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2563/2022

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO 43 OF 2022

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

ASHWINI KUMAR UPADHYAY

...PETITIONER

VERSES

UNION OF INDIA & ANOTHER

...RESPONDENTS

PAPER BOOK

[FOR INDEX KINDLY SEE INSIDE]

(ADVOCATE FOR PETITIONER: ASHWANI KUMAR DUBEY)

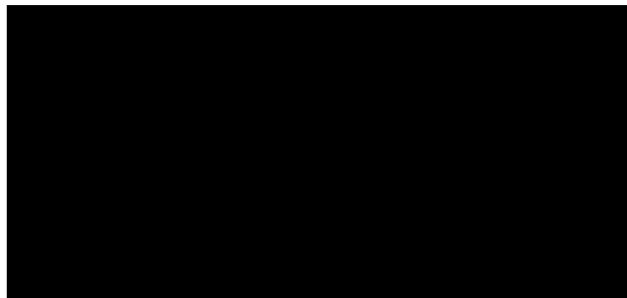
DIARY NO 2563 OF 2022

DECLARATION

All defects have been duly cured. Whatever has been added/deleted/modified in this petition, is the result of curing of defects and nothing else. Except curing the defects, nothing has been changed. Paper books are complete in all respects.

ADVOCATE FOR PETITIONER

(ASHWANI KUMAR DUBEY)



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PERFORMA FOR FIRST LISTING

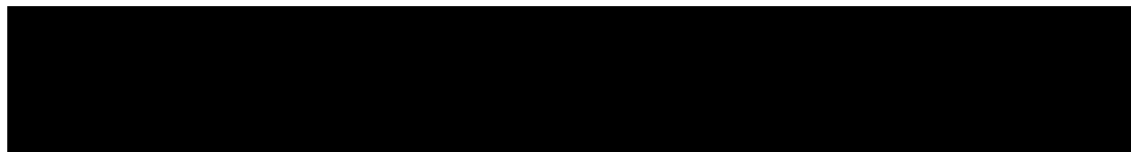
Section: PIL

The case pertains to (Please tick / check the correct box):

- Central Act: Constitution of India
- Section: Articles 14, 162, 266, 282 of the Constitution
- Central Rule: N/A
- Rule No: N/A
- State Act: N/A
- Section: N/A
- State Rule: N/A
- Rule No: N/A
- Impugned Interim Order: N/A
- Impugned Final Order / Decree: N/A
- High Court: N/A
- Name of Judges: N/A
- Tribunal / Authority Name : N/A

1. Nature of Matter: Civil

2. (a) Petitioner / Appellant : Ashwini Kumar Upadhyay



3. (a) Respondent: Union of India and others

(b) Email ID: N/A

(c) Phone No: N/A

4. (a) Main Category: o8 PIL Matters

(b) Sub Category: o810 (Election Commission Matter)

5. Not to be listed before: N/A

A1

6(a). Similar disposed of matter: No similar matter disposed off

6(b). Similar pending matter: No similar matter pending

7. Criminal Matters: N/A

(a) Whether accused / convicted has surrendered: N/A

(b) FIR / Complaint No: N/A

(c) Police Station: N/A

(d) Sentence Awarded: N/A

(e) Period of Sentence Undergone including period of detention / custody under gone: N/A

8. Land Acquisition Matters:

(a) Date of Section 4 Notification: N/A

(b) Date of Section 6 Notification: N/A

(c) Date of Section 17 Notification

9. Tax Matters: State the Tax Effect: N/A

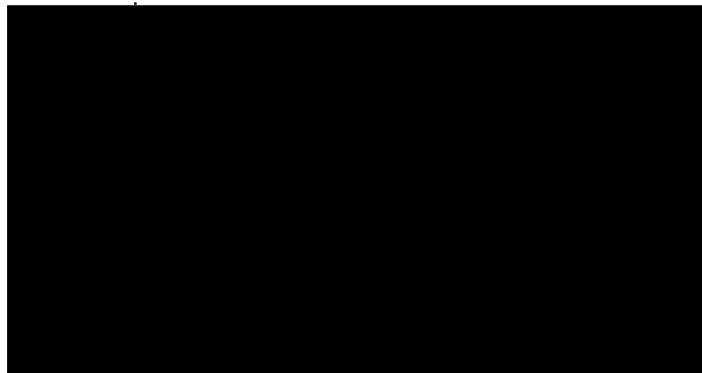
10. Special Category: N/A

11. Vehicle No in case of motor accident claim matters: N/A

Date: 22.1.2022

ADVOCATE FOR PETITIONER

(ASHWANI KUMAR DUBEY)



B

SYNOPSIS AND LIST OF DATES

Petitioner is filing this writ petition as a PIL seeking declaration that promise of irrational freebies from public fund before election unduly influences voters, disturbs level playing field, shakes roots of free-fair election & vitiates purity of election process. Petitioner also seeks declaration that promise/distribution of private goods/service, which are not for public purposes, from public funds before election, violate Articles 14, 162, 266(3) and 282 of the Constitution. Petitioner also seeks declaration that promise/distribution of irrational freebies from the public fund before election to lure voters is analogous to *Bribery and Undue Influence under S.171B and S.171C of the IPC*. Petitioner seeks direction to the ECI to insert an additional condition: "*political party shall not promise/distribute irrational freebies from the public fund before election*" in Paras 6A, 6B and 6C of the Election Symbols Order 1968; and, seize election symbol / deregister the political party which promise / distribute irrational freebies from public fund. In alternative, Court may direct Centre to enact a law to regulate political parties. **The Facts Constituting Cause of Action** accrued on 9.12.2021 and on the subsequent days, when rather than promising better rule of law,

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equal pay for equal work, clean water, equal quality education, quality healthcare, quality infrastructure, speedy justice, free legal aid, citizen charter, judicial charter, efficient police system, effective administrative system; political parties arbitrarily promised irrational freebies from public fund. Aam Aadmi Party promised Rs. 1000 per month to every woman aged 18 and above and Shiromani Akali Dal (SAD) promised Rs. 2000 to each woman to lure them. Thereafter, India's oldest political party Congress not only promised Rs. 2000 per month and 8 gas cylinders per year to every housewife but also promised a Scooty to every collage going girl, Rs. 20,000 after passing 12th class, Rs. 15,000 after passing 10th class, Rs. 10,000 after passing 8th class and Rs. 5000 after passing 5th.

In **Uttar Pradesh**, Congress promised a smartphone to every girl studying in Class 12, a Scooty to every girl pursuing graduation, free public transport for women, eight free gas cylinders per year to every housewife, free medical treatment up to Rs 10 lakh per family. Samajwadi Party announced 300-unit free electricity to every family and Rs. 1500 pension per month to every women as well as financial assistance of Rs 5 lakh to the people who lost their lives in accident while riding a cycle. Notably, the Cycle its election symbol. Another

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party promised job for one daughter and one son in each family and Rs 5 lakh to unemployed graduate. Some political parties promised Free washing machine, housing for all, solar cooker, education loan waiver, government jobs, free cable service, Rs 7500 to every farmer per year, Rs. 1500 to housewife and 2GB data to all students.

Petitioner submits that political parties promise irrational freebies for wrongful gain and to lure voters in their favor which is analogous to *Bribery and Undue Influence under S.171B and S.171C*. Petitioner submits that bribery and undue influence was defined in 1920 and the then lawmakers wouldn't have imagined that future politicians will stoop to such low levels and that's why there is an exemption for public policies and public action under S.171B-S.171C.

Petitioner submits that the fulcrum of democracy is the electoral process. If the integrity of electoral process is compromised then the notion of representation becomes vacuous. Distribution of money and promise of freebies has reached alarming levels with elections being countermanded several times. In this scenario, the danger to the system of parliamentary democracy and Indian republic cannot be gainsaid. Therefore, petitioner requests the Court to analyze whether States are really concerned about governance or do they

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cynically participate in the evisceration of democratic electoral and political process, which is a moot point. Petitioner submits that arbitrary promises of irrational freebies violate the ECI's mandate for free and fair elections and distributing private goods-services, which are not for public purposes, from public funds, clearly violate Articles 16, 266(3) and 282 of the Constitution. Petitioner also submits that apart from vitiating free and fair elections, arbitrary and irrational freebie distribution brazenly offends Article 14 of the Constitution as there is no reasonable classification of the people. The right to equality requires the State must make a reasonable classification and must have a nexus with the object but political parties are not adhering this basic tenant of the Constitution.

The Injury to the Citizens is Extremely Large because Punjab needs Rs. 12,000 crore per month to fulfil the political promises if AAP comes in power; Rs. 25,000 crore per month if SAD comes in power and Rs. 30,000 crore if Congress comes in power, though GST collection is 1400 Cr only. In fact, after debt repayment, Punjab Government is not able pay even salaries-pensions, then how will it provide freebies? The bitter truth is that Punjab's debt is increasing every subsequent year. State's outstanding debt has increased to Rs

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77,000 crore, with Rs 30,000 crore accumulating in present financial year itself. With the State having a population of 2.7 million, per capita public debt is Rs 96,000. State's debt to GSDP ratio is much above the prescribed limit of 30% and is the highest in the country. Punjab needs to focus on crime and rule of law but no political party is speaking on this matter. There was an increase of 10% in cases of murder from 679 in 2019 to 757 in 2020. State also saw an increase in suicide cases from 25 in 2019 to 35 in 2020. Similarly, in 2020, 4838 cases of crimes against women and 502 cases of rape were registered. The healthcare situation is also poor. Punjab had the second highest proportion of households (18.5%) that reported "catastrophic" healthcare expenditure, after Kerala, according to latest National Sample Survey Office (NSSO) data. Patients from Punjab travel to neighbouring States seeking medical care. Average expenditure per overnight trip for health purposes was the highest in Punjab among all States and Union territories — at Rs 31,512. Punjab's average was about double the India average of Rs 15,336, according to a 2016 NSSO report. Up to 70% of mothers in Punjab do not receive full antenatal care according to NFHS.

G

In Uttar Pradesh, according to State Planning Institute (Economics and Statistics Division), public debt will increase around 8% from Rs 5.65 trillion in 2020-21 to Rs 6.11 trillion in 2021-22. Gross State Domestic Product (GSDP) was likely to shrink 5.9% in 2020-2021. A scrutiny of revised data released for 2018-19, 2019-20 and 2020-21 also indicates that the economy grew less than 5% in past 5 years. According to National Sample Survey 2020, UP is fifth last with literacy rate at 73%, less than the national average of 77.7%. The literacy rate among men is 81.8% and among women is 63.4% but political parties are not speaking on this important issue. According to the Rural Health Statistics (2019-20), as of July 1, 2020, UP has a huge shortfall in health facilities as per mid-year population in rural areas - in urban areas, the shortfall in PHCs is 45%. The health infrastructure is insufficient in urban areas to meet the requirement of city population and the rural areas the Community Health Centres are virtually lacking in respect of life-saving gadgets. In most of the districts, the Level-3 hospital facilities are not there. However, rather than speaking on this important issue, political parties are promising freebies to lure the voters.

H

In Tamil Nadu, the public debt is Rs 263,976 per family and total revenue receipts declined to 8.7% of GSDP in 2020-21 from 13.35% GSDP in 2008-09. The revenue deficit has been deteriorating for the past eight years and fiscal deficit has been increasing due to increase in government borrowing. Electricity and Transportation problems are prominent. TANGEDCO and TANTRANSCO suffer from high costs and low recoveries. They lose Rs 2.36 for every unit of power produced. Increase in primary input cost of coal and increase in cost through external power purchase agreements also contribute to the increase in overall cost. The outstanding debt is Rs.134,119.94 cr. Transport department is making a loss of Rs 59.15 for every km run. The Accumulated loss in 2020-21 is Rs 4,2143.69 crore which is a 381% increase over Rs 871.69 crore in 2011-12. The latest NCRB data confirms that crime rate has risen by 430% in 2020. The number of cases filed under the IPC was 8.91 lakh in 2020, compared to 1.68 lakh cases in 2019. Tamil Nadu tops the list of States with most crimes during the pandemic and registered 28% rise in the number of rape cases in children in 2020. But rather than focusing on these basic elements of the governance, political parties promised and discussed freebies.

I

05.7.2013: Apex Court pronounced judgment in **S. Subramaniam Balaji Case (2013) 9 SCC 659 [Annex. P-1 (Page 50-104)]**

22.1.2022: States have not only failed to achieve the golden goals i.e. social economic political justice, liberty of thoughts expression belief faith worship, equality of status and opportunity, fraternity unity, national integration but also failed to secure important fundamental rights viz. right to health, right to education, right to shelter, right to road access, right to clean water, right to food, right to dignity, right to employment, right to justice, right to legal aid and right to clean environment. Rather than considering these rights in manifesto, political parties are promising freebies from public fund to lure voters. With limited resources, promising freebies is not only immoral and unethical but also contrary and violate Articles 14, 16, 266(3), 282. Political parties are prioritizing their self-interest over national interest and the public fund, which should have been properly utilized to secure fundamental rights of citizens, is being used to lure voters. Hence, this PIL.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO OF 2022
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay
 S/o Suresh Chandra Upadhyay
 Residence: G-284, Govindpuram, Ghaziabad-201013 ...Petitioner
 Verses

1. Union of India
 Through the Secretary,
 Ministry of Law & Justice,
 Shashtri Bhawan, New Delhi-110001
2. Election Commission of India
 Through the Chief Election Commissioner,
 Nirvachan Sadan,
 Ashoka Road, New Delhi-110001 ...Respondents

PIL UNDER ARTICLE 32 TO CONTROL IRRATIONAL FREEBIES FROM PUBLIC FUND

To,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND LORDSHIP'S COMPANION JUSTICES
OF THE HON'BLE SUPREME COURT OF INDIA
HUMBLE PETITION OF ABOVE-NAMED PETITIONER

THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. Petitioner is filing this PIL under Article 32 seeking declaration that
 promise/distribution of irrational freebies from public fund before
 election unduly influences the voters, shakes the roots of free-fair
 election, disturbs level playing field, vitiates the purity of election
 process and also violates Articles 14, 162, 266(3) and 282. Petitioner
 also seeks direction to ECI to seize election symbol and deregister
 political parties, which promise/distribute irrational freebies from
 public fund before election and to Centre to enact Law in this regard

2. Petitioner's name is Ashwini Kumar Upadhyay;

Petitioner is an Advocate and a social

political activist, contributing his best to the development of socially politically and economically downtrodden and marginalized citizens.

3. **The Facts Constituting Cause of Action** accrued on 9.12.2021 and on the subsequent days, when rather than promising better rule of law, equal pay for equal work, clean water, equal quality education, quality healthcare, quality infrastructure, speedy justice, free legal aid, citizen charter, judicial charter, efficient police system, effective administrative system; political parties arbitrarily promised irrational freebies from public fund. Aam Aadmi Party promised Rs. 1000 per month to every woman aged 18 and above and Shiromani Akali Dal (SAD) promised Rs. 2000 to each woman to lure them. Thereafter, India's oldest political party Congress not only promised Rs. 2000 per month and 8 gas cylinders per year to every house wife but also promised a Scooty to every collage going girl, Rs. 20,000 after passing 12th class, Rs. 15,000 after passing 10th class, Rs. 10,000 after passing 8th class and Rs. 5000 after passing 5th.

4. In Uttar Pradesh, Congress promised a smartphone to every girl studying in Class 12, a Scooty to every girl pursuing graduation, free public transport for women, eight free gas cylinders per year to every housewife, free medical treatment up to Rs 10 lakh per family. Samajwadi Party announced 300-unit free electricity to every family and Rs. 1500 pension per month to every women as well as financial assistance of Rs 5 lakh to the people who lost their lives in accident while riding a cycle. Notably, the Cycle its election symbol. Another party promised job for one daughter and one son in each family and Rs 5 lakh to unemployed graduate. Some political parties promised Free washing machine, housing for all, solar cooker, education loan waiver, government jobs, free cable service, Rs 7500 to every farmer per year, Rs. 1500 to housewife and 2GB data to all students.
5. Petitioner submits that political parties arbitrarily promise irrational freebies for wrongful gain and to lure voters in their favor which is analogous to *Bribery and Undue Influence under S.171B and S.171C*. Petitioner submits that bribery and undue influence was defined in 1920 and the then lawmakers wouldn't have imagined that future politicians will stoop to such low levels and that's why there is an exemption for public policies and public action under S.171B-S.171C.

6. Petitioner submits that the fulcrum of democracy is the electoral process. If the integrity of electoral process is compromised then the notion of representation becomes vacuous. Distribution of money and promise of freebies has reached alarming levels with elections being countermanded several times. In this scenario, the danger to the system of parliamentary democracy and Indian republic cannot be gainsaid. Therefore, petitioner requests the Court to analyze whether States are really concerned about governance or do they cynically participate in the evisceration of democratic electoral and political process, which is a moot point. Petitioner submits that arbitrary promises of irrational freebies violate the ECI's mandate for free and fair elections and distributing private goods-services, which are not for public purposes, from public funds, clearly violate Articles 14, 162, 266(3) and 282 of the Constitution. Petitioner also submits that apart from vitiating free and fair elections, arbitrary and irrational freebie distribution brazenly offends Article 14 of the Constitution as there is no reasonable classification of the people. The right to equality requires the State must make a reasonable classification and must have a nexus with the object but political parties are not adhering this basic tenant of the Constitution.

7. **The Injury to the Citizens is Extremely Large because Punjab** needs Rs. 12,000 crore per month to fulfil the political promises if AAP comes in power; Rs. 25,000 crore per month if SAD comes in power and Rs. 30,000 crore if Congress comes in power, though GST collection is 1400 Cr only. In fact, after debt repayment, Punjab Government is not able pay even salaries-pensions, then how will it provide freebies? The bitter truth is that Punjab's debt is increasing every subsequent year. State's outstanding debt has increased to Rs 2,77,000 crore, with Rs 30,000 crore accumulating in present financial year itself. With the State having a population of 2.7 ~~million~~^{crore}, per capita public debt is Rs 96,000. State's debt to GSDP ratio is much above the prescribed limit of 30% and is the highest in the country. Punjab needs to focus on crime and rule of law but no political party is speaking on this matter. There was an increase of 10% in cases of murder from 679 in 2019 to 757 in 2020. State also saw an increase in suicide cases from 25 in 2019 to 35 in 2020. Similarly, in 2020, 4838 cases of crimes against women and 502 cases of rape were registered. The healthcare situation is also poor. Punjab had the second highest proportion of households (18.5%) that reported "catastrophic" healthcare expenditure, after Kerala,

according to latest National Sample Survey Office (NSSO) data. Patients from Punjab travel to neighbouring States seeking medical care. Average expenditure per overnight trip for health purposes was the highest in Punjab among all States and Union territories – at Rs 31,512. Punjab's average was about double the India average of Rs 15,336, according to a 2016 NSSO report. Up to 70% of mothers in Punjab do not receive full antenatal care according to NFHS.

8. **In Uttar Pradesh**, according to State Planning Institute (Economics and Statistics Division), public debt will increase around 8% from Rs 5.65 trillion in 2020-21 to Rs 6.11 trillion in 2021-22. Gross State Domestic Product (GSDP) was likely to shrink 5.9% in 2020-2021. A scrutiny of revised data released for 2018-19, 2019-20 and 2020-21 also indicates that the economy grew less than 5% in past 5 years. According to National Sample Survey 2020, UP is fifth last with literacy rate at 73%, less than the national average of 77.7%. The literacy rate among men is 81.8% and among women is 63.4% but political parties are not speaking on this important issue. According to the Rural Health Statistics (2019-20), as of July 1, 2020, UP has a huge shortfall in health facilities as per mid-year population in rural areas – in urban areas, the shortfall in PHCs is 45%. The health

infrastructure is insufficient in urban areas to meet the requirement of city population and the rural areas the Community Health Centres are virtually lacking in respect of life-saving gadgets. In most of the districts, the Level-3 hospital facilities are not there. However, rather than speaking on this important issue, political parties are promising freebies to lure the voters.

9. In Tamil Nadu, the public debt is Rs 263,976 per family and total revenue receipts declined to 8.7% of GSDP in 2020-21 from 13.35% GSDP in 2008-09. The revenue deficit has been deteriorating for the past eight years and fiscal deficit has been increasing due to increase in government borrowing. Electricity and Transportation problems are prominent. TANGEDCO and TANTRANSCO suffer from high costs and low recoveries. They lose Rs 2.36 for every unit of power produced. Increase in primary input cost of coal and increase in cost through external power purchase agreements also contribute to the increase in overall cost. The outstanding debt is Rs.134,119.94 cr. Transport department is making a loss of Rs 59.15 for every km run. The Accumulated loss in 2020-21 is Rs 4,2143.69 crore which is a 381% increase over Rs 871.69 crore in 2011-12. The latest NCRB data confirms that crime rate has risen by 430% in 2020. The

number of cases filed under the IPC was 8.91 lakh in 2020, compared to 1.68 lakh cases in 2019. Tamil Nadu tops the list of States with most crimes during the pandemic and registered 28% rise in the number of rape cases in children in 2020. But rather than focusing on these basic elements of the governance, political parties promised and discussed freebies and freebies only.

10. Petitioner submits that States have not only failed to achieve the golden goals of the Constitution i.e. social economic political justice, liberty of thoughts expression belief faith worship, equality of status and opportunity, fraternity unity and national integration but also failed to secure the most important fundamental rights viz. right to health, right to education, right to shelter, right to road access, right to clean water, right to food, right to dignity, right to employment, right to justice, right to legal aid and right to clean environment. Rather than considering these rights in manifesto, political parties are promising freebies from the public fund to lure voters. With limited financial resources, promising freebies is not only immoral unethical and contrary to concept of Welfare State but also arbitrary irrational and violate Articles 14, 16, 26(3), 28. Petitioner submit that political parties are prioritizing their self interest over national

interest and the public fund, which should have been properly utilized to secure fundamental rights of citizens, is being used to lure voters. The Supreme Court in **S. Subramaniam Balaji v. State of Tamil Nadu & Ors.** [(2013) 9 SCC 659] had observed that *“the reality cannot be ruled out that the distribution of freebies of any kind, undoubtedly influences all the people. It shakes the roots of free and fair election to a large degree. The ECI also conveyed the same feeling both in the affidavit and in the argument”*.

11. Petitioner submits that it has become fashion for the political parties to announce free electricity in their election manifesto though State has not been able to provide electricity for more than 16 hours and a large population doesn't even have access to electricity which has been recognized as a fundamental right. Political parties announce unemployment allowance in manifesto which makes youth lazy and dampen the working culture of the people. Rather than giving unemployment allowance, executive should provide quality education so that youth can create job opportunities on their own. In this process, honest taxpayers have been made a mute spectator. Petitioner submits that healthcare infrastructure is not good as it was seen during Covid times but political parties are ignorant of it.

12. Petitioner submits that the time is not too far away when one party will say that *"We will cook food for you in your residence"* and other will say that *"We will not only cook, but also feed you"*. Each party tries to undo each other in terms of populist promises. One political party promises monthly Rs.1,000/- and one gas cylinder to women households' heads, there is a counter freebie of Rs.1,500/-, Rs. 2000/- and 2500/- monthly. The result is people started having a mindset that they could make a living out of freebies. A trend has been created that whoever avails loan from banks does not repay the loan, expecting waiver of loans during election. In this way, people themselves get corrupted by political parties. The way in which the political parties throw their promises, which are arbitrary irrational impractical, is really unwanted. Unfortunately, freebies are not connected with job creation, development, or agriculture. Voters are lured to cast votes in their favor by magical promises.

13. Petitioner submits that once in 5 years, this tamasha has been going on for decades. Promises always remain as promises. Most of them, except freebies, are not implemented. Every political party is bound to make promises to voters giving their social policies and plans for improving the standard of living of the people by providing clean

governance, infrastructure, especially, providing basic amenities like, water, transportation and health, which are expected in every democracy. However, the election promises made by the political parties are aimed at clinching power. If the basic amenities are promised and provided, there cannot be any objection and in fact, it has to be welcomed and appreciated. In the name of social security all the basic needs of the people have been provided by giving color televisions, laptops, mixers, fans and grinders etc. Moreover, every BPL card holder is given 10 kilograms of free grain every month.

14. During festival seasons, public money is drained by way of providing expenses for celebrations of festivals. The celebrations are being taken care by the Government by providing free dhotis, sarees and items necessary for cooking and making foods and expenses for celebrations. These kinds of freebies/money given during festivals, are justified by saying that State is taking care of the peoples' needs, but they are making people lazy and dampening the working culture. In this process, honest tax payer is made a mute spectator of these expenditure. Consequently, even for a normal work no force is available. Engineering Graduates, M.Phil, M.B.A. Degree holders are applying for sweeper posts. Nobody wants to do manual jobs.

15. It has been reported in electronic and print media that people who go for 100 days work under the MNREGA, which has been brought by the Government to give work to people, simply chit-chat and play mobile games without doing the work. The way in which things are happening today, one would not be surprised to see that migrant workers would be owners of the properties in due course and the sons of the soil will become workers, working under them and it may be the only achievement, probably, the political parties have attained through election promises by providing freebies for the past 10 years. Petitioner is aware that the judgment of the Supreme Court in the Balaji Case that promises in election manifesto cannot be construed as "corrupt practice" and these measures relate to implementation of Directive Principles of State Policy. However, the Supreme Court directed the ECI to verify election manifestos of political parties. If there is an external agency, which examines all manifestos to weed out the unreasonable and inexecutable ones. Definitely, that will go a long way to curtail the political parties from making promises of moon or star. Unless some mechanism is put into place, the political party would try to buy out the voters by hook or crook as their aim is only to ascend to power.

16. It is respectfully submitted that political parties are expected to make election promises providing basic amenities, like, education, health care facilities, transportation and generation of employment and not necessarily Government employment. Though political parties cry for rights, they never bother educating about the corresponding duties and it is also one of the dangerous trends to be addressed. All political parties, are expected to behave reasonably or offer political promises, which are helpful for overall development of the society instead of having an adverse effect on the people. Once the Supreme Court opined that freebie vitiate the purity of election process and influence the voters and they should be deemed as a corrupt practice. It is not as if offers of money or kind to influence the voters by candidates, alone can become corrupt practice and the political parties which in whole sale manner offer or lure by promising freebies to the people to vote for their respective party to power, cannot be construed as corrupt practice. Whether it is done by an individual or by a party, it is definitely a bribery or corrupt practice. Our democracy has stooped down to such a level that the time has come to bring the political parties which offer freebies to influence the voters, within the scope of S.123.

17. The election manifestos were not that much popular about 30 years ago and only for the past two decades they have become very popular among the masses, as the political parties compete with each other offering free gifts and freebies in various forms and kinds, promising them better development, social upliftment and comfortable life during their regime if they are voted to power. Whether the development is achieved or not, the freebies only create/inculcate laziness among the people, shattering the work force of the State. Consequently, no labor or sufficient labor is available and no work is done in the State, without the imported migrant labors from other States. As observed by the Court, the Manifesto is the road map to the policies of the political parties to show as to how they intend to govern the State or Country and what are all the infrastructures to be developed and other incidental ideas. Indeed, it is welcome one. However, unfortunately the political parties are at best concentrating only on freebies to get the voters by hook or crook in their craving for winning the elections. This has to be stopped as otherwise, there shall be no distinction between the enthusiastic work force and those who sit back and enjoy the freebies without doing anything.

18. The object of the RPA 1951 is thus: *"An Act to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with elections."* It is clear that the Act is also to rule out corrupt practice and other offences in connection with the elections. Though many amendments have been brought but S. 123 is not amended to wipe out freebies from the election manifesto by making them "corrupt practices" by political parties as election process cannot be free and fair and there cannot be a level playing field for all the political parties equally. Whenever the Court observes and indicates the necessity for bringing out a separate legislation or amendment in the existing Act, the Parliament or State Legislature has to take it very seriously and pursue the issue properly by bringing a new legislation or amendment. However, even after 9 years of judgment, nothing has been done to bring a new legislation or amendment governing political parties and election manifestos and only the ECI alone came forward and issued guidelines to the political parties.

19. Petitioner submits that neither Centre has taken any steps to bring legislation covering the issue of political manifestos, especially freebies promised in the election manifestos and governing the political parties as per the Judgment in Balaji Case, nor the ECI has vetted the election manifestos of political parties as per the dictum of the Judgement. Neither any political party submitted election manifestos for vetting after the judgement nor the ECI has taken any action against political parties, which have not followed the judgement. Neither ECI has made any objection regarding statements or promises made nor *any* disputed or controversial promises have been deleted by any political party. Petitioner submits that political parties should be liable to pay at least 20% of the money involved for implementation of election promises made by them while implementing the same after they come to power to infuse a sense of responsibility into political parties. It is submitted that ECI should sensitize political parties not to make unreasonable unfair promises, which, if implemented would drain the public exchequer unnecessarily/unreasonably. Political parties should be prohibited from giving irrational social security schemes which are capable of shattering work culture and making people lazy.

20. Political parties don't give the details about the political promises and provision for resources available, in case if they come to power and the ECI never directs political parties to make the political promises, especially with regard to the freebies, in accordance with the resources of the State. ECI neither monitor and verify as to whether the election promises are complied with during the tenure of the political party, which is elected to form the Government, nor, prohibit them from making any promises, which cannot be implemented by the State, as they are beyond the powers. i.e., waiver of loans given by the nationalized bank, etc.
21. Petitioner submits that ECI has never de-recognized those parties, who fail to implement their political promises based on which the voters are lured and the parties are elected to form the Government. Political parties ascend the throne by promises which are believed by the voters and are the foundation of the Government, therefore, election promises can be made enforceable. Centre has not taken any step to amend S. 123 to include "political parties" which could be charged for "corrupt practices". Though political promises cannot be implemented as per the 2013 Balaji judgment and much water has flown under the bridge since then. So, it needs to be re-looked.

22. Petitioner submits that people are floated with attractive promises and convinced by the promises to vote a particular party and many of the promises make big dent on the public exchequer. If money spent for freebies are utilized constructively for creating job opportunities by building infrastructure, like, dams, lakes, providing better facilities and incentives to the agriculture, which has become an orphan in our country as most of the people have quit agriculture as cultivation does not provide a secured income, definitely, there will be social upliftment and progress of the State. Political parties should be prohibited from giving election promises, which are capable of adding burden on the public exchequer, especially, when the State is facing financial crunch. Otherwise, for the sake of finance, State has to increase number of liquor shops.

23. Petitioner submits that after receiving directions from the Supreme Court in S. Subramaniam Balaji Case [(2013) 9 SCC 659], the ECI held meeting with recognized Political Parties for consultation with them in the matter and took note of their conflicting views. During consultations, while some political parties supported the issuance of such guidelines, others were of the view that it is their right and duty towards voters to make such offers and promises in manifestos

in a healthy democratic polity. While the Commission agrees in principle with the point of view that framing of manifestos is the right of the political parties, it cannot overlook undesirable impact of the promises and offers on the conduct of free and fair elections and maintaining level playing field for political party candidates.

24. After consultation with the Political Parties, the Commission, in the interest of free and fair elections, directed that Political Parties and Candidates while releasing election manifestos for any election to Parliament/State Legislatures, shall adhere to following guidelines:

(i) The election manifesto shall not contain anything repugnant to the ideals and principles enshrined in the Constitution and further that it shall be consistent with the letter and spirit of other provisions of Model Code of Conduct. (ii) The Directive Principles of State Policy enshrined in the Constitution enjoin upon the State to frame various welfare measures for the citizens and therefore there can be no objection to the promise of such welfare measures in election manifestos. However, political parties should avoid making those promises which are likely to vitiate the purity of the election process or exert undue influence on the voters in exercising their franchise. (iii) In the interest of transparency, level playing field and

credibility of promises, it is expected that manifestos also reflect the rationale for the promises and broadly indicate the ways and means to meet the financial requirements for it. Trust of voters should be sought only on those promises which are possible to be fulfilled.

25. Petitioner submits that political parties do not realize the value of the manifestos and they prepare it in at a very short notice without deep thinking. Most of the political parties are more interested in the vote bank than in the need to improve the quality of governance and administration. There is a need to improve the manifesto from the point of view of political stability, social equality and economic growth. Election manifesto of political parties should only talk about public good, and not appeal to any section of voters by promising the freebies like cycle, grinding machines, television etc. Manifesto does not contain the manner in which policy would be implemented, or the source of funds for such implementation. Manifestos neither apprise the electorates as to how the public exchequer would fund the scheme nor how an individual would qualify for receiving money under a particular scheme. Most manifestos have offensive campaign material, which is inserted to stir a particular feeling or inclination towards a particular group of people.

26. Petitioner submits that in **Bhutan** and **Mexico**, political parties are required to submit a copy of their election manifesto to the Election Commission before primary round of National Assembly elections and Manifestos are published only with the approval of Election Commission, after thoroughly vetting and filtering out issues with potential to undermine the security and stability of the nation. In the **United Kingdom** and **Netherland**, legal provisions are applicable and offensive campaign materials are screened and taken out. Such a principle ought to be applied to India as well. Each Election Manifesto ought to be screened by the Election Commission before it is released (to remove any objectionable or misleading campaign material) and a mechanism ought to be provided to enforce an election manifesto of a ruling party, if the party promising them is not implementing such poll promises. Messages, which evoke a certain feeling, ought to be screened and consequently removed.

27. Petitioner submits that freebies vitiate the purity of election process and influence voters, it should be deemed to be a corrupt practice. It is not as if offers of money to influence the voters by candidates, alone can become corrupt practice and the political parties which in wholesale manner offer or lure by promising freebies to the people

to vote for their respective party to power, cannot be construed as corrupt practice. Petitioner submits that whether it is done by an individual or by a party, it is an inducement to bribery hence a corrupt practice. Our democracy has stooped down to such a level that time has come to bring the political parties which offer freebies to influence the voters for picking up votes also, within the scope of S. 123. The Supreme Court has already stated that Distribution of Freebies by Political parties vitiates the purity of election process and influences the voters. Political parties by offering freebies basically induces or lures the voters to vote for them, and as freebies are being used as incentives by political parties to bring about a desired state it can be considered as Inducement to Bribery.

28. Apex Court in *S. Subramaniam Balaji v. State of Tamil Nadu and Others* (2013) 9 SCC 659, while interpreting Section 123 of the RPA held that it does not speak about the political parties, and it only prohibits individual candidates from resorting to promise directly linked to his election which constitutes corrupt practice within the meaning of Section 123. No doubt, the statute does not penalize the political parties for indulging in corrupt practice. RPA was passed in 1951, immediately after we became Republic and the then policy

makers did not foresee that the political parties would stoop down to the level of indulging in corrupt practice in the name of election manifestos and that is the reason why, they did not include political parties under S. 123 of the RPA.

29. ECI did not issue guidelines whether in respect of freebies, timing of release of election manifesto, implementation of promises etc. Instead, the Election Commission came up with generic guidelines stating that the election manifesto is to be in compliance with the Model Code of Conduct, the promises should not vitiate the purity of elections. The guidelines were so broad and generic that the entire exercise further to the Court's directions was rendered futile.

30. The EC's guidelines says that "Political parties should avoid making promises which are likely to vitiate the purity of the election process or exert undue influence on the voters in exercising their franchise, and in the interest of transparency, level playing field and credibility of promises should broadly indicate the ways and means to meet the financial requirements for it." But it is suggestive only. The practice of offering dole-outs is unfortunate. It damages electoral democracy as all political parties lure the electorate by promising myriad gifts and freebies. Though they may not fulfill all these promises but

people are quite amenable to them. Politicians' basic duty is good governance and development, both social and economic. But, after 75 years of Independence, India is still far behind many countries of Asia in all social parameters, even those countries which got independence after us. It is not that one single party indulges in such malpractices but the whole spectrum of political parties is responsible for this sorry state of affairs. The ECI is almost a lame duck sentinel for supervisory duty of the elections. Petitioner submits that the parties which indulge in such malpractices should be disqualified from contesting the elections. Only this will control the menace and only then the real democracy will flourish.

31. The announcements of freebies and sops in democracy are not new concepts to woo the voters. The slogan of 'Garibi Hatao' was most powerful in the era of seventies, slowly the political parties came out with announcing more freebies, sops, bonanzas for the voters to woo them with free power and free water to agriculture sector etc. *How long can the government deliver good governance if the state exchequer is in red?* The need for reviving welfare schemes is the need of the hour. We need better facilities in government hospitals, hygienic food, and safe drinking water for the masses.

32. Petitioner submits that recent trend of political parties to influence voters by offering freebies with an eye on elections is not only the greatest threat to survival of democratic values but also injures the spirit of the Constitution. This unethical practice is just like giving bribes to the electorate at the cost of exchequer to stay in power and must be avoided to preserve democratic principles and practices. In a real democracy, voters are left free to exercise their franchise solely on the basis of their future aspirations and past performance of government as per manifesto and it is duty of the government to ensure that elections are held in a conducive manner free from undue influences-manipulated interventions. Distributing freebies on the eve of elections and resorting to populist measures to win public support is a clear indication that the government lacks vision and will to carry on with infrastructural development in major fields such as health, sanitation, roads, bridges, education, employment, business, commerce, environment etc. To prevent this undemocratic practice, it is suggested to carry out effective amendments. There should be a total ban on the announcement of freebies and populist measures to gain undue political favors from the voters and the ECI should monitor the violations with suitable deterrent measures.

33. Ahead of the Assembly elections in the state, it has become a fashion with the political parties to announce a number of freebies to lure voters. When ruling party gives assurances to provide financial benefits to maximum workers one way or other, Opposition calls it mere eyewash and a political gimmick that has a debilitating impact on the financial management. Prioritizing sops rather than good governance is certainly against the basic principles of democracy. It compromises with the integrity of the whole electoral process when elections are not contested on burning issues and concerns for the larger interests of society. Freebies give undeserving corrupt leaders and inculcate the culture of indolence when people get all facilities without actually working for them. If we are really serious about developing our state, outlandish promises should be checked. People must out rightly discard parties that depend on sops to win election. But since a large majority of people are uneducated, only the ECI can provide much-needed relief. The Court should declare that the consolidating vote through populist schemes at the time of elections is illegal and parties violating the directions must be de-recognized. People should be educated about their rights so that they do not fall in lure of money, alcohol and lollypops offered by political parties.

34. There has been a steady decline in people's exercise of their franchise post-Independence. With an aim of ensuring maximum participation in the elections, political parties across the spectrum compete with other to woo the electorate. Instead of promising good governance or welfare schemes, they make umpteen electoral announcements such as opening more schools, colleges, hospitals and bus stands while the existing ones are in a shambles, and offer unparalleled freebies to various sections of society to ascertain their victory. This has become an obligatory practice that vitiates sanctity of elections and is, therefore, totally unwarranted and unjustified. The poor, illiterate, unemployed and gullible voters fall an easy prey to these lures and often make irrational choice of contestants. This breeds corruption and criminalization of politics that leads to inefficient legislative functioning and puts unnecessary burden on public exchequer. When people compromise their right to question the government, it ultimately undermines the spirit and essence of democracy and robs other citizens of their desire to live a decent life.
35. The blame for the present mess of our political culture lies entirely with the parties and the people at large. Parties should give tickets to only the deserving candidates. People should also vote for only

the educated, honest, dedicated and conscientious leaders who can lead on the road to development. The ECI should declare the freebie unlawful and bring it under the purview of the MCC. Also, the election manifesto of should be made a legal document. Political parties offering freebies to people ahead of elections is not something new. All political parties trying to outdo each other by luring voters with freebies such as free electricity, water, smartphones and free travelling but the trend has gained more momentum now. It has become a menace ahead of every election. It is a sure way of screwing the State and country economy by writing off the bills and taxes to woo the voters. This culture has made us so lazy that we don't want to do anything, we want everything for free. It is a never-ever ending trail and affects the mindset of people and degrades the election process. It is against principles of democracy. The EC must put a full stop to the freebie culture and take a stand against parties offering bribes and de-recognize them.

36. The elections in Punjab are about to arrive and different parties have been trying to woo people to get maximum share of votes. Many parties have been trying to pay all electricity bills and reduce its charges for the future and also many efforts are being made by

the different parties to fulfill the needs and aspirations of people at the nick of time. Petitioner submits that the government should provide more funds in improving the education sector and help to develop world-class institutions. Since we know that Punjab lacks a bit in the education sector, the government should increase the funds for developing top class, modern institutes with well-equipped staff. The government can also provide relief to many of the backward classes and also the poor and unemployed people who have been stuck with this wave of Covid-19. The government should also fulfill demands of the protesting teachers as they form the base for the future generation. The government should not provide freebies only to grab the attention of people.

37. Now, all parties offer the kind of lollipop which would fetch votes. Earlier, sewing machines were doled out. Then came knitting machines and bicycles. However, there is a method in this seeming madness. The politician targets the weaker and innocent sections of the electorate. Women, particularly the uneducated and the poor, foot this requirement. Hence, aata dal, garments, gas cylinders, cheaper electricity etc are doled out with all the fanfare, all the publicity it requires. Now there is a door-to-door scheme for new

ration cards for which the people had been waiting all the five years. The idea of a kind and gracious candidate is floated before the elections. Long ago, in Amritsar, a candidate from the socialist party was reported to have offered a trolleybus of langar at a popular Gurdwara. The richer Congress candidate brought two trolleys next Sunday. The tragedy is that no candidate spends a penny from their own pocket. It is tax payers' money which is squandered in laying substandard roads just before the elections. There is hardly any opposition to this blatant corruption. It reminds Nobel laureate Aldous Huxley's view that very soon, under influence of propaganda and drugs, the people will have lost all their freedom but they won't have with them the will to oppose. There will be a sort of concentration camp like circumstances, but people will have learnt to love them, to enjoy them. Huxley's prediction seems to be true.

Petitioner submits that arbitrary promises of irrational freebies from the public fund not only unduly influences the voters, shakes the roots of free and fair election, disturbs level playing field and vitiates the purity of election process but also brazenly offends Article 14. Petitioner also submits that ECI has plenary power to not only seize the election symbol but also to deregister the party.

38. Powers of ECI under Article 324 operates in areas left unoccupied by legislation and is plenary in character [*Kanhiya Lal, (1985) 4 SCC 628, Para 16*] The power of “superintendence, direction, control” of the conduct of elections, vested in the Election Commission, is executive in character. [*A.C. Jose (1984) 2 SCC 656, p. 22*] The Symbols Order is traceable to the power of the Election Commission under Article 324. [*Kanhiya Lal Omar, para 16*]. The power to amend, vary or rescind an order which is administrative in character under Section 21 of the General Clauses Act, specifically referred to in paragraph 2(2) of the Symbols Order, would permit Election Commission to withdraw recognition of a political party. [*Janata Dal v. Election Commission, (1996) 1 SCC 235, para 6*] Accordingly, it is clear that the proposed direction to the ECI to amend the Symbols Order would operate in a field where there is a vacuum. In fact, prayers in the instant case are vital because the functions performed by political parties are vital to democracy.

39. Petitioner submits that political parties hold constitutional status and wield constitutional powers under the Tenth Schedule in as much as they have the power to - (a) disqualify legislators from Parliament and State Assemblies; (b) bind legislators in their

speeches and voting inside the house; (c) decide what laws are made; (d) decide whether Government remains in power (e) decide public policies that affect lives of millions of people. As per Article 102 (2) of the Constitution, a person can be disqualified from being a member of either House of Parliament under the Tenth Schedule and that a similar provision exists for the State Legislators under Article 191(2). Furthermore, as per Article 102(2), if a member of a House belonging to a Political Party vote or abstains from voting in the House contrary to the directions issued by the Political Party, he is liable to be disqualified from being a Member of the House.

40. Political parties have been given statutory status under S. 29A and required to bear true faith and allegiance to the Constitution as by law established. Political Parties give tickets to candidates and people vote on party symbols and, thus, they are important instrumentalities of the democratic governance and function like a Public Authority. Political Parties are substantially financed by the State in multiple ways and exempted from Income Tax under S. 13A. State has been indirectly financing them by way of free airtime on All India Radio. In addition, State spend huge amounts on Political Parties to provide free air time on Doordarshan.

41. Under Rules 11 and 12 of the Registration of Electors Rules, 1960, two copies of Electoral Rolls are supplied to the recognized Political Parties, free of cost. This is another instance of indirect financing of the Political Parties by the State. The Central Government and State Governments have allotted various houses /buildings /other types of accommodation to various Political Parties either free of cost or at concessional rates. This also amounts to indirect financing of Political Parties by the Central and State Governments. Entire democratic system revolved around the Political Parties. They are continuously engaged in the performance of public duty and it is, therefore, important that they become accountable to the public. Transparency and accountability in working of Political Parties is essential in larger public interest as they perform public function.

42. The Election Commission awards symbols to Political Parties under the Election Symbols (Reservation and Allotment) Order, 1968, only after registration. The Election Commission calls for details of expenses made by the Political Parties in the elections. Contributions of the value of Rs. 20,000/- and above received from any person or company by Political Party are required to be intimated to the Commission under Section 29C of the RPA.

43. The ECI is vested with power of superintendence, direction and control of elections under Article 324. It is also vested with the authority to suspend or withdraw recognition of a political party in certain contingencies. More importantly, Political Parties can recommend disqualification of Members of the House in certain contingencies under the Tenth Schedule. Therefore, aforesaid constitutional and statutory powers of Political Parties definitely bring them under the public authority. The Preamble aims at securing to all its citizens: Justice - social, economic & political; Liberty of thought, expression, belief, faith and worship; and, Equality of status and of opportunity. Coincidentally, objectives of RTI Act is to promote these principles in the form of transparency and accountability in the working of every "Public authority". It aims to create informed citizenry, contain corruption and hold government instrumentalities accountable to the Public. Needless to say that Political Parties are important political institutions and can play a critical role in heralding transparency in public life. Political Parties perform public duty and define parameters of governance & socio-economic development. They have to work for public interest in spirit of the constitutional ethos only.

44. The Power Conferred by Article 32 of the Constitution of India is

in the widest terms and is not confined to issuing the high prerogative writs specified therein, but includes within its ambit the power to issue any directions or orders or writs which may be appropriate for enforcement of fundamental rights. Therefore, even when the conditions for issue of any of these writs are not fulfilled, the Supreme Court would not be constrained to fold its hand in despair and plead inability to help the citizen who has come before it for judicial redress. The Court is not helpless to grant relief in a case of violation of right to life and liberty and it should be prepared to *“forge new tools and device new remedies”*.

45. For purpose of vindicating these precious fundamental rights, in so

far as the Supreme Court is concerned, apart from Articles 32 and 142, which empower the Court to issue such directions as may be necessary for doing complete justice in any matter, Article 144 also mandates all authorities civil or judicial in the territory of India, to act in aid of the order passed by Supreme Court. Being protector of civil liberties of citizens, the Supreme Court has not only the power and jurisdiction, but also an obligation to protect the fundamental rights, guaranteed by **Part-III** in general and under Article 21 in

particular, zealously and vigilantly. The Supreme Court and High Courts are the sentinels of justice and have been vested with extraordinary powers of judicial review to ensure that rights of citizens are duly protected. [M.L. SHARMA (2014) 2 SCC 532]

46. It is not merely right of individual to move the Supreme Court, but also responsibility of the Court to enforce fundamental rights. Therefore, if the petitioner satisfies the Supreme Court that his fundamental right has been violated, it is not only the 'right' and 'power', but the 'duty' and 'obligation' of the Court to ensure that the petitioners fundamental right is protected and safeguarded. [Ramchandran, Law of Writs, 6th Edition, 2006, Pg. 131, Vol-1]

47. The power of the Supreme Court is not confined to issuing prerogative writs only. By using expression "in the nature of", the jurisdiction has been enlarged. The expression "in the nature of" is not the same thing as the other phrase "of the nature of". The former emphasis as essential in nature, latter is content with mere similarity. [M. NAGRAJ V. UOI, (2006) 8 SCC 212]

48. Supreme Court cannot refuse an application under Article 32, merely on the grounds: (i) that such application has been made to Supreme Court in the first instance without resort to the High Court

under Article 226 (ii) that there is some adequate alternative remedy available to petitioner (iii) that the application involves an inquiry into disputed questions of fact / taking of evidence. (iv) that declaratory relief i.e., declaration as to unconstitutionality of impugned statute together with consequential relief, has been prayed for (v) that the proper writ or direction has not been paid for in the application (vi) that the common writ law has to be modified in order to give proper relief to the applicant.

[KOCHUNNI V. STATE OF MADRAS, AIR 1959 SC 725 (729)]

(vii) that the Article in part three of the Constitution, which is alleged to have been infringed, has not been specifically mentioned in petition, if the facts stated therein, entitle the petitioner to invoke particular article. [PTI v. UOI, AIR 1974, SC 1044]

49. Article 32 of the Constitution provides important safeguard for the protection of the fundamental rights. It provides guaranteed quick and summary remedy for enforcing the fundamental right because a person complaining of breach of any of his fundamental rights by an administrative action can go straight to the Court for vindication of his right without having to undergo directory processes of proceeding from lower to the higher court as he has to do in other

ordinary litigation. The Court is the protector defender & guarantor of fundamental rights of the people. It was held: *“the fundamental rights are intended not only to protect individual rights but they are based on high public. Liberty of the individual and protection of fundamental rights are very essence of democratic way of life adopted by the Constitution and it is the privilege and duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by Constitution itself.”* [DARYAO v. STATE OF UP, AIR 1961 SC 1457]

50. In another case, the Supreme Court held: *“the fundamental right to move this Court can therefore be described as the corner stone of the democratic edifice raised by Constitution. That is why it is natural that the Court should regard itself as the protector and guarantor of fundamental rights and should declare that it cannot consistently with the responsibility led upon it, refuse to entertain application seeking protection against infringement of such right. In discharging the duties assigned to it, the Court has to play the role of a “sentinel on the qui vive” and it must always regard it as its solemn duty to protect the said fundamental right zealously and vigilantly.”* [PREM CHAND GARG, AIR 1963 SC 996].

51. The Language used in Articles 32 and Article 226 is very wide

and the powers of the Supreme Court as well as of the High Court's extends to issuing orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provision of the Constitution, there is no need to look back to procedural technicalities of the writs in English Law. The Court can make and order in the nature of these prerogative writs in appropriate cases in appropriate manner so long as the fundamental principles that regulate the exercise of jurisdiction in matter of granting such writ are observed [T.C. BASAPPA v. T. NAGAPPA, AIR 1954 SC 440]

52. An application under Article 32 cannot be thrown out simply

because the proper direction or writ has not been prayed for. Thus, where an order in the nature of mandamus is sought in a particular form, nothing bars the Court from granting it in a different form. Article 32 gives a very wide discretion in the matter of framing the writ to suit the exigencies of particular cases. [CHARANJIT LAL CHOWDHURY, AIR 1951 SC 41] Even if petitioner has asked for

wider relief which cannot be granted by Court, it can grant such relief to which the petitioner is entitled to [RAMBHADRIAH, AIR 1981 SC 1653]. The Supreme Court has power to grant consequential relief to do full and complete justice even in favour of those persons who may not be before the Court or have not moved the Supreme Court. [PRABODH VERMA AIR 1985 SC 167]

53. For the protection of fundamental right and rule of law, the Court under this article can confer jurisdiction on a body or authority to act beyond the purview of statutory jurisdiction or function, irrespective of the question of limitation prescribed by the statute. Exercising such power, Supreme Court entrusted the NHRC to deal with certain matters with a direction that the Commission would function pursuant to its direction and all the authorities are bound by the same. NHRC was declared not circumscribed by any condition and given free hand and thus act *sui generis* conferring jurisdiction of special nature [PARAMJIT KAUR, AIR 1999 SC 340]

54. Simply because a remedy exists in the form of Article 226 for filing a writ in High Court, it does not prevent or bar an aggrieved person from directly approaching Supreme Court under Article 32. It is true that Court has imposed a self-restraint in its own wisdom on

exercise of jurisdiction where aggrieved person has an effective alternative remedy in the form of Article 226. However, this rule which requires the exhaustion of alternative remedy is a rule of convenience and a matter of discretion rather than rule of law. It does not oust the jurisdiction of the Court to exercise its jurisdiction under Article 32. [MOHAMMED ISHAQ (2009) 12 SCC 748]

55. The Supreme Court is entitled to evolve the New Principles of

Liability to make the guaranteed remedy to enforce fundamental rights real and effective, to do complete justice to aggrieved person.

It was held that the court was not helpless and the wide powers given to the Court by Article 32 of the Constitution, which is fundamental right imposes a constitutional obligation on the Supreme Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enables award of monetary compensation in appropriate cases, where that is the only redress available. The remedy in public law has to be more readily available when invoked by have-nots who are not possessed of the where withal for enforcement of their right in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention

of private law remedies, which more appropriate. Under Article 32, the Court can pass appropriate orders to do complete justice between parties even if it is found that petition filed is not maintainable in law. [Saihba Ali, (2003) 7 SCC 250]

56. Petitioner has not filed any other petition either in this Court or in any other Court seeking same or similar directions as prayed.
57. Petitioner has no personal interests in filing this PIL.
58. There is no civil, criminal or revenue litigation, involving petitioner, which has or could have legal nexus with issue involved in this PIL.
59. Petitioner has not submitted representation and there is no other remedy available except approaching this Court under Article 32.
60. There is no personal gain private motive or oblique reasons in filing.
61. Annex P-1: S. Subramaniam Balaji (2013) 9 SCC 659 Judgment (50-104)

QUESTION OF LAW

1. *Whether* promise/distribution of irrational freebies unduly influence the voters, shakes the roots of free and fair election, disturbs level playing field and vitiates the purity of election process?
2. *Whether* irrational freebies are bribery-undue influences under IPC?
3. *Whether* irrational freebies violate Articles 14, 162, 266(3) and 282?
4. *Whether* the ECI has plenary power to seize symbol and deregister?

PRAYER

The Court may be pleased to issue writ, order or direction to:

- a) direct & declare that promise of irrational freebies from public fund before election unduly influences voters, disturbs level playing field, shakes roots of free-fair election & vitiates purity of election process;
- b) direct & declare that promise/distribution of private goods/services, which are not for public purposes, from public funds before election, violate Articles 14, 162, 266(3) and 282 of the Constitution;
- c) direct & declare that promise/distribution of irrational freebies from the public fund before election to lure voters is analogous to the *Bribery and Undue Influence under S.171B and S.171C of the IPC*;
- d) direct the ECI to insert an additional condition: "*political party shall not promise/distribute irrational freebies from the public fund before election*" in Paras 6A, 6B and 6C of the Election Symbols Order 1968;
- e) direct the ECI to seize election symbol/deregister the political party which promise/distribute irrational freebies from public fund. In alternative, direct Centre to enact a law to regulate political parties;
- f) pass such other orders as this Hon'ble Court deems fit and proper.

New Delhi

Advocate for petitioner

22.12.2024

(Ashwani Kumar Dubey)

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO OF 2021

IN THE MATTER OF:

Ashwini Kumar Upadhyay

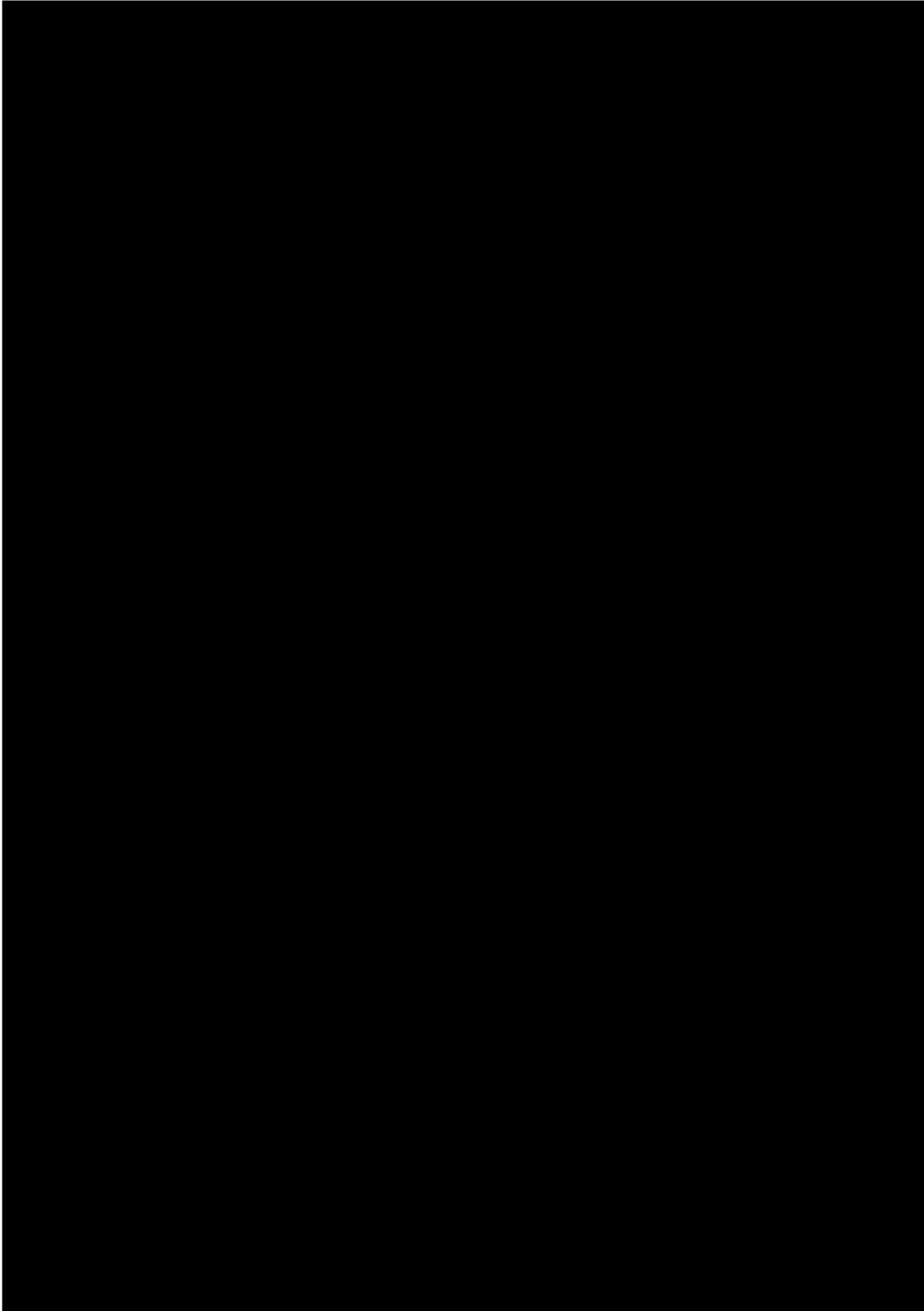
...Petitioner

Verses

Union of India & others

...Respondents

AFFIDAVIT



APPENDIX

THE ELECTION SYMBOLS (RESERVATION & ALLOTMENT) ORDER, 1968

An order to provide for specification, reservation, choice and allotment of symbols at elections in Parliamentary and Assembly Constituencies, for the recognition of political parties in relation thereto and for matters connected therewith.

S.O. 2959, dated the 31st August 1968. — Whereas, the superintendence, direction and control of all elections to Parliament and to the Legislature of every State are vested by the Constitution of India in the Election Commission of India.

AND WHEREAS, it is necessary and expedient to provide in the interest of purity of elections to the House of the People and the Legislative Assembly of every State and in the interest of the conduct of such elections in a fair and efficient manner, for the specification, reservation, choice and allotment of symbols for the recognition of political parties in relation thereto and for matters connected therewith.

NOW, THEREFORE, in exercise of the powers conferred by article 324 of the Constitution [read with section 29A of the Representation of the People Act, 1951 and rules 5 and 10] of the Conduct of Elections Rules, 1961, and all other powers enabling it in this behalf, the Election Commission of India hereby makes the following Order: —

1. SHORT TITLE, EXTENT, APPLICATION, COMMENCEMENT. — (1) This Order may be called Election Symbols (Reservation & Allotment) Order, 1968.

(2) It extends to the whole of India and applies in relation to election in all Parliamentary and Assembly Constituencies other than Assembly Constituencies in the State of Jammu and Kashmir.

(3) It shall come into force on the date of its publication in the Gazette of India which date is hereinafter referred to as commencement of this Order.

2. DEFINITIONS AND INTERPRETATION. — (1) In this Order, unless the context otherwise requires, —

(a) "clause" means a clause of the paragraph or sub-paragraph in which the word occurs;

(b) "Commission", means the Election Commission of India constituted under article 324 of the Constitution;

(c) "constituency" means a parliamentary constituency or an assembly constituency;

(d) "contested election" means an election in a parliamentary or an assembly constituency where a poll is taken;

(e) "election" means an election to which this Order applies;

[(ee) "form" means a Form appended to this Order;]

(f) "general election" means any general election held after the commencement of this Order for the purposes of constituting the House of the People or the Legislative Assembly of a State and includes a general election whereby the House of the People or the Legislative Assembly of a State in existence and functioning at such commencement, has been constituted;

(g) "paragraph" means a paragraph of this Order;

[(h) "political party" means an association or body of individual citizens of India registered with the Commission as a political party under section 29A of the Representation of the People Act, 1951 (43 of 1951);]

[(i) "State" includes the National Capital Territory of Delhi and the Union territory of Pondicherry;]

(j) "Sub-paragraph" means a sub-paragraph of the paragraph in which the word occurs;

[(jj) "Union territory" means Union territory other than the National Capital Territory of Delhi and the Union territory of Pondicherry; and]

(k) words and expressions used but not defined in this Order but defined in the Representation of the People Act, 1950 (43 of 1950), or the rules made thereunder or in the Representation of the People Act, 1951 (43 of 1951), or the rules made thereunder shall have the meanings respectively assigned to them in those Acts and rules.

(2) The General Clauses Act, 1897 (10 of 1897) shall, as far as may be, apply in relation to interpretation of this Order as it applies in relation to the interpretation of a Central Act.

4. ALLOTMENT OF SYMBOLS. — In every contested election a symbol shall be allotted to a contesting candidate in accordance with the provisions of this Order and different symbols shall be allotted to different contesting candidates at an election in the same constituency.

5. CLASSIFICATION OF SYMBOLS. — (1) For the purpose of this Order symbols are either reserved or free.

(2) Save as otherwise provided in this Order, a reserved symbol is a symbol which is reserved for a recognised political party for exclusive allotment to contesting candidates set up by that party.

(3) A free symbol is a symbol other than a reserved symbol.

[6. CLASSIFICATION OF POLITICAL PARTIES. — (1) For the purposes of this Order and for such other purposes as the Commission may specify as and when necessity therefor arises, political parties are either recognised political parties or unrecognised political parties.

(2) A recognised political party shall either be a National party or a State party.

[6A. CONDITIONS FOR RECOGNITION AS A STATE PARTY. —A political party shall be eligible for recognition as a State party in a State, only if, any of the following conditions is fulfilled: --

(i) At the last general election to the Legislative Assembly of the State, the candidates set up by the party have secured not less than six per. Cent. of the total valid votes in the State; and, in addition, the party has returned at least two members to the Legislative Assembly of that State at such general election; or

(ii) At the last general election to the House of the People from that State, the candidates set up by the party have secured not less than six per. Cent. of the total valid votes polled in the State; and, in addition, the party has returned at least one member to the House of the People from that State at such general election; or

(iii) At the last general election to the Legislative Assembly of the State, the party has won at least three per. Cent. of the total number of seats in the Legislative Assembly, (any fraction exceeding half being counted as one), or at least three seats in the Assembly, whichever is more; or

(iv) At the last general election to the House of the People from the State, the party has returned at least one member to the House of the People for every 25 members or any fraction thereof allotted to that State.]

6B. CONDITIONS FOR RECOGNITION AS A STATE PARTY. —A political party, other than a National party, shall be treated as a recognised State party in a State or States, if, and only if, — either (A)(i) the candidates set up by it, at the last general election to the House of the People, or to the Legislative Assembly of the State concerned, have secured not less than six per cent. of the total valid votes polled in that State at that general election; and (ii) in addition, it has returned at least two members to the Legislative Assembly of the State at the last general election to that Assembly;

or (B) it wins at least three per cent. of the total number of seats in the Legislative Assembly of the State (any fraction exceeding one-half being counted as one), or at least three seats in the Assembly, whichever is more, at the aforesaid general election.

6C. CONDITIONS FOR CONTINUED RECOGNITION AS A NATIONAL OR STATE PARTY.—If a political party is recognised as a National party under paragraph 6A, or as a State party under paragraph 6B, the question whether it shall continue to be so recognized after any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the State concerned, shall be dependent upon the fulfilment by it of the conditions specified in the said paragraphs on the results of that general election.]

ARTICLE 14 OF THE CONSTITUTION OF INDIA

14. Equality before law- The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.”

ARTICLE 162 OF THE CONSTITUTION OF INDIA

162. Extent of executive power of State Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof Council of Ministers

ARTICLE 266 OF THE CONSTITUTION OF INDIA

266. Consolidated Funds and public accounts of India and of the States

(1) Subject to the provisions of Article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled the Consolidated Fund of India, and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled the Consolidated Fund of the State

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be entitled to the public account of India or the public account of the State, as the case may be

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution

ARTICLE 282 OF THE CONSTITUTION OF INDIA

282. Expenditure defrayable by the Union or a State out of its revenues The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws

SECTION 171B OF THE INDIAN PENAL CODE

[171B. Bribery. —

(1) Whoever—

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right; commits the offence of bribery: Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.]

SECTION 171C OF THE INDIAN PENAL CODE

[171C. Undue influence at elections. —

(1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.]

S. SUBRAMANIAM BALAJI v. STATE OF T.N.

659

(2013) 9 Supreme Court Cases 659

(BEFORE P. SATHASIVAM AND RANJAN GOGOI, JJ.)

a S. SUBRAMANIAM BALAJI .. Appellant;

Versus

STATE OF TAMIL NADU AND OTHERS .. Respondents.

Civil Appeal No. 5130 of 2013[†] with Transferred Case No. 112 of 2011,
decided on July 5, 2013

b A. Constitution of India — Arts. 14, Preamble, 32, 41, 162, 266(3), 282
and 324 and S. 123 of RP Act, 1951 — Distribution of State largesse —
Schemes for distribution of free goods (“freebies”) as part of public welfare
schemes in fulfilment of election promises made by winning political party
in its election manifesto, upon coming to power — Validity of — Whether a
c corrupt practice — Purity of elections — If vitiated — Directions issued to
Election Commission of India

d — Said schemes challenged by writ petitions on ground that
expenditure to be incurred by State Government for such implementation of
electoral promises out of State Exchequer is unauthorised, impermissible
and ultra vires the constitutional mandates — “Corrupt practices”,
“electoral bribes” alleged

e — As per the prevailing law, held, such promises in the election
manifesto cannot be construed as “corrupt practice” under S. 123 of RP Act,
1951 — Schemes challenged herein fall within realm of fulfilling directive
principles of State policy — Court has limited jurisdiction to interfere with
such schemes

f — However, in reality distribution of freebies of any kind, undoubtedly,
influences all people — It shakes the root of free and fair elections to a large
degree — As there is an absence of any enactment directly governing
contents of election manifesto, directions issued to Election Commission to
frame guidelines in exercise of its power under Art. 324, in consultation with
all recognised political parties for governing contents of election manifesto
released by a political party — Such guidelines to be included in Model
Code of Conduct for Guidance of Political Parties and Candidates —
Fountainhead of the powers under which the Election Commission issues
these orders is Art. 324 of the Constitution, which mandates the Election
Commission to hold free and fair elections — Election Commission further
g directed to take up this task as early as possible owing to its utmost
importance — Election Commission will also have authority to regulate any
act in connection with a party’s election manifesto *before* the announcement
of the date of election — Need for a separate legislation to be passed in this
regard for governing the political parties in our democratic society,
emphasised

h [†] Arising out of SLP (C) No. 21455 of 2008. From the Judgment and Order dated 25-6-2007 of
the High Court of Madras. Madurai Bench in WP No. 9013 of 2006

— Constitution of India — Art. 32, Preamble and Art. 324 — Exercise of power under Art. 32 by Supreme Court — Relief — Directions issued to Election Commission — Representation of the People Act, 1951 — S. 123 — Corrupt practice — What is — Model Code of Conduct for Guidance of Political Parties and Candidates — Guidelines to govern contents of election manifesto of political parties, even before announcement of date of election (Paras 84 to 88)

The case related to the distribution of free gifts by the political parties (popularly known as “freebies”). The Dravida Munnetra Kazhagam (DMK), Respondent 8 herein, while releasing the election manifesto for the State Legislative Assembly Elections 2006, announced a scheme of free distribution of colour television sets (CTVs) to each and every household which did not possess the same, if the said party/its alliance were elected to power. The DMK justified the decision of distribution of free CTVs for the purpose of providing recreation and general knowledge to household women, more particularly, those living in the rural areas. In pursuance of the same, follow-up actions by way of enlisting the households which did not have a CTV set and door-to-door identification and distribution of application forms were initiated. This Scheme was challenged by the appellant herein, by way of filing a writ petition before the High Court on the ground that the expenditure to be incurred by the State Government for its implementation out of the State Exchequer was unauthorised, impermissible and ultra vires the constitutional mandates. The appellant herein filed a complaint to the Election Commission of India seeking initiation of action in respect of the said electoral manifesto promise under Section 123 of the Representation of the People Act, 1951. The appellant herein also forwarded the complaint to the Chief Election Officer, Tamil Nadu. The DMK and its political allies emerged victorious in the State Legislative Assembly Elections held in the month of May 2006. In pursuance of fulfilling the promise made in the election manifesto, a policy decision was taken by the then Government to provide one 14" CTV to all eligible families in the State. It was further decided by the Government to implement the Scheme in a phased manner and a provision of Rs 750 crores was made in the budget for implementing the same. A committee was constituted, headed by the then Chief Minister and eight other MLAs of various political parties, in order to ensure transparency in the matter of implementation of the Scheme.

For implementing the first phase of the Scheme, the work of procurement of around 30,000 CTVs was entrusted to Electronic Corporation of Tamil Nadu Ltd. (ELCOT), a State-owned corporation. The first phase of the Scheme was implemented on 15-9-2006/17-9-2006 by distributing around 30,000 CTVs to the identified families in all the districts of the State of Tamil Nadu. Being aggrieved by the implementation of the Scheme, the appellant herein filed another complaint to the Chief Secretary and the Revenue Secretary pointing out the unconstitutionality of the Scheme. He also preferred writ petitions before the High Court alleging that the Scheme was a corrupt practice to woo the gullible electorates with an eye on the vote bank. The High Court dismissed both the writ petitions filed by the appellant herein holding that the action of the Government in distributing free CTVs cannot be branded as a waste of exchequer. The appellant thus filed an appeal before the Supreme Court.

In 2011, pursuant to fresh elections to the State Legislative Assembly, the ruling party (DMK) announced its manifesto with a volley of free gifts. In the same manner, the main contesting party, All India Anna Dravida Munnetra

- a Kazhagam (AIADMK) and its alliance also announced its election manifesto with free gifts to match and outdo the gifts offered by the DMK Party and promised to distribute free of cost the following items viz. grinders, mixies, electric fans, laptop computers, 4 gm gold thalis, Rs 50,000 cash for women's marriage, greenhouses, 20 kg rice to all ration cardholders even to those above the poverty line and free cattle and sheep, if the said party/its alliance were elected to power. The AIADMK and its political allies won the State Legislative Assembly Elections held in 2011. In order to fulfil the promise made in the election manifesto, a policy decision was taken by the then Government to distribute the abovesaid freebies and, pursuant to the same, tenders were floated by the Civil Supplies Department for mixies, grinders, fans, etc. as well as by ELCOT for laptop computers. In the meanwhile, the appellant herein preferred another writ petition before the High Court alleging that the Scheme was a corrupt practice and to restrain the Government from in any way proceeding with the procurement, placement of tenders or making free distributions under various schemes introduced to woo the voters. The Supreme Court allowed the transfer of the said writ petition to itself.
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The following issues arose for consideration before the Supreme Court:

- (i) Whether the promises made by the political parties in their election manifesto would amount to "corrupt practices" as per Section 123 of the RP Act?
- (ii) Whether the Schemes under challenge are within the ambit of public purpose and if yes, are they violative of Article 14?
- (iii) Whether this Court has inherent power to issue guidelines by application of *Vishaka*, (1997) 6 SCC 241, principle?
- (iv) Whether the Comptroller and Auditor General of India has a duty to examine public expenditures even before they are deployed?
- (v) Whether the writ jurisdiction will lie against a political party?
- d
- e Dismissing the appeal and the transferred case the Supreme Court

Held :

The law in regard to welfare schemes framed to fulfil the promises made in the election manifesto of the winning political party can be summarised as follows:

- (i) After examining and considering the parameters laid down in Section 123 of the Representation of the People Act, 1951 it is concluded that the promises in the election manifesto cannot be read into Section 123 for declaring it to be a corrupt practice. Thus, promises in the election manifesto do not constitute as a corrupt practice under the prevailing law.
- (ii) Further, it has been decided that the Schemes challenged in this writ petition fall within the realm of fulfilling the directive principles of State policy thereby falling within the scope of public purpose.
- (iii) The mandate of the Constitution provides various checks and balances before a scheme can be implemented. Therefore, as long as the schemes come within the realm of public purpose and monies withdrawn for the implementation of the schemes by passing a suitable Appropriation Bill, the Court has limited jurisdiction to interfere with such schemes.
- (iv) It is also asserted that the schemes challenged under this petition are in consonance with Article 14 of the Constitution.
- (v) The duty of CAG will arise only after the expenditure has incurred.
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(vi) Since this petition is fit for dismissal de hors the jurisdiction issue, the issue of jurisdiction i.e. whether political parties are amenable to writ jurisdiction, is left open. (Paras 84.1 to 84.3, 84.5, 84.7 and 84.8) a

Ramchandra G. Kapse v. Haribansh Ramakbal Singh, (1996) 1 SCC 206, *relied on*

S. Subramaniam Balaji v. State of T.N., WP (MD) No. 9013 of 2006, decided on 25-6-2007 (Mad), *affirmed*

S. Subramaniam Balaji v. State of T.N., Transfer Petition (C) No. 947 of 2011, order dated 16-9-2011 (SC), *referred to*

Although the law is obvious that the promises in the election manifesto cannot be construed as “corrupt practice” under Section 123 of the RP Act, the reality cannot be ruled out that distribution of freebies of any kind, undoubtedly, influences all people. It shakes the root of free and fair elections to a large degree. The Election Commission also conveyed the same feeling both in the affidavit and in the arguments that the promise of such freebies at the Government cost disturbs the level playing field and vitiates the electoral process and thereby expressed willingness to implement any directions or decision of the Supreme Court in this regard. (Para 85) b

The Court has limited power to issue directions to the legislature to legislate on a particular issue. Judicial interference is permissible only when the action of the Government is unconstitutional or contrary to a statutory provision and not when such action is not wise or that the extent of expenditure is not for the good of the State. Moreover, as there is no legislative vacuum in the case on hand, the scope for application of *Vishaka*, (1997) 6 SCC 241, principle does not arise. However, the Election Commission, in order to ensure a level playing field between the contesting parties and candidates in elections and also in order to see that the purity of the election process does not get vitiated, has in past been issuing instructions under the Model Code of Conduct. The fountainhead of the powers under which the Election Commission issues these orders is Article 324 of the Constitution, which mandates the Election Commission to hold free and fair elections. It is equally imperative to acknowledge that the Election Commission cannot issue such orders if the subject-matter of the order of the Election Commission is covered by a legislative measure. c

(Paras 84.4, 84.6 and 86)

Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932, *distinguished on facts* d

Therefore, considering that there is no enactment that directly governs the contents of the election manifesto, the Election Commission is directed to frame guidelines for the same in consultation with all the recognised political parties, as when it had acted while framing guidelines for general conduct of the candidates, meetings, processions, polling day, party in power, etc. In a similar way, a separate head for Guidelines for the Election Manifesto released by a political party can also be included in the Model Code of Conduct for the Guidance of Political Parties and Candidates. Generally political parties release their election manifesto before the announcement of the election date, in that scenario, strictly speaking, the Election Commission will not have the authority to regulate any act which is done before the announcement of the date. Nevertheless, an exception can be made in this regard as the purpose of the election manifesto is directly associated with the election process. The Election Commission is further directed to take up this task as early as possible owing to its utmost importance. There is a need for a separate legislation to be passed by e

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the legislature in this regard for governing the political parties in our democratic society. (Paras 87 and 88)

- a **B. Election — Representation of the People Act, 1951 — S. 123 — Corrupt practice — Applicability — Promises in election manifesto of a political party — Promise of “freebies” — If electoral bribe/inducement influencing the voter to vote in a particular manner — Held, S. 123 speaks only about a candidate or his agent or any other person, and not about political parties — Provisions relating to corrupt practice are penal in nature and, therefore, rule of strict interpretation must apply — Hence,**
- b **promises by a political party cannot constitute a corrupt practice on the part of the political party as a political party is not within the sweep of the provisions relating to corrupt practices — However, directions issued to Election Commission to issue guidelines to govern contents of election manifesto of political parties, to be included in Model Code of Conduct before next election — Interpretation of Statutes — Particular Statutes or**
- c **Provisions — Penal statutes or provisions — Strict interpretation — Applied — Model Code of Conduct for Guidance of Political Parties and Candidates — Guidelines to govern contents of election manifesto of political parties**

Held :

- d Part VII of the Representation of the People Act, 1951 deal with “corrupt practices” and “electoral offences” which was brought into force with effect from 28-8-1956. A perusal of Sections 123(1) to (8) makes it clear that it speaks only about a candidate or his agent or any other person. There is no word about political parties. For deciding the issue whether the contents of the election manifesto would constitute a corrupt practice under Section 123 of the RP Act, it is imperative to refer to the intention of the legislature behind incorporating the respective section. The purpose of incorporating Section 123 of the RP Act is to
- e ensure that elections are held in a free and fair manner. The gist of the appellant’s argument is that promises of freebies such as colour TVs, mixer-grinders, laptops, etc. are in form part of an election manifesto of a political party but in substance is a bribe or inducement under Section 123. Thus, it is the stand of the appellant that the promise of this nature indeed induces the voters thereby affecting the level playing field between the candidates, which in turn disrupts free and fair election. (Paras 56 to 58 and 60)

- f As appealing as this argument may sound, the implementation of this suggestion becomes difficult on more than one count:

- g 1. Firstly, if every kind of promises made in the election manifesto is declared a corrupt practice, this will be flawed. Since all promises made in the election manifesto are not necessarily promising freebies per se, for instance, the election manifesto of a political party promising to develop a particular locality if they come into power, or promising cent per cent employment for all young graduates, or such other acts. Therefore, it will be misleading to construe that all promises in the election manifesto would amount to corrupt practice. Likewise, it is not within the domain of the Supreme Court to legislate what kind of promises can or cannot be made in the election manifesto.

- h 2. Secondly, the manifesto of a political party is a statement of its policy. The question of implementing the manifesto arises only if the political party forms a Government. It is the promise of a future

Government. It is not a promise of an individual candidate. Section 123 and other relevant provisions, upon their true construction, contemplate corrupt practice by individual candidate or his agent. Moreover, such corrupt practice is directly linked to his own election irrespective of the question whether his party forms a Government or not. The provisions of the RP Act clearly draw a distinction between an individual candidate put up by a political party and the political party as such. The provisions of the said Act prohibit an individual candidate from resorting to promises, which constitute a corrupt practice within the meaning of Section 123 of the RP Act. The provisions of the said Act place no fetter on the power of the political parties to make promises in the election manifesto. a

3. Thirdly, the provisions relating to corrupt practice are penal in nature and, therefore, the rule of strict interpretation must apply and hence, promises by a political party cannot constitute a corrupt practice on the part of the political party as the political party is not within the sweep of the provisions relating to corrupt practices. As the rule of strict interpretation applies, there is no scope for applying provisions relating to corrupt practice contained in the said Act to the manifesto of a political party. b

4. Lastly, it is a settled law that the courts cannot issue a direction for the purpose of laying down a new norm for characterising any practice as corrupt practice. Such directions would amount to amending provisions of the said Act. The power to make law exclusively vests in the Union Parliament and as long as the field is covered by the parliamentary enactments, no directions can be issued as sought by the appellant. c

(Paras 61.1 to 61.4) d

After examining and considering the parameters laid down in Section 123 of the RP Act, it is held that the promises in the election manifesto cannot be read into Section 123 for declaring it to be a corrupt practice. Thus, promises in the election manifesto do not constitute a corrupt practice under the prevailing law. e

(Para 84.1)

Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh, (2001) 3 SCC 594; *Ramchandra G. Kapse v. Haribansh Ramakbal Singh*, (1996) 1 SCC 206, *relied on* *Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh*, (2001) 3 SCC 594, *considered* *Richardson-Gardner v. Eykyn*, (1869) 19 LT 613; *M.J. Jacob v. A. Narayanan*, (2009) 14 SCC 318; *Manmohan Kalia v. Yash*, (1984) 3 SCC 499; *Surinder Singh v. Hardial Singh*, (1985) 1 SCC 91; *Baldev Singh Mann v. Surjit Singh Dhiman*, (2009) 1 SCC 633; *Jeet Mohinder Singh v. Harminder Singh Jassi*, (1999) 9 SCC 386; *Samatha v. State of A.P.*, (1997) 8 SCC 191, *referred to* f

B. Shiva Rao: *The Framing of India's Constitution: Select Documents*, Vol. IV, pp. 944-45, *cited*

C. Constitution of India — Arts. 14, 32, 226, 73 and 162 — Distribution of State largesse/government contracts — Scope of judicial review in cases of Distribution of State largesse — Government public welfare schemes — Whether the State should frame a scheme which directly or indirectly improves living standards or means of livelihood, held, is for the State to decide — As long as the schemes come within realm of public purpose and monies for the schemes are withdrawn with passing of appropriate Appropriation Bill, the Court has limited power to interfere with such schemes — Judicial interference is permissible when action of Government is unconstitutional and not when such action is allegedly not wise — g

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Administrative Law — Judicial Review — Exclusion of Judicial Review — Policy/Policy decision/Policy matter — Government Grants, Largesse, Public Property and Premises — Distribution of State largesse

a

D. Constitution of India — Arts. 266, 267, 282, 73, 114, 118, 148, 162, 208 and 14 and Pt. IV — Public welfare expenditure by Union and States under Art. 282 — Expenditure by State Government, upon winning elections, on schemes for free distribution of consumer goods to eligible persons based on their party's election manifesto — When valid — If an

b

expense for "public purpose" — Schemes impugned in present case found to be valid since: State largesse in the form of distribution of colour TVs, laptops, etc. to eligible and deserving persons falls within the realm of fulfilling the directive principles of State policy thereby falling within the scope of "public purpose" — More so, the functioning of the Government is controlled by the Constitution, the laws of the land, the legislature and CAG

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— Government can frame a scheme in exercise of its executive powers but if such a scheme entails any expenditure, then it is required to be backed by law — In addition to legislative control by way of Appropriation Acts, the rules framed by Parliament under Art. 118 and by State Legislatures under Art. 208 also create a mechanism to keep a check on expenditure incurred by Government — Hence, it is established that there are various checks and

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balances within the mandate of the Constitution before a scheme can be implemented — Hence, no interference is called for with the Schemes impugned herein — Parliament and State Legislatures — T.N. Legislative Assembly Rules — Words and Phrases — "Public purpose"

e

E. Constitution of India — Arts. 38, 39(a) and 47 — State to promote welfare of the people and provide adequate means of livelihood — "Livelihood" — Changing concept of — What was once considered to be a luxury has become a necessity in the present day — Concept of livelihood is no longer confined to bare physical survival in terms of food, clothing and shelter but also now necessarily includes basic medicines, preliminary education, transport, etc. — Words and Phrases — "Livelihood", "standard of living"

f

F. Government Grants, Largesse, Public Property and Premises — Distribution of State largesse — State Government Schemes, upon winning elections, for distribution of consumer goods to eligible and deserving persons based on their party's election manifesto — Creation of private assets from public money — Permissibility — Held, purpose of the Schemes is to enforce the directive principles of State policy — In what way the State chooses to implement the directive principles of State policy is a policy decision of the State — Courts cannot interfere with such decisions — Constitution of India, Arts. 14, 226 and 32

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Held :

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The concept of State largesse is essentially linked to the directive principles of State policy. Whether the State should frame a scheme, which directly gives benefits to improve the living standards or indirectly by increasing the means of livelihood, is for the State to decide and the role of the court is very limited in this regard. (Para 62)

On behalf of the State of Tamil Nadu, it was explained that in order to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which social and economic justice can be achieved, the Government of Tamil Nadu has announced certain welfare schemes for raising the standard of living of the people by providing assistance to the deserving ones as envisaged under the directive principles of the Indian Constitution. In order to implement those schemes effectively, the Government of Tamil Nadu had exclusively formed a Special Programme Implementation Department. The guidelines for each scheme were framed to identify the beneficiaries and mode of distribution. It is pointed out by the State that the Government has issued necessary orders for the following schemes:

- (i) Marriage assistance scheme;
- (ii) Distribution of milch animals and goats;
- (iii) Solar-powered greenhouse scheme;
- (iv) Laptop computers to students;
- (v) Free rice scheme; and
- (vi) Free distribution of electric fans, mixies and grinders to women.

(Paras 63 to 65)

The concepts of livelihood and standard of living are bound to change in their content from time to time. What was once considered to be a luxury has become a necessity in the present day. It is well settled that the concept of livelihood is no longer confined to bare physical survival in terms of food, clothing and shelter but also now necessarily includes basic medicines, preliminary education, transport, etc. Hence, the State distributing largesse in the form of distribution of colour TVs, laptops, etc. to eligible and deserving persons is directly related to the directive principles of the State policy. As a result, the argument of the appellant that the giving of colour TVs, laptops, mixer-grinders, etc. by the Government after adhering to due process is not an expense for public purpose cannot be agreed with. Judicial interference is permissible when the action of the Government is unconstitutional and not when such action is not wise or it is alleged that the extent of expenditure is not for the good of the State. All such questions must be debated and decided in the legislature and not in court.

(Para 68)

The Schemes challenged in this writ petition fall within the realm of fulfilling the directive principles of State policy thereby falling within the scope of public purpose.

(Para 84.2)

Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225; *Deepak Theatre v. State of Punjab*, 1992 Supp (1) SCC 684, referred to

More so, the functioning of the Government is controlled by the Constitution, the laws of the land, the legislature and the Comptroller and Auditor General of India. As per Article 73 of the Constitution, the executive power of the Union of India is co-extensive with its legislative power. Similarly, the executive power of the State is co-extensive with its legislative power (Article 162). The Government can frame a scheme in exercise of its executive powers but if such a scheme entails any expenditure, then it is required to be backed by law. Article 266 of the Constitution lays down that all monies received by the Central Government or by the State Government by way of taxes or otherwise must be credited to the Consolidated Fund of India. Article 267 also constitutes Contingency Fund of India. If any money (except which is charged on the

a Consolidated Fund) is to be withdrawn for any governmental purpose, then there has to be an Appropriation Act under Article 266(3) read with Article 114 of the Constitution. Every department of the Government presents its demand to the legislature concerned and the legislature votes on the same, and thereafter, the Appropriation Act is passed which authorises the Government to withdraw the money from the Consolidated Fund. There are similar provisions relating to the State. The Contingency Fund can be established only by enacting a law in that behalf and not by an executive fiat. The law creating the Contingency Fund authorises the purposes for which the amount in it can be spent. This is how the money is being spent by the Government on its schemes under the control of the legislature. (Para 69)

Bhim Singh v. Union of India, (2010) 5 SCC 538, *relied on*

c In addition to the legislative control by way of Appropriation Acts, the rules framed by Parliament under Article 118 and by the State Legislatures under Article 208 of the Constitution of India, also create a mechanism to keep a check on the expenditure incurred by the Government. As far as State of Tamil Nadu is concerned, the legislature has framed rules under Article 208 of the Constitution and these rules are known as the Tamil Nadu Legislative Assembly Rules. Under Chapter XX of the said Rules, a Public Accounts Committee is set up and usually such Public Accounts Committee is headed by a Member of the Opposite Party. The Public Accounts Committee scrutinises the government accounts and submits its report to the legislature for its consideration. So, apart from the Appropriation Act, there is also effective control over the government accounts and expenses through the Public Accounts Committee. In addition to the legislative control, the Founding Fathers of the Constitution have also thought it fit to keep a check on government accounts and expenses through an agency outside the legislature also. Article 148 has created a constitutional functionary in the form of the Comptroller and Auditor General of India (CAG). CAG examines the propriety, legality and validity of all expenses incurred by the Government. The office of CAG exercises effective control over the government accounts. (Paras 71 to 73)

f Hence, it is established that there are various checks and balances within the mandate of the Constitution before a public welfare scheme can be implemented. As long as the schemes come within the realm of public purpose and monies for the schemes are withdrawn with appropriate Appropriation Bill, the court has limited power to interfere with such schemes. (Paras 74 and 84.3)

g Further, the appellant contended the principle that public money cannot be used to create private assets. There is no merit in this contention also. The purpose of the schemes is to enforce the directive principles of State policy. In what way the State chooses to implement the directive principles of State policy is a policy decision of the State and the Supreme Court cannot interfere with such decisions. Ordinarily, the Supreme Court cannot interfere with policy decisions of the Government unless they are clearly in violation of some statutory or constitutional provision or are shockingly arbitrary in nature. In the given case no such circumstances prevail as envisaged for judicial enquiry or to interfere with the policy decision. Judicial interference is permissible only when the action of the Government is unconstitutional or contrary to a statutory provision and not when such action is alleged to be not wise or that the extent of expenditure is not for the good of the State. (Paras 75, 77 and 84.4)

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Ekta Shakti Foundation v. Govt. (NCT of Delhi), (2006) 10 SCC 337; *Asif Hameed v. State of J&K*, 1989 Supp (2) SCC 364; *State of Orissa v. Gopinath Dash*, (2005) 13 SCC 495, *relied on*

Coates v. Campbell, 37 Minn 498 : 35 NW 366, *referred to*

G. Constitution of India — Art. 14 and Pt. IV — Nature, Scope and applicability — Extent of equality — Absolute equality — Feasibility — State distributing largesse in the form of consumer goods to deserving and eligible persons — Conferring social and economic benefits on particular sections of the community/persons implementing directive principles of State policy — While implementing the directive principles, it is for Government concerned to take into account its financial resources and the need of the people — There cannot be a straitjacket formula — If certain benefits are restricted to a particular class that can obviously be on account of the limited resources of the State — All welfare measures cannot at one go be made available to all the citizens — Government Grants, Largesse, Public Property and Premises — Concession/Exemption/Incentive/Rebate/ Subsidy/Benefit — Directive principles as a basis for grant of

H. Constitution of India — Art. 14 — Classification — Basis for — Welfare measures targeted at persons from lower income groups — Held, permissible classification

Held :

With regard to the contention that distribution of State largesse in the form of colour TVs, laptops, mixer-grinders, etc. violates Article 14 of the Constitution as the unequals are treated equally. These measures relate to implementation of the directive principles of State policy. While implementing the directive principles, it is for the Government concerned to take into account its financial resources and the need of the people. There cannot be a straitjacket formula. If certain benefits are restricted to a particular class that can obviously be on account of the limited resources of the State. All welfare measures cannot at one go be made available to all the citizens. The State can gradually extend the benefit and this principle has been recognised by the Supreme Court.

(Paras 78 and 84.5)

Roberts v. Hopwood, 1925 AC 578 : 1925 All ER Rep 24 (HL); *Bromley London Borough Council v. Greater London Council*, (1983) 1 AC 768 : (1982) 2 WLR 62 : (1982) 1 All ER 129 (HL); *R. v. Secy. of State for Foreign and Commonwealth Affairs, ex p World Development Movement Ltd.*, (1995) 1 WLR 386 : (1995) 1 All ER 611 (DC); *Union of India v. International Trading Co.*, (2003) 5 SCC 437; *K.T. Moopil Nair v. State of Kerala*, AIR 1961 SC 552, *referred to*

I. Constitution of India — Arts. 32, 14, 324, 141 and 142 — Power of Supreme Court to issue directions — Scope — Executive/legislative vacuum — Writ petition seeking to restrain the Government from proceeding with the procurement, placement of tenders or making free distribution of goods under various schemes introduced to fulfil promises made in their election manifesto — Guidelines sought to prevent misuse and ensure proper utilisation of public funds — Held, there is a special legislation i.e. Representation of the People Act wherein S. 123 enumerates exhaustively a series of acts as “corrupt practice” — Therefore, it is not a case of legislative vacuum where the judiciary can apply its inherent power to frame guidelines — Principle in *Vishaka*, (1997) 6 SCC 241 is thus inapplicable in

a present case — Directions however issued to Election Commission to exercise its power under Art. 324 to issue guidelines to govern contents of election manifesto of political parties, to be included in Model Code of Conduct before next election

Held :

b It is the stand of the appellant that there is legislative vacuum in the given case. Hence, the judiciary is warranted to legislate in this regard to fill the gap by application of *Vishaka*, (1997) 6 SCC 241 principle. In the case at hand, there is a special legislation, namely, the Representation of the People Act wherein Section 123 enumerates exhaustively a series of acts as “corrupt practice”. Therefore, this is not a case of legislative vacuum where the judiciary can apply its inherent power to frame guidelines. (Para 79)

c As there is no legislative vacuum in the case on hand, the scope for application of *Vishaka*, (1997) 6 SCC 241 principle does not arise. However, the Election Commission, in order to ensure a level playing field between the contesting parties and candidates in elections and also in order to see that the purity of the election process does not get vitiated, as in past been issuing instructions under the Model Code of Conduct. The fountainhead of the powers under which the Election Commission issues these orders is Article 324 of the Constitution, which mandates the Election Commission to hold free and fair elections. It is equally imperative to acknowledge that the Election Commission cannot issue such orders if the subject-matter of the order of the Election Commission is covered by a legislative measure. Thus, considering that there is no enactment that directly governs the contents of the election manifesto, the Election Commission is directed to frame guidelines for the same in consultation with all the recognised political parties as when it had acted while framing guidelines for general conduct of the candidates, meetings, processions, polling day, party in power, etc. In the similar way, a separate head for guidelines for the election manifesto released by a political party can also be included in the Model Code of Conduct for the Guidance of Political Parties and Candidates. Generally political parties release their election manifesto before the announcement of election date, in that scenario, strictly speaking, the Election Commission will not have the authority to regulate any act which is done before the announcement of the date. Nevertheless, an exception can be made in this regard as the purpose of the election manifesto is directly associated with the election process. The Election Commission is further directed to take up this task as early as possible owing to its utmost importance. (Paras 84.6 and 85 to 88)

Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932, distinguished on facts
Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454 : (2011) 2 SCC (Civ) 280 : (2011) 2 SCC (Cri) 294; *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294; *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399, referred to

g J. Constitution of India — Art. 148 — Comptroller and Auditor General of India — Audit of government accounts and expenditure — Extent of role — Duty of CAG, held, arises only after the expenditure has been incurred — It has no role to examine expenditures on government schemes before they are incurred — Hence, contention that a purposive interpretation should be given to S. 15 of Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 to read into the provision
h CAG's duty to examine expenditures even before they are deployed to

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ensure that Government's spending is only on purposes that are legally allowable, rejected — Public Accountability, Vigilance and Prevention of Corruption — Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971, S. 15

Held :

The Comptroller and Auditor General of India is a constitutional functionary appointed under Article 148 of the Constitution. His main role is to audit the income and expenditure of the Governments, government bodies and State-run corporations. The extent of his duties is listed out in the Comptroller and Auditor General's (Duties, Powers, etc.) Act, 1971. The functioning of the Government is controlled by the Constitution, the laws of the land, the legislature and the Comptroller and Auditor General of India. CAG examines the propriety, legality and validity of all expenses incurred by the Government. The office of CAG exercises effective control over the government accounts and expenditure incurred on these schemes only after implementation of the same. As a result, the duty of the CAG will arise only after the expenditure has incurred.

(Paras 80 and 84.7)

Richardson-Gardner v. Eykyn, (1869) 19 LT 613; *Kingston Cotton Mill Co. (No. 2)*, *In re*, (1896) 2 Ch 279 (CA), referred to

K. Constitution of India — Arts. 32 and 226 — Writ — Maintainability — Private parties — Amenability — "State" or "Authority" — Writ petition challenging promises made by political party of free distribution of consumer goods ("freebies") in its election manifesto — Political party — Amenability to writ jurisdiction — Question left open as writ petition found fit for dismissal dehors the jurisdiction issue

L. Constitution of India — Arts. 32, 12, 226 and 136 — Maintainability — Pleadings/New plea/Additional plea/Alternative plea — Objection as to subject-matter jurisdiction raised for first time in oral submissions before the Supreme Court — Although no such objection raised before the High Court or even in the pleadings before Supreme Court, entertained by Supreme Court — Question of subject-matter jurisdiction, held, can be raised even in the appeal stage — It is totally distinct and stands on a different footing from matters relating to pecuniary jurisdiction and territorial jurisdiction, where the objection as to jurisdiction has to be taken at the earliest possible opportunity — Practice and Procedure — Jurisdiction/Jurisdictional Error — Subject-matter jurisdiction, pecuniary jurisdiction and territorial jurisdiction, distinguished

Held :

The respondent (State of Tamil Nadu) raised the issue of jurisdiction stating that political parties are not "State" within the meaning of Article 12 of the Constitution of India and therefore, no writ of any nature can be issued against them either under Article 226 or Article 32 of the Constitution of India or any other provision of the Constitution or any other law. The correct forum is the Election Tribunal and not the writ jurisdiction. Admittedly, the respondents never raised any objection relating to the jurisdiction in the High Court or even in the pleadings before the Supreme Court. It is only in the oral submissions that this issue has been raised. In the matters relating to pecuniary jurisdiction and territorial jurisdiction, the objection as to jurisdiction has to be taken at the

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earliest possible opportunity. But, the present case relates to the jurisdiction over the subject-matter. This is totally distinct and stands on a different footing. As such, the question of subject-matter jurisdiction can be raised even in the appeal stage. However, as this petition is fit for dismissal de hors the jurisdiction issue, the jurisdiction issue is left open. (Paras 81 to 83 and 84.8)

Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733, referred to

B-D/52118/C

Advocates who appeared in this case :

P.P. Malhotra, Additional Solicitor General, Arvind P. Datar and Shekhar Naphade, Senior Advocates (Abhay Kumar, Rupesh Kr. Pandey, Upendra Pratap Singh, Ms Neetu Jain, Vineet Kr. Singh, Ms Shubhangi Tuli, R. Rakesh Sharma, P. Krishnamoorthy, B. Balaji, Ms Rachana Joshi Issar, D.K. Thakur, Ms Sushma Suri, D.S. Mahra and Ms Meenakshi Arora, Advocates) for the appearing parties.

Chronological list of cases cited

on page(s)

1. (2011) 4 SCC 454 : (2011) 2 SCC (Civ) 280 : (2011) 2 SCC (Cri) 294, *Aruna Ramachandra Shanbaug v. Union of India* 682e-f
2. Transfer Petition (C) No. 947 of 2011, order dated 16-9-2011 (SC). *S. Subramaniam Balaji v. State of T.N.* 674a
3. (2010) 5 SCC 538, *Bhim Singh v. Union of India* 680e-f, 686a, 708g, 709b-c
4. (2009) 14 SCC 318, *M.J. Jacob v. A. Narayanan* 683b-c
5. (2009) 1 SCC 633, *Baldev Singh Mann v. Surjit Singh Dhiman* 683g
6. WP (MD) No. 9013 of 2006, decided on 25-6-2007 (Mad), *S. Subramaniam Balaji v. State of T.N.* 672a-b, 673a-b
7. (2006) 10 SCC 337, *Ekta Shakti Foundation v. Govt. (NCT of Delhi)* 710c
8. (2005) 13 SCC 495, *State of Orissa v. Gopinath Dash* 710f
9. (2003) 10 SCC 733, *Federal Bank Ltd. v. Sagar Thomas* 682a
10. (2003) 5 SCC 437, *Union of India v. International Trading Co.* 678f
11. (2003) 4 SCC 399, *People's Union for Civil Liberties v. Union of India* 683a
12. (2002) 5 SCC 294, *Union of India v. Assn. for Democratic Reforms* 683a
13. (2001) 3 SCC 594, *Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh* 693e-f
14. (1999) 9 SCC 386, *Jeet Mohinder Singh v. Harminder Singh Jassi* 684b
15. (1997) 8 SCC 191, *Samatha v. State of A.P.* 684f-g
16. (1997) 6 SCC 241 : 1997 SCC (Cri) 932, *Vishaka v. State of Rajasthan* 681e-f, 682c, 682e-f, 689d-e, 711b-c, 711c, 711c-d, 712g
17. (1996) 1 SCC 206, *Ramchandra G. Kapse v. Haribansh Ramakbal Singh* 712d
18. (1995) 1 WLR 386 : (1995) 1 All ER 611 (DC), *R. v. Secy. of State for Foreign and Commonwealth Affairs, ex p World Development Movement Ltd.* 676d
19. 1992 Supp (1) SCC 684, *Deepak Theatre v. State of Punjab* 687d
20. 1989 Supp (2) SCC 364, *Asif Hameed v. State of J&K* 710d-e
21. (1985) 1 SCC 91, *Surinder Singh v. Hardial Singh* 683e-f
22. (1984) 3 SCC 499, *Manmohan Kalra v. Yash* 683c-d
23. (1983) 1 AC 768 : (1982) 2 WLR 62 : (1982) 1 All ER 129 (HL), *Bromley London Borough Council v. Greater London Council* 676d
24. (1973) 4 SCC 225, *Kesavananda Bharati v. State of Kerala* 687a-b
25. AIR 1961 SC 552, *K.T. Moopil Nair v. State of Kerala* 678g
26. 1925 AC 578 : 1925 All ER Rep 24 (HL), *Roberts v. Hopwood* 676c-d
27. (1896) 2 Ch 279 (CA), *Kingston Cotton Mill Co. (No. 2), In re* 680d-e
28. (1869) 19 LT 613, *Richardson-Gardner v. Eykyn* 679d-e
29. 37 Minn 498 : 35 NW 366, *Coates v. Campbell* 676b-c

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The Judgment of the Court was delivered by

P. SATHASIVAM, J.—

SLP (C) No. 21455 of 2008

1. Leave granted. This appeal is directed against the final judgment and order dated 25-6-2007 passed by the Madurai Bench of the Madras High Court in *S. Subramaniam Balaji v. State of T.N.*¹ whereby the High Court dismissed the petitions filed by the appellant herein.

Brief facts

2. The case relates to distribution of free gifts by the political parties (popularly known as “freebies”). The Dravida Munnetra Kazhagam (DMK), Respondent 8 herein, while releasing the election manifesto for the Assembly Elections 2006, announced a scheme of free distribution of colour television sets (CTVs) to each and every household which did not possess the same, if the said party/its alliance were elected to power. The Party justified the decision of distribution of free CTVs for the purpose of providing recreation and general knowledge to the household women, more particularly, those living in the rural areas. In pursuance of the same, follow-up actions by way of enlisting the households which did not have a CTV set and door-to-door identification and distribution of application forms were initiated. This Scheme was challenged by one S. Subramaniam Balaji, the appellant herein, by way of filing writ petition before the High Court on the ground that the expenditure to be incurred by the State Government for its implementation out of the State Exchequer is unauthorised, impermissible and ultra vires the constitutional mandates. The appellant herein filed a complaint dated 24-4-2006 to the Election Commission of India seeking initiation of action in respect of the said promise under Section 123 of the Representation of the People Act, 1951 (in short “the RP Act”). The appellant herein also forwarded the complaint to the Chief Election Officer, Tamil Nadu.

3. The DMK and its political allies emerged victorious in the State Assembly Election held in the month of May 2006. In pursuit of fulfilling the promise made in the election manifesto, a policy decision was taken by the then Government to provide one 14" CTV to all eligible families in the State. It was further decided by the Government to implement the Scheme in a phased manner and a provision of Rs 750 crores was made in the budget for implementing the same. A committee was constituted, headed by the then Chief Minister and eight other Legislative Members of various political parties, in order to ensure transparency in the matter of implementation of the Scheme.

4. For implementing the first phase of the Scheme, the work of procurement of around 30,000 CTVs was entrusted to Electronic Corporation of Tamil Nadu Ltd. (ELCOT), a State-owned corporation. The first phase of the Scheme was implemented on 15-9-2006/17-9-2006 by distributing around 30,000 CTVs to the identified families in all the districts of the State of Tamil Nadu.

¹ WP (MD) No. 9013 of 2006, decided on 25-6-2007 (Mad)

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5. Being aggrieved by the implementation of the Scheme, the appellant herein filed another complaint to the Chief Secretary and the Revenue Secretary pointing out the unconstitutionality of the Scheme. He also preferred writ petitions being Nos. 9013 of 2006 and 1071 of 2007 before the Madurai Bench of the High Court of Madras alleging the Scheme a corrupt practice to woo the gullible electorates with an eye on the vote bank. By order dated 25-6-2007¹, the High Court dismissed both the writ petitions filed by the appellant herein holding that the action of the Government in distributing free CTVs cannot be branded as a waste of exchequer. Being aggrieved, the appellant herein has preferred this appeal by way of special leave before this Court.

Transferred Case (C) No. 112 of 2011

6. In the month of February 2011, pursuant to the elections to the Tamil Nadu State Assembly, the ruling party (DMK) announced its manifesto with a volley of free gifts. In the same manner, the opposite party, All India Anna Dravida Munnetra Kazhagam (AIADMK) and its alliance also announced its election manifesto with free gifts to equalise the gifts offered by the DMK Party and promised to distribute free of cost the following items viz. grinders, mixies, electric fans, laptop computers, 4 gm gold thalis, Rs 50,000 cash for women's marriage, greenhouses, 20 kg rice to all ration cardholders even to those above the poverty line and free cattle and sheep, if the said party/its alliance were elected to power during the Tamil Nadu Assembly Elections 2011.

7. The very same Scheme was also challenged by the appellant herein on the ground that such promises by the parties are unauthorised, impermissible and ultra vires the constitutional mandates. The appellant herein also filed a complaint dated 29-3-2011 to the Election Commission of India seeking initiation of action in respect of the said Scheme under Section 123 of the RP Act.

8. The AIADMK and its political allies won the State Assembly Elections held in 2011. In order to fulfil the promise made in the election manifesto, a policy decision was taken by the then Government to distribute the gifts and, pursuant to the same, tenders were floated by the Civil Supplies Department for mixies, grinders, fans, etc. as well as by ELCOT for laptop computers.

9. On 6-6-2011, the appellant herein filed another complaint to the Comptroller and Auditor General of India and the Accountant General of Tamil Nadu (Respondents 3 and 4 therein respectively) pointing out the unconstitutionality of the Scheme and transfer of Consolidated Funds of the State for the same. In the meanwhile, the appellant herein preferred a writ petition being No. 17122 of 2011 before the High Court of Madras alleging the Scheme a corrupt practice and to restrain the Government from in any way proceeding with the procurement, placement of tenders or making free distributions under various schemes introduced to woo the voters. In view of the pendency of SLP (C) No. 21455 of 2008 in this Court relating to the

¹ *S. Subramaniam Balaji v. State of T.N.*, WP (MD) No. 9013 of 2006, decided on 25-6-2007 (Mad)

similar issue, the appellant preferred Transfer Petition (C) No. 947 of 2011 before this Court praying for the transfer of the said writ petition. By order dated 16-9-2011², this Court allowed the said petition and the same has been numbered as TC No. 112 of 2011 and tagged with the abovesaid appeal. a

10. Heard Mr Arvind P. Datar, learned Senior Counsel for the appellant-petitioner, Mr Shekhar Naphade, learned Senior Counsel for the State of Tamil Nadu, Mr P.P. Malhotra, learned Additional Solicitor General for the Union of India and Ms Meenakshi Arora, learned counsel for the Election Commission of India. b

Prayer/Relief sought for

11. When DMK started distribution of CTVs, the appellant-petitioner herein approached the High Court of Judicature of Madras, Bench at Madurai, by way of filing Writ Petition (C) No. 9013 of 2006 with a prayer to issue a writ of mandamus to forbear the respondents therein from incurring any expenditure out of the public exchequer for the purchase and distribution of colour televisions within the State of Tamil Nadu. c

12. After 5 years, when AIADMK was elected to power, pursuant to their election manifesto, they started distributing various freebies, which was also challenged by the very same person — the appellant-petitioner herein by filing a writ petition being No. 17122 of 2011 before the High Court of Judicature of Madras praying for issuance of a writ to declare the free distribution of (i) grinders, (ii) mixies, (iii) electric fans, (iv) laptop computers, (v) 4 gm gold thalis, (vi) free greenhouses, (vii) free 20 kg rice to all ration cardholders even to those above the poverty line and (viii) free cattle and sheep ultra vires the provisions of Articles 14, 41, 162, 266(3) and 282 of the Constitution of India and Section 123(1) of the RP Act. d e

Contentions of the appellant

13. Mr Datar, learned Senior Counsel for the appellant submitted that a "gift", "offer" or "promise" by a candidate or his agent, to induce an elector to vote in his favour would amount to "bribery" under Section 123 of the RP Act. He further pointed out that to couch this offer/promise to give away a gift whose worth is estimable in money and that too from the Consolidated Fund of the State under the head "promise of publication" or "public policy" or "public good" is to defeat the purposes of the above section viz. Section 123(1) of the RP Act. f

2 S. Subramaniam Balaji v. State of T.N., Transfer Petition (C) No. 947 of 2011, order dated 16-9-2011 (SC), wherein it was directed: g

"Heard the learned counsel for the petitioner. Considering the fact that a similar issue is pending in this Court in SLP (C) No. 21455 of 2008 we are of the view that it is desirable to transfer Writ Petition (C) No. 17122 of 2011 titled as 'S. Subramaniam Balaji v. State of T.N.' pending before the High Court of Judicature of Madras to this Court. The transfer petition is allowed accordingly. The Registry of the High Court is directed to forward the entire case file to this Court immediately. List Transferred Case No. ... of 2011 @ TP (C) No. 947 of 2011 along with the abovesaid special leave petition for final disposal on 15-11-2011." h

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14. While elaborating his submissions, Mr Datar raised his objections under the following heads:

a 14.1. Article 282 of the Constitution of India only permits defraying of funds from the Consolidated Fund of the State for “public purpose”;

14.2. The distributions made by the respondent State is violative of Article 14 since there is no reasonable classification;

b 14.3. Promises of free distribution of non-essential commodities in an election manifesto amounts to electoral bribe under Section 123 of the RP Act;

14.4. The Comptroller and Auditor General of India has a duty to examine expenditures even before they are deployed; and

c 14.5. Safeguards must be built into schemes to ensure that the distribution is made for a public purpose and is not misused.

I. Article 282 of the Constitution of India only permits defraying of funds from the Consolidated Fund of the State for “public purpose”

d 15. Regarding the first contention relating to Article 282 of the Constitution of India which only permits use of monies out of the Consolidated Fund of the State for public purpose, it is useful to refer the said Article which reads as under:

“282. *Expenditure defrayable by the Union or a State out of its revenues.*—The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.”

e 16. It is pointed out by Mr Datar that under Article 266(3) of the Constitution, the monies out of the Consolidated Fund of India or the Consolidated Fund of the State can only be appropriated in accordance with law and for the purposes and in the manner provided by the Constitution.

f Under Article 162, the extent of the executive power of the State is limited to the matters with respect to which the legislature of the State has the power to make laws. Likewise, under Article 282, the Union or the States may make grants for “any public purpose”, even if such public purpose is not one with respect to which the State or the Union may make laws. By referring these articles, Mr Datar submitted that monies out of the Consolidated Fund of the State can only be appropriated for the execution of laws made by the State, or for any other “public purpose”.

g 17. It is further pointed out that the State raises funds through taxation which can be used by the State only in discharge of its constitutional functions. The taxpayers’ contribution cannot be used to fund State largesse. While the taxpayer has no right to demand a quid pro quo benefit for the taxes paid, he has a right to expect that the taxes paid will not be gifted to other persons without general public benefit. The main intention of an act done for a public purpose must be the public, and that the act would

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remotely, or in a collateral manner, benefit the local public is not relevant at all.

18. According to Mr Datar, the most important constitutional mandate is that a “public purpose” cannot be the one that results in the creation of private assets. The exceptions that can be made to this overarching principle are the distributions that fulfil an essential need such as food, clothing, shelter, health or education. Even if certain distributions, such as the distribution of televisions might have some public benefit, it would not amount to public purpose since the dominant purpose of such a distribution is only the creation of private assets. Where the purposes of the expenditure are partly public and partly private, the courts in US have held that the entire act must fail (vide *Coates v. Campbell*³).

19. While statutory authorities can confer social or economic benefits on particular sections of the community, their power is limited by the principle that such benefits must not be excessive or unreasonable. As Lord Atkinson stated in *Roberts v. Hopwood*⁴, the State cannot act in furtherance of “eccentric principles of socialistic philanthropy”. In view of the above, a reference was also made to *Bromley London Borough Council v. Greater London Council*⁵ and *R. v. Secy. of State for Foreign and Commonwealth Affairs, ex p World Development Movement Ltd.*⁶

20. In this context, it is pointed out that Article 41 of the Constitution of India states that the State, “within its economic capacity and development” can make effective provision for securing “public assistance” in certain special cases. Article 39(b) states that the State shall endeavour to ensure that the “material resources” of the community are so distributed as best to subserve the “common good”. Both these articles imply that the goal of the Constitution, as evidenced by these directive principles, is to ensure that the State distributes its resources to secure “public assistance” and “common good”, and must not create private assets.

21. It is also pointed out that the Constitutions of 17 States of the US explicitly prohibit the making of private gifts by the Government, and it is recognised even elsewhere in US that the public funds cannot be used to make gifts to private persons.

22. It is further stated that the spending on free distribution must be weighed against the public benefits that ensue from it and only if the public benefits outweigh the same, can the spending be classified as being for a public purpose. Mr Datar asserted that when the literacy rate in the State of Tamil Nadu is around 73% and there are 234 habitations across the State with no school access whatsoever, distribution of free consumer goods to the people having ration cards cannot be justified as “public purpose”.

3 37 Minn 498 : 35 NW 366

4 1925 AC 578 : 1925 All ER Rep 24 (HL)

5 (1983) 1 AC 768 : (1982) 2 WLR 62 : (1982) 1 All ER 129 (HL)

6 (1995) 1 WLR 386 : (1995) 1 All ER 611 (DC)

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23. In addition to CTVs by the previous Government, the following free distributions have been promised by the Government of Tamil Nadu in the Budget Speech for the year 2011-2012:

a *1. 60,000 greenhouses, at a cost of Rs 1.8 lakhs per house, totally amounting to Rs 1080 crores.* The greenhouses are being supplied to persons below the poverty line residing in rural areas. However, they are being supplied to persons who already own 300 sq ft of land.

b *Comment by the appellant:*

The State is creating private assets through this distribution, when it can, instead build houses owned by the State which can be occupied by eligible persons.

2. 4 gm of gold for poor girls for thali, plus Rs 50,000 cash for wedding purposes, totally amounting to Rs 514 crores.

c *Comment by the appellant:*

The State can achieve the same end of subsidising marriages by providing institutions such as mandaps and temples that can be used for marriage. There are no safeguards in any scheme proposed by the State to ensure that Rs 50,000 given in cash to the eligible beneficiaries will be used for the marriage, and not diverted for other purposes.

d *3. Free mixies, grinders and fans for 25 lakh families, totally amounting to Rs 1250 crores.*

Comment by the appellant:

e The reasons given by the State, of alleviating women of 'domestic drudgery' are frivolous and do not amount to a 'public purpose'. Mixies, grinders and fans are luxuries and cannot be freely distributed by the Government. The distribution is being made to a large section of persons without even ascertaining whether the persons already own these goods and whether they require State assistance to acquire these goods.

4. 9.12 lakh laptops to all Class XII students in Tamil Nadu amounting to Rs 912 crores.

f *Comment by the appellant:*

g No 'public purpose' is served by such distribution. The State is duty-bound to create computer labs in schools and colleges and not distribute such expensive articles as gifts. Classification of students eligible for the laptops suffers from overclassification, violative of Article 14 of the Constitution. The classification is also violative of Article 14 as it omitted certain categories of students.

5. Free cattle to poor families in certain rural areas, Rs 56 crores. Distribution of milch cows is being done, according to the State Governments order, to 'boost the productivity of milk in the State'.

Comment by the appellant:

h It is stated that the State does run a dairy, and the constitutionally valid method to boost milk production is to spend on these institutions and not to create private assets under these government orders.

6. Free rice to 1.83 crore families under the PDS system, amounting to Rs 4500 crores.

Comment by the appellant:

Rice is already being distributed in the State at Rs 2 per kg. Under this scheme, rice is being distributed free of cost, as a pure populist measure. As per the State's own submissions, rice is priced at Rs 2 under the Anthyodaya Anna Yojana, which is being followed throughout the country.

24. Mr Datar, learned Senior Counsel for the appellant pointed out that the Constitution of India does not permit free distribution of goods such as colour televisions, mixies, grinders, laptops since these are consumer goods and only benefit the persons to whom they are distributed and not the public at large. Public spending on these goods to the tune of Rs 9000 crores far outweighs any public benefit that might arise from such distributions. When the same ends can be efficiently achieved without the creation of private assets, such as the creation of community computer centres instead of distributing laptops, or setting up of community televisions at the panchayat level resorting to make large-scale free distribution, it clearly violates Articles 162, 266(3) and 282 of the Constitution. It is further pointed out that the fact that CTVs and other schemes of the previous Government were cancelled by the present Government shows that these were not for "public purpose" but only to serve the political objectives of a particular party.

II. The distributions made by the respondent fall foul of Article 14 since there is no reasonable classification

25. The right to equality under Article 14 of the Constitution requires that the State must make a reasonable classification based on intelligible differentia, and such classification must have a nexus with the object of the law. In making free distributions, the State, therefore, must show that it has identified the class of persons to whom such distributions are sought to be made using intelligible differentia, and that such differentia has a rational nexus with the object of the distribution. As held in *Union of India v. International Trading Co.*⁷, Article 14 applies to matters of government policy and such policy or action would be unconstitutional if it fails to satisfy the test of reasonableness.

26. This Court, in *K.T. Moopil Nair v. State of Kerala*⁸, held that a statute can offend Article 14 if it groups together persons who are dissimilar. In that case, a flat tax of Rs 2 per acre was levied on land without ascertaining the income earning potential of such land, which was struck down as unconstitutional.

27. In the case on hand, the colour televisions, mixies and grinders were being distributed to all persons having ration card. While the distribution of

⁷ (2003) 5 SCC 437

⁸ AIR 1961 SC 552

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a these goods is supposedly being made to help people who cannot afford these items, the State has not made any attempt to find out if such persons already own a colour television, a mixie or a grinder. Further, the differentia of a ration card has no rational nexus with the object of free distribution of the items since a ration card does not indicate the income of the family or whether they already own these goods.

b 28. Similarly, in another Scheme, the State has promised to distribute free laptops to all the students studying in the State Board. Again, this classification is arbitrary since there are numerous similarly placed students in the Central Board schools who were being excluded by this Scheme. The Scheme also excludes Commerce, Law and medical college students and violates Article 14 by not providing intelligible differentia having a nexus with such distribution.

c **III. Promises of free distribution of non-essential commodities in election manifesto amounts to an electoral bribe under Section 123 of the RP Act**

d 29. Under Section 123(1)(A) of the RP Act, any "gift, offer or promise" by a candidate or his agent or by any other person, with the object of inducing a person to vote at an election amounts to "bribery", which is a "corrupt practice" under the said section. The key element in this section is that the voter must be influenced to vote in a particular manner. It has been held in *Richardson-Gardner v. Eykyn*⁹ that the making of charitable gifts on an extensive scale would lead to an inference that this was made to influence voters.

e 30. Mr Datar pointed out that the plea that promises in the manifesto do not amount to bribery is completely baseless and finds no support in the plain words of the statute or in decided case laws. The statute very clearly includes a "promise" within its ambit, and an unconstitutional promise clearly falls foul of the language of Section 123 of the RP Act. Such "freebies" are in form part of an election manifesto but in substance is a bribe or inducement under Section 123. If such practices are permitted, then the manifesto does indirectly what a candidate cannot do directly.

f 31. It is further pointed out that the promise of distribution was made at the time of elections and not after, and instead of focusing on basic necessities, it was on free distributions which indicates that the promise of free colour televisions, grinders, mixies, laptops, gold, etc. was only made as an electoral bribe to induce voters.

g 32. Mr Datar further pointed out that the intent of Section 123 of the RP Act is to ensure that no candidate violates the level playing field between the candidates. Therefore, whether such promises are made by the political party or by the candidate himself is irrelevant. The manifesto, where such illegal promises are made, implore the voters to vote for that particular party.

h

IV. *The Comptroller and Auditor General of India has a duty to examine expenditures even before they are deployed*

33. The Comptroller and Auditor General of India is a constitutional functionary appointed under Article 148 of the Constitution. His main role is to audit the income and expenditure of the Government, government bodies and State-run corporations. The extent of his duties is listed out in the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. Section 13 of this Act states that CAG shall audit all the expenditure from the Consolidated Fund of India, and of each State, and ascertain whether the moneys so spent were "legally available for and applicable to the service of purpose to which they have been applied or charged".

34. Section 15 of the Act states that where grants and loans have been given for any specific purpose to any authority or body other than a foreign State or an international organisation, CAG has the duty to scrutinise the procedure by which the loan or grant has been made. The language of the provision suggests that the role of CAG is limited to review. However, this would rob CAG of the power to ensure that large-scale unauthorised spending of public funds, such as these free distributions, does not take place. The section must be given purposive interpretation that would further its intent to ensure that the Government's spending is only on purposes that are legally allowable. The Chancery Division has held in *Kingston Cotton Mill Co. (No. 2), In re*¹⁰ that an auditor is a "watchdog". To perform his role as a watchdog, CAG must be vigilant, watch for any large-scale illegal expenditures, and act upon them immediately.

V. *Safeguards must be built into schemes to ensure that the distribution is made for a public purpose, and is not misused*

35. The Members of Parliament Local Area Development Scheme (MPLADS) was challenged before this Court in *Bhim Singh v. Union of India*¹¹ wherein the Constitution Bench of this Court upheld the scheme on the grounds that there were three levels of safeguards built into the scheme to ensure that the funds given to the Members of Parliament would not be misused. This Court held as under: (SCC p. 578, para 97)

"97. ... (8) The court can strike down a law or scheme only on the basis of its vices or unconstitutionality but not on the basis of its viability. When a regime of accountability is available within the scheme, it is not proper for the court to strike it down, unless it violates any constitutional principle.

(9) In the present Scheme, an accountability regime has been provided. Efforts must be made to make the regime more robust, but in its current form, cannot be struck down as unconstitutional."

10 (1896) 2 Ch 279 (CA)

11 (2010) 5 SCC 538

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a 36. The MPLAD Scheme clearly had prohibitions against spending on the creation of private assets and to make loans. It is pointed out that there is no scheme of accountability in the abovementioned promises for free distributions, hence, the learned Senior Counsel prayed for necessary guidelines for proper utilisation of public funds.

Contentions of the respondents

Contentions of the State of Tamil Nadu

b 37. On the other hand, Mr Shekhar Naphade, learned Senior Counsel for the State of Tamil Nadu while disputing the above claim submitted that the freebies, as promised in the election manifesto, would not come under the head “corrupt practices” and “electoral offences” in terms of the RP Act. He further submitted that in view of the mandates in the directive principles of State policy in Part IV of the Constitution, it is incumbent on the State Government to promote the welfare of the people, who are below the poverty line or unable to come up without their support. In any event, according to the learned Senior Counsel, for every promise formulated in the form of election manifesto, after coming to power, the same were being implemented by framing various schemes/guidelines/eligibility criteria, etc. as well as with the approval of the legislature. Thus, it cannot be construed as a waste of public money or prohibited by any statute or scheme.

c 38. While elaborating his submissions, Mr Shekhar Naphade replied to the contentions made by the appellant under the following heads:

e 38.1. Political parties are not “State”, therefore, not amenable to the writ jurisdiction of the High Court under Article 226 or the writ jurisdiction of the Supreme Court under Article 32 of the Constitution of India or any other provisions of the Constitution. For corrupt practices, the remedy is election petition.

38.2. Non-application of *Vishaka*¹² principle and the difficulties in implementing the directions, if any, that may be issued by this Court.

38.3. Promises of political parties do not constitute a corrupt practice.

f 38.4. The schemes under challenge operate within the parameters of public purpose and Article 14 of the Constitution has no role to play.

g ***I. Political parties are not “State”, therefore, not amenable to the writ jurisdiction of the High Court under Article 226 or the writ jurisdiction of the Hon’ble Supreme Court under Article 32 of the Constitution of India or any other provisions of the Constitution. For corrupt practices, the remedy is an election petition***

h 39. The learned Senior Counsel submitted that a political party is not a statutory corporation. Similarly, a political party is also not a Government. It is also not an instrumentality or agency of the State. None of the parameters laid down by several judgments of this Court for identifying an agency or instrumentality of the State apply to a political party and, therefore, no

12 *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932

political party can be considered as “State” or an agency or instrumentality of the State, hence, no writ can lie against a political party (vide *Federal Bank Ltd. v. Sagar Thomas*¹³). a

40. Further, the learned Senior Counsel put forth that it is the claim of the appellant that the promises like giving colour TVs, mixer-grinders, laptops, etc. constitute a corrupt practice and, therefore, must vitiate an election. If the promise of the above nature is a corrupt practice, then the only remedy for the appellant is to file an election petition under Sections 80, 80-A read with other provisions of the RP Act. Under Section 81, such an election petition must be filed within 45 days from the date of the election. In the petition, the appellant must set out clearly and specifically the corrupt practice that he complains of and also set out as to how the returned candidate or his agent has committed the same or has connived at the same. An election petition is to be tried on evidence and therefore, the writ petition is not a remedy. b

II. Non-application of Vishaka¹² principle and the difficulties in implementing the directions, if any, that may be issued by this Court c

41. It was submitted that Schedule VII List I Entry 72 to the Constitution of India deals with election to Parliament and State Legislative Assemblies. In exercise of this power, Parliament has enacted the RP Act. The Act, as originally enacted, did not contain any provision relating to corrupt practice as contained in Section 123. Section 123 defines and enumerates “corrupt practices” exhaustively. Section 123 came as a result of recommendations of the Select Committee of Parliament on the basis of which the said Act was amended by substituting Chapter I in Part VII of the Act by Act 27 of 1956. The legislature has dealt with the subject of corrupt practice and it is not a case of legislative vacuum. The field of corrupt practice is covered by the provisions of the said Act. Once the legislature has dealt with a particular topic, then the *Vishaka*¹² principle (*Vishaka v. State of Rajasthan*¹²) has no applicability. This Court, in *Vishaka*¹² and *Aruna Ramachandra Shanbaug v. Union of India*¹⁴ and other cases has clearly held that if on a given topic there is no law enacted by a competent legislature, then this Court has power to issue directions under its inherent powers under Articles 142 and 141 of the Constitution and the said directions would operate and bind all concerned till the competent legislature enacts a law on the subject concerned. Whether the present provisions of the said Act are adequate or not is a matter for Parliament and Parliament alone to decide. This Court, in exercise of powers under Articles 141 and 142 or under any other provision of law, cannot issue a direction to include any practice not specified as corrupt practice under the Act as corrupt practice. d e f g

42. Further, the learned Senior Counsel emphasised on the difficulties to implement the guidelines, if any, framed by this Court by referring to

13 (2003) 10 SCC 733

12 *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932

14 (2011) 4 SCC 454 : (2011) 2 SCC (Civ) 280 : (2011) 2 SCC (Cri) 294

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previous cases viz. *Union of India v. Assn. for Democratic Reforms*¹⁵ and *People's Union for Civil Liberties v. Union of India*¹⁶.

a **III. Promises of political parties do not constitute a corrupt practice**

b 43. The learned Senior Counsel submitted that inasmuch as the words mentioned in Section 123 of the Act are clear and unambiguous, the same should be interpreted in the same manner as stated therein. Section 123 of the RP Act is a penal statute and ought to be strictly construed. It is settled principle of law that an allegation of "corrupt practice" must be strictly proved as a criminal charge and the principle of preponderance of probabilities would not apply to corrupt practices.

c 44. In *M.J. Jacob v. A. Narayanan*¹⁷, it has been held by this Court in paras 13 and 15 as under: (SCC pp. 324-25)

d "13. It is well settled that in an election petition for proving an allegation of corrupt practice the standard of proof is like that in a criminal case. In other words, the allegation must be proved beyond reasonable doubt, and if two views are possible then the benefit of doubt should go to the elected candidate vide *Manmohan Kalia v. Yash*¹⁸, vide SCC p. 502, para 7 in which it is stated:

e '7. ... It is now well settled by several authorities of this Court that an allegation of corrupt practice must be proved as strictly as a criminal charge and the principle of preponderance of probabilities would not apply to corrupt practices envisaged by the Act because if this test is not applied a very serious prejudice would be caused to the elected candidate who may be disqualified for a period of six years from fighting any election, which will adversely affect the electoral process.'

* * *

f 15. In *Surinder Singh v. Hardial Singh*¹⁹, vide SCC p. 104, para 23, it was observed:

'23. ... It is thus clear beyond any doubt that for over 20 years the position has been uniformly accepted that charges of corrupt practice are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in criminal trials.' "

g 45. In *Baldev Singh Mann v. Surjit Singh Dhiman*²⁰, this Court observed as under: (SCC pp. 641-42, paras 19 & 20)

"19. ... The law is now well settled that the charge of a corrupt practice in an election petition should be proved almost like the criminal

15 (2002) 5 SCC 294

16 (2003) 4 SCC 399

17 (2009) 14 SCC 318

h 18 (1984) 3 SCC 499

19 (1985) 1 SCC 91

20 (2009) 1 SCC 633

charge. The standard of proof is high and the burden of proof is on the election petitioner. Mere preponderance of probabilities is not enough, as may be the case in a civil dispute. Allegations of corrupt practices should be clear and precise and the charge should be proved to the hilt as in a criminal trial by clear, cogent and credible evidence. a

* * *

21. The Court in a number of cases has held that the charge of corrupt practice is quasi-criminal in character and it has to be proved as a criminal charge and proved in the court. In *Jeet Mohinder Singh case*²¹ the Court observed as under: (SCC p. 410, para 40) b

40. ... (ii) Charge of corrupt practice is quasi-criminal in character. If substantiated it leads not only to the setting aside of the election of the successful candidate, but also of his being disqualified to contest an election for a certain period. It may entail extinction of a person's public life and political career. A trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Two consequences follow. Firstly, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same. Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person charged. The charge shall have to be proved to the hilt, the standard of proof being the same as in a criminal trial.' " c

46. It is further submitted that the manifesto of the political party in question promises to achieve a social order removing economic inequalities, attain a social plane and attempts to reduce the degradations existing in our society where only a certain class of people are elevated and entitled to economic upliftment. The mandate for social and economic transformation requires that material resources or their ownership and control be so distributed as to subserve the common good. f

47. In *Samatha v. State of A.P.*²²; in paras 76 and 79, it has been held as under: (SCC pp. 246 & 248)

"76. Social and economic democracy is the foundation on which political democracy would be a way of life in the Indian polity. Law as a social engineering is to create just social order removing inequalities in social and economic life, socio-economic disabilities with which poor people are languishing by providing positive opportunities and facilities to individuals and groups of people. Dr B.R. Ambedkar, in his closing speech in the Constituent Assembly on 25-11-1949, had lucidly elucidated thus: g

21 *Jeet Mohinder Singh v. Harinder Singh Jassi*, (1999) 9 SCC 386

22 (1997) 8 SCC 191

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a '... What does social democracy mean? It means a way of life which recognises liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in Indian society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On 26-1-1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognising the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up.'

c (Vide B. Shiva Rao's *The Framing of India's Constitution: Select Documents*, Vol. IV, pp. 944-45.)

f * * *

g 79. It is necessary to consider at this juncture the meaning of the word 'socialism' envisaged in the Preamble of the Constitution. Establishment of the egalitarian social order through rule of law is the basic structure of the Constitution. The fundamental rights and the directive principles are the means, as two wheels of the chariot, to achieve the above object of democratic socialism. The word 'socialist' used in the Preamble must be read from the goals Articles 14, 15, 16, 17, 21, 23, 38, 39, 46 and all other cognate articles seek to establish i.e. to reduce inequalities in income and status and to provide equality of opportunity and facilities. Social justice enjoins the Court to uphold the Government's endeavour to remove economic inequalities, to provide h decent standard of living to the poor and to protect the interests of the

weaker sections of the society so as to assimilate all the sections of the society in a secular integrated socialist Bharat with dignity of person and equality of status to all." a

48. In *Bhim Singh*¹¹, a Constitution Bench of this Court observed as under: (SCC pp. 564-65 & 577, paras 58 & 95-96)

"58. The above analysis shows that Article 282 can be the source of power for emergent transfer of funds, like the MPLAD Scheme. Even otherwise, the MPLAD Scheme is voted upon and sanctioned by Parliament every year as a scheme for community development. We have already held that the scheme of the Constitution of India is that the power of the Union or State Legislature is not limited to the legislative powers to incur expenditure only in respect of powers conferred upon it under the Seventh Schedule, but it can incur expenditure on any purpose not included within its legislative powers. However, the said purpose must be 'public purpose'. Judicial interference is permissible when the action of the Government is unconstitutional and not when such action is not wise or that the extent of expenditure is not for the good of the State. We are of the view that all such questions must be debated and decided in the legislature and not in court. b

* * *

95. This argument is liable to be rejected as it is not based on any scientific analysis or empirical data. We also find this argument a half-hearted attempt to contest the constitutionality of the Scheme. MPLADS makes funds available to the sitting MPs for developmental work. If the MP utilises the funds properly, it would result in his better performance. If that leads to people voting for the incumbent candidate, it certainly does not violate any principle of free and fair elections. c

96. As we have already noted, MPs are permitted to recommend specific kinds of works for the welfare of the people i.e. which relate to development and building of durable community assets (as provided by Clause 1.3 of the Guidelines). These works are to be conducted after approval of relevant authorities. In such circumstances, it cannot be claimed that these works amount to an unfair advantage or corrupt practices within the meaning of the Representation of the People Act, 1951. Of course such spending is subject to the above Act and the regulations of the Election Commission." d

IV. *The schemes under challenge operate within the parameters of public purpose and Article 14 of the Constitution has no role to play* e

49. The argument of the appellant that giving of colour TVs, laptops, mixer-grinders, etc. on the basis of the manifesto of the party that forms the Government is not an expense for a public purpose. This argument is devoid of any merit according to the learned Senior Counsel for the State of Tamil Nadu. It was submitted that the concept of State largesse is essentially linked f

¹¹ *Bhim Singh v. Union of India*, (2010) 5 SCC 538 g

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a to the directive principles of State policy. Whether the State should frame a scheme, which directly gives benefits to improve the living standards or indirectly by increasing the means of livelihood, is for the State to decide. The Preamble to the Constitution recognises socialism as one of the pillars of Indian democracy. The Preamble has been held to be a part of the Constitution by a catena of judgments including *Kesavananda Bharati v. State of Kerala*²³. The State largesse is directly linked to the principle of socialism and, therefore, it is too late in the day for anybody to contend that

b the Government giving colour TVs, laptops, mixer-grinders, etc. that too to the eligible persons as prescribed by way of government order is not a public purpose. For the same reasons, it must be held that it is a part of government function to take measures in connection with the government largesse.

c 50. It is further submitted that the political parties in their election manifesto promised to raise the standard of living of the people and to formulate a scheme/policy for the upliftment of the poor. The distribution of basic necessities in today's time like TVs, mixers, fans and laptops to eligible persons fixing parameters, can by no stretch of imagination be said to be State largesse. A three-Judge Bench of this Court in *Deepak Theatre v. State of Punjab*²⁴, held as under: (SCC p. 689, para 5)

d "5. Witnessing a motion picture has become an amusement to every person; a reliever to the weary and fatigued; a reveller to the pleasure seeker; an imparter of education and enlightenment enlivening to news and current events; disseminator of scientific knowledge; perpetuator of cultural and spiritual heritage, to the teeming illiterate majority of

e people to secure and protect as effectively as it may a social order as per directives of the State policy enjoined under Article 38 of the Constitution. Mass media, through motion picture has thus become the vehicle of coverage to disseminate cultural heritage, knowledge, etc. The passage of time made manifest this growing imperative and the consequential need to provide easy access to all sections of the society to

f seek admission into theatre as per his paying capacity."

g 51. The grievance of the appellant is that the public resources are being used for the benefit of individuals. According to the learned Senior Counsel for the respondent, this argument is completely misconceived. It was submitted that in a catena of cases, this Court has held that while judging the constitutional validity of any law or any State action, the directive principles of State policy can be taken into account. Article 38 contemplates that the State shall strive to promote the welfare of the people. Article 39 contemplates that the State shall take actions to provide adequate means of livelihood and for distribution of material resources of the community on an egalitarian principle. Article 41 contemplates that the State shall render

h
23 (1973) 4 SCC 225
24 1992 Supp (1) SCC 684

assistance to citizens in certain circumstances and also in cases of undeserved want. Article 43 directs that the State shall "endeavour to secure to all workers, by suitable legislation or economic organisation or any other way to ensure decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workers". Similarly, Article 45 contemplates that the State shall endeavour to provide early childhood care and education to all children below the age of 6 years and Article 46 says that the State shall promote educational and economic interests of the weaker sections of the people. Article 47 contemplates that the State shall take steps to raise the level of nutrition and the standard of living. The concept of livelihood and standard of living are bound to change in their content from time to time. This Court has dealt with the concept of minimum wage, the fair wage and the living wage while dealing with industrial disputes and has noted that these concepts are bound to change from time to time. What was once considered to be a luxury can become a necessity. The concept of livelihood is no longer confined to a bare physical survival in terms of food, clothing and shelter, but also now must necessarily include some provision for medicine, transport, education, recreation, etc. How to implement the directive principles of State policy is a matter within the domain of the Government, hence, the State distributing largesse in the form of distribution of colour TVs, laptops, mixer-grinders, etc. to eligible and deserving persons is directly related to the directive principles of State policy.

52. The other facet of the argument is that this largesse is distributed irrespective of the income level and, therefore, violative of Article 14 as unequals are treated equally. The learned Senior Counsel submitted that this principle of not to treat unequals as equals has no applicability as far as State largesse is concerned. This principle applies only where the law or the State action imposes some burden on the citizen either financial or otherwise.

53. Article 14 essentially contemplates equality in its absolute sense and classification can be taken recourse to if the State is unable or the State policy does not contemplate the same benefit or treatment to people who are not similarly situated. It is the philosophical sense decoded by this Court in the first part of Article 14 which is equal treatment for all without any distinction. This is the concept of formal equality which is not necessarily an antithesis to Article 14. The concept of equality based on classification is proportional equality. The formal equality applies when the State is in a position to frame a scheme or law which gives the same benefit to all without any distinction and the proportional equality applies when the State frames a law or a scheme which gives benefit only to people who form a distinct class. It is in the case of proportional equality that the principles of intelligible differentia having reasonable nexus to the object of legislation gets attracted. Article 14 does not prohibit formal equality. The directive principles of State policy save proportional equality from falling foul with formal equality contemplated by Article 14.

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Contentions of the Union of India, CAG and the Election Commission

a 54. Mr P.P. Malhotra, learned ASG also reiterated the stand taken by the learned Senior Counsel for the State. It is the stand of CAG that they have no role at this juncture, particularly, with reference to the prayer sought for. Ms Meenakshi Arora, learned counsel for the Election Commission of India submitted that with the existing provisions in the RP Act, the Election Commission is performing its duties, however, if this Court frames any further guidelines, they are ready to implement the same.

b *Points for consideration*

55. We have carefully considered the rival contentions, perused the relevant provisions, various government orders, guidelines and details furnished in the counter-affidavit. The following points arise for consideration:

c 55.1. (i) Whether the promises made by the political parties in the election manifesto would amount to "corrupt practices" as per Section 123 of the RP Act?

55.2. (ii) Whether the schemes under challenge are within the ambit of public purpose and if yes, is it violative of Article 14?

d 55.3. (iii) Whether this Court has inherent power to issue guidelines by application of *Vishaka*¹² principle?

55.4. (iv) Whether the Comptroller and Auditor General of India has a duty to examine expenditures even before they are deployed?

e 55.5. (v) Whether the writ jurisdiction will lie against a political party?

Discussion

Issue 1: Whether the promises made by the political parties in their election manifestos would amount to "corrupt practices" as per Section 123 of the Representation of the People Act, 1951?

f 56. Before going into the acceptability or merits of the claim of the appellant and the stand of the respondents, it is desirable to reproduce certain provisions of the RP Act. Part VII of the RP Act deals with "corrupt practices" and "electoral offences" which was brought into force with effect from 28-8-1956. Chapter I of Part VII deals with "corrupt practices". Section 123 is the only section relevant for our purpose which reads thus:

g "123. *Corrupt practices.*—The following shall be deemed to be corrupt practices for the purposes of this Act—

(1) 'Bribery', that is to say—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

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¹² *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to— a

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting; b

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward— b

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature. c

Explanation.—For the purposes of this clause the term ‘gratification’ is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in Section 78. d

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right: e

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or f

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause; g

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain h

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a from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

b Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.

c (3-A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

d (3-B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

e *Explanation.*—For the purposes of this clause, 'sati' and 'glorification' in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987.

f (4) The publication by a candidate or his agent or by any other person, with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

g (5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under Section 25 or a place fixed under sub-section (1) of Section 29 for the poll:

h Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

h Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or

place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.—In this clause, the expression ‘vehicle’ means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise. a

(6) The incurring or authorising of expenditure in contravention of Section 77.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate’s election, from any person whether or not in the service of the Government and belonging to any of the following classes, namely— b

(a) gazetted officers;

(b) stipendiary Judges and Magistrates;

(c) members of the armed forces of the Union;

(d) members of the police forces;

(e) excise officers;

(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, desh mukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and d

(g) such other class of persons in the service of the Government as may be prescribed: e

(h) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections:

Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason to the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate’s election. f

(8) Booth capturing by a candidate or his agent or other person. g

Explanation.—(1) In this section the expression ‘agent’ includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate’s election if he acts as an election agent of that candidate. h

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a (3) For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union Territory) or of a State Government shall be conclusive proof—

(i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and

b (ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service such person ceased to be in such service with effect from the said date.

c (4) For the purposes of clause (8), 'booth capturing' shall have the same meaning as in Section 135-A."

d 57. Keeping the parameters fixed in the above section, we have to analyse the claim of both the parties hereunder. A perusal of clauses (1) to (8) of Section 123 makes it clear that it speaks only about a *candidate* or *his agent* or *any other person*. There is no word about political parties. Taking note of the conditions mandated in those sub-sections, let us test the respective stand of both the parties.

e 58. For deciding the issue whether the contents of the political manifesto would constitute a corrupt practice under Section 123 of the RP Act, it is imperative to refer to the intention of the legislature behind incorporating the respective section. The purpose of incorporating Section 123 of the RP Act is to ensure that elections are held in a free and fair manner.

59. The object of provisions relating to corrupt practices was elucidated by this Court in *Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh*²⁵ as follows: (SCC p. 605, para 13)

f "13. ... Fair and free elections are essential requisites to maintain the purity of elections and to sustain the faith of the people in election itself in a democratic set-up. Clean, efficient and benevolent administration are the essential features of good governance which in turn depends upon persons of competency and good character. Hence those indulging in corrupt practices at an election cannot be spared and allowed to pollute the election process and this purpose is sought to be achieved by these provisions contained in the RP Act."

g 60. With this background, let us analyse the contention of the appellant. The gist of the appellant's argument is that promises of freebies such as colour TVs, mixer-grinders, laptops, etc. are in form part of an election manifesto of a political party but in substance is a bribe or inducement under Section 123. Thus, it is the stand of the appellant that the promise of this

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nature indeed induces the voters thereby affecting the level playing field between the candidates, which in turn disrupts free and fair election. Therefore, the appellants suggested for construing the promises made in the election manifesto as a corrupt practice under Section 123 of the RP Act. He mainly relied on the principle that one cannot do indirectly what one cannot do directly. a

61. As appealing this argument may sound good, the implementation of this suggestion becomes difficult on more than one count:

61.1. Firstly, if we are to declare that every kind of promises made in the election manifesto is a corrupt practice, this will be flawed. Since all promises made in the election manifesto are not necessarily promising freebies per se, for instance, the election manifesto of a political party promising to develop a particular locality if they come into power, or promising cent per cent employment for all young graduates, or such other acts. Therefore, it will be misleading to construe that all promises in the election manifesto would amount to corrupt practice. Likewise, it is not within the domain of this Court to legislate what kind of promises can or cannot be made in the election manifesto. b
c

61.2. Secondly, the manifesto of a political party is a statement of its policy. The question of implementing the manifesto arises only if the political party forms a Government. It is the promise of a future Government. It is not a promise of an individual candidate. Section 123 and other relevant provisions, upon their true construction, contemplate corrupt practice by individual candidate or his agent. Moreover, such corrupt practice is directly linked to his own election irrespective of the question whether his party forms a Government or not. The provisions of the RP Act clearly draw a distinction between an individual candidate put up by a political party and the political party as such. The provisions of the said Act prohibit an individual candidate from resorting to promises, which constitute a corrupt practice within the meaning of Section 123 of the RP Act. The provisions of the said Act place no fetter on the power of the political parties to make promises in the election manifesto. d
e

61.3. Thirdly, the provisions relating to corrupt practice are penal in nature and, therefore, the rule of strict interpretation must apply and hence, promises by a political party cannot constitute a corrupt practice on the part of the political party as the political party is not within the sweep of the provisions relating to corrupt practices. As the rule of strict interpretation applies, there is no scope for applying provisions relating to corrupt practice contained in the said Act to the manifesto of a political party. f
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61.4. Lastly, it is a settled law that the courts cannot issue a direction for the purpose of laying down a new norm for characterising any practice as corrupt practice. Such directions would amount to amending provisions of the said Act. The power to make law exclusively vests in the Union Parliament and as long as the field is covered by parliamentary enactments, no directions can be issued as sought by the appellant. As an outcome, we are h

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not inclined to hold the promises made by the political parties in their election manifesto as corrupt practice under Section 123 of the RP Act.

a *Issue 2: Whether the schemes under challenge are within the ambit of public purpose and if yes, is it violative of Article 14?*

62. The concept of State largesse is essentially linked to the directive principles of State policy. Whether the State should frame a scheme, which directly gives benefits to improve the living standards or indirectly by increasing the means of livelihood, is for the State to decide and the role of the court is very limited in this regard.

b 63. It is not in dispute that television is a widely used telecommunication medium for receiving moving images. Today, television has a lot of positive effects and influences on our society and culture. Television gives helpful information and it is not an equipment aimed for entertainment alone. The State Government has also asserted that the purpose of distributing colour television sets is not restricted for providing recreation but to provide general knowledge to the people, more particularly, to the household women.

c 64. On behalf of the State of Tamil Nadu, it was explained that in order to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which social and economic justice can be achieved, the Government of Tamil Nadu has announced certain welfare schemes for raising the standard of living of the people by providing assistance to the deserving ones as envisaged under the directive principles of the Indian Constitution. In order to implement those schemes effectively, the Government of Tamil Nadu had exclusively formed a Special Programme Implementation Department. The guidelines for each scheme were framed to identify the beneficiaries and mode of distribution.

d 65. It is pointed out by the State that the Government has issued necessary orders for the following schemes:

- e
- (i) Marriage assistance scheme;
 - (ii) Distribution of milch animals and goats;
 - (iii) Solar-powered greenhouse scheme;
 - (iv) Laptop computer to students;
 - (v) Free rice scheme; and
 - (vi) Free distribution of electric fans, mixies and grinders to women.

f 66. The schemes are as under:

g *"I. Marriage Assistance Scheme*

h (1) The economic status of a family plays a vital role in enabling the poor parents who have daughters to fulfil the social obligation of marriage. Various marriage assistance schemes being implemented by the Government of Tamil Nadu are in vogue to benefit the poor and the downtrodden for whom the marriage ceremony of their daughters imposes a heavy burden. There are at present 5 marriage assistance schemes and they are as follows:

(i) Moovalur Ramamirtham Ammaiyar Ninaivu Marriage Assistance Scheme for poor girls

(ii) Dr Dharmambal Ammaiyar Ninaivu Widow Remarriage Assistance Scheme to encourage the remarriage of young widows a

(iii) E.V.R. Maniammaiyar Ninaivu Marriage Assistance Scheme for daughters of poor widows

(iv) Annai Theresa Ninaivu Marriage Assistance Scheme for Orphan Girls

(v) Dr Muthulakshmi Reddy Minaivu Inter-Caste Marriage Assistance Scheme b

(2) With the extraordinary rise in the price of gold, poor families and the abovementioned vulnerable categories find it difficult to buy even a small quantity of gold for the traditional 'thirumangalyam' (mangal sutra). To mitigate the hardship of the poor families and vulnerable sections, the State Government has ordered the provision of 4 gm (½ sovereign) 22 carat gold coin for making the 'thirumangalyam' in addition to the already existing financial assistance of Rs 25,000. Moreover, with the aim of encouraging higher education among women, the present Government has also introduced a new scheme of providing financial assistance of Rs 50,000 for graduates/diploma-holders along with the four gram 22 carat gold coin for making the 'thirumangalyam'. c

(3) The guidelines for sanction of assistance under the various marriage assistance scheme include that the annual income of the family should not exceed Rs 24,000 and the minimum age-limit for the girls should be 18 years. The detailed guidelines have been issued in GOMs No. 49, SW&NMP Dept. dated 26-7-2011. The details pertaining to each scheme are as follows: d

(A) *Moovalur Ramamirtham Ammaiyar Ninaivu Marriage Assistance Scheme* e

1.	Objectives of the Scheme	To help the poor parents financially in getting their daughters married and to promote the educational status of poor girls. f
2.	Assistance provided and educational qualification	Rs 25,000 along with 4 gm gold coin (for those who have studied up to 10th standard, Vth standard for Scheduled Tribes) g
3.	To whom the benefit is due	Girls belonging to poor families
4.	When the benefit is due	Before marriage
5.	Eligibility criteria	Bride should have completed 18 years of age
	(a) Age-limit	
	(b) Income limit	Not exceeding Rs 24,000 per annum
	(c) Other criteria	Only one girl from a family is eligible h

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(B) *Dr Dharmambal Ammaiyar Ninaivu Widow Remarriage Assistance Scheme*

a	1.	Objectives of the Scheme	To encourage widow remarriage and rehabilitate widows
	2.	Assistance provided and educational qualification	Rs 25,000 along with 4 gm gold coin (for those who have studied up to 10th standard, Vth standard, for Scheduled Tribes) Rs 50,000 along with 4 gm gold coin (for graduate and diploma-holders)
b	3.	To whom the benefit is due	To the couple
	4.	When the benefit is due	Within 6 months from the date of marriage
c	5.	Eligibility criteria	Minimum age of 20 years for the bride and below 40 years for the bridegroom.
		(a) Age-limit	
		(b) Income limit	No income ceiling.

(C) *E.V.R. Maniammaiyar Ninaivu Marriage Scheme for daughters of poor widows*

d	1.	Objectives of the Scheme	To help the poor widows by providing financial assistance for the marriage of their daughters
	2.	Assistance provided and educational qualification	Rs 25,000 along with 4 gm gold coin (for those who have studied up to 10th standard, Vth standard, for Scheduled Tribes) Rs 50,000 along with 4 gm gold coin (for graduate and diploma-holders)
e	3.	To whom the benefit is due	Daughter of poor widow
	4.	When the benefit is due	Before marriage
f	5.	Eligibility criteria	18 years
		(a) Age-limit	
		(b) Income limit	Not exceeding Rs 24,000 per annum
		(c) Other criteria	Only one daughter of a poor widow is eligible

(D) *Annai Theresa Ninaivu Marriage Assistance Scheme for Orphan Girls*

g	1.	Objectives of the Scheme	To help the orphan girls financially for their marriage
	2.	Assistance provided and educational qualification	Rs 25,000 along with 4 gm gold coin (for those who have studied up to 10th standard, Vth standard, for Scheduled Tribes) Rs 50,000 along with 4 gm gold coin (for graduate and diploma-holders)
h			

3.	To whom the benefit is due	Orphan girls	
4.	When the benefit is due	Before marriage	
5.	<i>Eligibility criteria</i>	18 years	a
	(a) Age-limit		
	(b) Income limit	Not exceeding Rs 24,000 per annum	

(E) *Dr Muthulakshmi Reddy Ninaiyu Inter-Caste Marriage Assistance Scheme*

1.	Objectives of the Scheme	To abolish caste and community feelings based on birth and wipe out the evils of untouchability by encouraging inter-caste marriage	b
2.	Assistance provided and educational qualification	Rs 25,000 (Rs 15,000 DD/cheque, Rs 10,000 NSC Certificate) along with 4 gm gold coin (for those who have studied up to 10th standard, Vth standard, for Scheduled Tribes) Rs 50,000 (Rs 30,000 DD/cheque, Rs 20,000 NSC Certificate) along with 4 gm gold coin (for graduate and diploma-holders)	c d
3.	To whom the benefit is due	Inter-caste married couple	
4.	When the benefit is due	Considering the special constraints in such marriages the facility will be extended up to two years.	
5.	<i>Eligibility criteria</i>	Minimum 18 years	e
	(a) Age-limit		
	(b) Income limit	No income limit	

II. *Distribution of milch animals and goats*

(i) It is highlighted by the State that with the growing population and shrinking land resources, the nutritional requirement of the State cannot be met by increasing the agricultural production alone. Moreover vagaries of monsoon, availability of water have added to the pressure on increasing the agricultural production. To compensate this, it is necessary to improve the animal production.

(ii) As per the Indian Council for Agriculture Research (ICAR) norms, the per capita requirement of milk and meat per individual per day is 260 gm per day and 15 gm per day respectively. At present, the per capita availability of milk and meat in Tamil Nadu is below the recommended requirement. Hence, it is the need of the hour to increase the milk and meat production in the State to the State's human population requirements. Moreover, still a large population in the State live below the poverty line.

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a (iii) Hence, it has been proposed to improve the standard of living by providing the needy poor with a milch cow (to 60,000 families) and sheep/goats to the poorest of the poor (7 lakh families) spread across the State. The main aim of the above schemes will be to improve the standard of living of the poorest of the poor.

b (iv) Under the scheme of free distribution of milch cows, it has been envisaged to distribute milch cows to the poor people selected by the Grama Sabha based on norms in such villages/districts which do not have adequate availability of milk. Likewise, the poorest of the poor living in the rural areas will be identified democratically by the Grama Sabha and will be given 4 sheep/goats in order to sustain their livelihood by rearing these sheep/goats.

A. *The scheme for distribution of 60,000 lactating cows free of cost in rural village panchayats*

c (i) The Government of Tamil Nadu have planned to launch a scheme to distribute 60,000 free milch cows to the poor beneficiaries in the rural areas in the next 5 years in order to give boost to the milk productivity of the State. This scheme will be called '*Scheme for free distribution of milch cows*'.

d 2. *Selection of villages for the Scheme*

(i) The Commissioner of Animal Husbandry and Veterinary Services (CA&VS) will select the village panchayats to be taken for implementation during each of the 5 years in such a way that in a year approximately 12,000 beneficiaries are distributed free milch cows in order to complete the distribution of 60,000 milch cows in 5 years.

e (ii) The free milch cows will be distributed to the poor beneficiaries on a priority basis in such districts that have lesser number of cooperative societies than the total number of revenue villages. In such districts, the distribution will be undertaken in those village panchayats where there are no Primary Milk Cooperative Societies at present. Consequent upon the distribution of the cows, action will be taken to form Primary Cooperative Societies of the beneficiaries in these villages and render the beneficiaries necessary hand-holding assistance by the Dairy Development Department. The cooperative network has the following advantages for the beneficiaries:

(a) Availability of immediate opportunity of sale of milk through the Milk Cooperative Society at good prices.

g (b) Availability of breeding services as well as veterinary care at the doorsteps through the Society as well as Milk Union.

(c) Opportunity to tap the benefits of various Central/State funded schemes meant for the cooperative sector.

h (iii) Out of the villages to be selected within the districts concerned, the smaller village panchayats will be prioritised by the Commissioner of Animal Husbandry and Veterinary Services for the implementation of the

Scheme since it will be easier to form the primary milk societies of smaller and cohesive units. Further, the Village Panchayats to be taken up each year will be grouped in appropriate geographical clusters as to facilitate the economical collection of milk. a

3. Breed of milch cows to be procured

(i) The breeding policy of the State envisages rearing of the cross-bred jersey cows in the plains and cross-bred Holstein-Friesian cows in the hilly areas of the State and the cross-bred cows yield, on an average, 2.5 times the milk yield of indigenous cows. It is, hence, proposed to supply cross-bred cows as per the breeding policy of the State. Further, in most of the cases, farmers prefer rearing of cows as compared to buffaloes. Hence, it is proposed to distribute only cows in this Scheme. Amongst the cross-bred cows too, it is proposed to supply lactating cows that are in their first/second lactation so as to ensure a continuous production for next five lactations. The age of the animal should not be more than 5 years. b
c

4. Identification of beneficiaries

(i) The free milch cows will be distributed at the rate of one cow per eligible household. In order to empower the women, it has been decided that the actual beneficiary will be the woman of the household. In case there are any transgender residing in the village panchayat, who are otherwise eligible as per the criteria given below, they will also be considered to be eligible for the Scheme. d

(ii) *Criteria for eligibility:* The beneficiaries should satisfy the following criteria:

- Women headed households are to be given priority, (widows, destitutes and the disabled women to be given priority within this group). e
- Are below 60 years of age.
- Do not own land over 1 acre in their own name or family member's name (however, owning some land is preferable, since it will enable production of green fodder in own land). f
- Do not own any cows/buffaloes at present.
- Are not employees of Central/State Government or any organisation/cooperative or member of any local body (nor should their spouse or father/mother/parents-in-law/son/daughter/son-in-law/daughter-in-law be so). g
- Have not benefited from the free goats/sheep scheme of the Government.
- Should be permanent resident of the village panchayat.
- At least 30% beneficiaries from the village panchayat should necessarily belong to SC/ST (SC 29% and ST 1%) communities. h

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a (iii) In order to form a viable and successful procurement of milk by the Primary Milk Cooperative Societies, it is preferable that at least 50 members within a village panchayat should pour the milk to the Milk Cooperative Society. Hence, ordinarily around 50 beneficiaries should be provided with cows in each of the selected village panchayats.

b (iv) In the district, the District Collector will be overall in-charge of the process of identification of beneficiaries. The Regional Joint Director (Animal Husbandry) (RJAD), Project Officer (Mahalir Thittam) and Assistant Director (Panchayats) will assist him in this regard. The District Collector will form a village level committee consisting of (i) Village Panchayat President, (ii) Vice-President, (iii) the seniormost Ward member (by age) representing SC/ST community, (iv) the panchayat level federation (PLF) coordinator, (v) an active SHG representative, (vi) the Veterinary Assistant Surgeon (VAS) of the area and (vii) the Deputy, Block Development Officer (ADW) to identify and shortlist the list of beneficiaries as per the norms specified. The District Collector should also ensure that necessary support is rendered to the committee by the Village Panchayat Assistant concerned. The purpose of adding the Veterinary Assistant Surgeon and Deputy Block Development Officer is to ensure that the shortlisted beneficiaries are conforming to the prescribed norms.

c (v) After constituting the village level committee for the selected village panchayats concerned, the District Collector should arrange to convene a meeting of all the members concerned and in that meeting, the details of the Scheme and the eligibility conditions are to be explained in detail. Since, the number of village panchayats per district will be ordinarily only about 10 per district per year, the District Collector should himself convene this meeting and convey the details.

d (vi) The District Collector should, thereafter, fix a special meeting of the Grama Sabha in the village panchayat concerned to inform the details of the Scheme to the villagers. The Veterinary Assistant Surgeon and Deputy Block Development Officer (ADW) will explain the salient features of the Scheme and the eligibility details of the beneficiaries in the meeting. Applications for the free milch cows will be sought for in this special Gram Sabha meeting from the interested beneficiaries.

e (vii) A period of one week will also be given for further receipt of applications. The applications can be given to any of the village level committee members or directly to the village panchayat. Thereafter, the Veterinary Assistant Surgeon and Deputy Block Development Officer (ADW) will arrange a meeting of the village level committee in the office of the village panchayat to scrutinise and list out the names of all the eligible beneficiaries for the Scheme.

f (viii) The list prepared should also be got verified by the Veterinary Assistant Surgeon and Deputy Block Development Officer (ADW) with the Village Administrative Officer concerned, with regard to the land

g

h

ownership details and the community details. (No certificate is however to be insisted upon and the scrutiny of the village level committee and subsequently the Gram Sabha will be considered to be final.) Only after ensuring the eligibility of the proposed beneficiaries, the list will be approved by the village level committee. a

(ix) The finalised list should be placed before the Gram Sabha for approval. The Gram Sabha should again ensure that 30% of the beneficiaries belong to SC/ST communities.

(x) The District Collector should also arrange to send the Veterinary Assistant Surgeon/Deputy Block Development Officer or another official of the rank of Deputy Block Development Officer (in case the Deputy Block Development Officer is unable to attend) to participate in the Gram Sabha meeting and facilitate the discussion and finalisation of the beneficiaries list. b

(xi) The list finalised by the Gram Sabha will be displayed in the village panchayat noticeboard and other prominent places in the village panchayat. c

B. Scheme for free distribution of goats/sheep to the poorest of the poor

The Government of Tamil Nadu have proposed to launch a 'Scheme for free distribution of Goats/Sheep' for the poorest of the poor in the rural areas in order to enhance their standard of living. d

2. Implementation of the Scheme

(i) The goats/sheep can be procured within the State and also from outside the State. However, the procurement of goats/sheep in larger numbers from the other States is not preferable since this category of animals (also called 'small ruminants' in veterinary terminology) are fragile or prone to diseases when transported en masse from long distances and different climatic zones. Hence, unlike the Scheme for procurement of free milch cows wherein cows only from other States are proposed to be procured, it has been decided to procure goats/sheep predominantly from the local market shandies available within the State in the proximity of the beneficiaries. If good quality animals are brought and supplied by the breeders in the village itself, the supply of goats/sheep through such breeders will be permitted. e

(ii) It is presumed that about 6-7 lakh goats/sheep can be procured from the shandies within the State or from the neighbouring State shandies without causing shortage of availability of goats/sheep for meat purpose and without causing impact on the price of goats/sheep in the area. f

(iii) In view of the availability of about 6-7 lakh goats/sheep in a year, the number of families to be assisted in each year will be 1.5 lakhs and in the current year, approximately one lakh families can be assisted since the first quarter of the year is already over. The Gram Sabha will be utilised to identify the poorest of the poor beneficiaries within each village. g

3. *Eligibility norms*

a The beneficiaries will be the poorest of the poor families living in village panchayats (rural areas) who are identified by the village level committee as per the norms and whose name is approved by the Gram Sabha as the poorest of the poor in the village.

b The free goats/sheep will be distributed at the rate of 4 goats/sheep per household. In order to empower the women, it has been decided that the actual beneficiary will be the woman of the household. In case there are any transgender residing in the village panchayat, who are otherwise eligible as per the criteria given below, they will also be considered to be eligible for the Scheme.

The beneficiaries under this Scheme should satisfy the following eligibility criteria:

- c
- Must be the landless agricultural labourers.
 - Should be a permanent resident of the village panchayat.
 - The beneficiary household should have at least one member between the age of 18 and 60 to effectively rear the goats/sheep.
 - Should not own any cow/goat/sheep at present.
- d
- Should not be an employee of Central/State Government or any organisation/cooperative or member of any local body (nor should their spouse or father/mother/parents-in-law/son/daughter/son-in-law/daughter-in-law be so).
 - Should not have benefited from the free milch cows distribution scheme of the Government.

e (2) *At least 30% beneficiaries from the village panchayat should necessarily belong to SC/ST (SC 29% and ST 1%) community*

f (i) The target number of beneficiaries for each district will be decided by the Commissioner of Animal Husbandry and Veterinary Services (CAH&VS) based on the strength of the rural population of the district. The village panchayat as well as the block target within the district will also be based on the proportionate rural population.

g (ii) Within each district, the village panchayats will be selected in such a manner that approximately one-fifth of the beneficiaries will be covered in each block in a year and the beneficiaries of a particular village panchayat will be fully covered within the year itself. The Commissioner of Animal Husbandry and Veterinary Services will work out the detailed action plan in this regard and convey to the District Collectors for implementation. In case of difficulties in implementation of the Scheme in some of the village panchayats having urbanised characters, the District Collector will, in consultation with the Commissioner of Animal Husbandry and Veterinary Services, reallocate the surplus target to other deserving village panchayats.

h (iii) In the district, the District Collector will be the overall in-charge of the process of identification of beneficiaries. The Regional Joint

Director (Animal Husbandry) (RJAD), Project Officer (Mahalir Thittam) and Assistant Director (Panchayats) will assist him in this regard. The District Collector will form a village level committee consisting of (i) Village Panchayat President, (ii) Vice-President, (iii) the seniormost Ward member (by age) representing SC/ST community, (iv) the panchayat level federation (PLF) coordinator (v) an active SHG representative, (vi) the Veterinary Assistant Surgeon (VAS) of the area and (vii) the Deputy Block Development Officer (ADW) to identify and shortlist the list of beneficiaries as per the norms specified. The District Collector should also ensure that necessary support is rendered to the committee by the Village Panchayat Assistant concerned. The purpose of adding the VAS and Deputy BDO (ADW) is to ensure that the shortlisted beneficiaries are conforming to the prescribed norms.

(iv) After constituting the village level committee for the selected village panchayats concerned, the District Collector should arrange to convene a meeting of all the members concerned and in that meeting, the details of the Scheme and the eligibility conditions are to be explained in detail. The District Collector should himself convene this meeting in one or more sessions in order to convey the details and the seriousness of the selection process.

(v) The District Collector should, thereafter, fix a special meeting of the Gram Sabha in the village panchayat concerned to inform the details of the Scheme to the villagers. The Veterinary Assistant Surgeon and Deputy Block Development Officer (ADW) will explain the salient features of the Scheme and the eligibility details of the beneficiaries in the meeting. Applications for the free goats/sheep will be sought for in this special Gram Sabha meeting from the interested beneficiaries.

(vi) A period of one week will also be given for further receipt of applications. The applications can be given to any of the village level committee members or directly to the village panchayat. Thereafter, the Veterinary Assistant Surgeon and Deputy Block Development Officer (ADW) will arrange a meeting of the village level committee in the office of the village panchayat to scrutinise and list out the names of all the eligible beneficiaries for the Scheme.

(vii) The list prepared should also be got verified by the Veterinary Assistant Surgeon and Deputy Block Development Officer (ADW) with the Village Administrative Officer concerned, to confirm the 'landless' status of the proposed beneficiaries and the community details. (No certificate is however to be insisted upon and the scrutiny of the village level committee and subsequently the Gram Sabha will be considered to be final.) Only after ensuring the eligibility of the proposed beneficiaries, the list will be approved by the village level committee.

(viii) The finalised list should be placed before the Gram Sabha for approval. The Gram Sabha should again ensure that 30% of the beneficiaries belong to SC/ST (SC 29% and ST 1%) communities.

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a (ix) The District Collector should also arrange to send the Veterinary Assistant Surgeon/Deputy Block Development Officer (ADW) or another official of the rank of Deputy Block Development Officer [in case the Deputy Block Development Officer (ADW) is unable to attend] to participate in the Gram Sabha meeting and facilitate the discussion and finalisation of the beneficiaries list.

III. Solar-powered Greenhouse Scheme

b 1. The Government proposed to construct 'Solar-powered Greenhouse Scheme' for the benefit of the poor in the rural areas and measuring about 300 sq ft with unit cost of Rs 1.80 lakhs by meeting the entire cost by the Government. The Scheme aims at providing solar-powered greenhouse for the poor living below poverty line in rural areas. Accordingly, it is proposed to construct 60,000 solar-powered greenhouse of 300 sq ft each year for the next five years from 2011-2012 totalling 3 lakh houses.

2. Eligibility criteria:

- c
1. The beneficiary under the Solar-powered Greenhouse Scheme should reside within the village panchayat and find a place in the below poverty line list.
 - d 2. He/she should own a site of 300 sq ft with clear title and patta.
 3. Should not own any pucca concrete house and not be benefited by any other housing scheme.
 4. Rs 1.50 lakhs will be earmarked for construction of house and Rs 30,000 for installing solar-powered home lighting system.
 - e 5. The scheme will be implemented by the District Collector so as to ensure that the construction of houses are completed in time.

IV. Laptop computers to students

f The State of Tamil Nadu have emerged as a favoured destination both for the domestic and multinational IT companies. This has opened new vistas of job opportunities for youth in Tamil Nadu. Further the students from lower rungs of the socio-economic pyramid also need to be equipped to participate in the emerging market. To provide a level playing field by bridging the digital divide, develop skills and improve human resources in consonance with the millennium development goals, the Government of Tamil Nadu have decided to provide laptop computers at free of cost to all students studying in government and government-aided higher secondary schools, arts and science colleges, engineering colleges and polytechnic colleges.

g Accordingly the Government have issued order in GOMs No. 1, Special Programme Implementation Department dated 3-6-2011 for distribution of laptop computer free of cost.

h Under this Scheme, the students studying in government and government-aided schools, arts and science colleges, engineering

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colleges and polytechnics will be eligible. These students will be covered as follows:

Year	Schools	Arts/Science College	Engineering Colleges	Polytechnics
2011-2012	Plus two (12th standard)	1st and 3rd year students	2nd and 4th year students	1st and 3rd year students
2012-2013	Plus two (12th standard)	3rd year students	2nd and 4th year students	1st and 3rd year students
2013-2014	Plus two (12th standard)	-	-	1st year student

During the year 2011-2012, laptop computers will be distributed to 9.12 lakh students studying in 12th standard, 1st and 3rd year of arts and science colleges, 2nd and 4th year of engineering colleges and 1st and 3rd year of polytechnic colleges. The Heads of institutions concerned will ensure that the dropouts/discontinued/transferred students are not included in the list of eligible students.

V. Free Rice Scheme

Note on the Scheme of distribution of free rice under Universal Public Distribution System in Tamil Nadu

In Tamil Nadu Universal Public Distribution System is being followed and there is no differentiation as APL/BPL categories based on income criteria for supply of essential commodities to family cardholders under Public Distribution System. Hence, there is no differentiation like BPL/APL family cards in this State. Instead family cards have been issued on the basis of option exercised by the cardholders under self-selection process to receive either rice with all commodities or to receive additional sugar in lieu of rice with other commodities after verifying the genuineness of the residence in this State.

Features of Universal Public Distribution System in Tamil Nadu

(1) Universal Public Distribution System is the heart and soul of State food policy. It is built on the principles of non-exclusion, easy access to Public Distribution System shops and adequate availability of foodgrain at an affordable price.

(2) Though the Government of India advocates Targeted Public Distribution System (TPDS), the Government of Tamil Nadu is not in favour of rigid targeting, as it may lead to exclusion of large number of genuine below poverty line (BPL) families and vulnerable above poverty line (APL) families due to enumeration errors and improper bench marking.

(3) Poverty is a dynamic and relative concept and hence, it is difficult to design acceptable criteria and methodology to measure poverty. Thus any method used for identifying BPL families is bound to result in some

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a amount of exclusion of deserving families. Further, due to unforeseen natural calamities like droughts, floods and disaster, etc. a large number of vulnerable APL families may be forced into poverty trap again.

(4) Rigid government system will not be able to respond quickly to such situation. Thus Targeted Public Distribution System approach will always have some families outside the Public Distribution System at any point of time in defeating the objective of total food security and elimination of hunger.

b (5) On the other hand Universal Public Distribution System is based on principle of self-selection. Only those who need subsidised food articles will go to the Public Distribution System shops and not the entire population.

c (6) Based on these principles and out of years of experiences, the Government of Tamil Nadu is convinced that Universal Public Distribution System assures better food security to the people and therefore has decided to continue with it.

Process for issue of family cards

d On application for issue of family cards in the form prescribed (available on the website of the Department of Civil Supplies and Consumer Protection and can be downloaded and used — no cost for application), the Civil Supplies Authorities verify the genuineness of the application and recommend for issue of family card or for rejection of cards as the case may be.

e No income details are collected from the individual and this information is not entered in the family card also. As income, except in the case of persons employed in the organised sector, is a dynamic variable susceptible to undergo changes in sync with any unexpected events in the employment market, these details are not being collected for the purpose of the existing Universal Public Distribution System.

f On the other hand, option is given to the applicant to choose whether he would like to draw rice or not. If he selects not to draw rice, he is given the benefit of drawing 3 kg extra sugar in lieu of rice in addition to the normal entitlement of ½ kg per person per month subject to the maximum of 2 kg per month per card.

VI. Free distribution of electric fans, mixies and grinders to women

g This Scheme is introduced as a welfare measure for women and intends universal coverage of women beneficiaries belonging to families holding family cards which are eligible for drawing rice. To make women more effective participants in the economy, it is imperative to relieve them from the domestic drudgery. Therefore, the Government have decided to distribute a package of electric fan, mixie and grinder to all the women from the families holding family cards which are eligible to draw rice. This Scheme is expected to improve the standard of living of the poor women apart from providing equal opportunities.

h In pursuance of the above, the Government have issued orders in GOMs No. 2, Special Programme Implementation Department, dated

3-6-2011 for free distribution of 25 lakh packages of electric fans, mixies and grinder during 2011-2012. In total about 1.83 crore women beneficiaries will be covered in a phased manner. a

2. Eligibility criteria:

All households having a family card which is eligible for drawing rice are eligible for electric fans, mixies and grinders, at free of cost, under this Scheme. The benefits will be distributed only to a woman member of these households. b

In case, a household having family card which is eligible for drawing rice, does not have any woman member it will be given to the head of the family. b

The family cards as on 30-6-2011 will be considered for distribution of the items during the current year (2011-2012).

The benefits will be distributed to an eligible family only once. While distributing the benefits, priority should be given to rural areas within the Assembly Constituency followed by Town Panchayats, then Municipalities and Municipal Corporations, if any." c

67. The concepts of livelihood and standard of living are bound to change in their content from time to time. It is factual that what was once considered to be a luxury has become a necessity in the present day. It is well settled that the concept of livelihood is no longer confined to bare physical survival in terms of food, clothing and shelter but also now necessarily includes basic medicines, preliminary education, transport, etc. Hence, the State distrusting largesse in the form of distribution of colour TVs, laptops, etc. to eligible and deserving persons is directly related to the directive principles of the State policy. d

68. As a result, we are not inclined to agree with the argument of the appellant that giving of colour TVs, laptops, mixer-grinders, etc. by the Government after adhering to due process is not an expense for public purpose. Judicial interference is permissible when the action of the Government is unconstitutional and not when such action is not wise or that the extent of expenditure is not for the good of the State. We are of the view that all such questions must be debated and decided in the legislature and not in court. e

69. More so, the functioning of the Government is controlled by the Constitution, the laws of the land, the legislature and the Comptroller and Auditor General of India. As per Article 73 of the Constitution, the executive power of the Union of India is co-extensive with its legislative power. Similarly, the executive power of the State is co-extensive with its legislative power (Article 162). In *Bhim Singh*¹¹, this Court has held that the Government can frame a scheme in exercise of its executive powers but if such a scheme entails any expenditure, then it is required to be backed by law. Article 266 of the Constitution lays down that all monies received by the Central Government or by the State Government by way of taxes or otherwise must be credited to the Consolidated Fund of India. Article 267 g

¹¹ *Bhim Singh v. Union of India*, (2010) 5 SCC 538 h

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a also constitutes Contingency Fund of India. If any money (except which is charged on the Consolidated Fund) is to be withdrawn for any governmental purpose, then there has to be an Appropriation Act under Article 266(3) read with Article 114 of the Constitution. Every department of the Government presents its demand to the legislature concerned and the legislature votes on the same, and thereafter, the Appropriation Act is passed which authorises the Government to withdraw the money from the Consolidated Fund. There are similar provisions relating to the State. The Contingency Fund can be established only by enacting a law in that behalf and not by an executive fiat. b The law creating the Contingency Fund authorises the purposes for which the amount in it can be spent. This is how the money is being spent by the Government on its schemes under the control of the legislature.

c 70. In *Bhim Singh*¹¹, Article 282 of the Constitution in the context of government expenditure on various projects was considered. In that case, the Government in question had framed the scheme empowering the Members of Parliament to recommend works and projects in their respective constituencies. The said Scheme was challenged on the ground that the same has been formulated without enacting any law in that behalf. This challenge was negatived by this Court principally on the ground that any expenditure which the Government incurs on the said Scheme is authorised by the d Appropriation Act and the Appropriation Act is a law as contemplated by Article 282. This Court also negatived the challenge on the ground that the same is not for public purpose.

e 71. In addition to the legislative control by way of the Appropriation Acts, the rules framed by Parliament under Article 118 and by the State Legislatures under Article 208 of the Constitution of India, also create a mechanism to keep a check on the expenditure incurred by the Government.

f 72. As far as the State of Tamil Nadu is concerned, the legislature has framed rules under Article 208 of the Constitution and these rules are known as the Tamil Nadu Legislative Assembly Rules. Under Chapter 20 of the said Rules, a Public Accounts Committee is set up and usually such Public Accounts Committee is headed by a Member of the Opposite Party. The Public Accounts Committee scrutinises the government accounts and submits its report to the legislature for its consideration. So, apart from the Appropriation Act, there is also effective control over the government accounts and expenses through the Public Accounts Committee.

g 73. In addition to the legislative control, the Founding Fathers of the Constitution have also thought it fit to keep a check on government accounts and expenses through an agency outside the legislature also. Article 148 has created a constitutional functionary in the form of the Comptroller and Auditor General of India (CAG). CAG examines the propriety, legality and validity of all expenses incurred by the Government. The office of CAG exercises effective control over the government accounts.

h 74. If we analyse the abovementioned articles and the rules of procedure, it is established that there are various checks and balances within the mandate

11 *Bhim Singh v. Union of India*, (2010) 5 SCC 538

of the Constitution before a scheme can be implemented. As long as the schemes come within the realm of public purpose and monies for the schemes is withdrawn with appropriate Appropriation Bill, the Court has limited power to interfere with such schemes. a

75. Further, the appellant contended by referring to various foreign cases to highlight the principle that public money cannot be used to create private assets. In our opinion, there is no merit in this contention also. The purpose of the schemes is to enforce the directive principles of State policy. In what way the State chooses to implement the directive principles of State policy is a policy decision of the State and this Court cannot interfere with such decisions. Ordinarily, this Court cannot interfere with policy decisions of the Government unless they are clearly in violation of some statutory or constitutional provision or is shockingly arbitrary in nature. b

76. In *Ekta Shakti Foundation v. Govt. (NCT of Delhi)*²⁶, it was held: (SCC pp. 341-42, para 11) c

"11. '5. While exercising the power of judicial review of administrative action, the court is not the appellate authority and

"[t]he Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonise qua any matter which under the Constitution lies within the sphere of the legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory powers."* d

The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or [is violative of] the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the court, it cannot interfere. e

6. The correctness of the reasons which prompted the Government in decision-making taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation.'***" f

77. In the light of settled principles and observing that in the given case no such circumstances prevail as envisaged for judicial enquiry, we are not persuaded to interfere with the policy decision.

78. With regard to the contention that distribution of State largesse in the form of colour TVs, laptops, mixer-grinders, etc. violates Article 14 of the Constitution as the unequals are treated equally. Before we venture to answer this question, we must recall that these measures relate to implementation of the directive principles of State policy. Therefore, the principle of not to treat unequals as equal has no applicability as far as State largesse is concerned. g

²⁶ (2006) 10 SCC 337

* Ed.: As observed in *Asif Hameed v. State of J&K*, 1989 Supp (2) SCC 364, p. 374, para 19. h

** Ed.: As observed in *State of Orissa v. Gopinath Dash*, (2005) 13 SCC 495, p. 497, paras 5-6 : 2006 SCC (L&S) 1225.

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This principle applies only where the law or the State action imposes some burden on the citizen either financial or otherwise. Besides, while implementing the directive principles, it is for the Government concerned to take into account its financial resources and the need of the people. There cannot be a straitjacket formula. If certain benefits are restricted to a particular class that can obviously be on account of the limited resources of the State. All welfare measures cannot at one go be made available to all the citizens. The State can gradually extend the benefit and this principle has been recognised by this Court in several judgments.

Issue 3: Whether this Court has inherent power to issue guidelines by application of *Vishaka*¹² principle?

79. It is the stand of the appellant that there is legislative vacuum in the given case. Hence, the judiciary is warranted to legislate in this regard to fill the gap by application of *Vishaka*¹² principle. However, the learned counsel for the respondent made a distinction between *Vishaka*¹² and the given case. While highlighting that in *Vishaka*¹², there was no legislation to punish the act of sexual harassment at workplace, therefore, the judiciary noting the legislative vacuum framed temporary guidelines until the legislatures passed a Bill in that regard. However, in the case at hand, there is a special legislation, namely, the Representation of the People Act wherein Section 123 enumerates exhaustively a series of acts as "corrupt practice". Therefore, this is not a case of legislative vacuum where the judiciary can apply its inherent power to frame guidelines.

Issue 4: Whether the Comptroller and Auditor General of India has a duty to examine expenditures even before they are deployed?

80. As reiterated earlier, the Comptroller and Auditor General of India is a constitutional functionary appointed under Article 148 of the Constitution. His main role is to audit the income and expenditure of the Governments, government bodies and State-run corporations. The extent of his duties is listed out in the Comptroller and Auditor General's (Duties, Powers, etc.) Act, 1971. The functioning of the Government is controlled by the Constitution, the laws of the land, the legislature and the Comptroller and Auditor General of India. CAG examines the propriety, legality and validity of all expenses incurred by the Government. The office of CAG exercises effective control over the government accounts and expenditure incurred on these schemes only after implementation of the same. As a result, the duty of CAG will arise only after the expenditure has incurred.

Issue 5: Whether the writ jurisdiction will lie against a political party?

81. The learned Senior Counsel for the respondent (State of Tamil Nadu) raised the issue of jurisdiction stating that political parties are not "State" within the meaning of Article 12 of the Constitution of India and therefore, no writ of any nature can be issued against them either under Article 226 or Article 32 of the Constitution of India or any other provision of the

12 *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932

Constitution or any other law. The correct forum is the Election Tribunal and not the writ jurisdiction.

82. Admittedly, the respondents never raised any objection relating to the jurisdiction in the High Court or even in the pleadings before this Court. It is only in the oral submissions that this issue has been raised. a

83. In the matters relating to pecuniary jurisdiction and territorial jurisdiction, the objection as to jurisdiction has to be taken at the earliest possible opportunity. But, this case relates to the jurisdiction over the subject-matter. This is totally distinct and stands on a different footing. As such, the question of subject-matter jurisdiction can be raised even in the appeal stage. However, as this petition is fit for dismissal dehors the jurisdiction issue, the jurisdiction issue is left open. b

84. Summary:

84.1. After examining and considering the parameters laid down in Section 123 of the RP Act, we arrived at a conclusion that the promises in the election manifesto cannot be read into Section 123 for declaring it to be a corrupt practice. Thus, promises in the election manifesto do not constitute as a corrupt practice under the prevailing law. A reference to a decision of this Court will be timely. In *Ramchandra G. Kapse v. Haribansh Ramakbal Singh*²⁷ this Court held that: (SCC p. 219, para 21) c

“21. ... Ex facie contents of a manifesto, by itself, cannot be a corrupt practice committed by a candidate of that party.” d

84.2. Further, it has been decided that the Schemes challenged in this writ petition falls within the realm of fulfilling the directive principles of State policy thereby falling within the scope of public purpose.

84.3. The mandate of the Constitution provides various checks and balances before a scheme can be implemented. Therefore, as long as the schemes come within the realm of public purpose and monies withdrawn for the implementation of the schemes by passing suitable Appropriation Bill, the Court has limited jurisdiction to interfere in such schemes. e

84.4. We have also emphasised on the fact that judicial interference is permissible only when the action of the Government is unconstitutional or contrary to a statutory provision and not when such action is not wise or that the extent of expenditure is not for the good of the State. f

84.5. It is also asserted that the schemes challenged under this petition are in consonance with Article 14 of the Constitution.

84.6. As there is no legislative vacuum in the case on hand, the scope for application of *Vishaka*¹² principle does not arise. g

84.7. The duty of CAG will arise only after the expenditure has incurred.

84.8. Since this petition is fit for dismissal dehors the jurisdiction issue, the issue of jurisdiction is left open.

27 (1996) 1 SCC 206

12 *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932

Directions

a 85. Although the law is obvious that the promises in the election manifesto cannot be construed as "corrupt practice" under Section 123 of the RP Act, the reality cannot be ruled out that distribution of freebies of any kind, undoubtedly, influences all people. It shakes the root of free and fair elections to a large degree. The Election Commission through its counsel also conveyed the same feeling both in the affidavit and in the argument that the promise of such freebies at the government cost disturbs the level playing field and vitiates the electoral process and thereby expressed willingness to implement any directions or decision of this Court in this regard.

b 86. As observed in the earlier part of the judgment, this Court has limited power to issue directions to the legislature to legislate on a particular issue. However, the Election Commission, in order to ensure a level playing field between the contesting parties and candidates in elections and also in order to see that the purity of the election process does not get vitiated, as in past been issuing instructions under the Model Code of Conduct. The fountainhead of the powers under which the Commission issues these orders is Article 324 of the Constitution, which mandates the Commission to hold free and fair elections. It is equally imperative to acknowledge that the Election Commission cannot issue such orders if the subject-matter of the order of the Commission is covered by a legislative measure.

c 87. Therefore, considering that there is no enactment that directly governs the contents of the election manifesto, we hereby direct the Election Commission to frame guidelines for the same in consultation with all the recognised political parties as when it had acted while framing guidelines for general conduct of the candidates, meetings, processions, polling day, party in power, etc. In the similar way, a separate head for guidelines for the election manifesto released by a political party can also be included in the Model Code of Conduct for the Guidance of Political Parties and Candidates. We are mindful of the fact that generally political parties release their election manifesto before the announcement of election date, in that scenario, strictly speaking, the Election Commission will not have the authority to regulate any act which is done before the announcement of the date.

d 88. We hereby direct the Election Commission to take up this task as early as possible owing to its utmost importance. We also record the need for a separate legislation to be passed by the legislature in this regard for governing the political parties in our democratic society.

e 89. In the light of the above discussion, taking note of statutory provisions of the RP Act, which controls only candidate or his agent, mandates provided under the directive principles, various guidelines such as income limit, preference to women, agricultural labourer, etc. as detailed in the counter-affidavit by the State, we find no merit in the appeal as well as in the transferred case. With the above observation as mentioned in paras 85 to 88

f (*supra*), the appeal and the transferred case are dismissed. No order as to costs.

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