Judgement dt. 18.3.2016

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

REVIEW PETITION (C) NOS.1879-1881/2015

IN

WRIT PETITION (C) NOS.13/2003, 197/2004 & 302/2012

STATE OF KARNATAKA ...PETITIONER

VERSUS

COMMON CAUSE AND ORS.ETC. ETC. ...RESPONDENTS

WITH

R.P.(C) NO.1876-1877/2015 IN W.P.(C) NO.197/2004, R.P.(C) NO.1834/2015 IN W.P.(C) NO.197/2004, R.P.(C) NOS.2703-2705/2015 IN W.P.(C) NOS.13/2003, 197/2004 & 302/2012, R.P.(C) NOS.3191-3193/2015 IN W.P. (C) NOS.13/2003, 197/2004 & 302/2012, R.P.(C) NOS.3275-3277/2015 IN W.P. (C). NOS.13/2003, 197/2004 & 302/2012, R.P.(C) NO.3259/2015 IN W.P.(C) NO.197/2004, R.P.(C) NOS.3674-3676/2015 IN W.P. (C) NOS.13/2003, 197/2004 & 302/2012, R.P.(C) NOS.123-125/2016 IN W.P.(C) NOS.13/2003, 197/2004 & 302/2012.

O R D E R

1. We have heard the learned counsels for all the contesting parties. Upon due consideration, we review our judgment dated 13th May, 2015 passed in Writ Petition (Civil) No.13 of 2003, Writ Petition (Civil) No.197 of 2004

and Writ Petition (Civil) No.302 of 2012 to the extent indicated below:

(i) The exception carved out in paragraph 23 of the aforesaid judgment dated 13th May, 2015 permitting the publication of the photographs of the President, Prime Minister and Chief Justice of the country, subject to the said authorities themselves deciding the question, is now extended to the Governors and the Chief Ministers of the States.

(ii) In lieu of the photograph of the Prime Minister, the photograph of the Departmental (Cabinet) Minister/Minister In-charge of the concerned Ministry may be published, if so desired.

(iii) In the States, similarly, the photograph of the Departmental (Cabinet) Minister/Minister In-charge in lieu of the photograph of the Chief Minister may be published, if so desired.

(iv) All other observations/directions in the aforesaid judgment dated 13th May, 2015

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shall continue to remain in force subject to the above modification.

2. The review petitions are disposed of in the above terms.

.....,J.
(RANJAN GOGOI)

.....,J.
(PINAKI CHANDRA GHOSE)

NEW DELHI;
MARCH 18, 2016.

Judgement dt. 13.5.2016

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 13 OF 2003

COMMON CAUSE ...PETITIONER (S)

VERSUS

UNION OF INDIA ...RESPONDENT (S)

WITH

W.P. (C) No. 197 of 2004

&

W.P. (C) No.302 of 2012

J U D G M E N T

RANJAN GOGOI, J.

1. Common Cause and Centre for Public Interest Litigation, two registered bodies, have approached this 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 have also

prayed for laying down of appropriate guidelines by this Court to regulate Government action in the matter so as to prevent misuse/wastage of public funds in connection with such advertisements.

2. In the above stated writ petitions the writ petitioners while conceding the beneficial effect of government advertisements which convey necessary information to the citizens with regard to various welfare and progressive measures as also their rights and entitlements, however, had contended that in the garb of communicating with the people, in many instances, undue political advantage and mileage is sought to be achieved by personifying individuals and crediting such individuals or political leaders (who are either from a political party or government functionaries) as being responsible for various government achievements and progressive plans. According to the petitioners such practice becomes rampant on the eve of the elections. Such advertisements not only result in gross wastage of public funds but constitute misuse of governmental powers besides derogating the fundamental rights of a large section of the

citizens as guaranteed by Article 14 and 21 of the Constitution of India.

3. The writ petitions, filed as public interest litigations, were resisted by the Union of India primarily on the ground that the issues sought to be raised pertain to governmental policies and executive decisions in respect of which it may not be appropriate for this Court to lay down binding guidelines under Article 142. The decision of this Court in ***Manzoor Ali Khan & Anr.*** *Vs.* ***Union of India & Ors.***[1] and a pronouncement of the Delhi High Court in ***Umesh Mohan Sethi*** *Vs.* ***Union of India & Anr.***[2] have been relied upon by the Union in support of its above stated stand.

4. The issues arising in the writ petitions were considered by this Court in an earlier round of exhaustive hearings. By order dated 23.04.2014, this Court, on consideration of the respective stands of the parties and by relying on the principles laid down in the decisions specifically referred to in the aforesaid order dated 23.04.2014, *inter alia*, held that there is no dispute that "primary cause of government

[1] (2014) 7 SCC 321
[2] WP (C) No.2926 of 2012 decided on 12.12.2012

advertisement is to use public funds to inform the public of their rights, obligations, and entitlements as well as to explain Government policies, programmes, services and initiatives." It was further held that only such government advertisements which do not fulfil the above requisites will fall foul of the area of permissible advertisements. This Court 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. As the materials laid before the Court by the parties were found to be inadequate for the purpose of evolving what would be the best practices keeping in view the prevailing scenario in other jurisdictions across the globe, this Court felt the necessity of constituting 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.

5. In terms of the order of this Court, the Committee was duly constituted and after full deliberations in the matter, a

report had been submitted by the Committee suggesting a set of guidelines for approval of this Court. It is the plea of the petitioner that the said guidelines should be approved by this Court and directions be issued 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.

6. The contents of the guidelines suggested by the court appointed Committee may be usefully extracted hereinbelow:-

"GUIDELINES ON CONTENT REGULATION OF GOVERNMENT ADVERTISING

(1) These Guidelines shall be called the Government Advertisement (Content Regulation) Guidelines 2014.

(2) They shall come into force with effect from.....

2. **APPLICATION:**

(1) These Guidelines shall apply to all Government advertisements other than Classified Advertisements.

(2) These Guidelines shall apply to the content of all Government Advertising till a suitable legislation is enacted by the Government to prevent the misuse of public funds on advertisements to gain political mileage as distinct from legitimate Government messaging.

(3) These Guidelines shall apply to all –

(a) institutions of Government;

(b) public sector undertakings;

(c) local bodies and other autonomous bodies/organizations established under a Statute.

3. **DEFINITIONS:**

In these Guidelines unless the context otherwise requires:

(a) "Classified Advertisements" include public notices, tenders, recruitment notices, statutory notifications.

(b) "DAVP Guidelines" means the existing guidelines of the Directorate of Advertising and Visual Publicity of the Ministry of Information and Broadcasting dealing with the eligibility and empanelment procedures and rates of payment and such other matters;

(c) "Government" means Central Government, State Governments/Union Territory Administrations and also includes local bodies, public sector undertakings and other autonomous bodies/organisations established under a Statute.

(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 creatives (visuals/video/multi

media) put out in print, electronic, outdoor or digital media.

OBJECTS:

The objects of these Guidelines are:-

(a) to prevent arbitrary use of public funds for advertising by public authorities to project particular personalities, parties or governments without any attendant public interest.

(b) neither to belittle the need nor to deny the authority of the Union and State Governments and its agencies to disseminate information necessary for public to know on the policies and programmes of Government but only to exclude the possibility of any misuse of public funds on advertisement campaigns in order to gain political mileage by the political establishment;

(c) to address the gap in the existing 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;

(d) to ensure that "all government activities satisfy the test of reasonableness and public interest, particularly while dealing with public funds and property";

(e) 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.

5. GOVERNMENT ADVERTISEMENT TO INFORM CITIZENS

Subject to these Guidelines Government may place advertisements or purchase advertising space or

time in any medium to inform citizens about their rights and responsibilities, about government policies, programmes, services or initiatives, or about dangers or risks to public health, safety or the environment.

6. **THE FIVE PRINCIPLES OF CONTENT REGULATION:**

While placing advertisements or purchasing advertising space in any media, the Government shall be guided by the following principles, namely:-

(1) Advertising Campaigns to be related to Government responsibilities:

While it is the duty of the Government to provide the public with timely, accurate, clear, objective and complete information about its policies, programmes, services and initiatives since the public has a right to such information, the content of government advertisements should be relevant to the governments' constitutional and legal obligations as well as the citizens' 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:

(i) The material shall be presented in a fair and objective manner and shall be capable of fulfilling the intended objectives;

(ii) Government shall exercise due caution while deciding the content, layout, size and design of the message including the target area and the creative requirement of the intended communication in order

to ensure that the maximum reach and impact are achieved in the most cost effective manner;

(iii) Content of advertisement must enable the recipients of the information to distinguish between facts and analysis and where information is presented as a fact, it should be accurate and verifiable;

(iv) Pre-existing policies, products, services and initiatives should not be presented as new unless there has been a substantial change or modification of such policies, products or services;

(v) Content of advertisement should provide information in a manner that accommodates special needs of disadvantaged individuals or groups identified as being within the target audience;

(vi) Multiple formats may be used to ensure equal access;

(vii) Every effort shall be made to pre-test the material in case of large scale campaign with target audiences.

(3) Advertisement materials should be objective and not directed at promoting political interests of ruling party:

(i) Display material must be presented in objective language and be free of political argument or partisan standpoint:

(ii) Government advertising shall maintain political neutrality and avoid glorification of political personalities and projecting a positive impression of the party in power or a negative impression of parties critical of the government.

(iii) Advertisement materials must not –

(a) Mention the party in government by name;
(b) directly attack the views or actions of others in opposition;

(c) include party political symbol or logo or flag;

(d) aim to influence public support for a political party, candidate for election; or

(e) refer to link to the websites of political parties or politicians.

(iv) Government advertisement materials should avoid photographs of political leaders and if it is felt essential for effective Government messaging, only the photographs of the President/Prime Minster or Governor/Chief Minister should be used;

(v) Government advertisements shall not be used at patronizing media houses or aimed at receiving favourable reporting for the party or person in power

(4) Advertisement Campaigns be justified and undertaken in an efficient and cost-effective manner:

(a) Since it is the responsibility of government to safeguard the trust and confidence in the integrity and impartiality of public services and

hence it should be the policy of governments to use public funds in such a manner as to obtain maximum value for taxpayers' money;

(b) Advertisement Campaigns must be justified and undertaken in an efficient and cost-effective manner;

(c) The Government shall –

(i) 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;

(ii) 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;

(d) Though advertising by governments should remain regulated all the time, it is particularly important to scrupulously follow these principles before and during the elections. As far as possible, during the period prior to elections, only those advertisements required by law (such as public health and safety advisories or job and contract advertisements) alone be released by governments;

(e) Advertisement campaigns should only be need based; and

(f) In case of large volume advertisement campaigns, post-campaign impact assessment is necessary to be included in the planning process itself and shall identify the indicators to measure success when the campaign has ended.

(5) **Government advertising must comply with legal requirements and financial regulations and procedures:**

Governments shall ensure that all Advertisements comply with:-

(i) relevant laws regarding privacy, intellectual property rights, election laws and consumer protection laws apart from laws in respect of broadcasting and media; and

(ii) copyright laws and ownership rights associated with works subject to copyright are fully respected.

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) Heads of government departments and agencies shall be responsible for ensuring compliance with these Guidelines and shall follow a procedure of certification of compliance before advertisements are released to the media.

(3) As part of the performance audit of the Ministry/Department/Agency –

(a) there shall be separate audit of the compliance of Advertisement Guidelines by the Ministry/Department/Agency concerned; and

(b) The annual report of such ministry/department/agency shall publish the findings of such audit and the money spent on advertising.

(4) The regulatory bodies of print and electronic media will be within their powers to impose sanctions against such media groups acting against these Guidelines in seeking or obtaining government advertisements.

8. **GENERAL**:

(1) These Guidelines shall be in addition to and not in derogation of the existing Guidelines which are in place under the existing Advertisement Policy of Government.

(2) These Guidelines are equally applicable to State Governments and its agencies. The State Governments shall undertake amendments to whatever policies they have in this regard and observe the Guidelines strictly in letter and spirit.

(3) The Ombudsman may recommend suitable changes to the Guidelines to deal with new circumstances and situations.

(4) The Government shall take necessary steps to initiate necessary legislation on the subject, given its importance for democracy, human rights and good governance."

****

Whether the guidelines recommended should commend acceptance and if so whether the same should be made operative and enforceable under Article 142 of the Constitution.

7. In the earlier order dated 23rd April, 2014, this Court, after holding that reasonableness and fairness consistent with

Article 14 of the Constitution would be the ultimate test of all State activities proceeded to hold that the deployment of public funds in any Government activity which is not connected with a public purpose would justify judicial intervention. We would like to say something more.

Part IV of the Constitution is as much a guiding light for the Judicial organ of the State as the Executive and the Legislative arms, all three being integral parts of the "State" within the meaning of Article 12 of the Constitution.[3]-[4] A policy certainly cannot be axed for its alleged failure to comply with any of the provisions of Part IV. Neither can the Courts charter a course, merely on the strength of the provisions of the said Part of the Constitution, if the effect thereof would be to lay down a policy. However, 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

[3] Naresh Shridhar Mirajkar & Ors. Vs. State of Maharashtra & Ors. –AIR 1967 SC 1=(1966) 3 SCR 744

[4] Kesavananda Bharati Sripadagalvaru Vs. State of Kerala & Anr. – (1973) 4 SCC 225 (Para 1703)

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.

8. Article 38 and 39 of the Constitution enjoin upon the State a duty to consistently endeavour to achieve social and economic justice to the teeming millions of the country who even today live behind an artificially drawn poverty line. What can be the surer way in the march forward than by ensuring avoidance of unproductive expenditure of public funds. This is how we view the present matter and feel the necessity of exercise of our jurisdiction under Article 142 of the Constitution to proceed further.

9. It is neither possible nor feasible or even necessary to try and encompass the myriad situations where government advertisements are issued. Indeed, the situations and circumstances; events and occasions on which government advertisements are issued are infinite. Nevertheless, an attempt can be made to arrive at a broad categorization for the purpose of an illustrative understanding.

Advertisements highlighting completion of a fixed period of the Government's Tenure

Governments at the Centre as well as in the States often bring out advertisements on completion of a number of days, months and years of governance. In such advertisements, not only the 'achievements' are highlighted even the different tasks which are in contemplation are enumerated. By way of example one of the points highlighted may be supply of electricity to each and every village. Though the achievements of a Government should not be a matter of publicity and really ought to be a matter of perception to be felt by the citizens on the results achieved, such advertisements do have the effect of keeping the citizens informed of the government functioning and therefore would be permissible.

Advertisements announcing projects:

On an everyday basis both the Government at the Centre as well as in different States issue advertisements announcing events like laying of the foundation of different development projects or the inauguration of projects completed. In many of such advertisements the results obtained in the particular

field covered by the advertisement and the plan/targets for the future are highlighted. Though such advertisements may look like a report card of the Government there is an element of informative content in such advertisements inasmuch as information is conveyed to the citizens as regards government programmes, policies and achievements.

Advertisements issued on the occasion of birth/death anniversaries and such other events:

Government advertisements are issued in the memory of great personalities who occupy a significant place in our history, such as, the father of the Nation, Mahatma Gandhi. While such persons must certainly be remembered, what, however, would not be justified is several similar, if not identical, advertisements issued by different Departments on the same occasion as is happening today. One single advertisement issued by a Central Agency should be enough to commemorate the anniversaries of the few acknowledged and undisputed public figures whose contribution to the National Cause cannot raise any dispute or debate.

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Advertisement issued on certain other occasions, for instance, to mark the centenary year of the Patna High Court does not serve any purpose and must be avoided. Institutions need not be glorified. They must earn glory by contribution and work.

Advertisements announcing policies and benefits for public:

All advertisements that fall within this category would be in public interest. Such advertisements, as for example in respect of the National Savings Schemes informing the public about benefits under the Scheme, are purely informational and make people aware of their rights and entitlements. Similarly, advertisements issued to generate public awareness would also be justified on the touchstone of public interest. By way of illustration, 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. would be highly informative and, therefore, justified.

10. 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 D.A.V.P. 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. An analysis of the Draft Guidelines as prepared by the Committee set up by this Court in the case may now be made. The applicability of these Guidelines is to all Government advertisements other than classifieds and in all mediums of communication, thereby including internet advertising. The objective of these Guidelines emphasize the Government's

responsibility to disseminate information necessary for the public to know about the policies and programmes of Government. It principally spells 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 objectives of the campaign,

iii) not directed at promoting 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.

The five broad Content Regulations contained in the draft guidelines framed by the Committee are similar to the provisions found in the Australian guidelines. However,

under each broad head specific regulatory parameters have been indicated which seem to embody what would be good practices in the Indian context.

12. While under the first head the requirement of conformity of Government advertisements with dissemination of information relating to Government's constitutional and legal obligations and the corresponding rights and entitlements of citizens is being stressed upon, under the second head objective presentation of the materials contained in an advertisement bearing in mind the target audience has been emphasized. Under the third head, the Guidelines state that advertisement materials must not: (a) mention the party in government by its name, (b) attack the views or actions of other parties in opposition, (c) include any party symbol or logo, (d) aim to influence public support for a political party or a candidate for election or (e) refer or link to the websites of political parties or politicians. It is also stated in the Guidelines that photographs of leaders should be avoided and only the photographs of the President/ Prime Minister or Governor/ Chief Minister shall be used for effective

government messaging. The fourth head deals with cost effectiveness of an advertisement campaign and measures to cut down avoidable expenses. A somewhat restricted range of advertising activity on the eve of the elections is also recommended. Appointment of an Ombudsman to hear complaints of violation of the norms and to suggest amendments thereto from time to time beside special performance audit by the concerned Ministries is also recommended.

13. The Union Government and the State of Bihar have filed their responses to the guidelines suggested by the Committee. The State of Bihar suggests that some of the recommendations of the Committee, details of which need not be noticed, are somewhat vague and require a more precise definition or meaning. The only aspect of the suggestions where the State has responded emphatically is with regard to the recommendation to confine the publication of photographs of the President and the Prime Minister of the country and the Governor and the Chief Minister of the State. According to the State of Bihar such a restriction should not be imposed.

14. The Union in its response to the guidelines of the Committee has been more categorical in suggesting certain changes as well as deletion of some of the recommendations. It will, therefore, be necessary to specifically notice the said objections raised by the Union.

Content of the Recommendations	**Response of the Union**
(1) <u>Object of Guidelines</u>	
(a) To prevent arbitrary use of public funds for advertising by public authorities.	The meaning of the word "arbitrary" according to the Union needs to be more specifically defined.
(b) To exclude the possibility of any misuse of public funds on advertisement campaign in order to gain political mileage by the political establishments.	According to the Union the expression "political mileage" is inappropriate and should be deleted.
(2) <u>5 Principles of Content Regulation</u>	
(a) Clause (vii) under the 2nd point of the 5 principles recommended by the Committee – Every effort should be made to pre-test the material in case of large scale campaign with target audiences.	According to the Union this should be done only when the same is feasible and whenever public interest so demands.

(b) Clause (c)(i) under the 4th point of the 5 principles of Content Regulation states that "The Government shall 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.		According to the Union the words "decide and announce beforehand" may be deleted as the same is not feasible since issuance of advertisement depends on a host of factors like availability of funds, last minute changes and the priorities of the government.
(c) Clause (d) of the 4th point of the 5 principles of Content Regulation states that "as far as possible, during the period prior to elections, only those advertisements required by law (such as public health and safety advisories or job and contract advertisements) alone be released by the governments.		According to the Union advertisement that serve public interest may be issued at any point of time.
(3) **Ombudsman**		
The suggestion of the Committee with regard to appointment of the Ombudsman is in the following terms: "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."		The Union objects to the same and seeks deletion of the said recommendation as also the recommendation with regard to separate performance audit of each Ministry and publication of the result of such audit. According to the Union the Government has inbuilt machinery for redressal and for audit purposes.

15. A consideration of the objections filed by the Union would go to show that the Union seriously disagrees with the recommendations of the Committee in respect of the following matters:

(1) restricted publication of photographs of the Government functionaries and political leaders alongwith the advertisement etc.

(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.

16. The rest of the objections are really in the nature of suggestions which having been considered we are of the view that incorporation of the said suggestions made by the Union or otherwise would not make any substantial difference to the impact and effect of the said recommendations. It is the recommendations with regard to the publication of photographs; appointment of Ombudsman; carrying out independent audit and embargo on advertisements during

election time that will have to be specifically dealt with in some details.

17. The remaining recommendations of the Committee appear to be comprehensive and based on an analytical approach of the best practices prevailing in other jurisdictions. The said recommendations, in our considered view, would serve public interest by enabling dissemination of information and spreading awareness amongst the citizens not only of the government policies; achievements made and targets to be reached but also the rights and entitlements of the citizens including the availability of a host of welfare measures. The said recommendations, therefore, commend to the Court for acceptance and are accordingly accepted.

18. At this juncture we may very briefly deal with the with the situation prevailing in other jurisdictions across the globe. While, undoubtedly there can be no blind adherence to the practices followed in other jurisdictions as what may be appropriate to another country may not be ideal in the Indian context, the correct approach will be to discern some of the best practices prevailing in such jurisdictions and thereafter to test the relevance of the same to our own country. Though the

recitals contained in the Report of the Committee do mention a consideration of such good practices prevailing in other jurisdictions there is however no discussion or even an indication of the precise contents of the practices that were found by the Committee to be in existence in other countries. It has therefore become necessary for us to deal with the matter though very briefly. In this regard we may usefully, though illustratively, make a reference to certain practices prevailing in Canada, United Kingdom, New Zealand and Australia.

19. Insofar as Canada(Ontario) is concerned, it appears that the object of issuing a government advertisement is : (i) to inform the public of current or proposed government policies, programs or services available to them; (ii) to inform the public of their rights and responsibilities under the law and (iii) to encourage or discourage specific social behaviour in public interest. Such advertisements are not to include the name, voice or image of any functionary of the State and the primary objective of an advertisement ought not to be to foster a positive impression of the ruling government or a negative

impression of any person, group or party critical of the government.

20. In some of the foreign jurisdictions there is a mechanism for review of advertisements on fixed parameters even before they are published and publication/issuance thereof only upon passing of the required test. In Australia and United Kingdom, there is an added emphasis on the cost effectiveness of advertising campaigns. In Australia, advertising campaigns of more than a particular pecuniary value i.e. 1million Australian dollars require to undergo a cost benefit analysis wherein the best options to achieve the intended objective of the campaign has to be determined before launching the same.

21. The good practices adopted in other jurisdictions as noticed above do find adequate reflection in the recommendations of the Committee which further fortify our conviction to adopt the same.

22. This will require the Court to consider the different aspects of a government advertisement campaign highlighted earlier on which we have reserved our comments. The first is

with regard to publication of photographs of functionaries of the State and political leaders alonwith the advertisement issued. There can be no manner of doubt that one government advertisement or the other coinciding with some event or occasion is published practically every day. Publication of the photograph of an individual be a State or party functionary not only has the tendency of associating that particular individual with either the achievement(s) sought to be highlighted or being the architect of the benefits in respect of which information is sought to be percolated. Alternatively, programmes/targets for the future as advertised carry the impression of being associated with the particular individual(s). Photographs, therefore, have the potential of developing the personality cult and the image of a one or a few individuals which is a direct antithesis of democratic functioning.

23. The legitimate and permissible object of an advertisement, as earlier discussed, can always be achieved without publication of the photograph of any particular functionary either in the State of a political party. We are,

therefore, of the view that 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 alongwith the advertisements, 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. Advertisements issued to commemorate the anniversaries of acknowledged personalities like the father of the nation would of course carry the photograph of the departed leader.

24. Insofar as the recommendation 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 directions and to oversee such implementation 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.

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25. Insofar as performance/special audit is concerned, we do not feel the necessity of any such special audit inasmuch as the machinery available is adequate to ensure due performance as well as accountability and proper utilization of public money.

26. If Government advertisements adhere to the objects and parameters mentioned above we do not feel the necessity of imposing a special curb on government advertisements on the eve of the elections, as suggested by the Committee.

27. In an earlier part of the present order we had indicated the power of the purse that Government advertisements invariably involve. Needless to say the concepts of fairness and even dispensation to all media/publishing houses will have to be maintained by the Government be it at the Centre or the States.

28. 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 alongwith 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.

29. 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.

.....J.
[RANJAN GOGOI]

.....J.
[PINAKI CHANDRA GHOSE]

NEW DELHI,
MAY 13, 2015.