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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.02.2018
CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P(MD)No.3622 of 2018
and
W.M.P.(MD)No.3753 of 2018

B.Ramkumar Adityan ... Petitioner

Vs.

The Government of Tamil Nadu,
represented by its Chief Secretary,
St.George Fort,
Chennai-600 009. ... Respondent

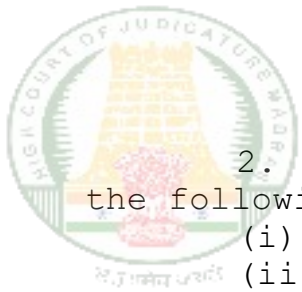
Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondent not to modify any old and existing freebike schemes to implement and initiate and implement any new freebike schemes till minimising its fiscal deficit to Zero within a stipulated time as fixed by this Court.

For Petitioner : Mr.Karthick Subramanian
For Respondent : Mr.K.Chellapandian
Additional Advocate General
assisted by
Mr.A.K.Baskarapandian
Special Government Pleader

ORDER

(Order of the Court was made by M.SATHYANARAYANAN,J.)

The petitioner claims that he is a law graduate and doing legal consultancy services and also agricultural activities and his Pan Number is AFCPR6979L and he is also regularly submitting his income tax returns and his annual net income is Rs.3,24,000/- as per his income tax statement during the financial year 2016-2017. The petitioner claims that he has presented two papers in University Grants Commission sponsored National Seminars on Gender Justice under Indian Criminal Justice System and Medical Negligence and Consumer Protection in India both organised by the Tamil Nadu Dr.Ambedkar Law University and he is an active member of the All India Anna Dravida Munnetra Kazhagam Party (AIADMK).



2. The petitioner claims in public interest, had also filed the following writ petitions:

- (i) W.P.(MD)No.14986 of 2016;
- (ii) W.P.(MD)No.24753 of 2016;
- (iii) W.P.(MD)No.13010 of 2017; and
- (iv) W.P.(MD)No.16077 of 2017.

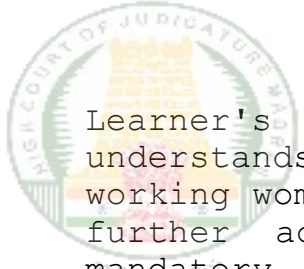
3. This Court, during the course of hearing, has put up a question to the learned Counsel appearing for the petitioner, as to whether the petitioner has completed his legal study and on instructions, he would submit that the petitioner has completed his study in Bangalore and he has already involved in a criminal case for the alleged commission of offence under Section 468 I.P.C., and later he filed a petition for discharge and it was dismissed and thereafter, a Criminal Revision Case was filed and it was allowed and therefore, the charge sheet against him was quashed and prays for apology for not disclosing the said fact in the affidavit filed in support of this petition.

4. The petitioner came forward to file this writ petition styled as Public Interest Litigation challenging the decision of the Government of Tamil Nadu to distribute one Lakh two wheelers to the working women at 50% subsidy and the amount not exceeding Rs.25,000/-.

5. The learned Counsel appearing for the petitioner has drawn the attention of this Court to the budget highlights of the year 2017-2018 as well as operational guidelines for "Ammu Two Wheeler Scheme for Working Women", dated 18.01.2018 and would submit that as per the budget highlights, admittedly there is revenue deficit of Rupees Fifteen Thousand Nine Hundred and thirteen Crores and that apart, 100 and 100 buses belonging to the State Transport Corporation are under attached and even the terminal benefits have not been settled to the retired employees of the State Transport Corporation, which led to series of adjudication and despite the said lack of funds, the Government of Tamil Nadu took a decision to distribute two wheelers by granting them 50% subsidy.

6. The further submission of the learned Counsel for the petitioner is that by providing two wheelers to working women at 50% subsidy is not going to achieve any purpose or object and there is no link between the scheme and the purpose for which it is going to be implemented and it is nothing but a wasteful extent of public money.

7. It is also the submission made by the learned Counsel appearing for the petitioner that there is no proper in-built mechanism, checks and balances are there and like any other scheme, this scheme is also likely to be misused and also add that on commencing of the same, very many women are thronging to the office of the Regional Transport Officer for the purpose of getting

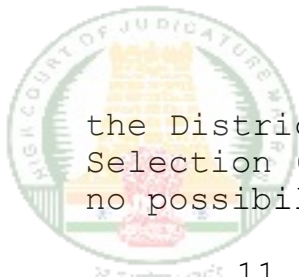


Learner's Licence Registration (LLR) and the petitioner reliably understands that 50% subsidy is also came to be given to the working women who are not holding valid driving licence and he would further add that though wearing of ISI certified helmet is mandatory, nothing has been stated in the operational guidelines, dated 18.01.2018 and therefore, he came forward to file this writ petition, not to modify any old and existing freebie schemes and also forbearing them from initiating and implementing any freebie scheme till minimising its fiscal deficit to Zero within the stipulated time and prays for appropriate orders.

8. The learned Counsel appearing for the petitioner has invited the attention of this Court to the typed set of documents, especially to the informations furnished by the Principal District Judges on various Districts, as to the attachment of the State Transport Corporation undertaking buses and would submit that 100 and 100 buses are in attachment for non-payment of compensation to the accident victims and no steps have been taken to pay the compensation and raised the attachment and to ply the buses for public benefit and that apart, admittedly, the terminal benefits have not been settled on time to the retired State Transport Corporation employees and without attaining to the said immediate need, one more freebie scheme has been announced providing 50% subsidy to enable the working women to purchase the two wheelers and since there is no connection at all between the purpose and object said to be achieved and further that it is also a sinful and wasteful expenditure, the present scheme is to be scrapped forthwith and also made the submission that in future, there may be an order of restraint, restraining the Government from announcing any freebie scheme unless it benefits the public at large improving industrial climate and employability.

9. Per contra, Mr.K.Chellapandian, learned Additional Advocate General, assisted by Mr.A.K.Baskarapandian, learned Special Government Pleader, has invited the attention of this Court to the guidelines and would submit that the objective and the outline of the scheme is to empower the working women by enabling them to purchase women friendly two wheelers to ease their commute to their enterprises, places of employment, engagements with banks and community based institutions and differently abled working women may avail retro-fitted three wheeler scooters and each year one lakh working women will be benefited through this scheme and it is also operational from the year 2017-2018 onwards and the basic concept of the scheme is to provide maximum subsidy of 50% of the cost of the two wheeler or Rs.25,000/-, whichever is less.

10. The learned Additional Advocate General has also invited the entire operational guidelines for "Amma Two Wheeler Scheme for Working Women" dated 18.01.2018 and would submit that the checks and balances were there and the scheme is formulated in such a way, there will not be any misuse and abuse of the purpose of the scheme and at an every stage, monitoring will be done and apart from field verification and regular check up, there is also a super check and



the District Level Selection Committee in rural and urban as well as Selection Committee for Chennai Corporation and therefore, there is no possibility of abuse or misuse.

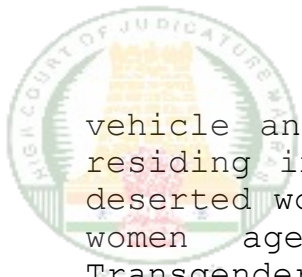
11. The learned Additional Advocate General has also invited the attention of this Court to page 103 and in inner page 11 of the said operational guidelines and would submit that as per step (vii), there was review at the State and District level and as per the condition No.3, the scheme is intended to provide vehicles to the beneficiary's own use only and the vehicle shall not be sold/transferred /gifted / lent-on-long-term basis to any other person for a minimum period of three years and moreover, the list of vehicles purchased under this scheme will be communicated by the Project Director, (PD), TNSRLM to the Regional Transport Officers, who shall ensure that no transactions happen on these vehicles for 3 years and as such, the apprehension expressed by the petitioner is wholly unsound and it is nothing but a publicity interest litigation and hence, prays for dismissal of the writ petition with exemplary costs.

12. The learned Additional Advocate General, in support of his submissions, has also placed reliance upon the judgment of the Honourable Supreme Court of India in *S.Subramaniam Balaji Vs. the Government of Tamil Nadu & Others* reported in 2013(4) CTC 290 (SC).

13. This Court paid its anxious consideration and best attention to the rival submissions and also scrutinised and analysed the materials placed on record as well as the decision relied on by the learned Additional Advocate General in support of his submissions.

14. All India Anna Dravida Munnetra Kazhagam party (AIADMK), on the eve of election to Tamil Nadu Legislative Assembly, has published an election manifesto and one of the promises made is to purchase two wheelers to the working women by providing them with 50% subsidy and in order to implement the same, has introduced the scheme and the budget highlights of 2017-2018 of the Government of Tamil Nadu would disclose that it is also having the amount required for the said scheme provided with budgetary support / sanction.

15. The operational guidelines for "Amma Two Wheeler Scheme for Working Women", dated 18.01.2018 appears to be a comprehensive one and as per the eligibility criteria, the beneficiary should be a native of and residing in Tamil Nadu and should be in the age group of 18 to 40 years and should know driving and possess a valid two wheeler driving license at the time of applying and the annual income of the beneficiary concerned should not exceed Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only) and only one woman beneficiary is eligible to avail the benefit in a family, who is willing to contribute the balance money for the purchase of the



vehicle and priority will be given to the working women, who are residing in remote places, hilly regions, women headed households, deserted women, destitute widows, differently abled women, unmarried women aged above 35 years and Scheduled Caste/Tribes and Transgender.

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16. The learned Additional Advocate General has also invited the attention of this Court to Clause 6 and would submit that the purpose of the said scheme is that the women registered as workers in the Organized and Un-organized sectors and self-employed women involved in petty trades or otherwise are also made eligible to avail the said scheme and it is a laudable scheme and also a unique one and it is not implemented anywhere in India, except in this State. He further pointed out that the State is also a pioneer in implementing very welfare schemes including the famous "Noon Meal Scheme" introduced by the former Chief Minister of Tamil Nadu Dr.M.G.Ramachandran.

17. This Court has also gone through the said scheme thoroughly and exhaustively and finds that for identification and provision of the subsidy, appropriate guidelines have been framed and there are enough checks and balances to see that there is no likelihood of misuse or abuse of the said scheme and driving licence and age group are also insisted at the time of submitting the application and after the scheme is implemented, there are provisions to review the same at the State and District Level and conditions have been also stipulated to ensure the intent use of the vehicle. It is also to be pointed out at this juncture that the said scheme is provided with budgetary allocation.

18. Incidentally , the question arises for consideration before this Court is as to the power of this Court to interfere with the State Policy decision of the Government and in the considered opinion of this Court, it is *no longer res integra*, in the light of the decision rendered by the Honourable Supreme Court of India in *S.Subramaniam Balaji Vs. the Government of Tamil Nadu & Others* reported in 2013(4) CTC 290 (SC) (cited supra). The facts of the case would disclose that Dravida Munnetra Kazhagam, which was a ruling party, has introduced a scheme for free distribution of Colour Television Sets to each and every household which did not possess the same by way of the election manifesto and they also state that if the said party / its alliance were elected to power, it will be done. The said Party got elected and introduced the said scheme and it was put to challenge before the Madurai Bench of this Court in W.P.(MD)Nos.9013 of 2006 and 1071 of 2007.

19. The said Writ Petitions were dismissed and challenging the same a Special Leave Petition in S.L.P.(C)No.21455 of 2008 was filed and it was converted as C.A.No.5130 of 2013 and it was taken along with Transferred Case No.112 of 2011.



20. It is relevant to extract the following paragraphs:

"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.

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.

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.



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.

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.

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.

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.

Further, it has been decided that the schemes challenged in this writ petition falls within the realm of the Directive Principles of State Policy thereby falling within the scope of public purpose.



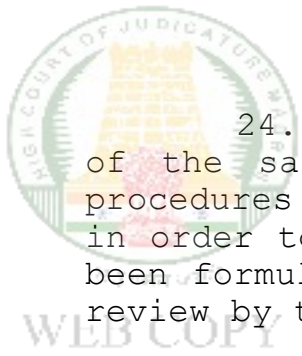
If we analyze the above mentioned articles and the rules of procedure, it is established that there are various checks and balances within the mandate of the Constitution before a scheme can be implemented. As long as the schemes come within the realm of public purpose and monies for the schemes is withdrawn with appropriate Appropriation bill, the court has limited power to interfere in such schemes."

21. It is further held in the said decision that the State can gradually extend the benefit and this principle has been recognized by this Court in several judgments and these schemes are formulated or in consonance with Article 14 of the Constitution of India.

22. The Honourable Supreme Court of India, in paragraph No.68 also observed that there are various checks and balances within the mandate of the Constitution before a scheme can be implemented and as long as the schemes come within the realm of public purpose and monies for the schemes are withdrawn with appropriate Appropriation Bill, the Court has limited power to interfere in such Schemes.

23. In *Indian Oil Corporation Ltd., & Others V. Shashi Prabha Shukla* and another reported in *JT 2017 (12) SC 336*, the issue is relating to cancellation of petroleum dealership and in paragraph No.33, the Honourable Supreme Court of India has observed as follows:

"33. Jurisprudentially thus, as could be gleaned from the above legal enunciations, a public authority in its dealings has to be fair, objective, non-arbitrary, transparent and non-discriminatory. The discretion vested in such an authority, which is a concomitant of its power is coupled with duty and can never be unregulated or unbridled. Any decision or action contrary to these functional precepts would be at the pain of invalidation thereof. The State and its instrumentalities, be it a public authority, either as an individual or a collective has to essentially abide by this inalienable and non-negotiable prescriptions and cannot act in breach of the trust reposed by the polity and on extraneous considerations. In exercise of uncontrolled discretion and power, it cannot resort to any act to fritter, squander and emasculate any public property, be it by way of State largesse or contracts etc. Such outrages would clearly be unconstitutional and extinctive of the rule of law which forms the bedrock of the constitutional order."



24. This Court, on going through the operational guidelines of the said Scheme, is of the considered view that the proper procedures are in place for identification of the beneficiaries and in order to avoid abuse and misuse, the intent mechanisms have also been formulated and it is also subject to periodical monitoring and review by the concerned Authorities.

25. It is also to be remembered at this juncture that wearing of helmets while riding two wheelers is made mandatory under the provisions of the Motor Vehicles Act and the Rules framed therein and therefore, at the time of realization of the subsidy, the concerned Officials / Authorities, are directed to insist the production of ISI certified helmet with bills for purchasing the same and this Court would like to incorporate the said condition also for the reason that it has become a habit for most of the riders of two wheelers to ride the vehicles without wearing helmet and the very many fatal accidents are taking place, on account of the brain injury and this Court hope and trust that the concerned Authorities shall also implement the said condition strictly.

26. In the light of the reasons assigned above, this Court is of the considered view that no interference is warranted in respect of "Ammu Two Wheeler Scheme for Working Women" formulated by the Government of Tamil Nadu.

27. In the result, the Writ Petition is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

The Chief Secretary,
The Government of Tamil Nadu,
St.George Fort,
Chennai-600 009.

+One cc to The Special Government Pleader, SR.No.51012
+One cc to Mr.S.Karthick Subramanian, Advocate, SR.No.51195

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W.P(MD)No.3622 of 2018