

## EXPLAINERNEWS

# Revisiting the *S. Subramaniam Balaji vs Tamil Nadu* judgment

Krishnadas Rajagopal

AUGUST 28, 2022 22:38 IST

UPDATED: AUGUST 28, 2022 22:48 IST

**What is the significance of this judgment in the context of the current debate surrounding freebies by political parties?**



**The story so far:** On Friday, the Supreme Court referred to a three-judge Bench a series of petitions seeking a judicial direction that political parties who make “wild” promises of largesse should also reveal in their poll manifestos where they will get the money to pay for them. The reference is a shift from the court’s own stand in the *S. Subramaniam Balaji vs Tamil Nadu* judgment of 2013.

## What happened?

In the Balaji case judgment, a Division Bench of the Supreme Court had held that making promises in election manifestos do not amount to a ‘corrupt practice’ under Section 123 of

## the Representation of People Act (RP).

However, the Supreme Court is now worried that freebies promised by political parties to win elections could bleed the public exchequer dry. The Court said that parties who form the government riding the wave created by their pre-poll promises of “free gifts” are bleeding the State finances dry by actually trying to fulfil their outlandish promises using public money.

The Supreme Court has therefore decided to revisit the Balaji verdict.

## What triggered the Balaji case?

The course of events started in 2006, during the run-up to the Tamil Nadu Assembly elections. The Dravida Munnetra Kazhagam (DMK) released its election manifesto announcing a scheme of free distribution of colour television sets (CTVs) to “each and every household” which did not have one if the party was voted to power. The party justified that the TV would “provide recreation and general knowledge to household women, more particularly, those living in the rural areas”. The party swept to power in the polls and decided to implement its scheme and portioned off ₹750 crore from the budget for the project. The government finally distributed 30,000 TV sets across the State. In 2011, rival All India Anna Dravida Munnetra Kazhagam (AIADMK) and its alliance also announced its election manifesto with free gifts to “equalise” the gifts offered by the DMK. AIADMK promised grinders, mixies, electric fans, laptop computers, four gram gold thalis, a cheque of ₹50,000 for women’s marriage, green houses, 20 kg of rice to ration card holders (even to those above the poverty line) and free cattle and sheep. Mr. Balaji, a resident of Tamil Nadu, challenged the schemes introduced by the parties in the Madras High Court. He said the expenditure to be incurred by the State from the exchequer was “unauthorised, impermissible and ultra vires the constitutional mandates”. The High Court dismissed his case, following which he had moved the apex court.

## How did the case play out?

Mr. Balaji, represented by senior advocate Arvind Datar, said the State cannot act in furtherance of “eccentric principles of socialistic philanthropy”. He argued that the promises of free distribution of non-essential commodities in an election manifesto amounts to electoral bribe under Section 123 of the RP Act. The Comptroller and Auditor General of India has a duty to examine expenditures even before they are deployed. Money can be taken out of the Consolidated Fund of the State only for “public purposes”. The distribution of goods to certain sections of people was violative of Article 14 of the Constitution.

In response, the State of Tamil Nadu countered that promises of political parties do not constitute corrupt practice. Political parties are not the State and ‘freebies’ is a nebulous term which has no legal status. The promises implemented by the party after forming the

government is an obligation under the Directives Principles of State Policy. The State is only doing its duty to promote the welfare of its people. The promises are implemented by framing various schemes/guidelines/eligibility criteria etc. as well as with the approval of the legislature. Thus, it cannot be construed as a waste of public money or be prohibited by any statute or scheme.

The court's judgment held that promises by a political party cannot constitute a 'corrupt practice' on its part. It would be "misleading" to construe that all promises in the election manifesto would amount to corrupt practice. 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 and not of an individual candidate. However, the court agreed that freebies create an "uneven playing field". It had asked the Election Commission of India to consult political parties and issue guidelines on the election manifesto and make it a part of the Model Code of Conduct.

## Why is the Court's move to review the Balaji judgment significant?

In its order, the court foresees that "freebies may create a situation wherein the State government cannot provide basic amenities due to lack of funds and the State is pushed towards imminent bankruptcy". The court said it wants a transparent debate before the three-judge Bench on whether an "enforceable" judicial order can stop political parties from promising and distributing 'irrational freebies'. The case is unique as the Supreme Court is exploring whether judicial parameters can be set on a purely political act of promising freebies.

### THE GIST

The Supreme Court referred to a three-judge Bench a series of petitions seeking a judicial direction that political parties who make "wild" promises of largesse should also reveal in their poll manifestos where they will get the money to pay for them.

The 2013 *Balaji* judgment states that election manifesto promises do not amount to 'corrupt practice' under Section 123 of the Representation of People Act.

This revisit by the Supreme Court on its earlier judgment is unique as the court is exploring whether judicial parameters can be set on a purely political act of promising freebies.

THE  HINDU

Our code of editorial values

