Research Paper Law

Accountability of Government in the Light of Directions Issued by the Supreme Court in Common Cause V. Union of India

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ABSTRACT

In a democratic setup, government advertisements are important vehicle to inform the people about various welfare and progressive measures undertaken by the government. But sometimes, in the garb of communicating with the people, undue political advantage and mileage is sought to be given to certain individuals or political leaders as being responsible for various government achievements and progressive plans. Such practice becomes more rampant on the eve of elections and constitutes not only gross wastage of public funds but also renders the government accountable to the electorate. In this regard, guidelines framed by the Supreme Court of India in the Writ Petition, Common Cause v. Union of India may prove instrumental to prevent misuse of public funds on government advertisements and to render the government accountable to the people.

KEYWORDS Democracy, participation, advertisements, directions, judgment.

INTRODUCTION

In a democratic political setup, two components are important, participation and accountability. While participation involves increasing role of the citizens in choosing political leaders and having a great say in the policies and practices of the government, accountability is just the other side of the process. It involves the justification or explanation by the government of its commissions and omissions. Essentially the term accountability encapsulates three main elements; answerability- the need for justification of actions; enforcement- the sanction that could be imposed if the action or justification of actions is found to be unsatisfactory and responsiveness - the ability of those held accountable to respond to the demands made.

It is no doubt true that government advertisements convey necessary information to the citizens with regard to various welfare and progressive measures undertaken by the government. It is also an important vehicle to inform the people about their rights and entitlements. But sometimes, in the garb of communicating with the people, undue political advantage and mileage is sought to be given to certain individuals or political leaders as being responsible for various government achievements and progressive plans. Such practice becomes more rampant on the eve of elections and constitutes not only gross wastage of public funds but also renders the government accountable to the electorate. Further in view of Articles 38 and 39 of the Constitution which seek to secure economic and political justice to the millions of people reeling under extremely poor conditions, it becomes very much necessary to ensure avoidance of unproductive public funds.

INTERVENTION BY THE SUPREME COURT

The Indian judiciary has made long lasting contribution in the system of governance that has impacted the life of the people and of the nation. In many ways it can claim credit for expanding the meaning of the constitution in favour of different segments, especially the poor of the society. In the exercise of jurisdiction under Article 142 of the Constitution, parameters can be laid down by this Court consistent with the objects enumerated by any of the provisions of Part IV. In *Common Cause* v. *Union of India,* Common Cause and Centre for Public Interest Litigation, two registered bodies, approached the Apex Court under Article 32 of the Constitution seeking an appropriate writ 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. The writ petitioners also prayed for laying down of appropriate guidelines by the Hon'ble Court to regulate government action in the matter so as to prevent misuse/wastage of public funds in connection with such advertisements.

For the purpose of evolving the best practices in the matter, the Court by its order dated 23.04.2014, ordered the constitution of a committee consisting of (1) Prof. (Dr.) N.R. Madhava Menon, former Director, National Judicial Academy, Bhopal (2) Mr. T.K. Viswanathan, former Secretary General, Lok Sabha and (3) Mr. Ranjit Kumar, Senior Advocate to go into the matter and submit a report to the Court. As per the orders of the court, the committee submitted its report and suggested a set of guidelines for the approval of the court. The petitioners in the present Writ Petition have prayed for approval of the said guidelines by the court and issuance of directions by the court 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**.** A summary of the said guidelines is reproduced as under.

Government Advertisement (Content Regulation) Guidelines 2014

As per the guidelines, the objects of these guidelines are:

1. to prevent arbitrary use of public funds for advertising by public authorities to project particular personalities, parties or governments without any attendant public interest.
2. to address the gap in the existing Directorate of Advertisement and Visual Publicity Guidelines (DAVP Guidelines) which only deal with the eligibility and empanelment of newspapers/journals or other media, their rates of payment, and such like matters and not on how to regulate the content of Government advertisements;
3. to ensure that "all government activities satisfy the test of reasonableness and public interest, particularly while dealing with public funds and property";
4. to ensure that government messaging is well co-ordinate, effectively managed in the best democratic traditions and is responsive to the diverse information needs of the public.

The guidelines specify five principles of content regulation of government advertisements which are being reproduced as under:

1 Advertisement campaigns to be related to government activity i.e, the content of these advertisements should be relevant to the government's constitutional and legal obligations as well as citizen's rights and entitlements.

2 Advertisement materials should be presented in an objective, fair and accessible manner and be designed to meet

the objectives of the campaign.

3 Advertisement materials should be objective and not directed at promoting political interests of ruling party. In particular, the advertising material must not mention the party in government by name; include party's political symbol or logo; directly attack the views of others in opposition. Further, it should avoid photographs of political leaders and if necessary only the photographs of President/ Prime Minister or Governor/Chief Minister should be used.

4 Advertisement Campaigns be justified and undertaken in an efficient and cost-effective manner. In particular, the government shall:

a. decide and announce beforehand, a list of personalities on whose birth or death anniversaries, advertisements could be released every year and specify which Ministry/Department could release the same;

b. avoid the issue of multiple advertisements by different departments and PSUs of the same Government in Commemorative Advertisements and shall issue a single advertisement only.

5 Government advertising must comply with legal requirements and financial regulations and procedures.

The committee suggested for appointment of an independent Ombudsman to receive complaints of violation of guidelines and to recommend action accordingly. Further, it suggested for audit of compliance of advertisement guidelines by the Ministry/Department/Agency concerned.

Supreme Court's directions

On the question that whether the guidelines recommended by the Committee should commend acceptance and whether the same should be enforced and made operative under Article 142 of the Constitution, the Apex Court 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 this court consistent with the objects enumerated by any of the provisions of Part IV. Such an exercise would be naturally time bound i.e. 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. Therefore, in exercise of these powers, the court laid down a broad categorization of events and occasions on which government advertisements can be issued.

1. Advertisements highlighting completion of fixed period of government's tenure.
2. Advertisements announcing projects.
3. Advertisements issued on the occasions of birth/death anniversaries and such other events with the rider that instead of different departments issuing advertisements on same occasions, one single advertisement issued by a Central Agency should be enough.
4. Advertisements announcing policies and benefits for the public like an advertisement issued by the Ministry of Health and Family Welfare informing the public of preventable disease, safeguards to be taken, vaccination programmes for the children etc.

In so far as the guidelines recommended by the committee are concerned, the Court virtually accepted all the guidelines with following departures:

1. In departure to the views of the Committee which recommended permissibility of publication of the photographs of the President and Prime Minister of the country and Governor or Chief Minister of the State along with the advertisements, the court held that there should be an exception only in the case of the President, Prime Minister and Chief Justice of the country who may themselves decide the question. Further, advertisements issued to commemorate the anniversaries of acknowledged personalities like the father of the nation would carry the photograph of the departed leader.
2. In so far as the recommendation with respect to appointment of Ombudsman is concerned, the court held that to oversee the implementation of directions, the government must constitute a three member body consisting of persons with unimpeachable neutrality and impartiality and who have excelled in their respective fields. The court left the said exercise to be performed by the Union Government.
3. In so far as the performance/special audit is concerned, the court ruled out such necessity on the ground that the machinery available is adequate to ensure due performance as well as accountability and proper utilization of public money.
4. If the government advertisements adhere to the objects and parameters laid down by the court, there is no necessity of imposing a special curb on government advertisements at the time of elections.

The court further clarified that the present directions issued under Article 142 of the Constitution are not comprehensive and the gaps, if any, may be filled by the Executive branch of the government.

CRITICAL ANALYSIS OF THE JUDGMENT

This landmark judgment of the Supreme Court goes a long way in ensuring accountability of the government towards its own people. However, there are certain issues which may require reconsideration. India is a federal country. If Prime Minister's photo along with that of President is permissible, on the same lines, photo of Chief Minister of a State along with the Governor must be permissible to highlight the achievements of the state government. Further, there is no logic in permitting the use of Chief Justice of India's (CJI) photo, even if the advertisement relates to a court event because it is duty of the CJI to uphold the Constitutional values and rights of the people and in that capacity he need not feature in a government advertisement. Another issue is encroachment by judiciary in the domains of Legislature and Executive. Court set up its own committee to frame the guidelines and accepted most of its suggestions. In this way, the court has essentially become both a law-making body and its executing authority.

CONCLUSION

A perusal of the above discussion makes it clear that power and accountability are two sides of the same coin. Power without accountability is bound to collapse. The guidelines framed by the Apex Court may be instrumental in preventing misuse of public funds by the government functionaries. But at the same time, it is the task of Legislature to enact a law on the same subject as the attainment of constitutional goals is the joint responsibility of the three organs of the State i.e., legislature, executive and judiciary. We may end with observation of Justice Ranjan Gogoi and Justice Pinaki Chandra Ghose:

"Institutions need not be glorified. They must earn glory by contribution and work".

REFERENCES

1 Dr. Roopinder Oberoi, "Institutionalizing Transparency and Accountability in Indian Governance: Understanding the Impact of Right to Information", IOSR Journal of Humanities and Social Sciences, Volume II, Issue 4 (May-June 2013) pp 41-53. | 2 Writ Petition (Civil) no. 13 of 2003, decided on May 15, 2015. | 3 Article 142: The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe. | 4 Common Cause v. Union of India, Writ Petition (Civil) no. 13 of 2003, decided on May 15, 2015. |