SYNOPSIS

"*For democracy to survive, it is essential that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values, who win the elections on a positive vote.*"

(Supreme Court of India in PUCL Vs Union of India(NOTA Case)

1. The Petitioner herein is a contestant from Eluru Parliament Constituency in Andhra Pradesh on behalf of Janasena Party in 2019 General elections.

2. Petitioner witnessed the ground situation in regard to misuse of public money to bribe the voters in the name of following schemes in Andhra Pradesh on the eve of General Elections:

    i. Pasupu Kumkuma scheme: Under this scheme Andhra Pradesh government distributed Rs. 10,000 cash per women in 3 installments between February, 2019 to 5th April, 2019. Last installment of the scheme i.e., Rs. 4000 was withdrawn from banks by the government officials and handed over to women across the State five days prior to the polling.

    ii. Annadata Sukhibhava: This is a scheme for farmers. Under this scheme Rs. 5000 each for 50.16 lakhs farmers was transferred on 9th April, 2019 by way of Direct Cash Transfer two days prior to the polling.

iii. NTR Bharosa, under this scheme old age pension and widow pension increased from Rs. 1000 to Rs. 2000 on 11.1.2019. This has come into implementation from February, 2019.

iv. Mukhya Mantri Yuva Nestam, a scheme to transfer cash to un employed youth has been increased from Rs. 1000 to Rs. 2000 for about 10 lakhs people on the eve of elections.

3. This Hon'ble Court while dealing with bribery of voters and corrupt practices by the political parties before elections in S. Subramaniam Balaji Vs State of Tamilnadu & Ors (2013) 9 SCC 659 by Election Commission of India and Union of India held as under:

> "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 & 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."

4. Since the Election Commission of India and Union of India failed to implement the above directions of this Hon'ble Court, parties in power at Center and States have distributed Direct Cash to women, farmers, students which has adversely affected 'Right of Equal Participation of each Citizen in Polity'.

5. Genesis of the Direct cash transfer before the elections has began in the State of Telangana in the year 2018. The Party in power has introduced a scheme namely ‘Rythu Bandhu’. The English translation is ‘Relative of Farmer’. Under this scheme Rs. 4000+4000 per acre Directly Cash Transferred to farmers as input subsidy for agriculture. If a farmer owns 10 acres, Rs. 80,000/-, and owns 20 acres then Rs.1,60,000 cash transferred to his or her account. This scheme was well received by suffering farmers who are the large number of voters in Telangana State.

6. After implementing the first phase of the scheme, State Assembly was dissolved to take advantage of positive wave. During the election process and few days before the polling day, second round installment of Rs. 4000 per acre transferred directly to the accounts of farmers. Though the opposition parties opposed the direct cash transfer to voters during the election process, Election Commission of India allowed the scheme. With the help of this scheme, party in power in Telangana has won elections with thumping majority. The success of the ruling party in Telangana motivated other parties in power in Union of India, West Bengal, Odisha and Andhra Pradesh to introduce similar direct cash transfer schemes before the elections to get electoral advantage over the opposition parties with the public money. This is the gross

violation of Article 14 and 21 of the Constitution of India which denies the equal participation for all the citizens in Polity.

PM Kisan Samman Nidhi Scheme to transfer Rs. 6000:

7. That Union of India initiated a huge money distribution scheme namely PM Kisan Samman Nidhi Scheme by way of Direct Benefit (Cash) Transfer (DBT). This scheme proposed to transfer Rs. 6000 to 12.50 Crores farmers. To implement this scheme Rs. 20,000 Crores allocated in 2018-19 budget and further Rs. 75,000 Crores allocated in 2019-20 annual budget. As per the official website pmkisan.nic.in the objects of the scheme was stated as under:

- PM KISAN is a Central Sector scheme with 100% funding from Government of India
- It has become operational from 1.12.2018.
- Under the scheme an income support of Rs.6000/- per year in three equal instalments will be provided to small and marginal farmer families having combined land holding/ownership of upto 2 hectares
- Definition of family for the scheme is husband, wife and minor children.

- State Government and UT Administration will identify the farmer families which are eligible for support as per scheme guidelines.

- The fund will be directly transferred to the bank accounts of the beneficiaries.

- The first instalment for the period 1.12.2018 to 31.03.2019 is to be provided in this financial year itself.

8. It is clear from above that Rs. 2000 cash transferred to farmers account after declaration of Election Model Code and further Rs. 2000 proposed to transfer in the month of April. But the Election Commission of India has not taken any action on this new scheme because this scheme was launched before the announcement of election schedule hence the Model Code of Conduct does not apply.

Andhra Pradesh transferred Rs. 10,000 to 94 lakhs women:

9. Due to lack of guidelines by Election Commission of India, State of Andhra Pradesh has transferred Rs. 9400 Crores of Rs. 10,000 each to 94 lakhs women self help group members in the name of Pasupu Kumkuma scheme. The Direct Cash Transfer took place as per the following schedule:

No.	Installment	Amount	Date
1	First installment	2,500	1.2.2019
2	Second installment	3,500	8.3.2019
3	Third installment	4,000	5.4.2019
	Total amount paid	10,000/- per woman	Polling date is on

			11.4.2019 in Andhra Pradesh

10. The second installment transferred two days prior to announcement of elections and third installment was transferred six days before the polling in Andhra Pradesh.

11. Besides this on the eve of elections, the State of Andhra has increased Old age Pension from Rs. 1000 to Rs. 2000. This has impacted on 54 lakhs pension holders/voters.

12. That the Petitioner herein who has contested for Eluru Loksabha Constituency believes that the implementation of the above Direct Cash Transfer schemes come under electoral bribes as they were implemented during the election process without budgetary allocations as per the Constitutional mandate.

13. Petitioner made complaint to the Election Commission of India on the issue but it has not even respondent to the complaint of the Petitioner.

14. It is submitted that State of Jarkhand, Odisha and West Bengal also initiated similar cash transfer schemes before the General elections.

LIST OF DATES

5.7.2013	This Hon'ble Court passed directions to Election commission of India to frame guidelines in regard distribution of various schemes before elections by political parties to stop corrupt practices and electoral bribes and also this Hon'ble Court directed Union of India to frame appropriate legislation.
2013-19	No effort was made by the Union of India and Election Commission of India for the implementation of the directions passed by this Hon'ble Court.
March-April 2019	Union of India launched a scheme namely PM Kisan and transferred Rs. 2000 in the month of March to 12.50 Crores farmers by way of Direct cash transfer. This was happened after the declaration of elections by Election Commission of India. Another Rs. 2000 is proposed to transfer in the month of April, 2019.
Jan-April 2019	State of Andhra Pradesh implemented a scheme between February and April, 2019 namely 'Pasupu Kumkuma' and transferred Rs. 10,000 cash by way of Direct cash benefit to 94 lakhs women voters. Third installment of the scheme of Rs. 4000

	deposited on 5th of April, 2019 which is six days prior to the polling date.
April, 2019	Several public spirited persons, organizations made complaints to Election Commission of India to take action on distribution of government money in the name of Pasupu Kumkuma on the eve of elections. Some of them have filed petitions before High Courts of Andhra Pradesh and Delhi. But Election Commission of India allowed the disbursement of cash by way of Direct Cash benefit to 94 lakhs women voters.
11.4.2019	Polling held in Andhra Pradesh including the constituency of the Petitioner. Large number of women voters more than men participated in voting. Several ministers of ruling party claimed that 94 lakhs women voted in their favor.
12.4.2019	Petitioner made complaint to Election Commission of India on the implementation of Direct cash transfer scheme by Andhra Pradesh government during the election process to advantage the ruling party and sought action. Election Commission did not respond to the complaint.
6.5.2019	Hence, this Writ Petition is filed before this Hon'ble court in the interest of justice.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

PUBLIC INTEREST LITIGATION

WRIT PETITION (CIVIL) NO. OF 2019

IN THE MATTER OF:

Dr. PENTAPATI PULLA RAO

…Petitioner

VERSUS

1. **Election Commission of India**
Rep. by its Director General
Nirvachan Sadan, New Delhi-1

2. **Union of India**
Rep. by its Secretary
Ministry of Law & Justice
Sastry Bhavan, New Delhi110001

3. **State of Andhra Pradesh**
Rep. by its Chief Secretary
Interim Government Complex
Velagapudi, Amaravati
Andhra Pradesh-522503

4. **State of West Bengal**
Rep. by its Chief Secretary
Secretariat, Kolkata-700001

5. **State of Telangana**
Rep. by its Chief Secretary
Secretariat, Saifabad
Hyderabad, Telangana

6. **State of Odisha**
Rep. by its Chief Secretary
Secretariat, Sachivalaya Marg
Bhuvaneswar-751001

7. **State of Jarkhand**
Rep. by its Chief Secretary
1st Floor, Project Building
Dhurva, Ranchi-834004

8. **State of Karnataka**
Rep. by its Chief Secretary
Room No. 321, Vidhan Saudha
Bengaluru-1

..Respondents

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA SEEKING ISSUANCE OF WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION TO THE RESPONDENTS.

To

The Hon'ble Chief Justice of India
and his companion justices of the
Hon'ble Supreme Court of India

The humble Petition of the
above named Petitioner

MOST RESPECTFULLY SHOWETH:

1. That the present Writ Petition preferred by the Petitioner herein, praying for the kind indulgence of this Hon'ble Court, for issuance of a Writ of Mandamus or an appropriate Writ to Election Commission of India and Union of India to implement the directions passed in S. Subramaniam Balaji Vs State of Tamilnadu & Ors (2013) 9 SCC 659 regarding framing of

guidelines in regard to Freebees by political parties and apply the order dated 30.3.2011 in Election Commission of India Vs Rajaji Mathew Thomas & Ors, SLP (C) No.8891 of 2011 passed by this Hon'ble Court in the implementation of new schemes/Direct Cash Transfer schemes by the Respondents.

Cause of Action and Nature of Injury:

a) Due to non implementation of the judgment/orders of this Hon'ble Court, parties in power have been indulging distribution of cash from government exchequer by way of Direct Cash Transfer to influence the voters. The Direct Cash Transfer schemes implementation on the eve of election and even after announcement of election has resulted to influence the voters which has violated the equal opportunity to participate in the process of election guaranteed under the Article 14 and 21 of the Constitution of the India. Besides that huge public money has been spent from government exchequer for disbursement to voters and for publicizing the introduction of schemes on the eve of elections with a motive to get electoral advantage over the opponent parties without considering the impact on financial condition of the State budget. The implementation of new Direct Benefit Transfer (in short DBT) schemes on the eve of elections have stopped the release of funds for salaries to the contract employees and various other essential expenditure in Andhra Pradesh which is against the Article 21 of Constitution of India.

Particulars of the Petitioner

a. That the Petitioner is a Citizen of India and Public spirited person. Petitioner is an Economist and conducted research in Economics in Madras University, Jawaharlal Nehru University, New Delhi and Chicago University in United States. Being a person conducted research in economics noticed the mal practice, bribery committed by the Respondents in the name of Direct Cash Transfer schemes. Petitioner contested in the General Elections of 2019 from Eluru Parliament Constituency on behalf of Janasena Party. His address is

b. Petitioner made representation to election Commission of India but it has not respondent to the complaint and took any action. True copy of the representation made to Election Commission of India dated 13.4.2019 by the Petitioner is annexed as **ANNEXURE P-1**(Pg__________). Though the Petitioner made representation to the authorities, there is no action on the representation. Hence the Petitioner is approaching this Hon’ble Court by way of this Public Interest Writ Petition.

c. The Petitioner have no personal interest, or private/oblique motive in filing the instant petition. There is no civil, criminal, revenue or any litigation involving the petitioner which have or could have a legal nexus with the issues involved in the Petition.

2. FACTS IN BRIEF:

i. While dealing with the issues of corrupt practices and electoral bribe by the Political parties, this Hon'ble Court held in S. Subramaniam Balaji Vs State of Tamilnadu & Ors (2013) 9 SCC 659 as under:

> "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 & 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.”

True copy of the relevant extracts of the order in S. Subramaniam Balaji Vs State of Tamilnadu & Ors (2013) 9 SCC 659 passed by this Hon’ble Court is annexed as **ANNEXURE P-2**(Pg_________).

ii. This Hon’ble Court in Election Commission of India Vs Rajaji Mathew Thomas & Ors in SLP (C)No. 8891 of 2011 passed an interim order dated 30.3.2011 that *“what was intended by the Model Code of Conduct was that no action should be taken by a party in power in close proximity to the date on which the elections are announced so as to derive any benefit therefrom during the elections or to disturb the level playing field for all* *political parties involved in the electoral process. Furthermore, although, the administrative sanction to the proposed extension of the scheme to the new sections of the population was given on 25th February, 2011, prior to the announcement of the elections, its implementation could not have been possible prior to the announcement of the elections on account of the various procedures involved in giving effect to the same."*

True copy of the judgment passed by Hon'ble Kerala High Court in WPC No.8178 of 2011 is annexed as **ANNEXURE P-3**(Pg_________).

Typed copy of the order passed by this Hon'ble Court in Election Commission of India Vs Rajaji Mathew Thomas & Ors in SLP (C)No. 8891 of 2011, dated 30.3.2011 is annexed as **ANNEXURE P-4**(Pg_________).

iii. The stand taken by the Election Commission of India in the above case was not followed in the implementation of PM Kisan, Rytu Bandhu, Pasupu Kumkuma, KALIA, Mukhyamantri Kisan Yogana etc.

iv. Since the Election Commission of India failed to implement the uniform policy in regard to implementation of new schemes during election process. This has helped the parties in power at Center and States to distribute Direct Cash to women, farmers, old age persons to get political advantage in the General Elections 2019.

Genesis of Freebies by party in power:

v. Genesis of the Direct cash transfer before the elections has began in the State of Telangana in the year 2018. The Party in power has introduced a scheme namely ‘Rythu Bandhu’. The English translation is ‘Relative of Farmer’. Under this scheme Rs. 4000+4000 per acre Directly Cash Transferred to farmers as input subsidy for agriculture. If a farmer owns 10 acres, Rs. 80,000/-, and owns 20 acres then Rs.1,60,000 cash transferred to his or her account. This scheme was well received by suffering farmers who are the large number of voters in Telangana State.

vi. After implementing the first phase of the scheme, State Assembly was dissolved to take advantage of positive wave. A Public Interest Litigation WP(PIL) No. 281 of 2018 was filed by an Advocate before the High Court of Hyderabad praying to restrain the State from distributing the money to farmers before the elections. But it was dismissed. True copy of the order passed by the Hon’ble High Court of Hyderabad in WP(PIL) No. 281 of 2018 dated 26.9.2018 on Rytu Bhandhu Scheme is annexed as **ANNEXURE P-5**(Pg__________).

vii. It is submitted that during the election process second installment of Rs. 4000 per acre transferred directly to the accounts of farmers by Telangana government during the election process/one or two day before polling. Though the opposition parties opposed the direct cash transfer to voters during the election process, Election Commission of India allowed the scheme stating it is an ongoing scheme. With the help of this scheme, party in power in Telangana has won elections with thumping majority. The success of the ruling party in Telangana motivated other parties in power in Union of India, Jharkhand, West Bengal, Odisha and Andhra Pradesh to introduce similar Direct Cash Transfer(DBT) schemes for farmers before the elections to get electoral advantage over the opposition parties with the public money. This is the gross violation of Article 14 and 21 of the Constitution of India which denies the equal participation for all the citizens in Polity.

viii. PM Kisan Samman Nidhi Scheme to transfer Rs. 6000:

That Union of India initiated a huge money distribution scheme namely PM Kisan Samman Nidhi Scheme by way of Direct Benefit (Cash) Transfer (DBT). This scheme proposed to transfer Rs. 6000 to 12.50 Crores farmers. To implement this scheme Rs. 20,000 Crores allocated in 2018-19 budget in the month of December, 2018 much later than the actual budget presentation. Further Rs. 75,000 Crores allocated in 2019-20 interim budget which is supposed to be an interim arrangement. As per the official website pmkisan.nic.in, the objects of the scheme was stated as under:

- PM KISAN is a Central Sector scheme with 100% funding from Government of India
- It has become operational from 1.12.2018.
- Under the scheme an income support of Rs.6000/- per year in three equal instalments will be provided to small and marginal farmer families having combined land holding/ownership of upto 2 hectares
- Definition of family for the scheme is husband, wife and minor children.
- State Government and UT Administration will identify the farmer families which are eligible for support as per scheme guidelines.
- The fund will be directly transferred to the bank accounts of the beneficiaries.
- The first instalment for the period 1.12.2018 to 31.03.2019 is to be provided in this financial year itself.

It is clear from above that Rs. 2000 cash transferred to farmers account after declaration of Election Model Code and further Rs. 2000 proposed to transfer in the month of April. But the Election Commission of India has not taken any action on this new scheme.

Since the program is being implemented through State government hence the political advantage during elections was divided between ruling party at Centre and State.

True copy of the Pradhan Mantri Kisan Samman Nidhi objectives dated nil downloaded from pmkisan.nic.in website is annexed as **ANNEXURE P-6**(Page).

ix. Andhra Pradesh transferred Rs. 10,000 to 94 lakhs women:

Due to lack of guidelines by Election Commission of India, State of Andhra Pradesh has transferred Rs. 9400 Crores i.e., Rs. 10,000 each to 94 lakhs women self help group members in the name of Pasupu Kumkuma scheme. The program was launched in January, 2019 with a clear schedule to transfer money during the election process. The Direct Cash Transfer took place as per the following schedule:

No.	Installment	Amount	Date
1	First installment	2,500	1.2.2019
2	Second installment	3,500	8.3.2019 **(Election schedule released on 10.3.2019)**
3	Third installment	4,000	5.4.2019 **(Polling took place on 11.4.2019)**
	Total amount paid	10,000/- per woman	

x. That Pasupu Kumkuma scheme of Rs. 9400 Crores was not discussed in Assembly during 2018-19 budget and it was not approved in the Annual Budget-2018-19 by Respondent No.3. The scheme was initiated against the rules and procedures under the law. A Government Order Ms.No. 17 dated 29.1.2019 issued prior to announcement of Election schedule with a clear intention to get electoral advantage over the opposition parties. True copy of the G.O.Ms. No. 17 dated 29.1.2019 issued by government of Andhra Pradesh on Pasupu Kumkuma Scheme is annexed as **ANNEXURE P-7**(Page).

xi. Besides this on the eve of elections, the State of Andhra has transferred Rs. 5000 cash to about 50 lakhs farmers on 9th April, 2019 two days before the polling. It has also increased Old age Pension from Rs. 1000 to Rs. 2000. This has impacted on 54 lakhs pension holders who are voters in general elections. Other than these three schemes, State of Andhra has increased unemployment allowance from Rs. 1000 to Rs. 2000. Total beneficiaries under these schemes would be about 2 crores who are voters.

Farmers scheme in West Bengal:

xii. Similarly State of West Bengal has introduced a Direct Cash Transfer scheme to farmers. Under this scheme Rs. 5000 will be given per acre to the farmers. A news reports published in The Telegraph English news paper dated 1.1.2019 regarding the announcement of farmers welfare scheme is extracted as under:

> **"T**he Mamata Banerjee government has announced two new schemes for farmers — one to give Rs 5,000 per an acre annually and another to grant Rs 2 lakh to the family of a cultivator or a farm labourer if he or she dies between 18 and 60.
>
> The schemes for around 72 lakh farmers in Bengal are apparently to woo them ahead of the 2019 Lok Sabha polls after Opposition parties launched agitation demanding proper price for agricultural produce.
>
> "We are happy to announce two new schemes for farmers. This will be a New Year gift for them from the state government. The schemes will be in place from January 1, 2019. Farmers will be able to apply for schemes from February, 2019," the chief minister said after holding a meeting with top government officials at Nabanna on Monday.
>
> Under the schemes, a farmer will get Rs 5,000 for an acre annually for cultivation. Besides, the next of kin of a farmer or a agriculture labourer in the age group of 18-60 years will get Rs 2 lakh in case of his/her death, irrespective of reasons behind the death.
>
> Sources at Nabanna said the schemes — launched in the backdrop of farmers' movements across Bengal and several rallies by the CPM in the state — would put an additional burden of Rs 7,000 crore on the struggling state exchequer.
>
> "The schemes will require a few thousand crores of rupees. We will try to arrange funds for the schemes by reducing expenditure elsewhere," said the chief minister.
>
> Sources in the agriculture department said the new schemes revealed that there were areas in the agriculture sector where the government interventions still lacked.
>
> "The scheme to give financial assistance to farmers makes it clear that majority of them don't get bank loans despite the government's repeated attempts. It is also clear that though more than 40 lakh kisan credit cards were issued in the past few years, it could help only a section of farmers," said a senior government official.

Sources in Trinamul said Mamata had received feedback that farmers were in trouble as the market price of paddy had fallen to about Rs 1,400 a quintal. The price was nearly Rs 1,500 a quintal during winter last year.

“The way farmers participated in rallies held by the CPM demanding proper price for their produce in some districts can be a cause of concern for any ruling party ahead of the 2019 Lok Sabha polls. Moreover, results of the recent Assembly polls in Chhattisgarh, Madhya Pradesh and Rajasthan hinted that farmers were unhappy with the ruling BJP at the Centre. We cannot take any risk,” said a minister.

Asked whether the schemes were linked to the Lok Sabha polls, Mamata said: “Farmers across the country have grievances. We try to help them in Bengal and that’s why their income had increased three times in the past seven years. If the new schemes bring smile to their faces, we will be happy.”

A section of officials in the finance department expressed concern over the additional burden on the state exchequer.

“We are finding it difficult to meet the income expenditure gap as we have to spend Rs 48,000 crore this year to repay loans. The additional burden will leave us in trouble as we have to spend Rs 53,000 crore in the next financial year to repay loans. There is little chance to increase our revenue significantly as no new tax will be allowed to be levied ahead of the polls,” said a finance department official.

Although Mamata said the government would try to reduce expenditure elsewhere, sources at Nabanna said it was easier said than done.

“All schemes like giving cheap grains to nearly 8 crore people and grant to clubs, which require huge money, will not be allowed to be withdrawn as they are the chief minister's pet schemes. So, arranging a sum of nearly Rs 7,000 crore will not be an easy task," said an official.

Sources said the government should have tried to ensure that farmers got loans from banks and cooperative societies and laid stress on securing proper price for farmers' produce as an alternative.

"This could have saved the state exchequer from the additional burden," said a source.

KALIA in Odisha:

xiii. That State of Odisha also implemented a similar Direct Cash Transfer scheme before the Assembly and Loksabha elections considering the positive results in Telangana State. That the State of Odisha provided Rs. 10,000 per family who depends on agriculture. As per the news report published in The Indian Express dated 25.1.2019 is reproduced as under:

"Among a number of farmer-specific schemes, announced or planned, across the country ahead of the Lok Sabha elections, the Odisha government has come up with a support scheme whose primary targets are small farmers, cultivators and landless agricultural labourers. Called KALIA, the scheme involves payments to encourage cultivation and associated activities.

The Scheme:

Short for Krushak Assistance for Livelihood and Income Augmentation, KALIA was launched last month and completed its first phase of registration Tuesday. Under the scheme, Rs 10,180 crore will be spent over three years until 2020-21 in providing financial assistance to cultivators and landless agricultural labourers. At the Krushi Odisha 2019 event in Bhubaneswar Tuesday, Chief Minister Naveen Patnaik claimed the scheme will benefit 92% of the cultivators in the state and include every category from big farmers to landless cultivators.

Farmers Big or small

All farmers will be provided Rs 10,000 per family as assistance for cultivation. Each family will get Rs 5,000 separately in the kharif and rabi seasons, for five cropping seasons between 2018-19 and 2021-22.

Although the scheme is not linked to the amount of land owned, the government insists it will “greatly benefit” sharecroppers and cultivators, most of whom own little or no land. “The scheme has been made equitable, looking at the best-case/worst-case scenario problems of a small farmer. At the same time, we don’t want to target only certain farmers and leave out others; whether you own one acre or five acres, you get the same financial assistance,” said an Agriculture Department official.

Work for land less

This targets 10 lakh landless households, and specifically SC and ST families. They will be supported with a unit cost of Rs 12,500 for activities like goat rearing, mushroom cultivation, beekeeping, poultry farming and fishery. “The beneficiary is encouraged to choose an activity with which he is familiar because these trades require some skill and network. The idea is to identify an existing capacity and build on it. We are working on a skilling component to be added to this form of assistance,” an official said.

“This is also going to be an area-specific scheme in the sense that an input support for a particular trade, say mushroom cultivation, will be provided if it is prevalent throughout that locality so that there is aggregation of produce. A critical trade, dairy production, has deliberately been kept out because keeping a cow is more expensive, while milk production needs to have a collection route or agency that processes and refines this low shelf-life product. On the other hand, poultry farming and fishery do not need a strong ecosystem to survive and has a ready market of consumption or cheap method of preservation. Similarly, beekeeping is done by many self-help groups, so they are already familiar with the networks of that trade," the official added.

Sick & elderly

One of the interventions will assist the elderly, sick and differently-abled population who are unable to take up cultivation, by providing Rs 10,000 per household per year. This is meant to be used for sustenance.

"This is a component that will not be implemented immediately. Odisha already offers free healthcare under the Biju Swasthya Kalyan Yojana. The state disburses old-age pensions and other forms of assistance, for which this additional component will have to be better tailored," an official said.

The KALIA scheme includes a life insurance cover of Rs 2 lakh and additional personal accident coverage of the same amount for 57 lakh households. Crop loans up to Rs 50,000 are interest-free.

Why not a waiver

The BJD government was facing pressure to match its rivals which have announced or promised farm loan waivers. While the Centre is planning interest-free loans among various moves, the Congress in Odisha has been highlighting the loan waiver announced in states where the party has recently come to power, and the BJP has promised that if it wins in Odisha, it will waive existing loans and provide interest-free loans.

In his press conference announcing the KALIA scheme, Patnaik had criticised the Congress for demanding a loan waiver. "The Congress demand will be a ridiculous repetition of their (state) government from 1995-1999… You will remember how the treasury was bankrupt, how salaries could not be paid, how infrastructure suffered… It (loan waivers to farmers) hasn't paid in the past. It will not pay in the future".

An Agriculture Department official said: "Unlike a loan waiver, (through which) banks appease a few farmers, KALIA's main targets are rural activities as a whole. We will support farming on a small scale, sharecropping, fishing, animal herding, which are not covered under bank loans, but are caught in debt traps set up by local moneylenders. Also, a farm loan waiver will reduce credit available to farmers in the long term, while income support can be used to make a repayment or at least activate a bank account which can then receive a loan."

Mukhya Mantri Krishi Yojana in Jharkhand:

xiv. That State of Jharkhand has initiated farmers welfare scheme namely Mukhya Mantri Krishi Yojana. Under this scheme Rs. 5000 cash per acre will be transferred to 22.76 lakhs voters. The total amount will be spent on this scheme is Rs. 2250 Crores per year.

xv. All the above schemes initiated by Respondent No. 2 to 7 are:

a. Direct Cash Transfer schemes.
b. Initiated before elections
c. Budgetary allocations not made in 2018-19 budget
d. Cash transferred to voters during election process i.e., few days before polling day
e. Salaries and other regular payments stopped to implement Cash Transfer schemes.
f. Over draft taken to implement Cash Transfer schemes.
g. Financial feasibility studies were not considered
h. Cash Transfer schemes implemented with executive decision without proper policy under the Legislation

xvi. That the parties in power have been taking advantage of treasury and knowing about the schedule of the elections implemented Direct Cash Transfer schemes with a motive to get votes/influence the free and fair elections. Though this is not technically comes under Model Code of Conduct as per the present Code of Conduct, the intention of implementing the Direct Cash Transfer one or two months before the announcement of election schedule and transferring the cash to the accounts of voters is clear case of bribery. This will seriously harm the equal opportunity to the all contestants particularly candidates contesting from the party like Janasena Party whose motive is to fight against corruption and not to get votes by way of bribing.

xvii. To counter the parties in power, political parties such as Indian National Congress have promised Freebies/72000 cash transfer in their manifestos during the General elections-2019. That the political parties have incorporated various Direct Cash Transfer schemes, loan waivers etc in the manifestos without considering the financial burden on the government and without considering the possibility of implementation.

xviii. That Article 112 and 202 of the Constitution of India only permits defraying of funds from the Consolidated Fund of the State for public purpose. But the parties in power in Respondent No.2 to 7 have spent the public money for their Political purpose to get electoral advantage over the opponents contrary to the mandate of the Constitution of India. Without allocating budget in 2019-20, schemes were launched before the elections to attract the voters/to pacify angry farmers.

xix. That a gift, offer or promise by a candidate or his agent, to induce an elector to vote in his favour would amount to bribery under Section 123 of the RP Act. The extracts of Section 123 of RP Act is reproduced 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 2[to withdraw or not to withdraw] from being a candidate at an election, or
>
> …….
>
> (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 4[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.

xx. The Freebies raised in Subramaniam Balai (Supra) are relating to promise of Freebies before elections in the manifestos. The party which makes promise in the manifestos have implemented schemes as per the budgetary provisions and the accounts were audited by Comptroller and Auditor General. In the present case, Direct Cash Transfer schemes were implemented without budgetary allocations in the annual budgets and without scrutiny by the Comptroller and Auditor General. The sole motive of the implementation of Direct Cash Transfer schemes by the Parties in Power is to get benefit out of the schemes in the election. In case of Andhra Pradesh, salaries for contract employees, bills for executing the government works/contracts etc were stopped to implement the Direct Cash Transfer schemes. It is more pertinent to state that the incumbent government in State of Andhra Pradesh got approval to draw overdraft and used that money for Direct Cash Transfer schemes which is clear violation of Constitutional mandate and procedure of governance.

xxi. 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, has been issuing instructions under Model Code. The fountainhead of the powers under which the Election Commission issues these orders is Article 324 of the Constitution, which mandates the Election Commission to hold free and fair elections. But ECI has allowed the disbursement of money under various scheme in violation of Article 14, 21 of Constitution of India. It is further submitted that ECI failed to stop the campaigning of DBT schemes by parties in power during elections campaign. Parties openly raised the issue of DBT schemes in the campaign to get votes. This shows that the ECI failed to maintain level playing ground for all the contestants including the Petitioner.

xxii. It is submitted that ECI has adopted different code for different States. It has accepted the request made by Union of India for the implementation of 'PM Kisan' Scheme and also allowed State of Andhra, Telangana, Jharkhand to implement various DBT Schemes. But Election Commission has objected to the schemes initiated by Karnataka, Odisha and West Bengal. This shows that the ECI has not acted as per the mandate under Article 14,21 and 324 of the Constitution of India.

xxiii. That ECI has issued letter No. 437/6/16/2003/PLN-III, dated 01.04.2004 addressed to Smt. AshaSwarup, Joint Secretary (SGSY), KrishiBhawan, New Delhi-110 001 on **Clarification regarding implementation of Rural Development Programmes.**

> "I am directed to refer to the meeting you had in the Commission on 27th March, 2004 regarding implementation of various rural development programmes. In view of the Model Code of Conduct in force till the completion of elections, the Commission has directed the following: -

(i) Sampoorna Grameen Rozgar Yojana (SGRY): - Continuing works in Progress under SGRY may be continued and funds earmarked for such works can be released. In case of any Panchayat where all on going works have been completed and there is a requirement for taking up NEW wage employment works and where funds released directly to the Panchayats from the Ministry of Rural Development are available, new works can be started from approved annual action plan for 2003-04 with the prior consent of the District Collector / District Election Officer. From other funds, no new works should be started.

(ii) Indira Awas Yojana (IAY): - Beneficiaries who have been sanctioned housing scheme under IAY and have started work, will be assisted as per norms. No new constructions will be taken up or fresh beneficiaries sanctioned assistance till the elections are over.

(iii) Swaranjayanti Gram Swarozgar Yojana (SGSY): - Under SGSY, only those help groups which have received part of their subsidy / grant will be provided the balance installments. No fresh individual beneficiaries or SHGs will be given financial assistance till the elections are over."

xxiv. That the Election Commission has written letter No. 464/INST/2007-PLN-I Dated: 07.01.07 addressed to The Chief Secretaries and the Chief Electoral Officers of all States and Union Territories regarding implementation of Model Code of Conduct. These instructions does not speaks about the Direct Cash Transfer schemes during the elections. The extracts of the letter is reproduced as under:

“On Welfare schemes and governmental works:

1. Announcement of new projects or programme or concessions or financial grants in any form or promises thereof or laying of foundation stones, etc., which have the effect of influencing the voters in favour of the party in power is prohibited.

2. These restrictions apply equally to new schemes and also ongoing schemes. But it does not mean that in the case of national, regional and State utility schemes, which have already been brought up to the stage of completion, their utilization or functioning in public interest should be stopped or delayed. The coming into force of the Model Code of Conduct cannot be given as an excuse for not commissioning such schemes or allowing them to remain idle. At the same time, it should be ensured that the commissioning of such schemes is done by civil authority and without associating political functionaries and without any fanfare or ceremonies whatever, so that no impression is given or created that such commissioning has been done with a view to influencing the electorate in favour of the ruling party. If in doubt, a clarification should be obtained from Chief Electoral Officer/Election Commission of India.

3. It is further clarified that simply because a budget provision has been made for any particular scheme or the scheme has been sanctioned earlier or a reference to the scheme was made in the address of the Governor or the budget speech of the Minister it does not automatically mean that such schemes can be announced or inaugurated or otherwise taken up after the announcement of elections while the Model Code of conduct is in operation, since they will clearly be intended to influence the voters. Such actions if undertaken will be considered a violation of the model code of conduct.

4. No fresh sanctions for governmental schemes should be made. Review by political executive (Ministers etc.) and processing of beneficiary oriented schemes, even if ongoing, should be stopped till completion of elections. No fresh release of funds on welfare schemes and works should be made or contract for works awarded in any part of the state where election is in progress without prior permission of the Commission. This includes works under the Member of Parliament (including RajyaSabha members) Local Area Development fund or MLAs / MLCs Local Area Development Fund, if any such scheme is in operation in the state.

5. No work shall start in respect of which even if work orders have been issued before the model code came

into effect, if the work has actually not started in the field. These works can start only after the completion of election process. However, if a work has actually started, that can continue.

6. There shall be no bar to the release of payments for completed work(s) subject to the full satisfaction of the concerned officials.

7. Commission does not refuse approval for schemes undertaken for tackling emergencies or unforeseen calamities like providing relief to people suffering from drought, floods, pestilences, other natural calamities or welfare measures for the aged, infirm etc. In these matters, however, prior approval of the Commission should be taken and all ostentatious functions should be strictly avoided and no impression should be given or allowed to be created that such welfare measures or relief and rehabilitation works are being undertaken by the Government in office so as to influence the electors in favour of the party in power which at the same time will adversely affect the prospects of the other parties."

True copy relevant extracts of Compendium of Instructions on Model Code of Conduct published in the year 2018 by ECI is annexed as **ANNEXURE P-8**(Page).

xxv. That the Election Commission has failed to visualize the impact of Direct Cash Transfer scheme implemented by Respondent No.2 to 7 which has impacted the free and fair election in 2019.

3. GROUNDS:

That the present Writ Petition is being filed on following amongst other grounds without prejudice to each other:-

A. Whether the motive to implement Direct Cash Transfer schemes of incumbent government is with a view to get electoral advantage over the opposition parties?

B. Whether the allocations for the Direct Cash Transfer schemes were implemented without an appropriate scheme/policy?

C. Whether the Direct Cash Transfer schemes implemented by Respondent States and Center does not have budgetary allocations in the annual budget presented and approved respective Assemblies and Parliament?

D. Whether the salaries of contract employees, payment of bills etc stopped for the implementation of Direct Cash Transfer schemes in Respondent States?

E. Whether the Respondent No.1 and 2 have failed to implement the directions passed by this Hon'ble Court in S. Subramaniam Balaji Vs State of Tamilnadu & Ors (2013) 9 SCC 659 which is against the Article 14 and 21 of Constitution of India ?

F. Whether the Election Commission of India failed to estimate the irreparable loss to candidates of opposition parties due to implementation of Direct Cash Transfer schemes in Respondent States there by denying the right to equal participation in polity for every citizen guaranteed under Article 14, 21 of the Constitution of India?

G. Whether free and fair elections affected due to the implementation of Direct Cash Transfer schemes in Respondent States?

4. That the Petitioners herein have not filed any other Petition in any High Court or before this Hon'ble Court on the subject matter of the present Petition.

5. PRAYERS

It is humbly prayed that in the interest of justice this Hon'ble Court may be pleased to;

a. issue writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the implementation of Direct Cash Transfer schemes before/during election process such as PM Kisan, Pasupu Kumkuma, NTR Atmabandhu, Rytu Bandhu, KALIA, Mukhya Mantri Krishi Yojana etc as referred in Writ Petition by Respondents as illegal, unconstitutional and contrary to Article 14,21, 112, 202 of the Constitution of India and :

b. Issue Writ, order, direction in the nature of Writ of Mandamus directing the Respondent No.1 to implement the directions passed by this Hon'ble Court in S. Subramaniam Balaji Vs State of Tamilnadu (2013) 9 SCC 659 and in the matter of Election Commission of India Vs Rajaji Mathew Thomas & Ors in SLP (C)No. 8891 of 2011, dated 30.3.2011 and prepare comprehensive guidelines on freebies, Direct Cash Transfer Schemes etc and/or;

c. Issue Writ, order, direction in the nature of Writ of Mandamus directing the Respondent No.1 to take appropriate action under Article 324 of Constitution of India and Section 123 of Representation of Peoples Act on Direct Cash Transfer of Rs. 4000 to 94 lakhs women voters on 5.4.2019 i.e., 6 days prior to polling, Cash transfer of Rs. 5000 to 54 lakhs farmer/voter on 9.4.2019 i.e., two days prior to polling day i.e.,11.4.2019 by Respondent No.3 to benefit party in power in the State and/or;

d. Issue Writ, order, direction in the nature of Writ of Mandamus directing the Election Commission of India to fix minimum time preferably six months to implement schemes which have impact on free and fair elections such as Freebies, Direct Cash Transfer schemes, welfare schemes etc by Political parties in power before announcement of the election schedule and/or;

e. Direct Election Commission of India to take action on the complaint dated 12.4.2019 made by the Petitioner which is annexed as **ANNEXURE P-1**(Page).

f. Pass any other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interest of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:

Drafted by:
SRAVAN KUMAR
Advocate
New Delhi
Filed on: 6.5.2019

HITENDRA NATH RATH
(Advocate for the Petitioner)

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)
PUBLIC INTEREST LITIGATION
WRIT PETITION (CIVIL) NO. OF 2019

IN THE MATTER OF:

Dr. PENTAPATI PULLA RAO …. Petitioner

Versus

ELECTION COMMISSION OF INDIA & ORS ….Respondents

PAPER BOOK

ADVOCATE FOR THE PETITIONER: HITENDRA NATH RATH