

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CONTEMPT PETITION (C) NO. 144 OF 2006 IN C.A.No. 3492-94/2005

DAKSHINAMURTHY

Petitioner(s)

VERSUS

B.K.DAS I.A.S & ORS.

Respondent(s)

(With appln(s) for seeking leave to place on record additional facts/documents in support of the contempt petition and for seeking leave to change the cause title due to subsequent events of the order dated 21.7.2006 and directions)

WITH

Con.P.(C)No. 96/2007 in CA 3492-94/05

(With appln. for interim relief and permission to file addl. documents)

SLP(C) No. 11829/2008

(With appln. for permission to place addl. documents on record and with prayer for interim relief and office report)

WP(C) D23593/08

(With appln. for ex parte stay and permission to file addl. documents and exem. from filing OT and office report)

Date: 20/04/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE Dr. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s)

Mr. SUK Sagar, Adv.

Ms. Bina Madhavan,

Ms. Ananya Kar, Adv.

M/s. Lawyers Knit & Co.

Mr. Vasudevan Raghvan, Adv.

Ms. Meenakshi Arora, Adv.

Mr. Prashant Bhushan, Adv.

Mr. Prashant Kumar, Adv.

Mr. Triveni Poteker, Adv.

Mr. Amar Singh Bedi, Adv.

For Respondent(s)

Ms. Kiran Suri, Adv.

Mr. S.J. Amith, Adv.

Mr. Abhay Kumar, Adv.

Mr. Rajesh Anand, adv.

-2-

Mr. E.C. Vidyasagar, Adv.

Mr. Shantha Kr. Mahale, Adv.

Ms. Anitha Shenoy, adv.

Mr. Aavish, adv.

Mr. Sanjay R. Hegde, Adv.

Mr. K.T. Anantharaman, Adv.

Mr. Vasudevan Raghavan, Adv.

UPON hearing counsel the Court made the following
ORDER

List these matters before another Bench.

[SHASHI SAREEN]
COURT MASTER

[SHASHI BALA VIJ]
COURT MASTER
REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 867 OF 2009
(Arising out of SLP(C)No.16717/2008)

Nandi Infrastructure Corr.Ent.Ltd. & Ors. ...Appellant(s)

Versus

Election Commission of India & Anr. ...Respondent(s)

JUDGMENT

Dr. ARIJIT PASAYAT,J.

Leave granted.

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

-2-

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 concept

Read:- 1. G.O.No. PWD 53 CRM 2007 30.4.2008.

2. 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

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
-3-

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."

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.

-4-

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. (2006) 4 SCC 683. 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.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(V.S.SIRPURKAR)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
February 4, 2009.