

MANU/KE/0115/2006

Equivalent Citation: AIR2006Ker229, ILR2006(2)Kerala296, 2006(2)KLT454

IN THE HIGH COURT OF KERALA

W.P. (C) No. 10132 of 2006

Decided On: 18.04.2006

Appellants: **Intelligence Decisions Systems (India) P. Ltd.**

Vs.

Respondent: **Chief Election Commissioner**

Hon'ble Judges/Coram:

S. Siri Jagan, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Antony Dominic, A.M. Shaffique, E.K. Nandakumar and A.K. Jayasankar Nambiar, Advs.

For Respondents/Defendant: Anil Thomas, Government Pleader, Murali Purushothaman, Sivan Madathil and Manjeri Sunderraj, Advs.

***Case Note:**

Election--Model Code of Conduct--Part VII, Clause 6--Announcement of financial grant which may have the effect of influencing voters in favour of party in power--Signing of agreement for setting up 'Smart City'--By signing the agreement, the party in power is not announcing any financial grant or promises to the people of Kerala--Simply because a normal Governmental function would result in some benefit to the public at large, that would not come within the ambit of model of code of conductWrit Petition filed by a company said to be affected by the direction of Election Commission to Government that signing of agreement to set up 'Smart City' at Kochi, be deferred till completion of election. It was contended by Petitioner that the decision to sign the agreement was taken before election notification was issued, that the negotiation for the project commenced much earlier, that signing of the agreement will not amount to announcement of any financial grant which may influence the electorate and hence there is no violation of model code of conduct. On the other hand, it was contended by Election Commission that since the agreement would create 33,000 direct job opportunities in Smart City, the agreement would come within the ambit of Clause 6 (a) of Part VII of model code of conduct. Allowing the Writ Petition, the Court;Held:What is prescribed is the announcement of any financial grants in any form or promises thereof which may have effect of tilting the voters in favour of the party in power. I do not think that by signing the agreement, the party in power is announcing any financial grants in any form or promises thereof to the people of Kerala. On the other hand, what has been provided in the agreement is for granting the facility for TECOM to establish a Smart City in Kerala. The Government does not give any financial grants to TECOM. The object of model code of conduct is not to stop all Governmental activities in the State pending elections. Notwithstanding the elections, the normal Governmental functions should go on. It is only where with the intention of influencing the voters of the State the party in power declares any promises to

the people that the model code of conduct comes into play. Simply because a normal Governmental function would also result in some benefit to the public at large, that would not come within the ambit of the model code of conduct. Election Commission should examine these aspects carefully before coming to the conclusion whether the action infringes the model code of conduct and shall not interdict all Governmental functions simply because it would result in some benefit to the voters of the State or the public at large. If, without discrimination, the Election Commission takes a policy that all Governmental functions resulting in benefits to the people have to be postponed, until after the elections that would affect the interest of the State itself because in certain matters delay itself would vitally affect the project itself, which may ultimately result in irreparable loss to the State. Constitution of India--Article 226--Locus Standi--Person affected by direction of election commission can challenge the direction, though he may not be the one interdicted. Held: The fact situation as stated above is not in dispute before me. Having no privity of contract in respect of the subject agreement, the Petitioner may not succeed in bringing in an action in a civil suit in respect of the agreement in question. But the situation is different when it comes to filing of a writ petition under Article 226 of the Constitution of India. Here, the question of privity of contract is not relevant. What the Petitioner is challenging is a direction of the Election Commission of India against signing of the said agreement until after the elections are over, which agreement would have far reaching favourable effect on the Petitioner's business. The Infopark, in which the Petitioner has been allotted space, itself, is being handed over as per the subject agreement which would mean that on the Smart City coming into being, the Petitioner also would be part of the same. As such, the Petitioner is certainly a party affected by the direction of the Election Commission of India interdicting signing of the agreement before the elections and therefore I am of challenging the impugned direction of the Election Commission of India, since it affects its business and such challenges are not also alien to our constitutional jurisprudence as evolved by judicial precedents.

JUDGMENT

S. Siri Jagan, J.

1. In this Writ Petition, a Company stated to be affected by the direction issued by the Election Commission to the Government of Kerala that signing/execution of agreement for setting up of "Smart City" at Kochi between the Dubai Technology and Media Free Zone Authority (TECOM) and the Government of Kerala, be deferred till completion of election, challenges the said direction. The short facts necessary for disposal of this Writ Petition as stated by the petitioner are as follows.

2. During the second week of December, 2004, the TECOM submitted a proposal for setting up a project named "Smart City" at Kochi with a project outlay of US \$ 300 million covering an area of about 1000 acres of land in and around the premises of Infopark set up by the Kerala State IT Mission, a society incorporated by the Government of Kerala. Negotiations between the Government of Kerala and TECOM were held in January and April, 2005 wherein broad terms for the memorandum of understanding was finalised. Thereafter, Government of Kerala, issued Ext.P1 order dated 7-5-2005 directing freezing of further development activities of the Infopark and allotment of land in view of the progress made for the establishment of the Smart City. Thereafter, the Government of Kerala and TECOM signed Ext.P2 Memorandum of Understanding dated 9-9-2005 wherein the parties came to an understanding regarding

the establishment of a joint venture company with share holding for TECOM and the Government of Kerala or their nominees, grant of lease of approximately 100 acres of land free of cost but directly relating the same to employment creation, acquisition and transfer of additional land of around 136 acres at a stated price, transfer of Infopark, creation of employment avenues for 33,300 IT professionals and other support by the Government of Kerala. The Memorandum of Understanding provided for signing of a formal agreement between the parties, which was aimed at the ultimate establishment of the Smart City as contemplated in the Memorandum of Understanding. This was widely published in English and Malayalam newspapers in Kerala as evidenced by Exts. P3 and P4 press reports. Discussions followed regarding the final points to be incorporated in the formal agreement, which were finalised during the third week of February, 2006. As required under the Rules of Business of the Government of Kerala, the agreement was also approved by the Finance and Law Departments of the Government.

3. Thereafter, a public interest litigation was filed by a Samithy as W.P(C) No. 3898/2006, which was dismissed on 13-2-2006 directing that before the agreement is signed the representation made by the petitioner in that writ petition would be examined by some responsible persons well versed with the subject matter of agreement and only when the terms and conditions of the agreement were cleared by such a person, the same should be signed to become an effective document. Pursuant to the same, the Government of Kerala, by G.O(MS) No.4/2006/ITD dated 15-2-2006 constituted a committee to examine the issues raised in the writ petition. The committee finally submitted a report clearing the agreement to be executed between the Government of Kerala and TECOM. The finalised agreement was duly approved by the Finance and Law Departments, which was placed before the Council of Ministers in the forenoon of 1-3-2006 and the same was approved by the Council of Ministers. This was announced by the Chief Minister of Kerala at a press conference at about 1 p.m. on 1-3-2006 and was also telecast in all electronic media. In accordance with the Cabinet decision, Government issued Ext. PS G.O.(MS)10/2006/ITD dated 2-3-2006 approving the draft agreement appended thereto and authorising the Chief Secretary of Government of Kerala and the Chief Executive Officer of the Infopark to sign the agreement on 8-3-2006 with TECOM. This was also widely reported in all electronic and printed media. The agreement was thus scheduled to be signed on 8-3-2006.

4. In the after noon of 1-3-2006, the 1st respondent-Chief Election Commissioner issued Ext.P7 notification fixing the schedule for the election to the Legislative Assemblies of several States including that of State of Kerala. Ext.P7 inter alia provided that the model code of conduct stipulated by the Election Commission came into effect immediately from the date of Ext.P7. Apparently, in view of the said clause, the Government of Kerala forwarded the entire files containing the proposal relating to the signing of the agreement with TECOM to the 1st and 2nd respondents. The 1st and 2nd respondents thereupon examined the proposal and instructed the 3rd respondent to keep the proposal on hold as, according to them, such execution of the agreement was impermissible in view of the implementation of the model code of conduct. This was also widely reported in the media. It is under the above circumstances that the petitioner has approached this Court seeking the following reliefs:

- i) Declare that the direction issued by the 1st and 2nd respondents, directing the 3rd respondent not to execute the agreement with the Dubai Technology and Media Free Zone Authority (TECOM) for the establishment of the Smart City Project is illegal and unconstitutional;
- ii) issue a writ of certiorari or other appropriate writ, order or direction,

calling for the records leading to the direction issued by the respondents 1 and 2 directing the 3rd respondent not to execute the agreement with the Dubai Technology and Media Free Zone Authority (TECOM) for the establishment of the Smart City Project and quash the same;

iii) direct the 3rd respondent to execute the agreement with the Dubai Technology and Media Free Zone Authority (TECOM) for the establishment of the Smart City Project, pending disposal of the writ petition;

iv) grant such other and incidental reliefs as this Hon'ble Court may deem just and necessary on the facts and circumstances of this case.

5. The first contention of the petitioner against the direction issued by the 1st respondent is that since the election process commenced only by the issuance of Ext.P7 notification and the decision to sign the agreement was taken before the issuance of Ext.P7 notification, the signing of the agreement between the TECOM and the Government of Kerala would not be affected by the model code of conduct. Secondly, the petitioner would contend that the execution of the agreement between the Government and TECOM would not infringe any of the provisions of the model code of conduct. The petitioner would buttress the grounds of challenge by reiterating the fact that the Smart City Project was conceived as early as in July, 2004, negotiations regarding which were conducted during January and April, 2005, which ended in the signing of the memorandum of understanding in September, 2005, and the agreement itself was approved by the Government of Kerala, after complying with the directions of the High Court on 1st March, 2006 in the forenoon even before the declaration of election, which, according to the petitioner, would go to show that the signing of the agreement would not be affected by the declaration of the elections and the model code of conduct having come into force. The petitioner would support the second contention by stating that the signing of the agreement would not amount to announcement of any financial grants in any form or promises thereof which may have the effect of influencing the voters in favour of the party in power and use of any official position of the party in power for the purposes of its election campaign which alone would render such action violative of the model code of conduct.

6. The parties having entered appearance through counsel and filed their pleadings, in view of the urgency of the matter, the writ petition itself was finally heard.

7. A statement has been filed on behalf of respondents 1 and 2. The first contention of respondents 1 and 2 is that the petitioner has no locus standi to file the writ petition as the petitioner is not a party to the agreement between TECOM and the Government of Kerala. Secondly, they would contend that the 1st respondent has interdicted the 3rd respondent from entering into the subject agreement till the completion of the election process in view of the operation of model code of conduct since it would directly infringe Part VII of model code of conduct and in particular Clause (vi)(a) thereof. They would contend that although the memorandum of understanding was signed on 9-9-2005, the same was valid only for three months. Later, although the memorandum of understanding was extended for a later period, the validity of the same has already expired. They would submit that since the agreement would, in effect, create 33,000 direct job opportunities in Smart City, the same would squarely come within Clause (vi) (a) of Part VII of the model code of conduct as the same amounts to announcement of promises, financial grant and launching of new projects. In the above circumstances, in exercise of the powers conferred upon the Election Commission under Article 324 of the Constitution of India, the Commission has interdicted the signing of the agreement till the completion of the election process. On these grounds, Respondents 1 and 2 would

support the action taken by the Election Commission in this regard.

8. A statement has also been filed on behalf of the Government of Kerala, which would completely support the petitioner's case. According to the 3rd respondent-Government of Kerala, the signing of the agreement was the culmination of a long drawn out process of negotiations between the parties spanning over a period of more than an year and, therefore, the same cannot be linked with the election process in any manner so as to bring it within the ambit of the model code of conduct. They would further submit that the decision to sign the agreement itself was taken on 1-3-2006 before the Election Commission actually issued the election notification in the afternoon of 1-3-2006 and therefore the model code of conduct cannot be cited to interdict the signing of the agreement as it was a fait accompli even before the notification of election. In the statement, they have emphasised the facts that the Government was of the view that since the decision by the Council of Ministers to sign the Smart City agreement on 8-3-2006 was taken before the announcement of State Assembly Election by the Election Commission, such signing of the agreement would not be a violation of the model code of conduct. It is also submitted that the signing of the agreement would not come within Part VII of the model code of conduct. Government has also submitted that the Government is ready to sign the agreement if this Court directs the Government to do.

9. Elaborate arguments were advanced before me by the learned Counsel for the petitioner, learned Counsel for the Election Commission as also the learned Government Pleader appearing on behalf of the Government of Kerala.

10. Before going into the merits of the case, I have to deal with two preliminary issues in this case. First is the objection raised by respondents 1 and 2 regarding the locus standi of the petitioner. The second is a question posed by this Court itself to the Government Pleader as to why the Government themselves did not challenge the direction of the Election Commission if they were of the view that the model code of conduct would not come into play in the matter of signing of the agreement in question.

11. I will first deal with the objection on locus standi of the petitioner. Apparently, the contention of respondents 1 and 2 is that the petitioner being not privy to the agreement to be signed regarding Smart City, the petitioner cannot be a person aggrieved by the directions of the Election Commission and therefore does not have locus standi to file the writ petition. The answer given by the petitioner in reply to the said contention is that although the petitioner is not privy to the said agreement, the petitioner would be directly and favourably affected by the establishment of the Smart City. The petitioner is a Company engaged in Development of Software Applications relating to Geographic Information Systems, specifically Emergency Management, which are in use for effective management of the emergency situations like chemical spills, natural calamities and man made disasters. The Company was incorporated in May, 2003. On application made by it to the Kerala State IT Mission, a society incorporated by the Government of Kerala, which established the Infopark, space was allotted to the petitioner in the Infopark at Kochi, where it commenced its software development activities in September, 2004. The petitioner started its business in a humble way. Because of the fast increase in its business output, it required increased infrastructure for its further development and expansion. The petitioner points out that since its commencement, there has been steady increase in the volume of business and the targeted export turn over for 2006-2007 is 10 crores. The petitioner submits that the petitioner presently occupies three different areas in Thapasya Building of Infopark employing 55 developers. In spite of the massive recruitment drives undertaken by the petitioner, the results have not been encouraging because of the main reason that such IT professionals are unwilling to be relocated from Chennai, Bangalore and Hyderabad

where there are massive potential for growth and career placements to Kochi where there is no such potential or avenues of placement available. Further, according to the petitioner, the petitioner and other units that have already been given space in the Infopark are facing difficulties because of lack of infrastructural facilities such as place for expansion of activities, absence of amenities like covered car parking, food court, international roads, hands caped campus etc., a solution for all of which would be the establishment of the Smart City at Kochi. Petitioner particularly points out that the Infopark in which only the petitioner occupies space as allotted by the Kerala State IT Mission, itself is being handed over to Smart City as part of the proposed agreement in which the Kerala State IT Mission also proposes to join as a party. In the above fact situation, according to the petitioner, the petitioner is a directly interested party and does have locus standi to file this writ petition.

12. The fact situation as stated above is not in dispute before me. Having no privity of contract in respect of the subject agreement, the petitioner may not succeed in bringing in an action in a civil suit in respect of the agreement in question. But the situation is different when it comes to filing of a writ petition under Article 226 of the Constitution of India. Here, the question of privity of contract is not relevant. What the petitioner is challenging is a direction of the Election Commission of India against signing of the said agreement until after the elections are over, which agreement would have far reaching favourable effect on the petitioner's business. The Infopark, in which the petitioner has been allotted space, itself, is being handed over as per the subject agreement which would mean that on the Smart City coming into being, the petitioner also would be part of the same. As such, the petitioner is certainly a party affected by the direction of the Election Commission of India interdicting signing of the agreement before the elections and therefore I am of the opinion that the petitioner has locus standi in the matter of challenging the impugned direction of the Election Commission of India, since it affects its business and such challenges are not also alien to our constitutional jurisprudence as evolved by judicial precedents.

13. The second preliminary issue involved in this writ petition may be indirectly connected with the principle of locus standi itself in the converse sense. I directly asked the learned Government Pleader a question as to why the Government itself had not challenged the decision of the Election Commission of India, if the Government is of opinion that the declaration, of the election and coming into operation of the model code of conduct cannot be a bar to the signing of the agreement in question. The answer of the Government Pleader was that as a constitutionally elected Government of a State, it would not be in keeping with the democratic traditions to question the orders of a constitutional body, namely, the Election Commission of India in the matter of enforcement of model code of conduct. I feel that the stand of the Government in the circumstances is not only an eminently plausible explanation but also a stand which deserves to be complemented coming from a State Government in the present day scenario wherein even the constitutional bodies themselves are at logger heads on issues all and sundry. The said stand certainly is in keeping with democratic traditions and would even go to prove the bona fides of the Government in the matter.

14. Now, I shall proceed to examine whether the decision of the 3rd respondent-Government of Kerala to sign the agreement with TECOM would in fact infringe the model code of conduct, which have come into being on the declaration of the schedule of elections.

15. In this regard, two issues need to be tackled. First is whether the decision to sign this agreement was taken before or after the election schedule was declared by Ext.P7 so as to attract the embargo created by the model code of conduct. Here also, the dates

and events and the facts related thereto are not at all disputed by the parties. The following undisputed facts need particular mention in this regard.

- 1.** The proposal for establishment of the Smart City was first put forward in July, 2004.
- 2.** In July, October and November, 2004. the officials of TECOM visited Kochi and evaluated the facilities for development of the infrastructure available when the Government of Kerala made a presentation and submitted its proposal for the establishment of Smart City.
- 3.** Negotiations were held by TECOM and the Government of Kerala in January and April, 2005.
- 4.** Government of Kerala issued Ext.P7 order dated 7-5-2005 freezing further development activities of Infopark and allotment of land in view of the progress made for the establishment of the Smart City.
- 5.** The memorandum of understanding was signed between the parties on 9-9-2005.
- 6.** The decision for signing the agreement on 8-3-2006 was taken by the Cabinet in the forenoon of 1-3-2006, just before the notification declaring the election was published by the Election Commission in the afternoon of 1-3-2006.

In support of the petitioner's case, the learned Counsel for the petitioner cited before me the decision of a Division Bench of this Court in Babu v. Election Commission of India MANU/KE/0078/2006 : 2006(2)KLT137 , rendered on 17-3-2006 in a comparable fact situation. That was a case relating to implementation of revision of pay scales of Government employees of the State. The pay scales of the State Government employees were last revised in 1997 and as per practice, pay revisions were being effected every five years as per which the next pay revision was due in 2002. The Pay Commission was appointed by the Government in 2005. In the budget speech for the year 2006-2007 made on 10-2-2006, it was declared that the pay and allowances of the Government employees for the month of March, 2006 would be at the enhanced rates on the basis of pay revision. The Pay Commission report was submitted to the Government on 22-2-2006. On 1-3-2006, the Cabinet approved the Pay Commission Report in principle and it was adjourned to be considered by a special meeting of the Cabinet on 2-3-2006. But, on 1-3-2006, the Election Commission announced the programme for election. The Election Commission took the stand that implementation of the pay revision would infringe Part VII Sub-clause (vi)(a) of the model code of conduct. After examining the fact situation and the model code of conduct, the Division Bench came to the conclusion that the decision to implement the recommendations of the Pay Commission was taken before the commencement of the election scheduled and therefore there is no embargo in implementing the Pay Commission Report. The Division Bench further held that the implementation of the Pay Commission was not intended for influencing the voters in favour of the party in power so as to attract Sub-clause (vi)(a) of Part VII of the Model Code of Conduct. Deriving support from the said decision, learned Counsel for the petitioner submitted before me that the fact situation available in this case is more than identical to the fact situation in the above Division Bench decision and therefore the principles of law enunciated in that decision squarely applies to the facts of this case.

16. I have already stated that the fact situation in this case is not disputed by the standing counsel for the Election Commission. If that be so, I have absolutely no option but to hold that the fact situation is exactly, if not more to the advantage of the petitioner in this case, identical to Babu's case and as such the legal principles laid down by the Division Bench in that case should be followed in this case also. In the said decision, the process of revision of pay itself started in early 2005 by appointment of a Pay Commission whereas the Smart City project was envisaged as early as in July, 2004, which was followed up regularly by discussions in 2005 resulting ultimately in signing the memorandum of agreement on 9-9-2005. The decision for signing of the agreement itself was taken in the forenoon of 1-3-2006, which itself is before the announcement of the election scheduled by the Election Commission as in the case of Pay Commission. In this connection, the intervening direction by a Division Bench of this Court in W.P(C) No. 3898/2006 also has to be noted, which may certainly have affected the earlier execution of the agreement. Therefore, I am of the opinion that the declaration of the election schedule and the model code of conduct cannot stand in the way of signing of me agreement as decided and approved by the Council of Ministers in the forenoon of 1-3-2006.

17. Of course, on the basis of the additional statement submitted by the Election Commission in Babu's case to the effect that the Election Commission decided to permit the Government of Kerala to implement the recommendation of the Pay Revision Committee as per the decision of the Cabinet dated 2-3-2006, which was recorded after delivering the judgment in Babu's case, the learned standing counsel for the Election Commission would contend that that decision cannot be relied upon for the purpose of this case as Babu's case was decided on concession. I am unable to agree. A reading of the judgment would show that it was rendered after taking into , account arguments on merit on the question as to whether the fact situation warranted action in accordance with the model code of conduct and as to whether Sub-clause (vi)(a) of Part VII of the Model Code of Conduct is attracted to the fact situation. As such, the recording of the later submission of the Election Commission would not dilute the effect of the said decision as a binding precedent.

18. Counsel for the Election Commission would further contend that in Babu's case, all the political parties were in favour of implementation of the Pay Revision unlike the present case wherein there were serious opposition particularly from the Bharathiya Janata Yuva Morcha as evidenced by Annexure A. According to counsel, in such circumstances, the yardstick of Babu 's case cannot be applied to the present case. Of course, the absence of opposition from other political parties is a very relevant consideration for not enforcing the model code of conduct. But the converse may not be correct. The fact that there was opposition from some political parry alone is not a material factor in deciding to enforce the model code of conduct in respect of an action of the Government. The Election Commission has to address itself to the relevant aspects and decide whether the situation warrants such enforcement notwithstanding such opposition. Otherwise, if opposition from other political parties is to be a deciding factor, then such political parties would always put spokes into the Government wheel at every conceivable opportunity to tie the hands of the Government from doing anything during the two and odd months of currency of the model code of conduct, which would be to the detriment of the people themselves.

19. The second issue arising for consideration is as to whether the signing of the subject agreement would come within the ambit of Sub-clause (vi)(a) of Part III of the model Code of Conduct. Although in view of my decision on the first issue, it may not be strictly necessary to decide the issue, now that the issue was raised before me, I may examine that issue also. For this purpose, I may extract here Part VII, Clause (vi)

of the Model Code of Conduct with advantage. It runs as follows:

VII. Party in power.

The party in power whether at the Centre or in the State or States concerned, shall ensure that no cause is given for any complaint that it has used its official position for the purposes of its election campaign and in particular--

X X X

X X X

(vi) From the time elections are announced by the Commission, Ministers and other authorities shall not-

(a) announce any financial grants in any form or promises thereof; or

(b) (except civil servants) lay foundation stones etc. of projects or schemes of any kind; or

(c) make any promise of construction of roads, provision of drinking water facilities etc; or

(d) make any ad-hoc appointments in Government, Public Undertakings etc., which may have the effect of influencing the voters in favour of the party in power.

The contention of the Election Commission in this regard is contained in paragraphs 7 and 8 of the statement filed by respondents 1 and 2 which run as follows:

7. The execution of the agreement for the Smart City Project after the announcement of election amounts to announcement of promises, financial grant and launching of new projects. In exercise of the powers bestowed upon the Election Commission under Article 324 of the Constitution of India the Commission has interdicted the signing of the agreement till the completion of the election process. The directions issued by the Commission are only for a limited period and purpose.

8. The party in power is not to make use of Governmental machinery for the betterment of its prospects in the ensuing elections. The party in power shall not give room for any apprehension that the steps taken by it are to influence the electorate. The Model Code of Conduct provides that the party in power whether at the Central or in the State or the States concerned shall ensure that no cause is given for any complaint that it has used its official position for the purpose of its election campaign. The energy to do public good should be used not on the eve of the election but much earlier. On the eve of the elections, political parties or candidates may come forward with tempting offers to the electorate to win their favour. There can be

allegations that the party in power may misuse the Governmental machinery and its power for its partisan ends. It is for the Election Commission to provide a level playing field for all parties and to ensure that no political party gets an unfair advantage by virtue of its being in power at the time of election. The philosophy underlying the Model Code of Conduct is that unfair advantage should not be taken by the ruling party because of its being in power to tilt the views of the electorate on the eve of the election.

From the same, it is clear that the apprehension of the Election Commission is that the signing of the agreement would influence the voters in favour of the party in power. It is for providing a level playing field for all political parties in the ensuing election so as to deny any unfair advantage to one political party that the Election Commission has interdicted the Government of Kerala from signing the agreement before the election.

20. As is clear from Clause (vi)(a) extracted above, relied upon by the Election Commission, what is proscribed is the announcement of any financial grants in any form or promises thereof which may have effect of tilting the voters in favour of the party in power. I do not think that by signing the agreement, the party in power is announcing any financial grants in any form or promises thereof to the people of Kerala. On the other hand, what has been provided in the agreement is for granting the facility for TECOM to establish a Smart City in Kerala. The Government does not give any financial grants to TECOM. Of course, the agreement provides for lease of some land free of cost for establishing the project with a reciprocal promise of providing for job opportunities in the Smart City. That cannot by itself be regarded as financial grant in any form or promises to the people of Kerala or the voters.

21. I am not satisfied that the Smart City Project was envisaged by the Government for the purpose of influencing the electorate. The facts presented before me suggest the same only as a development project envisaged more than a year prior to the declaration of election itself. Nothing is there to indicate that the same is a tempting offer to woo the electorate at the eve of the elections so as to give an unfair advantage to a political party in the ensuing elections.

22. The object of model code of conduct is not to stop all governmental activities in the State pending elections. Notwithstanding the elections, the normal governmental functions should go on. It is only where with the intention of influencing the voters of the State the party in power declares any promises to the people that the model code of conduct comes into play. Simply because a normal governmental function would also result in some benefit to the public at large, that would not come within the ambit of the model code of conduct. Election Commission should examine these aspects carefully before coming to the conclusion whether the action infringes the model code of conduct and shall not interdict all governmental functions simply because it would result in some benefit to the voters of the State or the public at large. If, without discrimination, the Election Commission takes a policy that all governmental functions resulting in benefits to the people have to be postponed, until after the elections that would affect the interest of the State itself because in certain matters delay itself would vitally affect the project itself, which may ultimately result in irreparable loss to the State. Here, I may not be mistaken as commenting on the virtues of the project in question at all. Whether the project is for the benefit of the State or not is a matter which does not come within the purview of this decision in any sense. It is a matter which has to be decided by the persons who are capable of evaluating and taking decisions thereof. My only anxiety is that in the name of implementation of model code of conduct, a project which if to the advantage of the State, should not be interdicted, which may even kill the project itself

on account of the delay. I make it abundantly clear that I have been called upon to decide only the question as to the validity of the direction of the Commission and nothing stated herein shall be construed as an endorsement of the merits or demerits of the project themselves in any sense whatsoever.

23. The standing counsel for the Commission would stress the fact that the validity of the Memorandum of Understanding is over and therefore the decision to sign the agreement should be taken only as an attempt to woo the voters. I am not impressed by that contention also. It is trite law that the parties to a contract can notwithstanding the expiry of the period of agreement, mutually decide to go ahead with implementation of the same. Here it may be noted that the delay itself was caused on account of the implementation of a direction in a judgment of this Court, which delay cannot be held against the Government.

24. Accordingly, I am satisfied that the petitioner has made out a case for interference of this Court with the direction of the Election Commission postponing the signing of the agreement regarding the Smart City Project until after the elections are over. Of course, the petitioner has not produced a copy of the direction as, according to the petitioner, the same being only a direction, copy was not made available and, therefore, the petitioner is not in a position to produce the same, Respondents 1 and 2 have, however, along with the statement, produced the directions as Annexures C and D. I hereby quash the directions of the Election Commission as evidenced by Annexures C and D directing that the signing/execution of agreement in setting up the Smart City at Kochi be deferred till completion of election. Accordingly, the 3rd respondent would be free to take further steps pursuant to the decision taken on 1-3-2006 for signing the agreement and take it to its logical conclusion, notwithstanding the direction of the Election Commission.

The Writ Petition is allowed as above, but without any order as to costs.

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