs, non-resident citizens of Bihar, representatives of Panchayat Raj Institutions.

5. In the above background, learned counsel for the petitioner vehemently argued that in terms of the judgment of the Hon'ble Supreme Court in the case of **Common Cause vs.**



Union of India [(2015) 7 SCC 1], the advertisements, carrying photograph of the Chief Minister, are prohibited. Therefore, the brochure issued is nothing but an advertisement on the eve of elections to Bihar Legislative Assembly and, thus, not permissible in terms of the direction contained therein. It is contended that a large number of vehicles, fitted with audio-visual equipments, had been put in service not for collecting of data but for projecting the Chief Minister in the ensuing election. Such use of large number of vehicles is without any tender process, which contravenes the norms for spending public money.

6. On the other hand, the learned State Counsel controverted the stand and stated that the brochure is not an advertisement, which is prohibited in terms of the aforesaid judgment. The brochure is a vision document to collect feedback from the citizens residing within and outside the State on various projects undertaken by the State Government. To collect feedback, service provider has been engaged after extensive process of advertisement for selection of the service provider. Therefore, it cannot be said that public funds are being utilized in an unauthorized manner.

7. The first question, which is required to be examined is whether the brochure titled "*Badh Chala Bihar*" is an advertisement over which the photographs of the Chief Minister or the Minister of the State could not have been published.

8. The judgment of the Supreme Court, in the case of **Common Cause** (supra), shows that the Guidelines, as framed by a Committee, has been accepted by the Court subject to certain modifications. The Guidelines defines 'government advertisement' in clause 3(d). It reads as follows:-

"Guidelines on Content Regulation of Government Advertising

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3. Definitions. – In these Guidelines unless the context otherwise requires –

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(d) '**government advertising**' means any message, conveyed and paid for by the Government for placement in media such as newspapers, television, radio, internet, cinema and such other media but does not include classified advertisements; and includes both copy (written text/audio) and creative (visuals/video/multimedia) put out in print, electronic, outdoor or digital media."

The 'classified advertisements' include public notices, tenders, recruitment notices, statutory notifications.

9. The brochure, which is published, is not released or published in media, i.e., newspapers, television, radio, internet, cinema. It is meant for circulation not through the mass media or medium but may be on one-to-one basis or by post or by any other method.

10. The brochure has been published by the Department of Information and Public Relation, Government of Bihar. The Supreme Court, in the case of **Common Cause** (supra), examined the selection of media houses for giving advertisement. It has been held that patronizing any particular

media house must be avoided and award of advertisements must be on an equal basis to all newspapers. Paragraph -15 of the aforesaid judgment is relevant and is reproduced hereinbelow for the facility of quick reference:-

"15. A connected facet of the matter which cannot be ignored is the power of the Government to give/award advertisements to selected media houses and the concomitant issue of freedom of press. Award of advertisements, naturally, brings financial benefit to the particular media house/newspaper group. Patronization of any particular media house(s) must be avoided and award of advertisements must be on an equal basis to all newspapers who may, however, be categorized depending upon their circulation. The DAVP Guidelines do not deal with the said aspect of the matter and hence the necessity of incorporating the same in the present directions to ensure the independence, impartiality and the neutrality of the Fourth Estate which is vital to the growth and sustenance of democracy will have to be weighed and considered by us."

11. In the present case, the brochure is not released to any media - print or electronic. It is circulated by the Government Department. Such brochure does not come within the definition of 'government advertisements' as defined in the Guidelines reproduced hereinabove. It cannot be said to be an advertisement for which intervention of electronic or print media is said to have been used. Therefore, the brochure issued by the State Government titled "*Badh Chala Bihar*" with the theme line "*BIHAR @ 2025*" is not covered by the direction contained in the aforesaid judgment in the case of **Common Cause** (supra).

12. The other argument is in respect of use of vehicles, fitted with audio-visual equipments, advancing the



image of the Chief Minister as per the petitioner, whereas as per the respondents, such vehicles have been put to use for collecting data. Even if the vehicles have been utilized for highlighting the achievements of the State Government, there is no legal bar for such an action except when it falls within the four corners of the judgment of the Supreme Court in the case of **Common Cause** (supra). Since it is not an advertisement, it does not come within the scope of the aforesaid judgment of the Supreme Court. Even otherwise, we have no reason to disbelieve the stand of the State that the vehicles are being used for collection of data to frame its policies for advancement of the State.

13. Another argument, which was raised by the petitioner, is that a large number of vehicles have been engaged without adopting any tender process before any public money could be utilized. The stand of the State Government is that an Expression of Interest was published by the Department and PR agencies have been empanelled according to the terms published. As per Annexure-26, such letter was issued after advertisement of Expression of Interest was published in leading newspapers, such as, Hindustan, Dainik Jagaran, Dainik Bhaskar, Times of India edition of Patna, Kolkata, Delhi and Mumbai, The Hindu edition of Chennai, Bangalore, Hyderabad and Hindustan Times edition of Delhi and Mumbai. Two PR agencies, namely, Citizens Alliance Pvt. Ltd. & JWT Mindset Advertising Pvt. Ltd. (a Joint Venture) and Crayons Advertising

Pvt. Ltd. were empanelled for two years as PR agencies after following due process of selection. Thereafter, work orders were issued for different works as per terms and conditions of EOI.

14. Since wide publicity was given before shortlisting of PR agencies, it cannot be said that the process of spending public money has not been followed. Thus, we find that the brochure is not an advertisement and that public money has been spent in accordance with the procedure established therefor.

15. We do not find any merit in the writ petition. It is accordingly dismissed.

(Hemant Gupta, J)

I A Ansari, ACJ I agree.

(I.A. Ansari, ACJ)

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