

(2022) 05 DEL CK 0345

In the Delhi High Court

Case No : Civil Writ Petition No. 1126 Of 2020

Parashar Narayan Sharma And Anr.

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 17-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 324

Representation Of The People Act, 1951 — Section 123

Citation : (2022) 05 DEL CK 0345

Hon'ble Judges : Vipin Sanghi, J;Navin Chawla, J

Bench : Division Bench

Advocate : Soumya Chakraborty, Ankush Tyagi, Akash Verma, Ajay Dignpaul, Kamal R. Dignpaul, Swati Kwatra, Sidhant Kumar, Manyaa Chadhok

Final Decision : Dismissed

Judgement

Navin Chawla, J

1. This petition has been filed, in public interest, praying for the following reliefs:

"a) an appropriate writ in the nature of declaration declaring inter alia that offer of transfer of cash by way or in the guise of freebies in election manifestos is a corrupt electoral practice under section 123 of Representation of People Act, 1951 as well as the guidelines framed by the Respondent No.2 as part of its Model Code of Conduct pursuant to the decision of the Hon'ble Supreme Court of India in S. Subramaniam Balaji Vs. State of Tamil Nadu (2013) 9 SCC 659;

b) a writ in the nature of declaration that election manifestos promising transfer of cash not by way of goods to be distributed for free or at a subsidized rate or in pursuance of any scheme which would provide an opportunity to earn in exchange of physical labour or any kind of productivity being unknown to Directive Principles of State Policy is ultra vires the Constitution of India;

c) a writ in the nature of certiorari commanding the Respondents, particularly the Respondent No.2 to transmit all records relating to their inaction towards

preventing the Respondents Nos.3 and 4 from inducing voters with corrupt electoral promise of transfer of cash in lieu of votes as regards General Elections, 2019 so that conscionable justice may be done by quashing the same;”

2. During the course of the hearing today, the learned senior counsel for the petitioners submitted that the petitioners do not press their prayers against the respondent nos.3 and 4 and the respondent nos.3 and 4 have been accordingly deleted from the array of the parties.

3. It is the case of the petitioners that the issue of transfer of cash in the garb of distribution of ‘freebies’ is an unprecedented corrupt electoral practice in India, and the guidelines issued by the respondent no.2, pursuant to the judgment of the Supreme Court in *S.Subramaniam Balaji v. State of Tamil Nadu and Ors.*, (2013) 9 SCC 659, do not address the said issue, and are vague, cryptic and open to be interpreted to all such practices to continue.

4. The learned senior counsel for the petitioners submits that the Supreme Court in *S.Subramaniam Balaji* (supra) did not consider the issue of promise to give ‘freebies’ in the form of cash as part of electoral promises made by the political party in their election manifesto as constituting “corrupt practice” and ‘bribery’ in terms of Section 123 of the Representation of the People Act, 1951. He submits that the ‘Model Code of Conduct for the Guidance of the Political Parties and Candidates’ (hereinafter referred to as the “Guidelines”) issued by the respondent no.2 in purported compliance of the judgment in *S.Subramaniam Balaji* (supra) are vague and do not fully address this issue, which in fact was not considered by the Supreme Court in the referred judgment. He submits that the Supreme Court was only considering the issue of freebies in the form of certain material benefits, not being cash, promised by the political parties.

5. On the other hand, the learned counsel for the respondent no.2 submits that the issue raised by the petitioners is squarely covered by the judgment of the Supreme Court in *S.Subramaniam Balaji* (supra). He submits that in compliance with the directions issued by the Supreme Court, the respondent no.2 has issued the Guidelines, within the limited scope of jurisdiction that it has in these matters. He submits that, therefore, there is no merit in the present petition.

6. We have considered the submissions made by the learned counsels for the parties.

7. The Supreme Court in *S.Subramaniam Balaji* (supra) was considering the issue of election manifestos of the political parties promising free gifts by a political party (popularly known as freebies). The Supreme Court culled out the points for consideration before it as under:

“Points for Consideration

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

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

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

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

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

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

8. In answer to the first point of consideration referred hereinabove, the Supreme Court has held as under:

" 61.1. Firstly, if we are to declare that every kind of promises made in the election manifesto is a corrupt practice, this will be flawed. Since all promises made in the election manifesto are not necessarily promising freebies per se, for instance, the election manifesto of a political party promising to develop a particular locality if they come into power, or promising cent 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.

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

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

61.4. Lastly, it is 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."

9. The Supreme Court, thereafter, went on to examine the various schemes that were put to specific challenge before it and held as under:

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

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

10. The Supreme Court further held that functioning of the Government is also controlled by the Constitution, Laws of the Land, the Legislature and the Authorities constituted thereunder. There are checks and balances within the mandate of the Constitution before a scheme can be implemented. The Court has a limited power to interfere with such scheme.

11. The Supreme Court summarized its findings in the following words:

" 84. Summary:

84.1. 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 v. Haribansh Ramakbal Singh (1996) 1 SCC 206 this Court held that: (SCC p. 219, para 21)

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

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

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

84.4. 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.

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

84.6. As there is no legislative vacuum in the case on hand, the scope for application of Vishaka, (1997) 6 SCC 241 : 1997 SCC (Cri) 932 principle does not arise.

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

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

12. Having held above, the Supreme Court passed the following directions:

"Directions

85. 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.

86. As observed in the earlier part of the judgment, this Court has limited power to issue directions to the legislature to legislate on a particular issue. However, the Election Commission, in order to ensure 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.

87. Therefore, considering that there is no enactment that directly governs the contents of the election manifesto, we hereby direct the Election Commission to frame guidelines for the same in consultation with all the 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 and Candidates. We are mindful of the fact that generally political parties release their election manifesto before the announcement of election date, in that scenario, strictly speaking, the Election Commission will not have the authority to regulate any act which is done before the announcement of the date. Nevertheless, an exception can be made in this regard as the purpose of election manifesto is directly associated with the election process.

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

13. In compliance with the above directions, the respondent no.2 has issued the Guidelines, which inter-alia provide as under:

“VIII. Guidelines on Election Manifestos

1. The Supreme Court in its judgment dated 5th July 2013 in SLP(C) No. 21455 of 2008 (S. Subramaniam Balaji Vs Govt. of Tamil Nadu and Others) has directed the Election Commission to frame guidelines with regard to the contents of election manifestos in consultation with all the recognized political parties. The guiding principles which will lead to framing of such guidelines are quoted below from the judgment:-

(i) “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”.

(ii) “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.”

(iii) “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”.

2. Upon receiving the above directions of the Hon’ble Supreme Court, the Election Commission held a meeting with the recognized National and State Political Parties for consultation with them in the matter and took note of their conflicting views in the matter.

During consultations, while some political parties supported the issuance of such guidelines, others were of the view that it is their right and duty towards voters to make such offers and promises in manifestos in a healthy democratic polity. While the Commission agrees in principle with the point of view that framing of manifestos is the right of the political parties, it cannot overlook the undesirable impact of some of the promises and offers on the conduct of free and fair elections and maintaining level playing field for all political parties and candidates.

3. The Constitution under Article 324 mandates the Election Commission, to conduct elections inter alia to the Parliament and the State Legislatures. Having due regard to the above directions of the Supreme Court and after consultation with the Political Parties, the Commission, in the interest of free and fair elections , hereby directs that Political Parties and Candidates while releasing election manifestos for any election to the Parliament or State Legislatures, shall adhere to the following guidelines :-

(i) The election manifesto shall not contain anything repugnant to the ideals and principles enshrined in the Constitution and further that it shall be consistent with the letter and spirit of other provisions of Model Code of Conduct.

(ii) The Directive Principles of State Policy enshrined in the Constitution enjoin upon the State to frame various welfare measures for the citizens and therefore there can be no objection to the promise of such welfare measures in election manifestos. However, political parties should avoid making those promises which are likely to vitiate the purity of the election process or exert undue influence on the voters in exercising their franchise.

(iii) In the interest of transparency, level playing field and credibility of promises, it is expected that manifestos also reflect the rationale for the promises and broadly indicate the ways and means to meet the financial requirements for it. Trust of voters should be sought only on those promises which are possible to be fulfilled.”

14. The distinction now sought to be drawn by the learned senior counsel for the petitioners in form of a freebies being offered as a material benefit, that is, Laptop, Television etc., as against being one being offered as cash, in our view, is superficial in nature and of no avail to the petitioners to escape from the conclusion that the issue raised by the petitioners in the present petition is fully

covered by the judgment of the Supreme Court in *S.Subramaniam Balaji* (supra). The Supreme Court has, in no uncertain terms, held that promise in the election manifestos cannot be read into Section 123 of the Representation of the People Act, 1951 for declaring it to be "Corrupt Practice", and that they do not constitute "Corrupt Practice" under the prevailing law. The Supreme Court also considered Schemes that were offering financial assistance to a selected category of citizens, primarily for marriage of the girls. The learned counsel for the petitioners, confronted with this, sought to contend that these schemes had a rational nexus of granting incentive to skill. We again find that the learned counsel is seeking to find a distinction where none exists. The petitioners having withdrawn their challenge against respondent no. 3 and 4, have not put in question/challenge any specific scheme before us. Be that as it may, the jurisdiction of the court to scrutinise such a scheme would come in only when such scheme is implemented by the Government in power, and thereto, the jurisdiction of the court shall be highly limited, as explained by the Supreme Court in the above referred judgment.

15. As far as the power of the respondent no.2 is concerned, as noticed hereinabove, the Supreme Court held that while the respondent no.2 has the power and jurisdiction to issue the Model Code of Conduct, such order cannot be issued if the subject matter of the order of the Commission is covered by the Legislative Measures. The Supreme Court, acknowledging that generally the political parties release their election manifesto before the announcement of election date and that strictly speaking, the Election Commission will not have the authority to regulate any act which is done before the announcement of that date, observed that an exception can be made in this regard. The Guidelines have been issued thereafter by the respondent no.2, which inter-alia advise the political parties to avoid making those promises which are likely to vitiate the purity of the election process or exert undue influence on the voters, exercising their franchise. It has been further advised that manifestos also reflect the rationale for the promises and broadly indicate the ways and means to meet the financial requirement for it. Trust of voters should be sought only on those promises which are possible to be fulfilled. Respondent no. 2 has therefore, issued the necessary Guidelines. In the Writ Petition, apart from raising some vague pleas in challenge to such Guidelines, in fact, no prayer is sought against the said Guidelines. As noted above, there is also no challenge left to any specific scheme of any political party being in breach of such Guidelines.

16. In view of the above, we are of the view that no further directions can be issued in the present petition. The same is accordingly dismissed.