

IN THE SUPREME COURT OF INDIA
[UNDER ORDER XXXVIII RULE 12(1)(d)]
CIVIL ORIGINAL JURISDICTION
(Under Article 32 of the Constitution of India)
WRIT PETITION (CIVIL) NO. 87 OF 2022

IN THE MATTER OF:-

CHANDRA SHEKHAR

..Petitioner

VERSUS

UNION OF INDIA & ANR.

...Respondents

PAPER – BOOK

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Advocate For The Petitioner: NIRMAL KUMAR AMBASTHA

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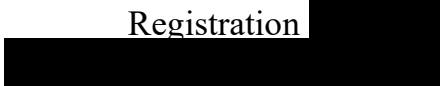
The case pertains to (Please tick/check the correct box):

- ☐ Central Act: (Title) **Constitution of India**
- ☐ Section: **Articles 14, 162, 266, 282**
- ☐ Central Rule: (Title) **N.A.**
- ☐ Rule No (s): **N.A.**
- ☐ State Act (Title): **N.A.**
- ☐ Section: **N.A.**
- ☐ State Rule: (Title) **N.A.**
- ☐ Rule No (s): **N.A.**
- ☐ Impugned Interim Order: **N. A.**
- ☐ Impugned final Order/Decree: **N.A.**
- ☐ High Court: **N.A.**
- ☐ Names of Judges: **N.A.**
- ☐ Tribunal/Authority: **N.A.**

-
1. Nature of matter: ☐ Criminal ☐ Civil
 2. (a) Petitioner/appellant No.1: **Chandra Shekhar**
(b) e-mail ID: [REDACTED]
(c) Mobile phone number: [REDACTED]
 3. (a) Respondent No.1: **UNION OF INDIA**
(b) e-mail ID: **Not Known**
(c) Mobile phone number: **Not Known**
 4. (a) Main category classification: **08-Letter Petition & PIL**
(b) Sub classification: **0810 – Matters relating to Election Commission**
 5. Not to be listed before: **N. A.**

6. (a) Similar disposed off matter with citation, if any, & Case Details:
No similar matter is disposed off.
- (b) Similar pending matter with Case Details: **W.P. (C) No. 43 of 2022**
7. **Criminal Matters: No**
- a) Whether accused/convict has surrendered: Yes ☐ No ☐
- b) FIR No. **N.A. Date: N.A**
- c) Police Station: **N.A.**
- d) Sentence Awarded: **N. A.**
- e) Sentence Undergone: **N. A.**
8. **Land Acquisition Matters: N. A.**
- a) Date of Section 4 notification: **N. A.**
- b) Date of Section 6 notification: **N. A.**
- c) Date of Section 17 notification: **N. A.**
9. **Tax Matters: State the tax effect: N. A.**
10. **Special Category (first petitioner/appellant only): N/A**
- ☐ Senior citizen>65 years
- ☐ SC/ST
- ☐ Woman/child
- ☐ Disabled Legal Aid case
- ☐ In custody
11. Vehicle Number (in case of Motor Accident Claim matters): **N. A.**

Date: **31.01.2022**

AOR for petitioner(s)/appellants(s)
NIRMAL KUMAR AMBASTHA
Registration 

SYNOPSIS

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, 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

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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 class.

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.

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 of Indian Penal Code.

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

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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 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.

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 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.

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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.

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

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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.

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.

Hence, the present Writ Petition is being filed.

LIST OF DATES

05.7.2013: This Hon'ble Court pronounced judgment in S. Subramaniam Balaji Vs. State of Tamil Nadu & Ors. (2013) 9 SCC 659.

31.01.2022: 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, 162, 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
[UNDER ORDER XXXVIII RULE 12(1)(d)]
CIVIL ORIGINAL JURISDICTION
[UNDER ARTICLE 32 OF CONSTITUTION OF INDIA]
WRIT PETITION (CIVIL) NO. _____ OF 2022

IN THE MATTER OF :-

1. CHANDRA SHEKHAR

Petitioner

████████████████████
██
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VERSUS

1. UNION OF INDIA

Respondent

Through the Secretary

No. 1

Ministry of Law & Justice, Legislative Dept.

Shastri Bhawan,

NEW DELHI – 110001

2. ELECTION COMMISSION OF INDIA

Respondent

Through the Chief Election Commissioner,

No. 2

Nirvachan Sadan, Ashoka Road,

NEW DELHI-110001

**WRIT PETITION AS PUBLIC INTEREST LITIGATION
UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA
PRAYING FOR APPROPRIATE WRIT DIRECTING THE
RESPONDENT NO. 2 ELECTION COMMISSION OF INDIA
TO TAKE ACTION AGAINST THE POLITICAL PARTIES
MAKING UNREGULATED AND IRRATIONAL PROMISES
OF FREEBIES TO VOTERS FROM PUBLIC FUND
TO,**

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUDGES OF THE SUPREME COURT OF INDIA.

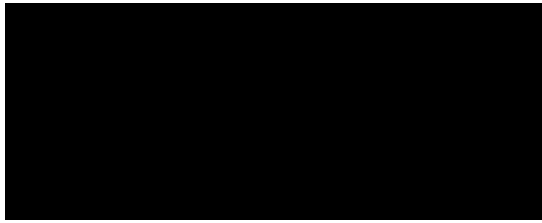
THE HUMBLE PETITION ON BEHALF
OF THE PETITIONER ABOVE NAMED

The Petitioner most respectfully Showeth:-

1. That the petitioner herein is constrained to prefer the present Writ Petition as Public Interest of Litigation under Article 32 of the Constitution of India praying for seeking a declaration that the promise/distribution of irrational freebies from public funds before an election unduly influences voters, shakes the foundations of a free and fair election, disrupts the level playing field, taints the election process, and also violates Articles 14, 162, 266(3), and 282. The petitioner also wants the ECI to take electoral symbols and deregister political parties that promise or deliver nonsensical freebies from public funds before an election, as well as the Centre to enact legislation in this area.
2. **Petitioner's profile:-** The petition is a permanent resident of the address mentioned herein below and is an advocate by profession. The petitioner is also a socio-political activist, who devotes his time and energy to the advancement of socially, politically, and economically oppressed persons. Petitioner's net annual income is approximately- [REDACTED] and he has means to bear the consequences of the present case, if the Cost is imposed by the Hon'ble Court on finding the petition to be frivolous.

Name – Chandra Shekhar

Address – [REDACTED]
[REDACTED]



3. Respondent's Profile:- The respondent No. 1 is the department of the Union Government responsible for framing and proposing the law to be tabled before the Parliament of India and the respondent No. 2 is the constitutional Authority responsible for conducting electoral processes in India and for recognizing the political parties. The two abovenamed respondents are jointly and severally responsible for enacting laws and taking actions for stopping the political parties from making announcements of freebies to the voters as poll-promise at the expense of public exchequer.

4. Issues for Consideration:-

- 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?*

Facts Giving Rise to the Present Petition

5. It is stated that since November, 2021 in run up to Elections to Legislative Assembly of Punjab, several political parties started arbitrarily promising unregulated and irrational freebies from public funds to the voters instead of 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, and effective administrative system. In the state of Punjab to entice women, the Aam Aadmi Party promised Rs. 1,000/- per month to every woman aged 18 and above, and the Shiromani Akali Dal (SAD) promised Rs. 2,000/- per woman. Following that, India's oldest political party, the Indian National Congress, promised every housewife not just Rs. 2,000/- per month and 8 gas cylinders per year, but also a Scooty to every collage-going female, worth Rs. 20,000/- after passing 12th class, Rs. 15,000/- after passing 10th class, Rs. 10,000/- after passing 8th class and Rs. 5,000/- after passing class 5th class in the state of Punjab.
6. In run up to the election to Legislative Assembly of Uttar Pradesh, Indian National Congress promised a smartphone to every girl in Class 12th, a Scooty to every female pursuing degree, free public transportation for women, eight free gas cylinders per year for every housewife, and free medical treatment up to Rs 10.00 lakh per household. Samajwadi Party promised every household 300 units of free energy and a monthly pension of Rs. 1,500/- for women, as well as financial aid of Rs 5.00 lakh to those who dies in a “cycle accident”. The Cycle is notable for being the election symbol of Samajwadi Party. Another party pledged a job for each family's daughter and son, as well as Rs. 5.00 lakh for unemployed graduates. Some

political parties offered free washing machines, homes for everyone, solar cookers, and educational loan waiver, government jobs, free cable service, Rs. 7,500/- to every farmer per year, Rs. 1500 to housewife and 2GB data to all students.

7. Political parties arbitrarily give nonsensical freebies for unjust benefit and to entice voters in their favour, according to the petitioner, which is equivalent to Bribery and Undue Influence under Sections 171B and 171C of Indian Penal Code. The petitioner claims that when bribery and undue influence were defined in 1920, the lawmakers could not have envisaged that future politicians would descend to such low depths, which is why public policies and public action are exempted under Sections 171B-171C of Indian Penal Code.
8. The electoral process, according to the petitioner, is the fulcrum of democracy. When the integrity of the voting process is questioned, the concept of representation is rendered meaningless. With elections being cancelled multiple times, the distribution of money and promises of freebies has reached dangerous levels. The threat to India's parliamentary democracy and republic cannot be overstated under this scenario. As a result, the petitioner asks the Court to consider whether states are truly concerned about governance or if they are cynically complicit in the abolition of democratic electoral and political processes, which is a moot argument. The petitioner submits that arbitrary promises of nonsensical freebies violate the Respondent's mission for free and fair elections, and that providing private goods and services from public funds clearly violates the Respondent's mandate for free and fair elections which are clearly violation of Articles 14, 162, 266(3) and 282 of the

Constitution of India. Apart from undermining free and fair elections, the petitioner submits that arbitrary and irrational freebie distribution shamelessly violates Article 14 of the Constitution of India, because there is no reasonable classification of the population. The right to equality requires the state to establish a reasonable classification and have a connection to the object, yet political parties are not abiding by this essential constitutional principle.

9. Punjab requires Rs. 12,000 crore per month to fulfil political pledges if AAP comes to power; Rs. 25,000 crore per month if SAD comes to power; and Rs. 30,000 crore if Congress comes to power, despite GST collection being only Rs. 1400 crore. In reality, if the Punjab government is unable to pay even salaries and pensions after debt repayment, how can it be able to deliver freebies? The harsh reality is that Punjab's debt is growing with each passing year. The state's total debt has risen to Rs 77,000 crore, with Rs 30,000 crore accruing in the current fiscal year alone. With a population of more than 30 million people, the state's per capita public debt is Rs 96,000/-. The debt-to-GDP ratio of the state is substantially higher than the prescribed limit of 30% and is the highest in the country. Punjab must concentrate on crime and the rule of law, but no major party is speaking out on the subject. The number of murder cases increased by 10% from 679 in 2019 to 757 in 2020. Suicide cases in the state increased from 25 in 2019 to 35 in 2020. In 2020, there were 4838 cases of crimes against women and 502 cases of rape reported. Healthcare is also in a bad state. According to the latest National Sample Survey Office (NSSO) data, Punjab had the second highest proportion of families (18.5 percent) reporting

"catastrophic" healthcare expenditure after Kerala. Patients from Punjab seek medical treatment in neighbouring states. Punjab had the highest average expenditure per overnight journey for health reasons of all the provinces 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.

10. According to the State Planning Institute (Economics and Statistics Division), public debt in Uttar Pradesh will rise by roughly 8% between 2020-21 and 2021-22, from Rs 5.65 trillion to Rs 6.11 trillion. In 2020-2021, the Gross State Domestic Product (GSDP) was expected to fall by 5.9%. According to revised figures given for 2018-19, 2019-20, and 2020-21, the economy grew at a rate of less than 5% in the previous five years. According to the National Sample Survey 2020, the literacy rate in UP is 73 percent, which is lower than the national average of 77.7%. Men have an illiteracy rate of 81.8 percent and women have an illiteracy rate of 63.4 percent, yet political parties are silent on this critical issue. According to the Rural Health Statistics (2019-20), UP has a major shortage in health facilities as of July 1, 2020, as measured by the mid-year population in rural areas — the deficiency in PHCs in urban areas is 45 percent. In metropolitan regions, health infrastructure is insufficient to satisfy the needs of the city population, while in rural areas; Community Health Centers are practically devoid of life-saving equipment. The Level-3 hospital services are not available in the majority of the districts. Rather of speaking out

on this critical problem, political parties are luring people with promises of freebies.

11. The state debt in Tamil Nadu is Rs 263,976/- per family, with total income receipts falling to 8.7% of GSDP in 2020-21 from 13.35 percent in 2008-09. For the past eight years, the revenue shortfall has worsened, while the fiscal deficit has risen due to increased government borrowing. There are significant issues with electricity and transportation. High costs and low recoveries plague TANGEDCO and TANTRANSCO. For every unit of electricity produced, they lose Rs 2.36. An increase in the primary input cost of coal, as well as an increase in the cost of external power purchase agreements, contribute to the overall cost increase. The total amount owed is Rs.134,118.94 crore. For every kilometer run, the transport agency loses Rs 59.15. In 2020-21, the accumulated loss is Rs 4,2143.69 crore, up 381 percent from Rs 871.69 crore in 2011-12. According to the most recent NCRB data, the crime rate has increased by 430 percent in 2020. In 2020, 8.91 lakh cases were filed under the IPC, compared to 1.68 lakh instances in 2019. Tamil Nadu topped the list of states with the most crimes during the pandemic, with a 28 percent increase in child rape incidents in 2020. However, rather than focusing on these fundamental aspects of administration, political parties promised and discussed primarily giveaways and freebies only.
12. Petitioner submits that States have now no longer most effective did not obtain the golden desires of the Constitution i.e. social financial political justice, liberty of mind expression notion religion worship, equality of popularity and opportunity, fraternity cohesion and countrywide integration however

additionally did not stable the maximum vital essential rights viz. proper to health, proper to education, proper to shelter, proper to avenue access, proper to easy water, proper to food, proper to dignity, proper to employment, proper to justice, proper to prison useful resource and proper to easy environment. Rather than thinking about those rights in manifesto, political events are promising freebies from the general public fund to entice voters. With restricted monetary resources, promising freebies isn't always most effective immoral unethical and opposite to idea of Welfare State however additionally arbitrary irrational and violate Articles 14, 162, 266(3), 282. Petitioner post that political events are prioritizing their self hobby over countrywide hobby and the general public fund, which need to were well applied to stable essential rights of citizens, is getting used to entice voters. This Hon'ble Court in **S. Subramaniam Balaji v. State of Tamil Nadu & Ors. [(2013) 9 SCC 659]** had observed that “the truth can't be dominated out that the distribution of freebies of any kind, absolutely affects all of the people. It shakes the roots of loose and truthful election to a massive degree. The ECI additionally conveyed the identical feeling each withinside the affidavit and withinside the argument”. A true copy of the Judgment of this Hon'ble Court in the case of S. Subramaniam Balaji v. State of Tamil Nadu & Ors. reported in (2013) 9 SCC 659 is being annexed herewith and marked as **Annexure P-1. [Pages 48 – 102]**

13. The petitioner submits that it has become fashionable for political parties to promise free electricity in their election manifestos, despite the fact that the state has been unable to provide electricity for more than 16 hours and that a large portion of the

population lacks access to electricity, which is a fundamental right. In their manifestos, political parties promise unemployment benefits, which encourage youth to be lazy and discourages people from working. Rather than providing unemployment benefits, the government should invest in quality education so that young people can find work on their own. Honest taxpayers have been rendered mute spectators in this process. According to the petitioner, healthcare infrastructure is not as good as it was during Covid's time, but political parties are ignorant of this.

14. The petitioner submits that the day will come when one Political party will say, "We will cook food for you at your home," and the other would answer, "Not only will we cook, but we will also feed you." In terms of populist pledges, one party strives to undo the other. There is a counter freebie of Rs.1,500/-, Rs. 2000/-, and Rs. 2500/- monthly from a political party that promises monthly Rs.1,000/- and one gas cylinder to women household heads. As a result, many began to believe that they could make a career off of freebies. A tendency has emerged in which anyone who obtains a loan from a bank does not repay the debt because they believe the loan to be waived during the election. People become corrupted as a result of this by the political parties. The random, unreasonable, and unrealistic manner in which political parties toss their pledges is quite unwelcome. Freebies, unfortunately, have nothing to do with job creation, development, or agriculture. Magical promises entice voters to cast votes in their favour.
15. The petitioner submits that this tamasha occurs every five years and has been going on for decades. Promises are always just that: promises. Except for freebies, the most of them are not executed.

Every political party is obligated to make promises to voters regarding their social policies and plans for improving the people's standard of living by providing clean governance, infrastructure, and basic amenities such as water, transportation, and health care, all of which are expected in any democracy. The election promises made by political parties, on the other hand, are targeted at securing power. There can be no objections if basic services are promised and given; in fact, it should be embraced 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.

16. During festival seasons, public funds are depleted to cover the costs of festival events. The government is taking care of the celebrations by giving free dhotis, sarees, and other goods needed for cooking and producing dishes, as well as covering the cost of the celebrations. These types of freebies/money given out during festivals are justified by the fact that the government is providing for the necessities of the people, yet they are making people lethargic and dampening the working culture. In this process, the honest tax payer is reduced to a passive observer of the expenditure. As a result, even for routine work, no force is available. For sweeper positions, engineering graduates, M.Phil, and M.B.A. degree holders are applying. Nobody wants to work in a factory.
17. It has been reported in the electronic and print media that people who go for 100 days of work under the MNREGA, which was introduced by the government to provide people with work,

simply chit-chat and play mobile games instead of working. Given the current state of affairs, it would not be surprising to see migrant workers become property owners in due course, and the sons of the soil become workers, working under them, and this may be the only achievement, if any, that political parties have attained through election promises by providing freebies over the last ten years. Petitioner is aware of this Hon'ble Court's decision in the Balaji Case that promises in election manifestos cannot be construed as "corrupt practice," and that these measures relate to the implementation of Directive Principles of State Policy. However, this Hon'ble Court directed the ECI to verify political party election manifestos. If there is an outside agency that examines all manifestos in order to weed out the unreasonable and unworkable ones. That will undoubtedly go a long way toward discouraging political parties from making moon or star promises. Unless a mechanism is put in place, the political party will try to buy out the voters by hook or crook because their only goal is to gain power.

18. It is respectfully submitted that political parties are expected to make election promises that provide basic amenities such as education, health care, transportation, and job creation, rather than necessarily government employment. Though political parties advocate for rights, they never bother to educate their constituents on the corresponding responsibilities, which is one of the dangerous trends that must be addressed. All political parties are expected to behave reasonably or to make political promises that are beneficial to the overall development of society rather than having a negative impact on the people. Once, this Hon'ble Court opined that freebies taint the integrity of the

election process and influence voters, and that they should be considered a corrupt practice. It is not as if offers of money or kind to influence voters by candidates alone can become corrupt practice, and political parties that offer or lure people to vote for their respective party to power in a whole sale manner cannot be construed as corrupt practice. Whether done by an individual or a group, it is unquestionably bribery or a corrupt practice. Our democracy has sunk to such depths that the time has come to bring political parties that offer freebies to influence voters, within the scope of Section 123 of the Representation of People Act.

19. The election manifestos were not very popular 30 years ago, and only in the last two decades have they become very popular among the masses, as political parties compete with each other offering free gifts and freebies in various forms and kinds, promising them better development, social upliftment, and a comfortable life during their regime if they are elected to power. Whether or not development is achieved, freebies only create/instill laziness among the people, shattering the State's work force. As a result, without the imported migrant labours from other states, no labour or sufficient labour is available, and no work is done in the state. As observed by the Court, the Manifesto is a road map for political parties' policies, indicating how they intend to govern the State or Country, as well as what infrastructures will be developed and other incidental ideas. It is, indeed, a welcome one. However, political parties are, at best, focusing solely on freebies to entice voters to vote by hook or crook in order to win elections. This must be stopped, or there

will be no distinction between the enthusiastic workforce and those who sit back and enjoy the freebies without doing anything.

20. The object of the Representation of People Act, 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 Section 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.
21. Petitioner claims that neither the Centre has taken any steps to bring legislation covering the issue of political manifestos, particularly freebies promised in election manifestos, and governing political parties as per the Balaji Case Judgment, nor has the ECI vetted the election manifestos of political parties as

per the Judgement's dictum. After the ruling, no political party submitted election manifestos for vetting, and the ECI took no action against political parties that did not follow the ruling. Neither ECI nor any political party has objected to any statements or promises made, nor have any disputed or controversial promises been deleted. To instil a sense of responsibility in political parties, the petitioner proposes that political parties be obligated to pay at least 20% of the money involved in implementing election promises made by them after they come to power. It is proposed that ECI educate political parties on the importance of not making unreasonable or unfair promises that, if carried out, would drain the public coffers unnecessarily/unreasonably. Political parties should be prohibited from implementing irrational social security schemes that have the potential to disrupt work culture and make people lazy.

22. Political parties do not provide details about the political promises and provisions for available resources if they come to power, and the ECI never directs political parties to make political promises, particularly regarding freebies, in accordance with the State's resources. ECI neither monitors nor verifies whether election promises are kept during the tenure of the political party elected to form the government, nor does it prohibit them from making promises that the State cannot implement because they are beyond its powers. Waiver of loans made by the nationalized bank, for example.
23. Petitioner claims that ECI has never de-recognized parties that fail to follow through on their political promises, on which voters are enticed and parties are elected to form the government. Political parties ascend to the throne by making promises that

voters believe and serve as the foundation of the government; thus, election promises can be made enforceable. The Centre has taken no action to amend Section 123 of the Representation of Peoples Act to include "political parties" that could be charged with "corrupt practices." Political promises, however, cannot be carried out in accordance with the 2013 Balaji decision, and much water has passed under the bridge since then. As a result, it must be reconsidered.

24. Petitioner claims that people are swayed by attractive promises and persuaded to vote for a particular party, and that many of these promises put a significant dent in the public coffers. If money spent on freebies is used constructively to create job opportunities by building infrastructure such as dams and lakes, as well as providing better facilities and incentives to agriculture, which has become an orphan in our country because most people have abandoned agriculture because cultivation does not provide a secure income, there will undoubtedly be social upliftment and progress in the state. Political parties should be prohibited from making election promises that could place additional strain on the public purse, especially at a time when the state is facing a financial crisis. Otherwise, for financial reasons, State has to increase number of liquor shops.
25. Petitioner claims that after receiving instructions from this Hon'ble Court in the S. Subramaniam Balaji Case [(2013) 9 SCC 659], the ECI met with recognised political parties to consult with them on the matter and took note of their opposing viewpoints. During consultations, some political parties supported the issuance of such guidelines, while others believed that in a healthy democratic polity, it is their right and duty to

make such offers and promises to voters in manifestos. While the Commission agrees in principle that political parties have the right to draught manifestos, it cannot ignore the negative impact of promises and offers on the conduct of free and fair elections and the maintenance of a level playing field for political party candidates.

26. The election manifesto shall not contain anything contrary to the ideals and principles enshrined in the Constitution, and it shall also be consistent with the letter and spirit of the Model Code of Conduct. (ii) Because the Directive Principles of State Policy enshrined in the Constitution enjoin the State to frame various welfare measures for citizens, there can be no objection to election manifestos promising such welfare measures. Political parties, on the other hand, should avoid making promises that are likely to taint the integrity of the election process or exert undue influence on voters in exercising their right to vote. (iii) In the interest of transparency, a level playing field, and the credibility of promises, manifestos are expected to reflect the rationale for the promises as well as broadly indicate the ways and means to meet the financial requirements for it. Voters' trust should be sought only on promises that are likely to be fulfilled.
27. The petitioner claims that political parties do not recognize the value of manifestos and prepare them on short notice with little thought. Most political parties are more concerned with increasing their vote bank than with improving the quality of governance and administration. The manifesto should be improved in terms of political stability, social equality, and economic growth. Political parties' election manifestos should only speak about the public good, rather than appealing to

specific groups of voters by promising freebies such as bicycles, grinding machines, televisions, and so on. The manifesto makes no mention of how policy would be implemented or the source of funds for such implementation. Manifestos do not inform voters about how the scheme would be funded by the public purse or how an individual would be eligible to receive funds under a specific scheme. Most manifestos include offensive campaign material designed to elicit a specific feeling or inclination toward a specific group of people.

28. The petitioner submits that in Bhutan and Mexico, political parties are required to submit a copy of their election manifesto to the Election Commission prior to the primary round of National Assembly elections, and manifestos are only published with the Election Commission's approval, after thoroughly vetting and filtering out issues that have the potential to undermine the nation's security and stability. Legal provisions apply in the United Kingdom and the Netherlands, and offensive campaign materials are screened and removed. This principle should be applied to India as well. Each election manifesto should be screened by the Election Commission before being released (to remove any objectionable or misleading campaign material), and a mechanism should be provided to enforce a ruling party's election manifesto if the party promising them is not implementing such poll promises. Messages that elicit a specific emotion should be screened and, as a result, removed.
29. The petitioner contends that because freebies taint the integrity of the election process and influence voters, they should be considered a corrupt practice. It is not as if offers of money to influence voters by candidates alone can become corrupt

practice, and political parties that offer or lure people to vote for their respective party to power in a wholesale manner cannot be construed as corrupt practice. The petitioner contends that whether done by an individual or a party, it is an inducement to bribery and thus a corrupt practice. Our democracy has sunk to such depths that it is time to bring political parties that offer freebies to influence voters for the purpose of picking up votes within the scope of S. 123. This Hon'ble Court has previously stated that the distribution of freebies by political parties taints the integrity of the electoral process and influences voters. Political parties basically induce or lure voters to vote for them by offering freebies, and because freebies are used as incentives by political parties to bring about a desired state, it can be considered Inducement to Bribery.

30. In *S. Subramaniam Balaji v. State of Tamil Nadu and Others* (2013) 9 SCC 659, this Hon'ble Court held that Section 123 of the RPA does not apply to political parties and only prohibits individual candidates from making promises directly related to their election, which constitutes corrupt practice under Section 123. Without a doubt, the statute does not penalize political parties for engaging in corrupt practices. The RPA was passed in 1951, immediately after we became a republic, and policymakers at the time did not anticipate that political parties would stoop to the level of engaging in corrupt practices in the name of election manifestos, which is why they did not include political parties under Section 123 of the Representation of People Act.
31. The ECI did not issue any guidelines regarding freebies, the timing of the release of the election manifesto, the fulfilment of promises, and so on. Instead, the Election Commission issued

generic guidelines stating that the election manifesto must adhere to the Model Code of Conduct and that promises should not taint the integrity of elections. The guidelines were so broad and generic that the entire exercise was rendered pointless in light of the Court's instructions.

32. According to the ECI's guidelines, "political parties should avoid making promises that are likely to vitiate the purity of the election process or exert undue influence on voters in exercising their franchise, and in the interest of transparency, level playing field, and credibility of promises, political parties should broadly indicate the ways and means to meet the financial requirements for it." However, it is only a suggestion. The practice of handing out handouts is regrettable. It undermines electoral democracy because all political parties entice voters with a plethora of gifts and freebies. Even if they do not keep all of their promises, people are willing to listen to them. Politicians' primary responsibility is to promote good governance and social and economic development. However, even after 75 years of independence, India remains far behind many Asian countries in all social parameters, including those that gained independence after us. It is not just one political party that is guilty of such malpractices; rather, the entire spectrum of political parties is to blame for this sorry state of affairs. The ECI is almost a dormant sentinel for election supervision. Petitioner contends that parties that engage in such malpractices should be barred from running in elections. Only this will bring the threat under control, and only then will true democracy flourish.
33. Announcements of freebies and perks to entice voters are not novel concepts in democracy. The slogan 'Garibi Hatao' was

most powerful in the 1970s; gradually, political parties announced more freebies, sops, and bonanzas for voters to woo them with free power and free water to agriculture sector, etc. How long will the government be able to provide good governance if the state exchequer is in the red? The need for reviving welfare schemes is critical at this time. We require improved facilities in government hospitals, hygienic food, and safe drinking water for the general public.

34. The petitioner contends that the recent trend of political parties influencing voters through freebies with an eye toward elections not only poses the greatest threat to the survival of democratic values, but also violates the spirit of the Constitution. This unethical practice is akin to paying bribes to the electorate at the expense of the exchequer in order to stay in power, and it must be avoided in order to preserve democratic principles and practices. In a true democracy, voters are free to exercise their franchise solely on the basis of their future aspirations and the government's past performance as stated in the manifesto, and it is the government's responsibility to ensure that elections are held in a conducive manner free of undue influences-manipulated interventions. Distributing freebies on the eve of elections and resorting to populist measures to gain public support is a clear indication that the government lacks the vision and will to continue with infrastructure development in major fields such as health, sanitation, roads, bridges, education, employment, business, commerce, and the environment, among others. It is suggested that effective amendments be implemented to prevent this undemocratic practice. The announcement of freebies and populist measures to gain undue political favours from voters

should be prohibited, and the ECI should monitor violations and take appropriate deterrent measures.

35. Ahead of the state Assembly elections, political parties have made it a practice to announce a slew of giveaways in order to entice voters. When the ruling party promises to provide financial benefits to all workers in some way, the opposition dismisses it as mere lip service and a political ploy that has a crippling effect on financial management. Prioritizing perks over good governance is unquestionably contrary to democratic principles. It jeopardises the integrity of the entire electoral process when elections are not contested on pressing issues and concerns for society's larger interests. Freebies reward undeserving corrupt leaders and instill a culture of indolence when people receive all amenities without having to work for them. Outlandish promises should be scrutinised if we are serious about developing our state. People must outright reject parties that rely on bribes to win elections. However, because the vast majority of people are uneducated, only the ECI can provide much-needed relief. The Court should rule that consolidating votes through populist schemes during elections is illegal, and parties that violate the directions should be de-recognized. People should be educated about their rights so that they do not succumb to the allure of money, alcohol, and lollipops offered by political parties.
36. Since independence, there has been a steady decline in people exercising their right to vote. Political parties from across the political spectrum compete to woo the electorate in order to ensure maximum participation in the elections. Instead of promising good governance or welfare schemes, they make a

slew of electoral promises, such as opening more schools, colleges, hospitals, and bus stops while the existing ones are in disarray, and offer unprecedented freebies to various sections of society to ensure their victory. This has become an unavoidable practice that undermines the sanctity of elections and is thus completely unwarranted and unjustified. The poor, illiterate, unemployed, and gullible voters are easy prey for these enticements and frequently make irrational choices of candidates. This breeds corruption and criminalization of politics, resulting in ineffective legislative functioning and an unnecessary burden on the public purse. When people give up their right to question the government, they undermine the spirit and essence of democracy and deprive other citizens of the desire to live a decent life.

37. The parties and the general public are entirely to blame for the current state of our political culture. Parties should only give tickets to deserving candidates. People should also vote for leaders who are educated, honest, dedicated, and conscientious, and who can lead them on the path to development. The ECI should declare the freebie illegal and place it under the jurisdiction of the MCC. The election manifesto should also be made a legal document. It is not uncommon for political parties to provide freebies to voters ahead of elections. All political parties are competing to lure voters with freebies such as free electricity, water, smartphones, and free travel, but the trend has gained traction recently. It has become a threat in the run-up to every election. Writing off bills and taxes to woo voters is a sure way to screw the state and country's economies. We are so lazy as a result of our culture that we don't want to do anything; we

want everything for free. It is a never-ending trail that affects people's mindsets and degrades the electoral process. It violates democratic principles. The European Commission must put an end to the freebie culture and de-recognize parties that offer bribes.

38. The election in Punjab is approaching, and various parties have been attempting to sway voters in order to obtain the greatest number of votes. Many parties have been attempting to pay all electricity bills and reduce future charges, and many efforts are also being made by various parties to meet people's needs and aspirations at the last minute. The petitioner believes that the government should invest more money in education and assist in the development of world-class institutions. Given that Punjab suffers from a lack of resources in the education sector, the government should increase funding for the development of high-quality, modern institutes with well-trained faculty and staff. The government can also provide relief to many of the backward classes, as well as the poor and unemployed, who have been impacted by the Covid-19 wave. The government should also meet the demands of the protesting teachers, as they are the foundation for the next generation. The government should not give out freebies just to get people's attention.
39. Over the years the politics of freebies has become an integral part of the electoral battles –
 - (i) Unplanned Promises: Offering freebies has become a competitive bidding done by every political party, however, a big problem is the subsidies or any of the freebies announced are not incorporated into the budget proposals.

- (ii) Economic Burden on States: Offering freebies, ultimately, has an impact on the public exchequer and most of the states of India do not have a robust financial health and often have very limited resources in terms of revenue.
 - (iii) Such distribution freebie commodity largely disrupts demand-supply dynamics.
 - (iv) Freebies actually have the tendency to turn the nation's population into: Lethargy and devoid of entrepreneurship.
 - (v) Everyone at the slightest sign of distress starts demanding some kind of freebies from the Govt.
- 40.** Now, all parties offer the type of lollipop that will garner votes. Sewing machines were previously distributed. Knitting machines and bicycles followed. However, there is a method to what appears to be madness. The politician preys on the weaker and more vulnerable segments of the electorate. Women, particularly the uneducated and impoverished, bear the brunt of this burden. As a result, aata dal, garments, gas cylinders, cheaper electricity, and so on are distributed with great fanfare and publicity. There is now a door-to-door distribution scheme for new ration cards, for which people have been waiting for the past five years. Before the elections, the idea of a kind and gracious candidate is floated. Long ago, a socialist party candidate in Amritsar was reported to have offered a trolleybus of langar at a popular Gurdwara. Next Sunday, the wealthier Congress candidate brought two trolleys. The tragedy is that no candidate spends a single dime of their own money. Taxpayers' money is being squandered by laying substandard roads just before elections. There is almost no opposition to this obvious corruption. It reminds me of Nobel laureate Aldous Huxley's belief that, very

soon, under the influence of propaganda and drugs, the people will have lost all of their freedom but will lack the will to oppose. There will be concentration camp-like conditions, but people will have learned to love and enjoy them. Huxley's prediction appears to be correct. Petitioner claims that arbitrary promises of irrational freebies from public funds not only unfairly influence voters, shakes the foundations of free and fair elections, disrupts the level playing field, and taints the purity of the election process, but also flagrantly violates Article 14. Petitioner also claims that ECI has the authority to not only seize the election symbol but also deregister the party.

41. The bluff of all those parties, who have zero delivery when seated in government, but have got into the habit of announcing lots of freebies just before elections have to be called out.
42. ECI powers under Article 324 operate in areas left unoccupied by legislation and have a plenary nature. **[Kanhya Lal, 4 SCC 628, para 16]** The Election Commission's power of "superintendence, direction, and control" over election administration is executive in nature. [2 SCC 656, p. 22] A.C. Jose (1984). The Symbols Order can be traced back to the Election Commission's authority under Article 324. [Para 16 of Kanhya Lal Omar]. The ability to amend, vary, or revoke an administrative order under Section 21 of the General Clauses Act, specifically referred to in paragraph 2(2) of the Symbols Order, would allow the Election Commission to withdraw recognition of a political party. **[Janata Dal v. Election Commission, 1 SCC 235, para 6]** As a result, it is clear that the proposed direction to the ECI to amend the Symbols Order would operate in a vacuum. In fact, prayers are

critical in this case because the functions performed by political parties are critical to democracy.

43. Petitioner contends that political parties have constitutional status and constitutional powers under the Tenth Schedule insofar as they can: (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 the Government remains in power; and (e) decide public policies that affect the lives of millions of people. A person can be disqualified from being a member of either House of Parliament under the Tenth Schedule, according to Article 102 (2) of the Constitution, and a similar provision exists for State Legislators under Article 191. (2). Furthermore, according to Article 102(2), if a member of a House belonging to a Political Party votes or abstains from voting in the House in contravention of the directions issued by the Political Party, he is disqualified from being a Member of the House.
44. Political parties have been granted statutory status under S. 29A and are required by law to bear true faith and allegiance to the Constitution. Political parties provide tickets to candidates, and people vote on party symbols, making them important instruments of democratic governance that function similarly to a public authority. Political parties are heavily subsidised by the state in a variety of ways and are exempt from income tax under S. 13A. The state has indirectly financed them through free airtime on All India Radio. Furthermore, the government spends a lot of money on political parties in order to give them free air time on Doordarshan.

45. Under Rules 11 and 12 of the Registration of Electors Rules, 1960, two copies of Electoral Rolls are provided free of charge to recognised Political Parties. This is yet another example of the state indirectly funding political parties. The Central Government and State Governments have provided various houses/buildings/other types of accommodation to various Political Parties, either for free or at a reduced rate. This also amounts to the Central and State Governments indirectly funding Political Parties. Political Parties dominated the entire democratic system. They are constantly engaged in the performance of public duty, so it is critical that they become accountable to the public. Transparency and accountability in the operations of political parties are critical in the larger public interest because they perform public functions.
46. Only after registration does the Election Commission award symbols to political parties under the Election Symbols (Reservation and Allotment) Order, 1968. The Election Commission requests information on the expenses incurred by political parties during the elections. Contributions of Rs. 20,000/- or more received by a Political Party from any person or company must be reported to the Commission under Section 29C of the Representation of People Act.
47. Under Article 324 of the Constitution of India, the ECI has superintendence, direction, and control over elections. In certain circumstances, it also has the authority to suspend or withdraw recognition of a political party. More importantly, under the Tenth Schedule, Political Parties can recommend the disqualification of Members of the House in certain circumstances. As a result, the aforementioned constitutional and

statutory powers of Political Parties unquestionably bring them under public authority. The Preamble seeks to ensure to all its citizens: social, economic, and political justice; liberty of thought, expression, belief, faith, and worship; and equality of status and opportunity. Interestingly, one of the goals of the RTI Act is to promote these principles in the form of transparency and accountability in the operations of every "public authority." It seeks to educate citizens, combat corruption, and hold government agencies accountable to the public. Political Parties, it goes without saying, are important political institutions that can play a critical role in promoting transparency in public life. Political parties serve the public interest by defining the parameters of governance and socioeconomic development. They must only work in the public interest in the spirit of the constitutional ethos.

48. The power conferred by Article 32 of the Indian Constitution is broad and not limited to issuing the high prerogative writs specified therein, but also includes the authority to issue any directions, orders, or writs necessary for the enforcement of fundamental rights. As a result, even if the conditions for issuing any of these writs are not met, this Hon'ble Court would not be forced to fold its hands in despair and claim that it is unable to assist the citizen who has come before it for judicial redress. The Court is not powerless to grant relief in cases involving violations of the right to life and liberty, and it should be prepared to "*forge new tools and device new remedies*".
49. In order to vindicate these precious fundamental rights, this Hon'ble Court, in addition to 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 civil or judicial authorities in the territory of India to act in support of this Hon'ble Court's order. This Hon'ble Court, as the protector of citizens' civil liberties, has not only the power and jurisdiction, but also the obligation, to protect the fundamental rights guaranteed by Part III in general and Article 21 in particular, zealously and vigilantly. This Hon'ble Court and High Courts are sentinels of justice, with extraordinary powers of judicial review to ensure that citizens' rights are properly protected. **[M.L. SHARMA (2014) 2 SCC 532]**

50. It is not only an individual's right to petition this Hon'ble Court, but also the Court's responsibility to enforce fundamental rights. As a result, if the petitioner convinces this Hon'ble Court that his fundamental right has been violated, it is the Court's 'duty' and 'obligation' to ensure that the petitioner's fundamental right is protected and safeguarded. **[Ramchandran, Law of Writs, 6th Edition, 2006, Vol-1, p. 131]**
51. This Hon'ble Court's authority is not limited to issuing prerogative writs. The jurisdiction has been expanded by using the phrase "in the nature of." The phrase "in the nature of" is not synonymous with the phrase "of the nature of." The former emphasises the importance of nature, while the latter is content with mere similarity. **[M. NAGRAJ v. UOI, 8 SCC 212 (2006)]**
52. This Hon'ble Court cannot refuse an application under Article 32 solely on the grounds that: (i) the application was made to this Hon'ble Court in the first instance without recourse to the High Court under Article 226; or (ii) the application was made to this Hon'ble Court in the first instance without recourse to the High Court under Article 226. (ii) that the petitioner has access to an

adequate alternative remedy; and (iii) that the application involves an investigation into disputed factual issues and the taking of evidence. (iv) that declaratory relief, i.e., a declaration of the unconstitutionality of the challenged statute, as well as consequential relief, has been requested; and (v) that the appropriate writ or direction has not been paid for in the application. (vi) that the common writ law must be amended in order to provide adequate 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**]

53. Article 32 of the Constitution is a vital safeguard for the protection of fundamental rights. It guarantees a quick and summary remedy for enforcing fundamental rights because a person complaining of a violation of any of his fundamental rights by an administrative action can go straight to the Court for vindication of his right without having to go through the directory processes of proceeding from lower to higher courts as he would in other ordinary litigation. The Court is the protector, defender, and guarantor of the people's fundamental rights. 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]

54. In another case, this Hon’ble 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].*
55. The language used in Articles 32 and 226 is broad, and this Hon’ble Court's and High Court's powers include issuing orders, writs, or directions, including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition, and certiorari, as may be deemed necessary for the enforcement of fundamental rights and, in the case of the High Courts, for other purposes. There is no need to return to the procedural complexities of writs in English Law in light of the express provision of the Constitution. The Court may make and issue orders in the nature of these prerogative writs in appropriate cases and in appropriate manners, so long as the fundamental principles governing the exercise of jurisdiction in the matter of granting such writ are followed [T.C. BASAPPA v. T. NAGAPPA, AIR 1954 SC 440]

56. An application under Article 32 should not be dismissed simply because the appropriate direction or writ was not requested. Thus, where an order in the nature of mandamus is sought in one form, nothing prevents the Court from granting it in another. Article 32 allows for a great deal of leeway in framing the writ to meet the needs of specific cases. [AIR 1951 SC 41] CHARANJIT LAL CHOWDHURY Even if the petitioner has asked for broader relief that the Court cannot grant, the Court can grant the relief to which the petitioner is entitled [RAMBHADRIAH, AIR 1981 SC 1653]. This Hon'ble Court has the authority to grant consequential relief in order to provide full and complete justice, even in the case of individuals who are not before the Court or have not filed a petition with the Court [PRABODH VERMA AIR 1985 SC 167]
57. For the protection of fundamental rights and the rule of law, the Court may grant jurisdiction to a body or authority under this article to act beyond the scope of statutory jurisdiction or function, regardless of the question of limitation prescribed by the statute. In exercising this power, this Hon'ble Court entrusted the NHRC with certain matters, with the direction that the Commission would function in accordance with its direction, and that all authorities would be bound by it. The NHRC was declared to be unconstrained by any conditions and given free rein, resulting in an act sui generis conferring special jurisdiction. The NHRC was declared to be unconstrained by any conditions and given free rein, resulting in an act sui generis conferring special jurisdiction. [PARAMJIT KAUR, AIR 1999 SC 340]
58. The existence of a remedy in the form of Article 226 for filing a writ in High Court does not preclude or bar an aggrieved person

from approaching this Hon'ble Court directly under Article 32. It is true that the Court, in its wisdom, has imposed a self-restraint on the exercise of jurisdiction where the aggrieved party has an effective alternative remedy in the form of Article 226. This rule, however, which requires the exhaustion of alternative remedies, is a rule of convenience and discretion rather than a rule of law. It does not preclude the Court from exercising its jurisdiction under Article 32. **[MOHAMMED ISHAQ (2009) 12 SCC 748]**

59. This Hon'ble Court has the authority to evolve the New Principles of Liability in order to make the guaranteed remedy for enforcing fundamental rights real and effective, and to provide complete justice to the aggrieved party. It was determined that the court was not helpless, and that the broad powers granted to the Court by Article 32 of the Constitution, which is a fundamental right, imposes a constitutional obligation on this Hon'ble Court to forge such new tools as may be required for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which allows for the award of monetary compensation in appropriate cases where that is the only redress available. When invoked by have-nots who lack the wherewithal to enforce their right in private law, the remedy in public law must be more readily available, even if its exercise is tempted by judicial restraint to avoid circumvention of private law remedies, which are more appropriate. Under Article 32, the Court may issue appropriate orders to provide complete justice to the parties even if it is determined that the petition filed is not legally maintainable. **[Saihba Ali, (2003) 7 SCC 250]**
60. That the petitioner has come to know through media reports and other sources that Writ Petition (Civil) No. 43 of 2022 has been

filed on same issue as being raised by the petitioner in the present petition and this Hon'ble Court has been pleased to issue notice to the respondents. A true copy of the Order dated 25.01.2022 passed by this Hon'ble Court in Writ Petition (Civil) No. 43 of 2022 is being annexed herewith and marked as **Annexure P-2.**

[Page 103]

61. Petitioner has not filed any other petition in this or any other court seeking the same or similar directions as prayed.
62. The petitioner has no personal stake in the outcome of this PIL. There is no personal gain, private motive, or oblique motive for filing.
63. There is no civil, criminal, or revenue litigation involving the petitioner that has or could have a legal nexus with the issue raised in this PIL.
64. Petitioner has not filed any representation, and there is no other recourse available to him other than a petition to this Court under Article 32.
65. That the petitioner seeks leave of this Hon'ble Court to place on record additional documents, facts and grounds in the present petition subsequently, if necessary.

PRAYER

In view of the submissions made herein above, the petitioner most respectfully prays that this Hon'ble Court may be pleased to:

- a) issue writ, order or direction 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; and/or

- b)** issue writ, order or direction 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; and/or
- c)** issue writ, order or direction 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*; and/or
- 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; and/or
- e)** Direct the ECI to seize election symbol/deregister the political parties which promise/distribute irrational freebies from public fund. In alternative, direct Centre to enact a law to regulate political parties; and/or
- f)** Pass such other orders as this Hon’ble Court deems fit and proper.

AND FOR THIS ACT OF KINDNESS PETITIONER AS IN DUTY BOUND SHALL EVERY PRAY.

DRAWN & FILED BY

Drawn on:29.01.2022
Filed on: 31.01.2022
New Delhi

[NIRMAL KUMAR AMBASTHA]
ADVOCATE FOR PETITIONER

IN THE SUPREME COURT OF INDIA

[Civil Original Jurisdiction]

WRIT PETITION (CIVIL) NO OF 2022

IN THE MATTER OF:

Chandra Shekhar

...Petitioner

Verses

Union of India & others

...Respondents

AFFIDAVIT

I, Chandra Shekhar, [REDACTED] Occupation -
 Advocate, aged 48 years, [REDACTED]
 [REDACTED]

[REDACTED] do hereby
 solemnly affirm and declare as under:

1. I am the sole petitioner above named and well acquainted with facts and circumstances of the case and as such competent to swear this affidavit.
2. I have read and understood contents of accompanying Writ Petition comprising of Synopsis and List of Dates [Pages B - G, Writ Petition [Paras (1 - 65), Pages (1 - 36)], which have been drafted under my instructions and I state that the averments therein are true and correct to my knowledge and belief and rest are submission based on legal advice by the conducting counsel, which I believe to be true.
3. That Annexure filed with the petition is true copy of respective original.
4. I have not filed any other petition either in this Hon'ble Court or in any other Court seeking same or similar directions as prayed.
5. I have no personal interests, individual gain, private motive, or oblique reasons in filing this petition. It is not guided for gain of any other individual person, institution, or body. The only motive is public interest.



6. There is no civil, criminal or revenue litigation, involving petitioner, which has or could have legal nexus, with issue involved in this petition.
7. There is no requirement to move concerned authority for relief sought in this petition. There is no other remedy available except approaching this Court.
8. I have gone through the Article 32 and the Supreme Court Rules and do hereby affirm that the present petition is in conformity thereof.
9. I have done whatsoever enquiry, which was in my power, to collect the data or material, which is available and relevant for the Court to entertain the petition.
10. I've not concealed any data/material/information in this petition, which may have enabled this Hon'ble Court to form an opinion, whether to entertain this petition or not and/or whether to grant any relief or not.
11. The averments made in this affidavit are true and correct to my personal knowledge and belief. No part of this Affidavit is false or fabricated, nor has anything material been concealed there from.




DEPONENT

VERIFICATION

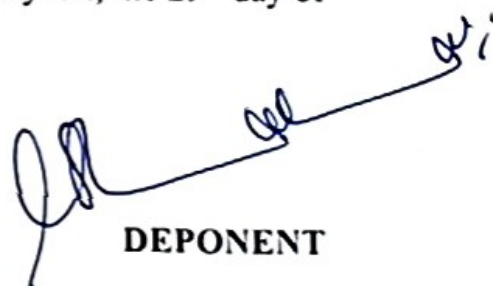
I, the Deponent do hereby verify that the contents of above affidavit are true and correct to my personal knowledge and belief. No part of this affidavit is false nor has anything material been concealed there from. I hereby solemnly affirm and declare it today i.e., the 29th day of January 2022 at New Delhi.

IDENTIFIED BY
N-12 Ambekar
Advocate / Regd. Clerk

ATTESTED

NOTARY DELHI

29 JAN 2022


DEPONENT

RELEVANT PROVISIONS OF CONSTITUTION OF INDIA, 1950

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.

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.

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.

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.

RELEVANT PROVISIONS OF INDIAN PENAL CODE, 1860**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.]

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 subsection (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.

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**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.

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

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(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 corrupt practice — Purity of elections — If vitiated — Directions issued to Election Commission of India

c — 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”,
d “electoral bribes” alleged

— 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

e — 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 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

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SUPREME COURT CASES

(2013) 9 SCC

— 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

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- 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.

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?

- 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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SUPREME COURT CASES

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(vi) Since this petition is fit for dismissal dehors 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)

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)

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.

(Paras 84.4, 84.6 and 86)

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

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

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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 ensure that elections are held in a free and fair manner. The gist of the appellant’s
- e 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

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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.

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.

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.

(Paras 61.1 to 61.4)

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.

(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. Harinder Singh Jassi*, (1999) 9 SCC 386; *Samatha v. State of A.P.*, (1997) 8 SCC 191, *referred to*

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 —

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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

c

— 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

d

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

g

Held :

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.

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(Para 62)

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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

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- 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*

- 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)

- 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)

- 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

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- 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 :

- 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)

- 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

- 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 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

a

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.

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(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

d

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

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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.

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3. (2010) 5 SCC 538, *Bhim Singh v. Union of India* 680e-f, 686a, 708g, 709b-c
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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

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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

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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.

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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.

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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.

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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)

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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

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. e

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.

1. 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. 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). a

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 b

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. c

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. d

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”. e

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

a Budget Speech for the year 2011-2012:

“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.

Comment by the appellant:

b 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:*

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.

g *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.

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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.

g 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.

h 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.

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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 vires 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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- 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

- 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.

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

- 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.

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

- 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***

- 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

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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).

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.

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

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.

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

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.

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)

c "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:

d '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.'

* * *

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

f '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.' "

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

g "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

18 (1984) 3 SCC 499

19 (1985) 1 SCC 91

20 (2009) 1 SCC 633

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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
d

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. e
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. Harminder 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.'

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

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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

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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.”

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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.

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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.

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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.”

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

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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

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

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- 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 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.

- 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)

- “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 population. Thus, cinemas have become tools to promote welfare of the 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 seek admission into theatre as per his paying capacity.”

- 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

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²³ (1973) 4 SCC 225

²⁴ 1992 Supp (1) SCC 684

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

e ***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

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(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) 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.

(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.

d *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.

e (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.

f (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:

g 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

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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, deshmukhs 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 c

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

(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: e

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.

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.

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.

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.

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

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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.

e **65.** 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 computer to students;
- (v) Free rice scheme; and
- (vi) Free distribution of electric fans, mixies and grinders to women.

66. The schemes are as under:

“I. Marriage Assistance Scheme

g (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:

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(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

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)
3.	To whom the benefit is due	Girls belonging to poor families g
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)
b			Rs 50,000 along with 4 gm gold coin (for graduate and diploma-holders)
	3.	To whom the benefit is due	To the couple
c	4.	When the benefit is due	Within 6 months from the date of marriage
	5.	<i>Eligibility criteria</i>	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. Maniammaiyyar 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)
e			Rs 50,000 along with 4 gm gold coin (for graduate and diploma-holders)
	3.	To whom the benefit is due	Daughter of poor widow
f	4.	When the benefit is due	Before marriage
	5.	<i>Eligibility criteria</i>	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)
h			Rs 50,000 along with 4 gm gold coin (for graduate and diploma-holders)

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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) Age-limit	
	(b) Income limit	Not exceeding Rs 24,000 per annum

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(E) *Dr Muthulakshmi Reddy Ninaivu 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
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)
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
	(a) Age-limit	
	(b) Income limit	No income limit

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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.

f

(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.

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

(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:

f (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

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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.

e (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.

f (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.

g (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

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. g

(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. h

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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

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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 (vi) 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.

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.

- g*
- 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:

<i>Year</i>	<i>Schools</i>	<i>Arts/Science College</i>	<i>Engineering Colleges</i>	<i>Polytechnics</i>
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

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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.

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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.

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.

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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.”

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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.

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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.

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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

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

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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
- b 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.

- 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
- g 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

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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 Vishaka¹² 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

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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

h

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Directions

- 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.
- 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.
- 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. Nevertheless, an exception can be made in this regard as the purpose of the election manifesto is directly associated with the election process.
- 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.
- 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 (*supra*), the appeal and the transferred case are dismissed. No order as to costs.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SWrit Petition(Civil) No.43/2022

ASHWINI KUMAR UPADHYAY

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(FOR ADMISSION)

Date : 25-01-2022 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MS. JUSTICE HIMA KOHLI

For Petitioner(s)

Mr. Vikas Singh, Sr. Adv.
Mr. Ashwini Kumar Upadhyay, Adv.
Mr. Ashwani Kumar Dubey, AOR
Mr. Kapish Seth, Adv.
Ms. Deepika Kaliya, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The Court is convened through Video Conferencing.

Heard the learned Senior counsel appearing for the petitioner
and carefully perused the material available on record.

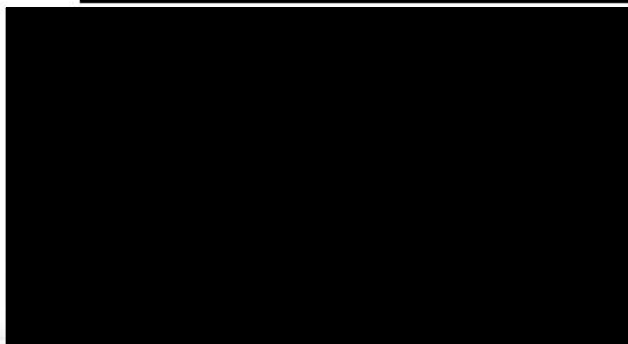
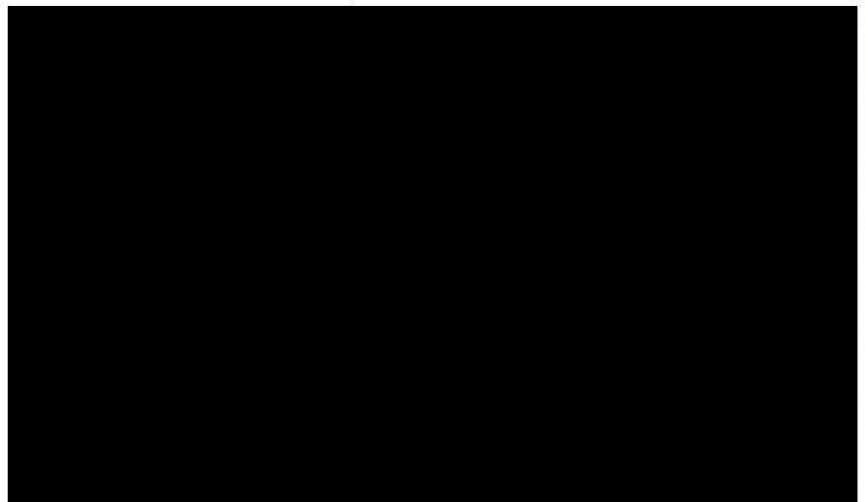
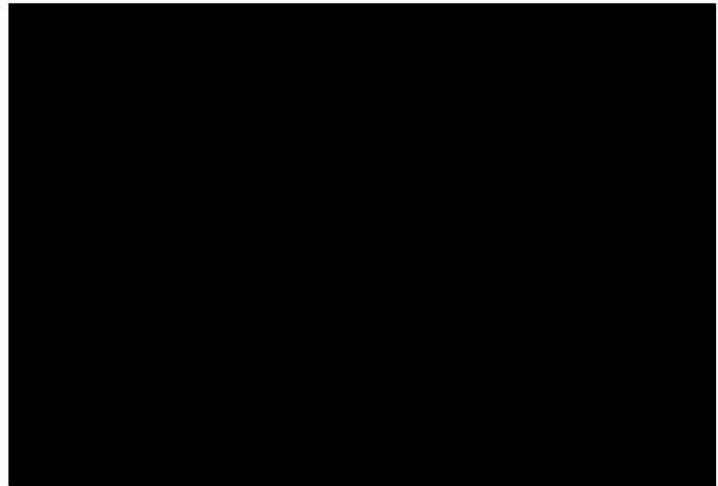
Issue notice, returnable in four weeks.

Dasti service, in addition, is permitted.

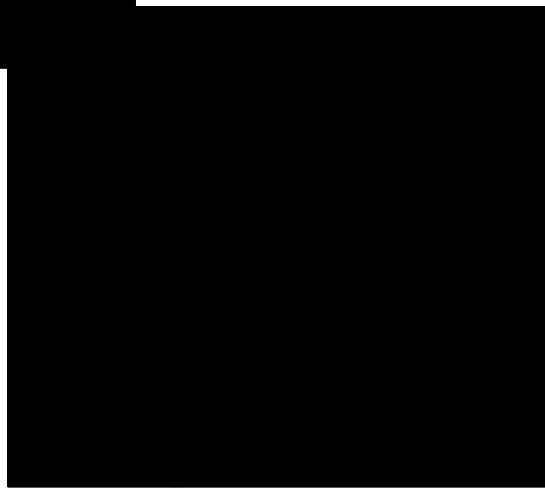
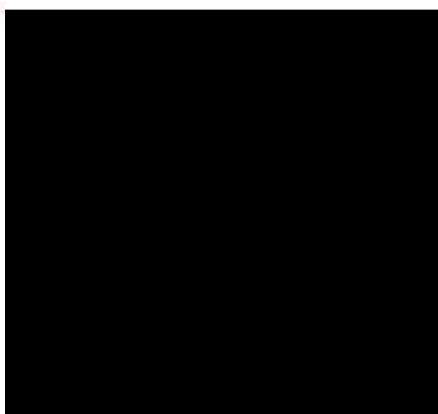
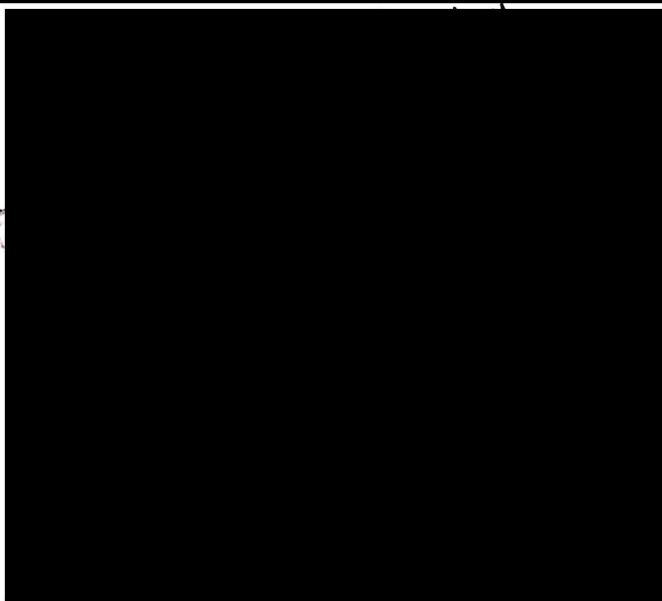
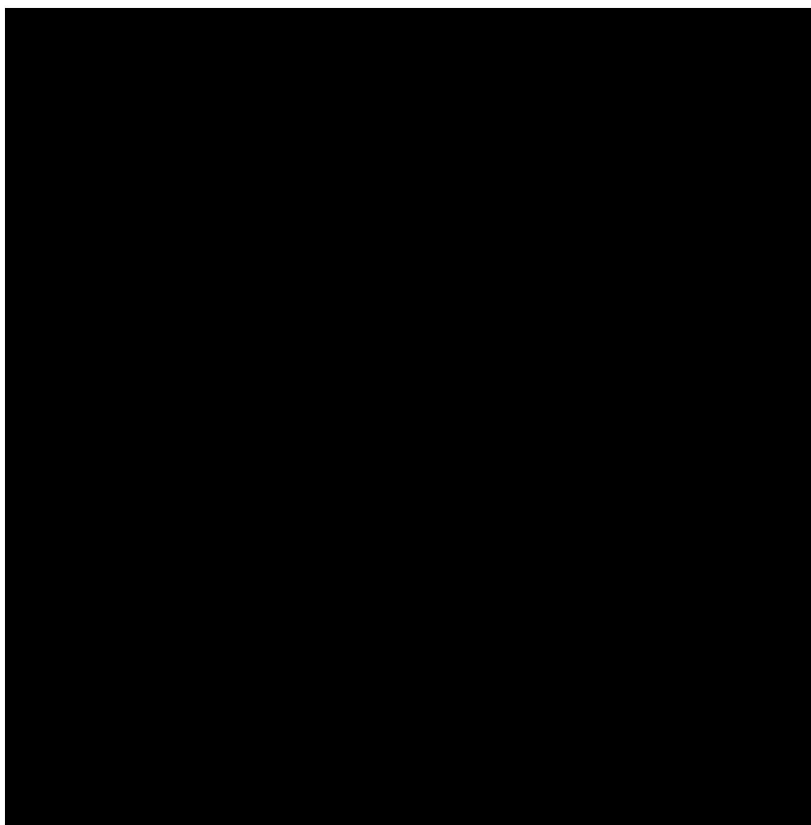
(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS(R.S. NARAYANAN)
COURT MASTER (NSH)

//True Copv/

Identity and Residence Proof of the



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Valid Upto 5 Year