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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 10th August, 2016

+ W.P.(C) 6681/2015, CM APPLs. No. 12187/2015, 13537/2015,
15010/2015, 22671/2015, 23434/2015 and 1250/2016

NYAYAA PATH (NGO) Petitioner

Through : Mr. Neeraj, Mr. Prashant Verma, Mr. Vijay
Joshi, Mr. Mukul Singh, Advocates.

versus

LT. GOVERNOR OF NCT OF DELHI AND ORS. Respondents

Through : Mr. Sudhir Nandrajog, Senior Advocate
with Ms. Prabhsahay Kaur, Advocate for
GNCTD.

Mr. Anil Soni, CGSC for UOI.

+ W.P.(C) 6702/2015, CM APPLs. No. 12222/2015, 12702/2015,
12996/2015, 12997/2015, 21890/2015 and 5820/2016

AJAY MAKEN Petitioner

Through : Mr. Vikas Singh, Senior Advocate with
Mr. Aman Panwar, Mr. Mudit Gupta and
Mr. Kapish Seth, Advocates.

versus

UNION OF INDIA AND ANR. Respondents

Through : Mr. Anil Soni, CGSC for UOI.

Mr. Sudhir Nandrajog, Senior Advocate
with Ms. Prabhsahay Kaur, Advocate for
GNCTD.

Mr. Sanjoy Ghose, ASC with
Mr. Vikramaditya, Advocate for GNCTD.

+ W.P.(C) 7127/2015, CM APPL. No. 13084/2015

VARUN KUMAR MAHLA Petitioner
Through : Nemo.

Versus

GOVT. OF NCT OF DELHI Respondent
Through : Mr. Sudhir Nandrajog, Senior Advocate
with Ms. Prabhsahay Kaur, Advocate for
GNCTD.

+ W.P.(C) 7288/2015, CM APPL. No. 13388/2015

S.N. SINGH Petitioner
Through : Petitioner in person.

Versus

GOVERNMENT OF NCT OF DELHI Respondent
Through : Mr. Sanjoy Ghose, ASC with
Mr. Vikramaditya, Advocate for GNCTD.
Mr. Santosh Kumar Tripathi, ASC for
GNCTD.
Mr. Sudhir Nandrajog, Senior Advocate
with Ms. Prabhsahay Kaur, Advocate for
GNCTD.
Mr. Dhanesh Relan and Ms. Isha Garg,
Advocates for DDA.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MS. G. ROHINI, CHIEF JUSTICE (ORAL):

1. A common issue relating to enforcement of Government Advertisement (Content Regulation) Guidelines, 2014 (hereinafter referred to as 'the Guidelines') has been raised in all these petitions.

2. These petitions were filed in July, 2015 alleging that the Government of NCT of Delhi has been violating the above-said Guidelines by repeatedly publishing politically motivated advertisements in newspapers, television and radio for promoting the party in power and has been indulging in unwanted and unethical expenses by diverting public funds towards promotion of the ruling party and its leaders. Contending that the Union of India failed to enforce the Guidelines and no mechanism has been created for redressal of the complaints with regard to violation of the Guidelines, the petitioners prayed for a direction to the respondents to withdraw the advertisements which are in violation of the Guidelines and to restrain them from publishing any such advertisements.

3. It is relevant to mention that two registered bodies, Common Cause and Centre for Public Interest Litigation, approached the Supreme Court of India 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. Having 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, the Supreme Court by order dated 23.04.2014 constituted a Committee to go into the matter and submit a report. In terms of the said order, the Committee appointed by the Supreme Court, after full deliberations in the matter, submitted a report suggesting a set of Guidelines called The Government Advertisement (Content Regulation) Guidelines. The Guidelines so recommended were approved and adopted by the Supreme Court by order dated 13.05.2015 [*Common Cause v. Union of India*,

(2015) 7 SCC 1] with certain modifications. It was also made clear that the same shall be directions issued in exercise of jurisdiction under Article 142 of the Constitution and that the same shall be enforceable until the Legislature or the Executive, as the case may be, steps in to fulfil its constitutional role and authority by framing an appropriate policy.

4. In Clause 7 of the Guidelines, the Court constituted Committee proposed appointment of an Ombudsman to hear complaints of violation of the norms and to recommend action. The said clause reads as under:

"7. Compliance and enforcement - (1) The Government shall appoint an Ombudsman who shall be an eminent expert independent of the Government to receive complaints of violations of Guidelines and to recommend action in accordance with the Guidelines.
(2)"

5. However, having taken note of the objections filed by the Union of India, to the extent of the appointment of Ombudsman proposed by the Committee, the Supreme Court held:

"29. Insofar as the recommendations with regard to the appointment of Ombudsman is concerned, we are of the view that for ironing out the creases that are bound to show from time to time in the implementation of the present direction and to oversee such implementations the Government should constitute a three-member body consisting of persons with unimpeachable neutrality and impartiality and who have excelled in their respective fields. we could have but we refrain from naming the specific persons and leave the said exercise to be performed by the Union Government."

6. In terms thereof, the Government was required to constitute a three-member committee. Aggrieved by the failure of the Government to do so, the present petitions have been filed.

7. This Court issued notice to the Respondent No.1 / Union of India on 15.07.2015 calling upon to explain as to what steps have been taken for implementation of the Guidelines and the petitions were adjourned from time to time to enable the Respondent No.1 to take the necessary steps. Ultimately, it was brought to the notice of this Court that in compliance of the directions of the Supreme Court, a three-member Committee was constituted by the Union of India on 06.04.2016 comprising of Shri B.B. Tandon, former Chief Election Commissioner of India (Chairperson); Shri Rajat Sharma, President of the News Broadcasters Association (Member); and Shri Piyush Pandey (Member). As per the said Notification dated 06.04.2016, the jurisdiction of the said three-member Committee would extend to advertisements issued by all -

- (a) Ministries/Departments of Government of India and Union Territory Administrations;
- (b) Public Sector Undertakings of Government of India; and
- (c) Local bodies and other autonomous bodies / organizations established under a Statute by Government of India / Union Territory Administrations.

8. It is also brought to our notice that contempt proceedings were initiated before the Supreme Court for non-implementation of the directions dated 13.05.2015 in *Common Cause v. Union of India* (supra) and there was an order on 28.04.2016 as under:

"The spirit of the judgment of this Court dated 13.05.2015 would require the States to also constitute their respective Committees which shall now be done. If the States so desire, the Committee constituted at the Central level by UOI may be entrusted with the task of overseeing the publication of the advertisements in the State."

9. It appears that in the light of the above said order, the Government of India, Ministry of Information and Broadcasting addressed a letter dated 23.05.2016 to the Government of NCT of Delhi to take up the matter and appoint a three-member Committee as directed by the Supreme Court.

10. It is represented by Shri Vikas Singh, the learned senior counsel appearing for the petitioner in W.P.(C) No.6702/2015 that after the constitution of the Committee by the Government of India, the petitioner filed a complaint dated 10.05.2016 before the three-member Committee and pursuant thereto, the Committee has also issued notice to the Chief Secretary, Government of NCT of Delhi on 26.05.2016 followed by reminders. However, the Government of NCT of Delhi, by reply dated 29.06.2016, informed the Committee that they have initiated the process to constitute their own Committee to regulate the content of Government advertising and to oversee the implementation of the order of the Supreme Court.

11. However, on the next date of hearing, it is brought to our notice by Mr. Anil Soni, the learned counsel appearing for the Union of India that the letter dated 23.05.2016 of the Ministry of Information and Broadcasting addressed to the Union Territories was withdrawn vide letter dated 09.08.2016 since the direction of the Supreme Court dated 28.04.2016 was not meant for Union Territories and accordingly, it was

made clear that the advertisements of Union Territories shall be regulated by the three-member Committee constituted by the Central Government and that the Union Territories are not authorized to constitute three-member bodies of their own. In the light of the said clarification, it is represented by Shri Anil Soni that the complaint of the petitioner in W.P.(C) No.6702/2015 dated 10.05.2016 would be considered by the three-member Committee constituted by the Union of India.

12. Stating that he has no instructions with regard to the clarificatory letter dated 09.08.2016 stated to have been issued by the Government of India, Ministry of Information & Broadcasting, Shri Sudhir Nandrajog, the learned senior counsel appearing for the Government of NCT of Delhi submitted that the issue with regard to the constitution of their own Committee by the Government of NCT of Delhi may be left open.

13. For the purpose of the present petitions, it is not necessary for us to enter into the issue as to whether Government of NCT of Delhi may constitute their own committee to regulate the contents of Government advertisements.

14. Having regard to the fact that a three-member committee has been constituted by the Government of India on 06.04.2016 in compliance with the directions of the Supreme Court and that the petitioner in W.P.(C) No.6702/2015 has already filed a complaint before the said Committee and it has also been represented by the learned counsel appearing for the Union of India that the said complaint would be considered in accordance with the Guidelines approved by the Supreme Court, we consider it appropriate to dispose of all the writ petitions with the following directions:

- (i) The complaint dated 10.05.2016 of the petitioner in W.P.(C) No.6702/2015 shall be considered and decided by the three-member Committee constituted by the Government of India on 06.04.2016 in accordance with the Guidelines as expeditiously as possible, preferably within a period of six weeks from today.
- (ii) The petitioners in other writ petitions are at liberty to file complaints before the Committee in which event the same shall also be considered in terms of the Guidelines.
15. All the writ petitions are accordingly disposed of.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

AUGUST 10, 2016

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