

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5130 OF 2013
(Arising out of SLP (C) No. 21455 of 2008)

S. Subramaniam Balaji Appellant(s)

Versus

The Government of
Tamil Nadu & Ors. Respondent(s)

WITH

TRANSFERRED CASE NO 112 OF 2011

S. Subramaniam Balaji Appellant(s)

Versus

The Government of
Tamil Nadu & Ors.
Respondent(s)

J U D G M E N T

P. Sathasivam, J.

SLP (C) No. 21455 of 2008

1) Leave granted.

2) This appeal is directed against the final judgment and order dated 25.06.2007 passed by the Madurai Bench of the Madras High Court in Writ Petition (C) Nos. 9013 of 2006 and 1071 of 2007 whereby the High Court dismissed the petitions filed by the appellant herein.

3) Brief Facts:

(a) The case relates to distribution of free gifts by the political parties (popularly known as 'freebies'). The Dravida Munnetra Kazhagam (DMK)- Respondent No. 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.

(b) 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 unauthorized, impermissible and *ultra vires* the Constitutional mandates. The appellant herein filed a complaint dated 24.04.2006 to the Election Commission of India seeking initiation of action in respect of the said promise under Section 123 of the Representation of People Act, 1951 (in short 'the RP Act'). The appellant herein also forwarded the complaint to the Chief Election Officer, Tamil Nadu.

(c) 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.

(d) 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 15/17th September, 2006 by distributing around 30,000 CTVs to the identified families in all the districts of the State of Tamil Nadu.

(e) 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 Petition 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

25.06.2007, 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

(f) 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 equalize 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 gms gold thalis, Rs. 50,000/- cash for women's marriage, green houses, 20 kgs. rice to all ration card holders 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.

(g) The very same Scheme was also challenged by the appellant herein on the ground that such promises by the parties are unauthorized, impermissible and ultra vires the Constitutional mandates. The appellant herein also filed a complaint dated 29.03.2011 to the Election Commission of India seeking initiation of action in respect of the said Scheme under Section 123 of the RP

Act.

(h) The AIADMK and its political allies won the State Assembly Elections held in 2011. In order to fulfill 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 lap top computers.

(i) On 06.06.2011, the appellant herein filed another complaint to the Comptroller and Auditor General of India and the Accountant General of Tamil Nadu (Respondent Nos. 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 similar issue, the appellant preferred a Transfer Petition (C) No. 947 of 2011 before this Court praying for the transfer of the said writ petition. By order dated 16.09.2011, this Court allowed the said petition and the same has been numbered as T.C No. 112 of 2011 and tagged with the abovesaid appeal.

4) 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.

5) Prayer/Relief Sought For:

(a) When DMK started distribution of CTVs, the appellant/petitioner herein approached the High Court of Judicature at 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.

(b) After 5 years, when AIADMK 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 at 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 green houses (vii) free 20 kgs. rice to all ration card holders 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.

Contentions by the Appellant:

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

- (I) Article 282 of the Constitution of India only permits defrayment of funds from the Consolidated Fund of the State for "public purpose";
- (II) The distributions made by the respondent-State is violative of Article 14 since there is no reasonable classification;
- (III) Promises of free distribution of non-essential commodities in an election manifesto amounts to electoral bribe under Section 123 of the RP Act;
- (IV) The Comptroller and Auditor General of India has a duty to examine expenditures even before they are deployed; and
- (V) Safeguards must be built into schemes to ensure that the distribution is made for a public purpose and is not misused.

(I) Article 282 of the Constitution of India only permits defrayment of funds from the Consolidated Fund of the State for "public

purpose".

7) 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 revenue - 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."

8) 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".

9) It is further pointed out that the State raises funds through taxation which can be used by the State only to discharge its

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

10) 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 fulfill 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 the US have held that the entire act must fail. (*vide Coates vs. Campbell and Others*, 37 Minn. 498).

11) 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 vs. Hopwood & Ors.*

1925 AC 578, 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, London vs. Greater Council & Anr.* 1982 (2) WLR 62 and *R vs. Secretary of State for Foreign Affairs* (1995) 1 All ER 611.

12) 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.

13) 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 recognized even elsewhere in the US that the public funds cannot be used to make gifts to private persons.

14) 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".

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

"1. 60,000 green houses, at a cost of Rs.1.8 lakhs per house, totally amounting to Rs.1080 crores. The green houses 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:

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 gms of gold for poor girls for thali, plus Rs.50000 cash for wedding purposes, totally amounting to Rs.514 crores.

Comment by the appellant:

The State can achieve the same end of subsidizing 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.

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

Comment by the appellant:

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.

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.

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

Comment by the appellant:

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

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

Comment by the appellant:

Rice is already being distributed in the State at Rs.2 per kilo. 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.

- 16) 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 Centers instead of distributing laptops, or setting up of Community Televisions at the Panchayat level resorting to make large scale free distribution, it clearly violate Articles 162, 266(3) and 282 of the Constitution. It is further pointed out that the fact that CTVs and other schemes of 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

17) 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 & Anr. vs. International Trading Co. & Anr.* 2003 (5) SCC 437, 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.

18) This Court, in *K.T. Moopil Nair vs. State of Kerala* AIR 1961 SC 552, 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.

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

20) 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 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.

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

21) 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-Garnder vs. Ekykn*, (1869) 19 LT 613 that the making of charitable gifts on an extensive scale would lead to an inference that this was made to influence voters.

22) 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.

23) 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.

24) 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.

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

25) 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 etc.) Act, 1971. Section 13 of this Act states that the 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."

26) 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 organization, the CAG has the duty to scrutinize the procedure by which the loan or grant has been made.

27) The language of the provision suggests that the role of CAG is limited to review. However, this would rob the CAG of the power to ensure that large-scale unauthorized 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 Mills Co. Re* [1896] 2 Ch 279 that an auditor is a "watchdog". To perform his role as a watchdog, the 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.

28) The Members of Parliament Local Area Development Scheme (MPLADS) was challenged before this Court in *Bhim Singh vs. Union of India and Ors.*, (2010) 5 SCC 538 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:

"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."

29) 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 above mentioned promises for free distributions, hence, learned senior counsel prayed for necessary guidelines for proper utilization of public funds.

Contentions by the Respondents:

Contentions of the State of Tamil Nadu:

30) 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 Directives 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 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 legislature. Thus, it cannot be construed as a waste of public money or prohibited by any Statute or Scheme.

31) While elaborating his submissions, Mr. Shekhar Naphade replied for the contentions made by the appellant under the following heads:

(I) Political Parties are not State, therefore, not amenable to writ jurisdiction of the High Court under Article 226 or 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.

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

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

(IV) 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.

32) 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 political party can be considered as a State or any agency or instrumentality of the State, hence, no writ can lie against a political party. [vide *Federal Bank Ltd. vs. Sagar Thomas and Others*, (2003) 10 SCC 733.

33) Further, 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 Section 80, 80A 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 Vishaka principle and the difficulties in implementing the directions, if any, that may be issued by this Court.

34) It was submitted that Entry 72 of List-I of the VIIth Schedule to the Constitution of India deals with election to Parliament and State Legislative Assemblies. In exercise of this power, the 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 the Parliament on the basis of which the said Act was amended by substituting Chapter 1 in Part VII of the Act by Act No. 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 *Vishakha* principle (*Vishakha and Others vs State of Rajasthan and Others* (1997) 6 SCC 241) has no applicability. This Court, in *Vishakha* (*supra*) and *Aruna Ramachandra Shanbaug vs. Union of India and Others*, (2011) 4 SCC 454 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 Article 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

concerned subject. Whether the present provisions of the said Act are adequate or not is a matter for the Parliament and the Parliament alone to decide. This Court, in exercise of powers under Article 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.

35) Further, learned senior counsel emphasized on the difficulties to implement the guidelines, if any, framed by this Court by referring to previous cases, viz., *Union of India vs. Association for Democratic Reforms and Another* (2002) 5 SCC 294 and *People's Union for Civil Liberties (PUCL) and Anr. vs. Union of India and Anr.* (2003) 4 SCC 399.

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

36) 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. In *M.J. Jacob vs. A. Narayanan and Others*, (2009) 14 SCC 318, it has been held by this Court in paras 13 and 15 as under:

"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*, vide SCC p. 502, para 7 in which it is stated:

"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."

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

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

37) In *Baldev Singh Mann vs. Surjit Singh Dhiman*, (2009) 1 SCC 633, this Court observed as under:

"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 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.

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 the Court observed as under:

"(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."

38) 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.

39) In *Samatha vs. State of A.P. and Others*, (1997) 8 SCC 191, in paras 76 and 79, it has been held as under:

"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:

"... 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 the 26th January, 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 recognizing 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."

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

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

40) In *Bhim Singh (supra)*, a Constitution Bench of this Court observed as under:

"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.

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.

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."

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

41) 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 learned senior counsel for the State of Tamil Nadu. It was submitted that the concept of State Largesse is essentially linked to 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 recognizes 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 *Keshavanand Bharati vs. State of Kerala* (1973) 4 SCC 1461. 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 Government largesse.

42) 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, Dhuri vs. State of Punjab and Others*, 1992 Supp (1) SCC 684, held as under:

"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."

43) The grievance of the appellant is that the public resources are being used for the benefit of individuals. According to learned

senior counsel for the respondent, this argument is completely misconceived. It was submitted that in catena of cases, this Court has held that while judging the constitutional validity of any law or any State action, the Directive Principles of the 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 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 the State Policy.

44) 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. 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.

45) 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 in foul with formal equality contemplated by Article 14.

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

46) Mr. P.P. Malhotra, learned ASG also reiterated the stand taken by learned senior counsel for the State. It is the stand of the 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, Election Commission is performing its duties, however, if this Court frames any further guidelines, they are ready to implement the same.

47) 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:

Points for Consideration:

- (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?
- (ii) Whether the schemes under challenge are within the ambit of public purpose and if yes, is it violative of Article 14?
- (iii) Whether this Court has inherent power to issue guidelines by application of Vishaka principle?
- (iv) Whether the Comptroller and Auditor General of India has a duty to examine expenditures even before they are deployed?
- (v) Whether the writ jurisdiction will lie against a political party?

Discussion:

Issue No. 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?

48) 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 28.08.1956. Chapter I of Part

VII deals with "corrupt practices". Section 123 is the only Section relevant for our purpose which reads thus:-

"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-

(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-

(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-

(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.

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.

(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: 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 ex-communication or expulsion from any caste or community; or
(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;

(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 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:

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.

(3A) 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.

(3B) 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.

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 .

(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.

(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 vehicles 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:

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:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt, practice under this clause.

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

(6) The incurring or authorizing 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 in the service of the Government and belonging to any of the following classes, namely:-

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

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 of 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.

(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.

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

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.

(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

(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.]

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

49) Keeping the parameters fixed in the above Section, we have to analyze the claim of both the parties hereunder. A perusal of sub-sections 1-8 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.

50) For deciding the issue whether the contents of the political manifesto would constitute a corrupt practice under Section 123 of

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.

51) The object of provisions relating to corrupt practices was elucidated by this Court in *Patangrao Kadam vs. Prithviraj Sayajirao Yadav Deshmukh and Ors.* (2001) 3 SCC 594 as follows:-

14. "...Fair and free elections are essential requisites to maintain the purity of election 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."

52) With this background, let us analyze the contention of the appellant. The gist of appellant's argument is that promises of freebies such as colour TVs, mixer-grinders, laptops, etc., are in form part of an election manifesto of a political party but in substance is a bribe or inducement under Section 123. Thus, it is the stand of the appellant that the promise of this nature indeed induces the voters thereby affecting the level playing field between the candidates, which in turn disrupts free and fair election. Therefore, the appellants suggested for construing the promises made in the election manifesto as a corrupt practice under Section 123 of RP Act. He mainly relied on the principle that one cannot do

indirectly what it cannot do directly.

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

54) 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.

55) 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.

56) Lastly, it is settled law that the courts cannot issue a direction for the purpose of laying down a new norm for characterizing 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 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.

Issue No. 2

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

57) The concept of State largesse is essentially linked to 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.

58) It is not in dispute that television is a widely used tele-communication 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.

59) 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. Guidelines for each Scheme were framed to identify the beneficiaries and mode of distribution.

60) 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 Green House Scheme;
- (iv) Laptop Computer to students;
- (v) Free Rice Scheme; and
- (vi) Free distribution of Electric Fans, Mixies and Grinders to women.

The Schemes are as under:

"Marriage Assistance Scheme

1) The economic status of a family plays a vital role in enabling the poor parents who have daughters to fulfill 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 impose a heavy burden. There are at present 5 marriage assistance schemes and they are as follows:

- (i) Moovalur Ramamirtham Ammaiyar Ninaivu Marriage Assistance Scheme for poor girls
- (ii) Dr. Dharmambal Ammaiyar Ninaivu Widow Re-marriage Assistance Scheme to encourage the remarriage of young widows
- (iii) E.V.R. Maniammaiyyar 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

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 gms (1/2 sovereign) 22 ct. 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 grams 22 carat gold coin for making the 'Thirumangalayam'.

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 G.O.(Ms.) No. 49, SW & NMP Dept. dated 26.07.2011. The details pertaining to each scheme are as follows:

(A) Moovalur Ramamiratham Ammaiyan Ninaiyu Marriage Assistance Scheme

1.	Objectives of the Scheme	To help the poor parents financially in getting their daughter's married and to promote the educational status of poor girls.
2.	Assistance provided and Educational Qualification	Rs.25,000/- along with 4 gms. gold coin (for those who have studies up to 10 th std., Vth Std, for Scheduled Tribes)
3.	To whom the benefit is due	Girls belonging to poor families
4.	When the benefit is due	Before marriage
5.	<u>Eligibility Criteria</u> a) Age Limit	Bride should have completed 18 years of age

	b) Income Limit	Not exceeding Rs.24,000/- per annum
	c) Other criteria	Only one girl from a family is eligible

(B) Dr. Dharmambal Ammaiyyar Ninaivu Widow Re-marriage Assistance Scheme

1.	Objectives of the Scheme	To encourage widow remarriage and rehabilitate widows
2.	Assistance provided and Educational Qualification	Rs.25,000/- along with 4 gms. gold coin (for those who have studies up to 10 th std., Vth Std, for Scheduled Tribes) Rs. 50,000/- along with 4 gms. gold coin (for Graduate and diploma holders)
3.	To whom the benefit is due	To the couple
4.	When the benefit is due	Within 6 months from the date of marriage
5.	<u>Eligibility Criteria</u> a) Age Limit	Minimum age of 20 years for the bride and below 40 years for the bridegroom.
	b) Income Limit	No income ceiling.

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

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 gms. gold coin (for those who have studies up to 10 th std., Vth Std, for Scheduled Tribes) Rs. 50,000/- along with 4 gms. gold coin (for Graduate and diploma

		holders)
3.	To whom the benefit is due	Daughter of poor widow
4.	When the benefit is due	Before marriage
5.	<u>Eligibility Criteria</u>	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

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 gms. gold coin (for those who have studies up to 10 th std., Vth Std, for Scheduled Tribes) Rs. 50,000/- along with 4 gms. gold coin (for Graduate and diploma holders)
3.	To whom the benefit is due	Orphan girls
4.	When the benefit is due	Before marriage
5.	<u>Eligibility Criteria</u>	18 years
	a) Age Limit	
	b) Income Limit	Not exceeding Rs.24,000/- per annum

(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
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2.	Assistance provided and Educational Qualification	Rs.25,000/- (Rs.15,000/- DD/Cheque, Rs.10,000/- NSC Certificate) along with 4 gms. gold coin (for those who have studies up to 10 th std., Vth Std, for Scheduled Tribes) Rs. 50,000/- (Rs.30,000/- DD/cheque, Rs.20,000/- NSC Certificate) along with 4 gms. 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.	Eligibility Criteria a) Age Limit	Minimum 18 years
	b) Income Limit	No Income limit

II. Distribution of Milch Animal and Goats

- (i) It is highlighted by the State that with the growing population and shrinking land resources, the nutritional requirement of the State cannot be met by increasing the agricultural production alone. Moreover vagaries of monsoon, availability of water have added to the pressure on increasing the agricultural production. To compensate this, it is necessary to improve the animal production.
- (ii) As per the Indian Council for Agriculture Research (ICAR) norms, the per capita requirement of milk and meat per individual per day is 260 gms per day and 15gms. 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.
- (iii) Hence, it has been proposed to improve the standard

of living by providing the needy poor with a Milch cow (to 60000 families) and sheep/goats to about 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.

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

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

- (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".

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.

- (ii) The free Milch Cows will be distributed to the poor beneficiaries on a priority basis in such Districts that have lesser number of Co-operative 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 Co-operative network has the following advantages for the beneficiaries:

- (a) Availability of immediate opportunity of sale of milk

- through the Milk Cooperative Society at good prices.
- (b) Availability of Breeding services as well as Veterinary care at the door steps through the Society as well as Milk Union.
 - (c) Opportunity to tap the benefits of various Central/State funded Schemes meant for the co-operative sector.
- (iii) Out of the villages to be selected within the Districts concerned, the smaller village Panchayats will be prioritized by the Commissioner of Animal Husbandry & Veterinary Services for the implementation of the Scheme since it will be easier to form the Primary Milk Societies of smaller and cohesive units. Further, the Village Panchayats to be taken up each year will be grouped in appropriate geographical Clusters as to facilitate the economical collection of milk.
- 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.

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.
- (ii) Criteria for eligibility The beneficiaries should satisfy the following criteria:
 - ³⁵₁₇ Women Headed households are to be given priority, (Widows, Destitutes and the Disabled women to be given priority within this group).
 - ³⁵₁₇ Are below 60 years of age.
 - ³⁵₁₇ Do not own land over 1 acre in their own name or family

members' name (However, owning some land is preferable, since it will enable production of green fodder in own land).

³⁵₁₇ Do not own any cows/buffaloes at present.

³⁵₁₇ 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).

³⁵₁₇ Have not benefited from the free Goats/Sheep Scheme of the Government.

³⁵₁₇ Should be permanent resident of the Village Panchayat.

³⁵₁₇ At least 30% beneficiaries from the Village Panchayat should necessarily belong to SC/ST (SC 29% and ST 1%) Communities.

(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.

(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 senior most 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 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 short listed beneficiaries are conforming to the prescribed norms.

(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.

(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.

(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 scrutinize and list out the names of all the eligible beneficiaries for the Scheme.

(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.

- (ix) The finalized 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

finalization of the beneficiaries list.

- (xi) The list finalized by Gram Sabha will be displayed in the Village Panchayat, Notice Board and other prominent places in the Village Panchayat.

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 poor in the rural areas in order to enhance their standard of living.

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 enmasse 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.
- (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.
- (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 lakh 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 utilized to identify the poorest of the poor beneficiaries within each village.

3. Eligibility Norms

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.

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

- ³⁵₁₇ Must be the landless Agricultural labourers.
- ³⁵₁₇ Should be a permanent resident of the Village Panchayat.
- ³⁵₁₇ The beneficiary household should have at least one member between the age of 18 and 60 to effectively rear the Goats/Sheep.
- ³⁵₁₇ Should not own any Cow/Goat/Sheep at present.
- ³⁵₁₇ 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).
- ³⁵₁₇ Should not have benefited from the free Milch Cows Distribution Scheme of the Government.

2) Atleast 30% beneficiaries from the Village Panchayat should necessarily belong to SC/ST (SC 29% and ST 1%) community.

- (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.
- (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 urbanized characters, the District Collector will, in consultation with the Commissioner of Animal Husbandry and Veterinary Services, re-allocate the surplus target to other deserving Village Panchayats.

- (iii) In the District, the District Collector will be the overall in-charge of the process of identification of beneficiaries. The Regional Joint Director (Animal Husbandry) (RJAD), Project Officer (Mahalir Thittam) and Assistant Director (Panchayats) will assist him in this regard. The District Collector will form a Village Level Committee consisting of (i) Village Panchayat President, (ii) Vice-President, (iii) the senior most 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 scrutinize 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 finalized 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.
- (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 finalization of the beneficiaries list.

III. Solar Powered Green House Scheme

1. The Government proposed to construct "Solar Powered Green House Scheme" for the benefit of the poor in the rural areas and measuring about 300 square feet with unit cost of Rs.1.80 lakhs by meeting the entire cost by Government. The scheme aims at providing Solar Powered Green House for the poor living below poverty line in rural areas. Accordingly, it is proposed to construct 60,000 Solar Powered Green House of 300 sq. ft. each year for the next five years from 2011-2012 totalling 3 lakh house.
2. Eligibility Criteria :
1. The beneficiary under Solar Powered Green House Scheme should reside within the Village Panchayat and find a place in the below poverty line list.
2. He/she should own a site of 300 sq. ft. with clear title and patta.
3. Should not own any pacca concrete house and not 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.
 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

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 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 & Science colleges, Engineering Colleges and polytechnic colleges.

Accordingly the Government have issued order in G.O.(Ms) No.1, Special Programme Implementation Department dated 03.06.2011 for distribution of Laptop Computer at free of cost.

Under this scheme, the students studying in Government and Government aided schools, Arts and Science Colleges, Engineering Colleges and Polytechnics will be eligible. These students will be covered as follows:

Year	Schools	Arts/Science College	Engineering Colleges	Polytechnics
2011-12	Plus Two (12 th std.)	1 st & 3 rd years students	2 nd & 4 th year students	1 st & 3 rd year students
2012-13	Plus Two (12 th std.)	3 rd year students	2 nd & 4 th Year students	1 st & 3 rd year students
2013-14	Plus Two (12 th	-	-	1 st year student

	std.)			
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During the year 2011-12, 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 concerned Heads of Institutions 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 card holders 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 food gain at an affordable price.
- (2) Though Government of India advocates Targeted Public Distribution system(TPDS), 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 benchmarking.
- (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 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.
- (5) On the other hand Universal Public Distribution System is based on principle of self selection. Only those who need subsidized food articles will go to the Public Distribution System shops and not the entire population.
- (6) Based on these principles and out of years of experiences, 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

On application for issue of family cards in the form prescribed (available in 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 for family card or for rejection of cards as the case may be.

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 organized 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.

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 3kgs. extra sugar in lieu of rice in addition to the normal entitlement of $\frac{1}{2}$ kg. per person per month subject to the maximum of 2kg per month per card.

VI. Free Distribution of Electric Fans, Mixies & Grinders to Women

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.

In pursuance to above, the Government have issued Orders in G.O. Ms. 2 Special Programme Implementation Department, Dated 03.06.2011 for free distribution of 25 lakh packages of electric fans, mixies and grinder during 2011-12. In total about 1.83 crore women beneficiaries will be covered in a phased manner.

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.

The family cards as on 30.06.2011 will be considered for distribution of the items during the current year (2011-12).

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."

61) 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.

62) 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.

63) 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 (supra)*, 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 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 authorizes 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 authorizes 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.

64) In *Bhim Singh (supra)*, 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 authorized by the 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.

65) In addition to the legislative control by way of Appropriation Acts, the rules framed by the 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.

66) 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 scrutinizes 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.

67) 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.

68) If we analyze the abovementioned articles and the rules of procedure, it is established that there are various checks and balances within the mandate 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 in such schemes.

69) 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. In *Ekta Shakti Foundation vs. Government of NCT of Delhi* (2006) 10 SCC 337, it was held:-

10 "While exercising the power of judicial review of administrative action, the Court is not the appellate authority

and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize 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 power. 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. 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.

In the light of settled principle 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.

70) With regard to the contention that distribution of State largesse in the form of colour TVs, laptops, mixer-grinders, etc., violates Article 14 of Constitution as the unequals are treated equally. Before we venture to answer this question, we must recall that these measures relate to implementation of 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. 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 straight jacket 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 recognized by this Court in several judgments.

Issue No. 3

Whether this Court has inherent power to issue guidelines by application of Vishaka principle?

71) 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* principle. However, learned counsel for the respondent made a distinction between the *Vishaka (supra)* and the given case. While highlighting that in *Vishaka (supra)*, there was no legislation to punish the act of sexual harassment at work place, 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 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 No. 4:

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

72) 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 the CAG will arise only after the expenditure has incurred.

Issue No. 5

Whether the writ jurisdiction will lie against a political party?

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

74) 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.

75) 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 *de hors* the jurisdiction issue, the jurisdiction issue is left open.

76) Summary:

(i) After examining and considering the parameters laid in Section 123 of 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 *Prof. Ramchandra G. Kapse vs. Haribansh Ramakbal Singh* (1996) 1 SCC 206 this Court held that "..Ex facie contents of a manifesto, by itself, cannot be a corrupt practice committed by a candidate of that party."

(ii) 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.

(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 schemes by passing suitable Appropriation Bill, the court has limited jurisdiction to interfere in such schemes.

(iv) We have also emphasized 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.

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

(vi) As there is no legislative vacuum in the case on hand, the scope for application of Vishaka principle does not arise.

(vii) The duty of the CAG will arise only after the expenditure has incurred.

(viii) Since this petition is fit for dismissal *dehors* the jurisdiction issue, the issue of jurisdiction is left open.

Directions:

77) Although, the law is obvious that the promises in the election manifesto cannot be construed as 'corrupt practice' under Section 123 of 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 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.

78) 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 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 commission is covered by a legislative measure.

79) 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 recognized 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 election manifesto released by a political party can also be included in the Model Code of Conduct for the Guidance of Political Parties & 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 election manifesto is directly associated with the election process.

80) 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.

81) 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 paragraph Nos. 77-80, the appeal and the transferred case are dismissed. No order as to costs.

.....J.
(P. SATHASIVAM)

.....J.
(RANJAN GOGOI)

NEW DELHI;
JULY 05, 2013.

ITEM NO. IB
(FOR JUDGMENT)

COURT NO.2

SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO..... OF 2013 @
PETITION FOR SPECIAL LEAVE TO APPEAL © NO.21455 OF 2008

S. SUBRAMANIAM BALAJI .. Appellant(s)
Versus
THE GOVERNMENT OF TAMIL NADU & ORS. .. Respondent(s)

WITH
T.C. © NO. 112 OF 2011

DATE : 05/07/2013 These matters were called on for pronouncement of judgment today.

For Appellant(s) Mr. Abhay Kumar,Adv.
Ms. Neetu Jain,Adv.
Mr. U.P. Singh,Adv.

For Respondent(s) Mr. B. Balaji,Adv.
Ms. Sushma Suri,Adv.
Ms. Meenakshi Arora,Adv.

Hon'ble Mr. Justice P. Sathasivam pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Ranjan Gogoi.

Leave granted in SLP(C)No.21445 of 2008.

The appeal and the transferred case are dismissed in terms of the signed reportable judgment.

[Madhu Bala]
Sr.PA

[Savita Sainani]
Court Master

[Signed reportable judgment is placed on the file]