

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

File No.CIC/SA/A/2014/000155

Appellant : **Sh.Subhash Chandra Agrawal**

Respondent : **Department for the Welfare of
SC/ST/OBC, GNCTD**

Date of hearing of : **09-01-2015** **Show Cause**
Notice

Date of decision : **16-01-2015**

Information Commissioner : **Prof. M. Sridhar Acharyulu
(Madabhushi Sridhar)**

Referred Sections : **Sections 20 of the RTI Act**

Penalty : **Dropped**

Summary: *The Union and Union Territory Governments should disclose under Section 4 of RTI Act, and inform appellant under Section 3, their policy on photo publicity of political rulers in view of the Supreme Court Judgment in April 2014, report of Prof Madhava Menon Committee and Report plus Special Report of Delhi Lokayuktha.*

1 The appellant is present. The Public Authority is represented by Mr. Gama, APIO.

FACTS:

2. Appellant by RTI application on 14.10.2013 sought to know about action taken on the special report of Delhi Lokayuktha indicting political executives such as former Chief Minister of Delhi Smt Sheila Dixit and former Minister Shri Rajkumar Chouhan on using public money for self-glorifying advertisements in loan application forms. He was also seeking certified copies of reports of Lokayuktha against them.

3. This Commission vide its even order dated 14-10-2014 in respect of petition filed by the appellant against the Public Authority corresponding to his RTI application dated 14-10-2013 and second appeal heard on 10-10-2014, directed the PIO to furnish information on point Nos. 5 and 8 to 12 of the RTI application to the appellant within three weeks. The appellant had complained about the non-compliance of the Commission order by his letter dated 26-12-2014.

Decision:

4. The APIO Mr. Gama appeared before the Commission today in response to the summons issued by the Commission on 29-12-2014. The APIO submitted they complied with the CIC order and supplied the information to the appellant. But the appellant says that there are some missing links like the letter of Mr. VK Malhotra and communications from the President's Secretariat. The officer explained that one file was sent to the Director of Information and Publicity, Delhi Government and hence the relevant information claimed to be missing by the appellant, must be available in that file.

5. The Lokayuktha has found usage of photographs of Chief Minister of Delhi Smt Sheila Dixit and former Minister Shri Rajkumar Chouhana Government on Loan Application Forms of SC/ST/OBC Minority Finance and Development Corporation, which was sold at Rs 100 per application, was unusual and without any justification. They are intended to

glorify and develop personality cult of the individuals. Putting photos on such official forms is only to gain unfair political advantage over the rivals especially during the elections. The Lokayuktha concluded that the norms of integrity and conduct in terms of Section 2 (b)(i), (ii), (iii) of Act were breached. The Lokayuktha has recommended issuance of an advisory by the President of India to the respondents to desist from printing their photographs on the application forms under the Dilli Swarojgar Yojna, efface or block the photographs if any printed on the existing forms prior to their use. In its order dated 6th May 2013 sought President to direct the Government of NCT of Delhi to frame appropriate guidelines to govern issuance of advertisements, hoardings etc with photos of public functionaries even during the periods when Model Code of Conduct is not applicable.

6. After these recommendations, it was brought before the Lokayuktha again that one Minister desired that forms should carry photograph of the Chief Minister and his photograph on the application for Replacement of Kerosene Oil with LPG gas connection. Then on 11th October 2013, the Lokayuktha modified the order dated 29th August 2013 to the extent that 'advisory and caution' be administered to the public functionaries i.e., Smt Sheila Dikshit and Sh Rajkumar Chauhan, saying it would not be fair and just to issue an advisory and caution to Junior officials for no fault of theirs.

7. The appellant in this case wanted information about implementation of these recommendations, especially on point No.10 about the steps taken by the Government to stop photo-publicity of the political leaders, as indicted and recommended by Lok Ayukta.

8. In May 2012, a Right to Information application filed by a media organization revealed that the Central government has spent Rs. 58 crore on ads in three years which include Rs 22 Crore on ads with photos of Nehru-Gandhi family. This RTI also reveals that states Andhra Pradesh, Delhi and Uttarakhand were spending huge amounts.

<http://www.ndtv.com/article/india/stop-govt-from-wasting-money-on-ads-says-new-petition-in-court-256921>)

9. It is highly relevant to refer to the Hon'ble Supreme Court's Judgment in **Common Cause v Union of India**, WP (civil) 13 of 2003 with WP(Civil) of 197 of 2004 decided on April 23, 2014, found that "...there is no policy or guideline to regulate the content of Government advertisements and to exclude the possibility of any *mala fide* use or misuse of public funds on advertisements in order to gain political mileage by the political establishment". The SC bench consisting of Chief Justice P Sathasivam, Justice Ranjan Gogoi, Justice N V Ramana, stated: "...any government activity has to satisfy the test of reasonableness and public interest and while dealing with public funds and property, public interest is of paramount consideration". It referred to cases of **Ramana Dayaram Shetty vs. The International Airport Authority of India** (1979) 3 SCR 1014 and in **Col. A.S. Sangwan vs. Union of India** (1980) Supp SCC 559 wherein similar reasoning was rendered. It was submitted to SC that judicial review of Government policies is permissible if it does not satisfy the test of reasonableness and against the public interest.

10. It was also submitted to the Supreme Court that advertisement campaigns are undertaken ostensibly to advertise certain public works and almost all these advertisements contain photographs of the Ministers and important political personalities of the Government which clearly show that these advertisement are framed for the purpose of highlighting the achievements of the incumbent government and aim to create an impression that those particular political personalities were directly responsible for providing public benefits to the people. In succinct, the use of public office and public funds for personal, political or partisan purposes is clearly malafide, illegal and not permissible under the Constitution. It is yet further pleaded that even the Election Commission of India though had expressed concern but could not do anything owing to lack of jurisdiction in the matter. The apex court also noted that the Governments around

the world spend huge amount of money yearly for advertisements in their local media and most of the countries have faced similar fate of situation as portrayed in these petitions. The solution to this crisis was arrived at by framing the Government advertising guidelines, which set out the policies and processes that apply to Government advertisement. Supreme Court referred to developments in Australia, Canada etc.

11. Australia adopted new policy to regulate Government advertisement in response to nearly a decade of abuse, during which public advertising was corruptly used to promote a partisan agenda. The focus of policy recommendations is to depoliticize public advertising, prevent conflict of interest, and devolve power in such a way that no person or group can easily exploit public advertising funds for individual or political gains.

12. Canada also has strict conflict of interest guidelines, which promote transparency, accountability and separation of authority to discourage abuse of public advertising funds for individual, financial or political gains.

13. There are five principles laid down in ***Guidelines On Information and Advertising Campaigns by Australian Government Departments and Agencies***, which will be applicable to all Government advertising campaigns.

Principle 1: Campaigns should be relevant to government responsibilities.

Principle 2: Campaign materials should be presented in an objective, fair, and accessible manner and be designed to meet the objectives of the campaign.

Principle 3: Campaign materials should be objective and not directed at promoting party political interests.

Principle 4: Campaigns should be justified and undertaken in an efficient, effective and relevant manner.

Principle 5: Campaigns must comply with legal requirements and procurement policies and procedures.

14. Finally the Supreme Court constituted a Committee consisting of Prof. (Dr.) N.R. Madhava Menon, former Director, National Judicial Academy, Bhopal, Mr. T.K. Viswanathan, former Secretary General, Lok Sabha and Mr. Ranjit Kumar, Senior Advocate to study and make recommendations on this serious issue.

15. This Committee has presented its report recommending that government advertisements in media must not have faces of ministers and leaders of ruling party. It recommended that government advertisements should avoid photographs of political leaders and if it was essential then it should be restricted to photographs of the President/PM or Governor/Chief Minister. It said that name or symbol of political party in power should not be mentioned in advertisements which should maintain political neutrality and for projecting positive impression of the party. It said:

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 government to use public funds in such a manner as to obtain maximum value of taxpayers' money.

16. It also said advertisements of ongoing policies should be avoided by governments unless there was substantial change in the policy. It asked the apex court to issue substantive guidelines as there was no law or rule to regulate contents of government advertisements (<http://timesofindia.indiatimes.com/india/No-politics-in-government-advertisements-SC-panel/articleshow/45816896.cms>). On January 8, 2015, the Supreme Court bench of Justices Ranjan Gogoi and Arun Misra sought the Centre's response to this report. The SC bench asked the Centre whether it was agreeable to the

recommendations of the panel, which has also suggested that the practice of multiple advertisements by government, ministries and public sector undertakings in newspapers on birth and death anniversaries of political figures be done away with and a single consolidated advertisement be issued on such occasions.

17. In view of the above developments and recent directions of the apex court the Commission finds the matter raised by the appellant is of great public interest if properly acted upon would check the unreasonable use of public money in advertisements with photos of individual political leaders giving an advantage to ruling party and disturbing the level playing field especially during elections.

18. It is the duty of the Government of India to come out with their policy on the report of Prof Madhav Menon Committee and the respondents in this case have to inform the people as to what they have decided on the report and recommendations of the Lokayuktha in its first and special reports.

19. As the apex court directed, the Government of India will any way submit its response to it. The Government of India and similarly the Governments of states have an obligation under Section 4 of Right to Information Act, to disclose on their own what their policy is and when they would start implementing it. Especially when the elections are almost happening every year regularly at one region or the other, such as elections in Delhi now, the Governments have to expedite the disclosure and that policy should be duly publicized otherwise than through advertisements.

20. The Commission, therefore, directs the respondent PIO to furnish the information as sought by the appellant including about points 8, 9, 10 and 12 within 30 days from the date of receipt of this order, under intimation to the Commission. If needed, PIO may procure information from the concerned higher officer of public authority.

21. Simultaneously the Commission directs the Union of India which now governs the Union Territory of Delhi, to disclose its policy on recommendations of Prof Madhava Menon Committee and Lokayuktha of Delhi regarding usage of photos of political leaders on various kinds of advertisements issued by state at the cost of tax payer's money, in the best interests of democracy and proper representation to the people before they exercise their franchise.

22. As pointed out by the appellant that the political leaders complaining against the photo publicity of the earlier Chief Minister of Delhi before Lokayuktha are now being part of the government, the Commission finds need of the people's right to know the policy on political publicity at their cost.

23. Therefore, Commission require the Chief Secretary of Delhi and Union Cabinet Secretary to disclose their policy on this issue under Section 4 of Right to Information Act and also inform the appellants about their proposed steps to implement recommendation of Lokayuktha of Delhi in effectively preventing photo publicity of the political rulers.

24. Commission fixed the next date of hearing for ensuring compliance of the direction on 20.2.2015 at 2:30 PM.

25. Copy of this order also be marked along with RTI request to Chief Secretary of Delhi and Secretary of the Union Government.

26. As the disclosure of information involves policy decision to be taken by the higher authorities in the Government, it is not just and proper to penalize the PIO for non-disclosure of policy, who does not have any role in decision making process and in view of the observations of Delhi Lokayuktha not to issue advise/recommendation to the lower

level officers, the Commission finds no ground for imposing penalty on PIO and thus the penalty proceedings are **dropped**.

Sd/-

(M.Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Babu Lal)
Deputy Registrar

Addresses of the parties:

1. The CPIO under the RTI Act,
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3. Chief Secretary of Delhi
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4. Union Cabinet Secretary,

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