

INDIA

Can promises of 'irrational' poll freebies be curbed, Supreme Court asks government

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CJI-led Bench says issue is serious; Sibal feels it must be tackled at the State level

The Supreme Court on July 26 orally asked the Centre to find out from the Finance Commission whether there is a way to curb political parties from promising and distributing "irrational freebies" during election campaigns.

A Bench led by Chief Justice of India N. V. Ramana flagged the issue as "serious" and asked for means to control the promise of "freebies" to entice votes.

the Bench's position. You take a stand whether freebies should continue or not, Chief Justice

Ramana addressed Mr. Nataraj.

The Election Commission of India (ECI), on the other hand, chose a hands-off approach, as was evident from their affidavit which said "whether such policies are financially viable or its adverse effect on the economic health of the State is a question that has to be considered and decided by the voters of the State".

The court finally turned to senior advocate Kapil Sibal, who was present in the courtroom waiting for another case. "Mr. Sibal, you are an experienced Parliamentarian and a lawyer... Can you suggest something here. How to control these freebies?" Chief Justice Ramana asked.

The senior lawyer came forward and said freebies was a "serious issue" and had to be tackled at the level of the States. He said it would be unfair to put the liability on the Centre. He suggested tapping into the expertise of the Finance Commission. "The Finance Commission is an independent body. The Commission, while making allocations to the States, can take into account the debts of each individual States and examine whether offers of freebies would be viable for them," Mr. Sibal suggested.

The Bench promptly turned Mr. Nataraj and asked him to explore this avenue and get instructions from the government. It scheduled the next hearing for August 3.

The hearing came on a writ petition filed by BJP leader and lawyer, Ashwini Kumar Upadhyay, who had argued that the offer and distribution of "irrational freebies" amounted to bribery and unduly influencing voters. It vitiated free and fair elections in the country.

Mr. Upadhyay claimed that States in total had debts of over ₹70 lakh crore. He suggested that the Law Commission of India should be asked to examine the statutes to control the giving away of unreasonable freebies.

In its affidavit, the ECI had however disagreed with Mr. Upadhyay's plea to seize the election symbols of parties which promise gifts. The lawyer had wanted an additional condition that "political party shall not promise/distribute irrational freebies from the public funds before election" to be inserted in the Election Symbols Order of 1968.

The recognition and continuation of State and national parties were based on one touchstone – electoral performance, the ECI had countered.

"Barring parties from promising/distributing freebies from public fund before election may result in a situation where parties will lose their recognition even before they display their electoral performance in elections," the ECI had reasoned.

register parties which offer or distribute irrational freebies.

It said parties can be de-registered only if they had registered through fraud or forgery or if they were declared illegal by the Centre or if they stopped abiding by the Indian Constitution. "There is no provision for de-recognising a political party for distribution of irrational freebies," the ECI had said.

Freebie culture

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