

SUPREME COURT OF INDIA

Nandi Infrastructure Corr.Ent.Ltd.

Vs.

Election Commission of India

C.A.No. 867 of 2009

(Dr. Arijit Pasayat, V.S.Sirpurkar and Asok Kumar Ganguly JJ.)

04.02.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the order dated 8/5/2008 issued by the office of the Chief Electoral, Karnataka, purporting to act in terms of the directions of the Election Commission of India (in short 'the Commission') under Article 324 of the *Constitution of India, 1950* (in short the 'Constitution'). The effect of the order was that no action was to be taken on the decision of the State Government partially modifying the Government decision dated 30/4/2008 and also not to take any further policy decision and action on the BMIC project till 28/5/2008, that is the date on or before which the Election process is to be completed. The Commission further directed the State Government to cancel the Government decision. On the basis of this directive the Government of Karnataka by Government order No. PWD 53 CRM 2007 Bangalore, dated 9.5.2008, passed the following order: "PROCEEDING OF THE GOVERNMENT OF KARNATAKA Sub:- Implementation of the Basngalore-Mysore Infrastructure Corridor Project (BMICP) under BOOT conceptRead:- 1. G.O.No. PWD 53 CRM 2007 30.4.2008.

3. Letter No. DPAR 4356 ELN MCC 2008 dated 8.05.2008 from the office of the Chief Electoral Officer, Karnataka Bangalore. GOVERNMENT ORDER NO. PWD 53 CRM 2007 BANGALORE DATED 09.05.2008

4. Pursuant to the directions of the Election Commission of India conveyed in the reference read at (2) above, the Government Order dated 30.4.2008 at (1) above is hereby withdrawn with immediate effect. By Order and in the name of the President of India (M.Deviprasad) Under Secretary to Government Public Works, Ports and IWT Department By order dated 9.7.2008, this Court stayed the direction relating to cancellation of the decision. The Election Commission of India has filed an affidavit dated 30/9/2008, inter alia, stating as follows:

“It is submitted that the use of the word `cancel' in paragraph 2 of its Order dated 8/5/2008 has been misread by the petitioners as it was only intended to mean that the implementation of decision of Government of Karnataka dated 30/4/2008 be cancelled and suspended during the ongoing electoral process between the 8/5/2008 (the date of passing the Order by Election Commission) and the 28/5/2008 (the date on which the election process was to get over.”

5. It is surprising that by jugglery of words the use of the expression `cancel' in paragraph 2 of the order dated 8/5/2008 has been tried to be justified. If that was the intention, the same should have been conveyed to the State Government after the order of cancellation was passed. The expressions "cancel" and "suspend" are conceptually different. At the same time there could not have been cancellation and suspension. "Cancel" means to destroy the force, effectiveness or validity of an order, a decision, to bring to nothingness. "Suspend" means to debar temporarily a privilege or make temporarily ineffective. To "suspend" is to take a temporary measure while to "cancel" has an element of permanency.

6. Mr. G.E.Vahanavati, appearing for the State of Karnataka stated that the Government Order dated 9/5/2008 passed in line with the directives of the Election Commission of India has been recalled and the Government desires to implement the decision of the Karnataka High Court as upheld by this Court in *State of Karnataka & Anr. vs. All India Manufacturers Organization & Ors.*¹. In view of this Statement nothing further survives to be done in this appeal. In any event after 28/5/2008 the whole position has changed. The appeal is disposed of accordingly.

¹(2006) 4 SCC 683