

**Case Commentaries - COMMON CAUSE VERSUS
UNION OF INDIA**

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Abstract

This recent Supreme Court ruling on the subject of extensive advertising is examined in this case remark. The advertising, which were initially intended to inform the public about new government initiatives, citizen rights and entitlements, safety information, and information relating to public health, among other things, have become less effective. These advertisements have recently undergone a radical transformation in how they are printed and distributed, moving from commercials to political propaganda. This advertisement's message not only devalued democracy as a whole, but it also stood in direct opposition to its core values. The general people are not only duped by such commercials that simply work to promote personality cults and political parties' and candidates' candidates' images, but they are also forbidden from questioning them. When the same commercials sway voters' decisions by revealing the candidates' own party affiliation, this also violates the concept of fair elections. The Court only lately understood the significance of putting a stop to the problem in light of the extravagant expenditure on such advertisements made with tax payer money and money from the national exchequer. The statement examines the precedents on the topic and explores the issue in relation to the ideas that the Court has accepted or rejected. The comment's broader context identifies this case as a significant perspective on the subject matter where the Legislature has not yet codified a law.

Keywords: Democracy, Expenditure, Fair Election, Guidelines, Informative Advertisements, Political Advertisements, Political Mileage, Public Funds.

Case Title	COMMON CAUSE V. UNION OF INDIA
Case No.	WRIT PETITION (CIVIL) NO. 13 OF 2003
Date of the Order	13-05-2015
Jurisdiction	Supreme Court of India
Quorum	Hon'ble Mr. Justice Ranjan Gogoi, Hon'ble Mr. Justice Pinaki Chandra Ghose
Author of the Judgment	Hon'ble Mr. Justice Ranjan Gogoi
Petitioner(s)	Common Cause
Respondent(s)	Union of India
Counsel for Appellant	-
Counsel for Respondent	-

Acts And Section Involved	<ul style="list-style-type: none"> • The Constitution of India, 1950 <ul style="list-style-type: none"> - Article 14 - Article 21 - Article 32 - Article 142
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Introduction

This important verdict, which will have significant repercussions for politicians from the ruling and opposition parties in the federal government and the states, forbids the use of images among other prohibitions, advertisements for the government by the Indian Supreme Court.

Facts

Common cause and Centre for Public Interest Litigation, two registered bodies, move toward the Apex Court to file the Writ Petition under Article 32 of the Indian Constitution as the Central and State Government is misusing public funds on government advertisements to showcase their political achievements and party's individual lacqueys to gain the popularity among the general public. There was a lack of material, so the Court referred to the other jurisdictions of the world to evolve the best practice by keeping in mind the current Indian scenario. The Court felt the need to constitute a committee consisting of i) Prof. (Dr.) N. R. Madhava Menon, former Director of National Judicial Academy, Bhopal, ii) Mr. T. K. Viswanathan, former Secretary General of Lok Sabha, and iii) Mr. Ranjit Kumar, Sr. Advocate in response to the menace which would submit its report to the Court. The committee submitted a report suggesting a set of guidelines for the approval of the Court. The Guidelines were called *Government Advertisement (Content Regulation) Guidelines 2014*.

Issues

- Whether the *Government Advertisement (Content Regulation) Guidelines 2014* suggested by the Committee should be made operative and enforceable by the Supreme Court under Article 142 of the Constitution until the concerned legislation is brought into force by the Parliament.
- Whether the politically-motivated advertisement can be removed by the recommended guidelines.
- Whether the fundamental rights guaranteed by the Constitution were being infringed by misusing public funds for politically-motivated advertisements.

Arguments of the Petitioner

The petitioner argued that the government advertisement is a behemoth waste of public funds and ill-use of administrative powers. It was also alleged that these advertisements don't make people aware of their rights and obligations but showcase the personification of the individuals. During the election season, these practices became more prevalent. Such practices and advertisements were the infringement of the Fundamental rights of the citizen as guaranteed under Articles 14 and 21 of the Constitution.

Arguments of the Respondent

The respondent contended that the guidelines cannot be enforced in consonance with Article 142 as the issues were related to government policies and executive decisions. The respondent's contention revolved around the cases of *Manzoor Ali Khan & Anr. V. Union of India & Ors.*¹⁸, and *Umesh Mohan Sethi V. Union Of India & Anr.*¹⁹ In the case of *Manzoor Ali Khan & Anr. V. Union of India & Ors.*, the court refrained from meddling with the guidelines established by the nodal institutions for the release of government advertisements, DVAP, the Union of India, and the Department of Information of States. In *Umesh Mohan Sethi V. Union of India & Anr.* case, it was decided that the government has the authority to allocate

¹⁸ *Manzoor Ali Khan & Anr. V. Union of India & Ors.* (2014) 7 SCC 321.

¹⁹ *Umesh Mohan Sethi V. Union of India & Anr.* 20131 AD(Delhi)53.

funds to certain cases as needed. The legislature is the appropriate setting to voice criticism of government action, and it is up to the legislature to determine whether the expenditure was appropriate or not.

Judgment

In a situation where there is no previous legislation and guidelines to guide the governmental action, the court can surely with no hesitation exercise its power under Article 142, parameters can be laid down consistent with the constitutional provisions enumerated under part IV of the constitution.

The court held that the government can only use public funds for advertisement if the elements of the informative content are making the citizens aware about the government policies, only these advertisements should be permissible. The applicability of these guidelines is not only restricted to physical advertisements but also to internet advertisement.

The guidelines predominantly spell out five principles to regulate the contents of advertisements, namely,

- i) advertising campaigns are to be related to government responsibilities,
- ii) materials should be presented in an objective, fair and accessible manner and designed to meet the objectives of the campaign,
- iii) not directed at promoting the political interests of a Party,
- iv) campaigns must be justified and undertaken in an efficient and cost-effective manner and
- v) advertisements must comply with legal requirements and financial regulations and procedures.

Reference was also made to the customs practised in the neighbouring nations, and the best customs followed in such other jurisdictions were taken into consideration. It should be made clear that the advertisement shouldn't promote either a favourable impression of the ruling government or an unfavourable impression of someone who is critical of it.

Australian and British cost-effective approaches should be implemented in our nation. Publishing a person's photo

should be avoided as much as possible since it runs the risk of creating a personality cult and an image of one or a small group of people, both of which are directly opposed to a democratic government.

Lastly, the government should uphold the idea of justice and equal treatment for all media outlets.

Conclusion

The ruling is right and unquestionably clears the law, with the added benefit of implementing the rules that are desperately required in the field of law where the Legislature has remained silent and our financial resources have been drained. Without a doubt, it directs the Legislature's future legislative efforts on the subject of extensive advertising and illegal activities carried out in the name of educational advertising. Politicians and political parties looking to advance their own political careers and create their own personality cults won't be able to mislead the electorate any longer.

In order to fill in the gaps on the matter as a joint duty of the three organs of the State under Article 12 for the accomplishment of constitutional goals and values enshrined in Part IV of the Constitution, the Court adopted the Recommendations and issued directions under Article 142 of the Constitution of India. Publication of images of government officials and political figures coupled with marketing meant to foster personality cults and negative perceptions of persons is in direct opposition to democratic functioning. Therefore, the ads can only include the Prime Minister, President, Chief Justice, and Father of the Nation. There is undoubtedly a blurry line between political and educational advertising.

The aforementioned judgement makes it clear that the latter is unacceptable and will be subject to an independent Ombudsman's investigation and scrutiny with impeccable neutrality and impartiality. If the machinery ensures good performance, accountability, and use of public funds, a special audit won't be necessary. It should be remembered, though, that allowing the Prime Minister's photo to be used in advertisements will raise questions because the PM is a member of the ruling party. If this is permitted, the

widespread allusion in the public mind to the generosity of the state or federal government will provide that candidate and party an undeserved advantage in subsequent elections.

The ruling party will use the PM as a taxpayer-funded gimmick while other parties may have to pay for their own advertising. Therefore, using any party's candidate without restriction or restraint, regardless of their position, will not serve democracy. However, such advertisements should be allowed if there is a component of informative material or if they have the purpose of keeping the public informed about how the government is operating. The best practises used in other jurisdictions, including the UK and Australia, were taken into consideration. Appropriate reference was made to these practises. It should be highlighted that the advertisement shouldn't promote either a favourable opinion of the ruling government or a bad opinion of someone who opposes it. The rules don't describe unfair or best practises, and they aren't clear about what information broadcasting is considered to be in the "public interest." The Court upholding sufficient adherence to objects and parameters has overturned the ban on advertising before to elections. It is commendable that the idea of fairness has been put forth to help people understand the problem, but what is fair to the majority may not be so for some classes, which could result in oppression. Additionally, it is better if the Election Commission is in charge of issuing advertisements on election day. The EC needs to create appropriate and correct recommendations in this area. The provisions might also include sanctions for breaking them, as political parties are far from self-regulating. Instead of spending money to promote the Action Plans, that money should be spent to implement them. Instead, than highlighting the accomplishments of the parties, the focus should simply be on the development of the country.

Related Cases

- Manzoor Ali Khan & Anr. V. Union of India & Ors. (2014) 7 SCC 321.
- Umesh Mohan Sethi V. Union of India & Anr. 20131 AD(Delhi)53.

References

- Shubham Legal, CASE SUMMARY: SUPREME COURT ON GOVERNMENT ADVERTISING, Legally India.