



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 25TH DAY OF APRIL, 2024
BEFORE
THE HON'BLE MR JUSTICE M.I.ARUN
ELECTION PETITION NO.15 OF 2023

BETWEEN:

SRI. SHASHANKA J. SREEDHARA,

...PETITIONER

(BY SMT. PRAMILA NESARGI, SENIOR COUNSEL A/W.
SRI. SUNIL M.V., SMT. PRIYANKA G & G DEVARAJEGOWDA,
ADVOCATES)

AND:

SRI. B.Z. ZAMEER AHMED KHAN,

...RESPONDENT

(BY SRIYUTHS SHAIK ISMAIL ZABIULLA, GOKUL KUMAR S. O.
CHANDRA L., VIJAY KUMAR Y. H., AND
MOHAMED RIZWAN AHAMED, ADVOCATES)

THIS ELECTION PETITION IS FILED UNDER SECTIONS 81 OF THE REPRESENTATION OF PEOPLES ACT, 1951, PRAYING TO DECLARE THAT DECLARATION OF RESULTS OF THE RESPONDENT FOR THE ASSEMBLY CONSTITUTENCY-168 CHAMRAJAPET AS VOID, SO FAR AS THE RESPONDENT IS CONCERNED, AFTER CALLING FOR RECORDS FROM THE OFFICERS CONCERNED REGARDING FORM 21C AND FORM 21E ENCLOSED AS ANNEXURE-D AND E & ETC.,

THIS PETITION COMING ON FOR HEARING ON INTERLOCUTORY APPLICATION THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

The petitioner is a voter in Chamarajpet Assembly Constituency and he has challenged the selection of successful candidate from the said constituency in 2023 Elections conducted to the Karnataka State Legislature.

2. The petitioner has prayed for the following reliefs:

- a) *To declare that the declaration of results of the Respondent for the Assembly Constituency- 168-Chamrajapet as void, so far as the Respondent is concerned. After calling for the records from the officers concerned regarding Form 21C and Form 21E enclosed as Annexure 'D' and 'E'.*
- b) *To declare the results of the respondent under Section 21C of the Representation of People Act, 1951 as void after calling for the records.*
- c) *Declaring that Respondent has committed Corrupt practice U/s 123(1), 123(2), 123(4), 123(6) of the Representation of People Act, 1951 and he was not qualified to be chosen to fill the seat of 168-Chamrajapet Assembly Constituency U/s 100(1)(b),(1)(d)(iv) of the Representation of People Act, 1951.*
- d) *To declare that the result of the election of the Respondent has been materially affected by the improper reception and counting votes in favor of the Respondent as void under section 100(1)(A)(d)(iv) and disqualify him for a period of 6 years from contesting in elections;*
- e) *To make an order regarding the corrupt practice committed by persons other than the*



Respondent in the election held for 168-Chamrajapet Assembly constituency and name them and take action as contemplated under section 99 of The Representation of People Act, 1951.

- f) Pass such other orders deemed necessary under section 125(A) of Representation of People Act, 1951, and*
- g) To award costs and such other consequential relief/reliefs in the circumstances of the case.*

3. The ground of challenge in the instant Election Petition is that, the promises made by the Indian National Congress (INC) party in its manifesto, more particularly, the five guarantees, namely, (i) '*Gruha Jyothi*'- 200 Units of Free Electricity to all the houses; (ii) '*Gruha Lakshmi*'- Rs.2,000/- every month to each and every women head of the family; (iii) '*Anna Bhagya*' - 10 kilograms of food grain every person in BPL family per month; (iv) '*Yuva Nidhi*'-Rs.3000/- per month for two years to unemployed graduates and Rs.1,500/- per month for two years to unemployed diploma holders; (v) '*Shakthi*'-free travel to all women through out the state in regular KSRTC/BMTC Buses, amounts to corrupt practices and for that reason, it is prayed that the election of the respondent, who was a



winning candidate from the Indian National Congress, be set aside.

4. The respondent has filed an application under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, for rejection of the plaint.

5. The case of the respondent is, the petitioner has not made any personal allegations against the respondent candidate as being involved in corrupt practices, but has contended that the manifesto of the Indian National Congress party amounts to corrupt practice and it is submitted that the manifesto of the Indian National Congress party amounts to a policy matter and it cannot be termed as a corrupt practice.

6. The petitioner in the course of arguments admit that he has not made any personal allegation against the respondent having indulged in any individual corrupt practices, but submit that the manifesto of the Indian National Congress is dubious and the guarantee schemes



pronounced in the said manifesto has the effect of bankrupting the State Treasury and is not implementable and is made with an ulterior motive of attracting gullible voters and that itself has the effect of corrupt practices as contemplated in the Representation of Peoples Act, 1951 ('the RP Act for short) and that a political party has to be treated as an agent of its candidate because of which the respondent has to be considered as guilty of the same and for that reason his application is liable to be set aside.

7. Perusal of the petition and the arguments submitted by the petitioner makes it clear that, the petitioner is not making any personal allegation against the respondent as having indulged in a corrupt practice, but has been contending that the manifesto of the Indian National Congress party itself amounts to a corrupt practice as contemplated under the RP Act.

8. It is a well established principle of law that, while considering an application under Order VII Rule 11 CPC, the Court has to consider whether the averments



made in the plaint and the documents produced along with it makes out a case or not. The plaint can be rejected only when the allegation made in the plaint, if held true, does not disclose a cause of action.

9. Thus, the question that arises for consideration in the instant Election Petition is whether the promises made in the manifesto of the Indian National Congress for 2023 Karnataka Assembly Elections amounts to the corrupt practice as contemplated under Section 123 of the RP Act.

10. Section 123 of the Representation of Peoples Act, 1951 reads as under:

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 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 candidates 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 (3 of 1988).

(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 vehicle or vessel for the free conveyance of any elector (other than the candidate himself the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:

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 4[with the consent of a candidate or his election agent], any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate’s election, from any person whether or not in the service of the Government and belonging to any of the following classes, namely:—



- (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.



11. A perusal of the aforementioned Section discloses that, a practice shall be considered as a corrupt practice when the same is done by a candidate or his agent or by any other person with the consent of the candidate or his agent, and not otherwise. A declaration by a party as to the policy that they intend to bring about cannot be considered as a corrupt practice. Whether the said policy is sound or not and whether it has the effect of doling out freebies or appeasing a section of the society to the detriment of others, is a matter to be debated and it is for the voters to enlighten themselves about the viability of the said promises and vote for a particular party. The same cannot be considered as a corrupt practice for the purpose of Section 123 of the RP Act.

12. The Hon'ble Apex Court while examining certain policies of the political parties in the case of **S. Subramaniam Balaji Vs. Govt. of Tamilnadu**,¹ in paragraphs 55, 57, 58, 60, 61 and 84 to 89,

¹ (2013) 9 SCC 659



has held as under:

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 V. State of Rajasthan [(1997) 6 SCC 241]* 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?

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



58. 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.

60. 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.

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

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

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 vs. 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 V. State of Rajasthan [(1997) 6 SCC 241]* 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 de hors the jurisdiction issue, the issue of jurisdiction is left open.

85. Although, the law is obvious that the promises in the election manifesto cannot be construed as 'corrupt practice' under Section 123 of the RP Act, the reality cannot be ruled out that distribution of freebies of any kind, undoubtedly, influences all people. It shakes the root of free and fair elections to a large degree. The Election Commission through its counsel also conveyed the same feeling both in the affidavit and in the argument that the promise of such freebies at 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 & 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.

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



the transferred case are dismissed. No order as to Costs.

13. In the light of the aforementioned observations made by the Hon'ble Apex Court, the five guarantees of the Indian National Congress have to be considered as social welfare policies. Whether they are financially viable or not is altogether a different aspect. It is for the other parties to show as to how implementation of the said schemes amounts to bankruptcy of the State Treasury and it can only lead to malgovernance of the State. It is possible that they can be termed as wrong policies under the given facts and circumstances of the case, but cannot be termed as corrupt practices.

14. As the petitioner in the instant petition has challenged the election of the respondent to the Karnataka State Assembly only on the ground that the manifesto of the Indian National Congress amounts to corrupt practices and as it has to be held otherwise for the reasons mentioned above, it has to be concluded that the petition



in the instant case does not disclose the cause of action and the same is liable to be rejected.

15. For the aforementioned reasons, I.A.1/2024 filed by the respondent is hereby allowed and the petition filed by the petitioner is hereby rejected.

**Sd/-
JUDGE**

gab/ CT:VP
LIST NO.: 19 SL NO.: 1