

MANU/KE/0286/2011

Equivalent Citation: AIR2011Ker109, 2011 (3) KLT(SN) 72

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

WP (C). No. 8178 of 2011 (S)

Decided On: 21.03.2011

Appellants: **Rajaji Mathew Thomas**  
**Vs.**

Respondent: **The Election Commission of India, The Chief Electoral Officer,  
State of Kerala and Principal Secretary**

**Hon'ble Judges/Coram:**

*Jasti Chelameswar, C.J. and P.R. Ramachandra Menon, J.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: P. Deepak, Adv.*

*For Respondents/Defendant: Murali Purushothaman, SC*

**Case Note:**

**Civil - Implementation of scheme - Petitioner prayed for issue a writ in nature of mandamus commanding Respondents 1 and 2 not to interfere with implementation of subsidized rice distribution scheme - Held, object of model code of conduct was not to stop all governmental activities in State pending elections - Simply because a normal governmental functioned would also result in some benefit to public at large, that would not come within ambit of model code of conduct - Policy decisions taken by State prior to issuance of election notification could be implemented and necessary steps for implementation of same could be continued even during subsistence of election notification - Activity that State was combining official activity of State, that was implementation of policy, with political propaganda was absent - An analysis of Model Code of Conduct indicated that same was meant to prevent ruling party from taking unjust advantage of its position, like exclusively using infrastructural facilities of State or spending discretionary funds of State - Impugned decision of Respondents 1 and 2 to defer implementation of 3rd Respondent's decision was arbitrary - A decision of Respondents 1 and 2 interdicted implementation of a decision of State of Kerala which was otherwise within jurisdiction and authority of State conferred by Constitution - Therefore, impugned order was set aside - Petition allowed.**

**JUDGMENT**

**Jasti Chelameswar, C.J.**

**1.** The writ petition is filed with the prayers as follows:

- i) Issue a writ in the nature of mandamus commanding the Respondents 1 and 2 not to interfere with the implementation of the subsidized rice

distribution scheme as per Ext.P4 and P5.

ii) Declare that action of the 2nd Respondent in interdicting the implementation of the subsidized rice distribution scheme formulated as per Ext.P4 and P5 is without authority and non est.

iii) Issue such other orders, writs or directions as are deemed fit by this Hon'ble Court.

iv) award cost of this proceedings to the Petitioners

**2.** The Petitioner is a member of the Legislative Assembly of the State of Kerala.

**3.** Elections to the Legislative Assembly of the State of Kerala are due. The Election Commission of India (1st Respondent) announced the election schedule on 1st March, 2011. By a communication dated 1st March, 2011 from the Election Commission of India, the Chief Secretary and the Chief Electoral Officers of the State of Kerala were informed as follows:

I am directed to state that the Commission has announced the schedule for holding General Elections to the Legislative Assemblies of the States of Assam, Kerala, Tamil Nadu, West Bengal and Union Territory of Puducherry.

**2.** With this announcement, the provisions of the Model Code of Conduct for the guidance of Political Parties and Candidates have come into force with immediate effect. This may be brought to the notice of the Government, all Ministries/Departments and all other offices of the Union Government and the State Governments of Assam, Kerala, Tamil Nadu, West Bengal and Union Territory of Puducherry.

**4.** The Model Code of Conduct referred to above is filed as Ext.P7 to the writ petition. What is relevant in the context of the present controversy is clause VII which reads as follows:

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-

**1. a.** The Ministers shall not combine their official visit with electioneering work and shall not also make use of official machinery or personnel during the electioneering work;

b. Government transport including official air-crafts, vehicles, machinery and personnel shall not be used for furtherance of the interest of the party in power;

**2.** Public places such as maidans etc., for holding election meetings, and use of helipads for air-flights in connection with elections shall not be monopolised by itself. Other parties and candidates shall be allowed the use of such places and facilities on the same terms and conditions on which they are used by the party in power;

**3.** Rest houses, dak bungalows or other Government accommodation shall not be monopolised by the party in power or its candidates and such accommodation shall be allowed to be used by other parties and candidates in a fair manner but no party or candidates shall use or be allowed to use such accommodation (including premises appertaining thereto) as a campaign office or for holding any public meeting for the purposes of election propaganda;

**4.** Rest houses, dak bungalows or other Government accommodation shall not be monopolised by the party in power or its candidates and such accommodation shall be allowed to be used by other parties and candidates in a fair manner but no party or candidates shall use or be allowed to use such accommodation (including premises appertaining thereto) as a campaign office or for holding any public meeting for the purposes of election propaganda;

**5.** Ministers and other authorities shall not sanction grants/payments out of discretionary funds from the time elections are announced by the Commission; and

**6.** 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.

Note: The Commission shall announce the date of any election which shall be a date ordinarily not more than three weeks prior to the date on which the notification is likely to be issued in respect of such elections.

**7.** Ministers of Central or State Government shall not enter any polling station or place of counting except in their capacity as a candidate or voter or authorised agent.

**5.** The Government of Kerala issued an order in G.O. (MS). No. 11/2001 dated 25.2.2011, a translated copy of the same is filed as Ext.P5(a) to the writ petition, the relevant portion of which reads as follows:

As per the above mentioned government orders the Kerala Government approved the scheme for providing rice at the rate of Rs. 2 per kilogram is

extended to all the ration card holders including the persons categorized as BPL and APL, fishermen, scheduled cast, scheduled tribe persons and families of Asraya Scheme, workers of traditional industries including 40 lakh families, working under the national employment guarantee scheme.

Major part of Public depends for food grains the Civil Supplies Corporation considering rise in the price of food grains necessitated the introduction of subsidized rice distribution scheme by the government. In these circumstances the government approved the scheme for providing rice at the rate of Rs. 2 per kilogram to all the ration card holders subject to some conditions and issued orders.

The following ration card holders are not entitled to the benefit of the scheme.

- 1.** Those families having more than 2.5 acres landed property.
- 2.** Those having more than Rs. 25,000/- monthly income.
- 3.** Those having house of more than 2500 square feet.

Those who are entitled the benefit of this scheme shall produce self attested affidavit with photo. Not to produce any special certificate regarding this. For that purpose the application form should be distributed by the Director of Civil Supplies and to ensure that the benefit of the scheme is obtained by all the beneficiaries of the scheme.

**6.** Pursuant to the issuance of the said order, it appears that some complaints were received by Respondents 1 and 2 from various quarters including a sitting Member of Parliament, two members of the Legislative Assembly of whom one is the former Chief Minister of Kerala and others. The District Collectors of Kollam and Kannur also sought certain clarifications from Respondents 1 and 2. The relevant portion of the letter from the Collector of Kollam addressed to the second Respondent indicates the nature of the clarification sought which reads as follows:

As per the Govt. order read as ref.1st above, the Civil Supplies Department issued administrative sanction to extend the benefit of allowing ration supply @ of Rs. 2/- to the APL mass belongs to the following categories also.

- 1.** Fishermen belongs to APL Families
- 2.** Families belongs to SC/ST of Ashraya Projects
- 3.** Labourers worked at least 50 days in NREGP (National Rural Employment Guaranteed Programme)
- 4.** Peoples belongs to inorganized and traditional sectors. Government seems that the above ration scheme will benefit to 40 Lakhs families of the entire state.

Subsequent to the above Govt. Order, the Director of Civil Supplies instructed vide letter read as paper 2nd above that to prepare the list of

beneficiaries comes under the scheme and to furnish the progress report on the same to the Director of Civil Supplies in every week.

In the Context of prevailing Model Code of Conduct in connection with the 2011 General Election to Kerala Legislative Assembly, it is requested to give an urgent clarification on the matter regarding whether to proceed with the Govt. order and the direction issued by the Director of Civil Supplies for implementing the ration scheme.

Copies of Govt. Order and letter of Director of Civil Supplies are also submitted herewith.

**7.** On the other hand, the complaint referred to above is to the effect that the decision of the State of Kerala evidenced by the above mentioned G.O.(MS) No. 11/2011 dated 25.2.2011 and the implementation of the same after the coming into force of the Model Code of Conduct is in contravention of the norms contained in the Model Code of Conduct. The Leader of the Opposition who incidentally also happened to be a former Chief Minister of Kerala addressed a letter to the second Respondent on 8th March, 2011 complaining against the scheme, relevant portion of which reads as follows:

Now, the State Government is making all out efforts to extend the Rs. 2 per kg rice scheme to virtually all the families for which a self attested undertaking alone is insisted regarding monthly income (which should not exceed Rs. 25,000/- pm), the area of the residential building (which should not exceed 2500 sq.feet) and land holding (which should not exceed 2.5 acres). Clearly, the intention is to woo the voters by dispensing with the BPL/APL classification. Forms of undertaking have been prescribed and government machinery is being misused to distribute these forms throughout the State. I would specifically like to underscore the fact that there is no mechanism put in place to verify the veracity of the undertaking as certificates from Revenue/LSGI's are not insisted.

x x x

We would seek your kind intervention to stoutly restrain the State Government from implementing new schemes/extending existing schemes violating the Model Code. Directions may kindly be issued to ensure strict compliance with the Model Code by the State Government.

**8.** On the other hand the Secretary to Government, Food and Civil Supplies Department by communication dated 5.3.2011 sought the approval of the second Respondent for the implementation of the Government Order in issue. The second Respondent on 7.3.2011 directed that the implementation of the Government Order in issue be deferred till the election process is over. In this regard it is stated at paragraph 6 of the statement filed on behalf of Respondents 1 and 2 as follows:

As submitted, the Secretary to Government, Food and Civil Supplies, Kerala on 05.03.2011 sought the approval of the Chief Electoral Officer, Kerala for the implementation of Ext.P5 Government Order. In the file submitted before the Chief Electoral Officer, the Chief Electoral Officer on 07.03.2011 endorsed as follows:

Extension of the scheme to new beneficiaries as per G.O. No.

11/2001/F&CS dated 25.02.2011 may be deferred till the election process is over.

The photocopy of the relevant portion of the Note-File 3393/D2/11/F.C.S.D. with the notes of the Secretary, Food and Civil Supplies with the direction/endorsement of the 2nd Respondent dated 07.03.2011 is produced herewith and marked as Annexure-H. The English translation of Annexure-H is produced herewith and marked as Annexure-I.

**9.** Subsequently the second Respondent addressed a communication dated 7.3.2011 to the first Respondent seeking ratification of the action of the second Respondent. The first Respondent by its letter dated 11.3.2011 approved the action taken by the second Respondent. Hence the writ petition.

**10.** The case of the Petitioner is that the decision of the State Government contained in the Government order does not lay down any new policy, but it only extends an existing policy to larger number of new beneficiaries. The Petitioner at paragraphs 8, 9 and 10 of the writ petition explained the evolution of the scheme. It appears from the pleading that the third Respondent initially propounded a scheme that 25 kilograms of rice will be distributed at a price of Rs. 2 per kilogram every month for all the ration card holders who are classified as persons below poverty line other than those who are already receiving the benefit of a centrally sponsored scheme called 'Andhyodaya Annayojana Scheme'. According to the Petitioner, 15 lakhs families were benefited under the said scheme as originally propounded. Subsequently, the third Respondent decided to extend the benefit of the scheme even to those who are covered by the above mentioned centrally sponsored scheme and also decided to extend the ration to 35 kilograms per month per card thereby extending the benefit to 20 lakhs card holders (families). In the next phase, the third Respondent decided to extend the benefit of the above mentioned scheme to more number of people. Such a policy decision found an expression in the budget speech of the year 2010-11 made by the Finance Minister of Kerala. The policy was translated into action by an order of the Government in G.O. No. 11/2010/FCSD dated 25.5.2010.

**11.** Finally, the third Respondent took a policy decision to extend the benefit of the subsidized ration scheme to various other segments of the society. Such a policy decision is evidenced once again by the budget speech made by the Finance Minister in the Legislative Assembly on 10.2.2011 a copy of which is filed as Ext.P4 along with the writ petition. Pursuant to the said policy, G.O(MS). No. 11/2011 dated 25.2.2011 is issued the content of which is already extracted in the earlier paragraph of the judgment.

**12.** The learned Counsel for the Petitioner therefore argued that the complaints received by Respondents 1 and 2 that the implementation of the decision contained in the Government Order in issue is hit by the Model Code of Conduct is without any basis in law and not supported either by the language or the scheme of the Model Code of Conduct. It is further argued that the impugned decision is not only unauthorized by law but also subverts the constitutional scheme of the governance by the Government duly elected.

**13.** On the other hand, Sri. Murali Purushothaman, learned Counsel appearing for Respondents 1 and 2 argued that that the decision of the third Respondent has the effect of disturbing 'the level playing field amongst the political parties who are contesting the election as it influences the voters and gives the ruling party special

political benefit'. Further it is argued that such a decision is taken to ensure the purity of the election process. The said Respondents are of the opinion that (as can be seen from the relevant portions of paragraphs 9 and 10 of the statement filed on their behalf) they have the power under Article 324 of the Constitution of India to interdict the decision in question of the third Respondent.

The direction to defer the extension of the scheme to new beneficiaries till the election process is over has been issued to ensure a fair election and to provide a level playing ground for all political parties contesting the election. It is submitted that the Election Commission, in order to ensure purity in election has to exercise powers under Article 324 of the Constitution of India and has interdicted the extension of the scheme to new beneficiaries till the election process is over. Otherwise the same would offend the Model Code of Conduct and in particular Clause VII (vi)(a) thereof. The direction to defer the extension of the scheme to new beneficiaries till the election process is over has been issued with a laudable object, to ensure free and fair election. The Election Commission is the authority to enforce and ensure observance of Model Code. The Commission issues orders under Article 324 of the Constitution of India for the said purpose.

The said Respondents also believe:

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 now well recognized that 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 object 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.

**14.** The authority of Respondents 1 and 2 to conduct elections to the Parliament and the Legislature of the State emanates from the Constitution. On more than one occasion both the Supreme Court and the High Courts of this country had to consider the nature and scope of such power. In *Mohinder Singh Gill and Anr. v. the Chief Election Commissioner, New Delhi and Ors.* (MANU/SC/0209/1977 : AIR 1978 SC 851) the Supreme Court held that Article 324 is a 'reservoir of power for the Commission to act for the avowed purpose of pushing forward, but not divorced from a free and fair election'. The question once again fell for consideration of the Supreme Court in two cases in *Election Commission of India v. State Bank of India* (MANU/SC/0206/1995 : AIR 1995 SC 1078) and *Election Commission of India v. St. Mary's School and Ors.* [MANU/SC/4627/2007 : (2008) 2 SCC 390]. In both the above mentioned decisions the Supreme Court held that though the power of the Election Commission under Article 324 is very wide it does not have untrammelled powers. In 1995 SC 1078 (at paragraph 21) the court held that the Election Commission must trace its powers either to the Constitution or the law made under Article 327 or 328. In MANU/SC/4627/2007 : (2008) 2 SCC 390 the Supreme Court held that the power of the Election Commission cannot be exercised in such a manner so as to defeat another constitutional obligation or in derogation of the other constitutional imperatives. This Court earlier had an occasion to consider the various principles laid down in the above mentioned judgments in the case of *Flex Printing Owners Association of Kerala v. State*

Election Commission (MANU/KE/1820/2010 : 2010 (4) KLT 662).

**15.** In all the above mentioned decisions it was emphatically asserted the authority of the constitutional courts under Articles 226 and 32 of the Constitution to examine the action of the Election Commission though it was cautioned that the scope of enquiry is limited. It was consistently held that the scrutiny by the Court is limited to the questions of lack of jurisdiction, arbitrariness and mala fides.

**16.** The learned Counsel for the Petitioner also relied upon two judgments of this Court reported in Babu v. Election Commission of India [MANU/KE/0078/2006 : 2006 (2) KLT 137] and I.D.S. (India) P. Ltd. v. Chief Election Commissioner [MANU/KE/0115/2006 : 2006 (2) KLT 454]. In the first of the above mentioned two judgments the question was whether the action of the Election Commission directing the State Government to put on hold the decision to implement the recommendations of the Pay Commission was legal. A Division Bench of this Court held as follows at paragraph 2 of the judgment:

In view of the budget speech and announcement of the Government that recommendations of the Pay Commission will be implemented on 10.2.2006, it cannot be stated that the decision to implement the recommendations of the Pay Commission was made after the Model Code of Conduct came into force. Even the formal decision of the cabinet was also taken on 1.3.2006, before the commencement of the election schedule. Only modalities were chalked out by the special cabinet meeting after the pronouncement of the election. Therefore, even if Model Code of Conduct came into force and implementation of the recommendations of the Pay Commission is against the Model Code of Conduct, the decision to implement the recommendations of the Pay Commission was taken before the announcement of election schedule and hence there is no embargo in implementing the Pay Commission report.

In the second of the afore mentioned decisions [MANU/KE/0115/2006 : 2006 (2) KLT 454], the question was whether the execution of an agreement by the State of Kerala in favour of another party known as "TECOM" was required to be deferred in view of the issuance of the election notification. The decision to enter into such a contract was taken long prior to the election notification, but the documentation could not be completed in view of the various factors specified in the judgment. Dealing with the said case, a learned Judge of this Court (in para 15) held as follows:

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:

x x x.

After taking note of the various facts which led to the delay in the documentation though the decision was taken much earlier, the learned Judge also examined the principle laid down by the Division Bench in MANU/KE/0078/2006 : 2006 (2) KLT 137 (referred to supra) and held as follows:

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 the agreement as decided and approved by the Council of Ministers in the forenoon of 1.3.2006

It was also observed in the said judgment as follows:

The fact that there was opposition from some political party 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

Finally, the learned Judge held (at para 22) as follows:

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

**17.** However, the learned Standing Counsel for Respondents 1 and 2 Shri. Murali Purushothaman placed reliance on an interim order passed by the Division Bench of the Andhra Pradesh High Court in Victory Charitable Society v. The Election Commissioner of India [W.P.M.P. No. 6927 of 2009 in W.P. No. 5305 of 2009 and connected case, dated 8.4.2009]. Andhra Pradesh Government introduced a Health Insurance Scheme, called "Aarogyasri", which was required to be implemented by a

Trust created by the State. The Trust, in turn, entered into an agreement with an Insurance Company for the implementation of the scheme for the benefit of the families below the poverty line. Under the Memorandum of Understanding, the holders of BPL cards were entitled to the benefit of the Aarogyasri Scheme. The target group/beneficiaries were enlarged from time to time by appropriate amendments through various Government Orders. The last of such order was issued on 23.7.2008. Pursuant to such amendment, a large number of applications came to be received, claiming the benefit of the above mentioned amendment order. On 2.3.2009, the notification was issued by the Election Commission of India notifying the elections, both to the Legislative Assembly of the State as well as to the Lok Sabha. In view of the issuance of such notification, the identification of the eligible applicants could not be completed fully, though some of the identified beneficiaries were given the appropriate documents enabling to claim the benefit of the amended scheme. The question was whether identification of the remaining beneficiaries could be continued during the period of election process. It may be stated here that the Election Commission also did not object to the identification process. It is recorded in para 7 of the said order as follows:

A counter is filed on behalf of the Election Commission stating that the Election Commissioner has not issued any directions for stoppage of the ongoing schemes and the Rajiv Aarogyasri programme could continue as it was initiated before the announcement of the election notification and the persons who have been granted Rajiv Aarogyasri cards could continue to avail the health care facility provided to the beneficiaries and the said cards would be treated as continuing to be valid. It is further stated that the health camps can also be continued to be conducted, albeit with the condition that in such camps no political persons could participate

The only objection raised by the Election Commission appears to be is as follows:

It is stated that in view of the operation of the Model Code of Conduct from the date of announcement of elections, it was directed not to issue any Aarogyasri trust's health cards which have the photograph of the Chief Minister until the completion of the election schedule. These steps were taken for ensuring a level playing field to all political parties and were in keeping with other decisions of the Election Commission such as putting in abeyance the laying of foundation stones etc. till the completion of elections. It is stated that the scheme is not stopped, but only identification of fresh beneficiaries and using of the Government machinery to officially distribute cards, containing the Chief Minister's photograph, to the beneficiaries is stopped. It is stated that for the purpose of ensuring purity of the elections, without affecting the rights of eligible persons for availing the health care facilities, the identification of fresh beneficiaries through such health cards is directed to be put on hold till the completion of the elections. It is also stated that the Election Commission was conscious that eligible persons can always avail health care under the scheme by way of an alternative form of identification

In other words, the objection of the Election Commission appears to be that the issuance of the Aarogyasri Trust's Health Cards with the photograph of Sri. Rajiv Gandhi, the former Prime Minister of India and Sri.R. Rajasekhara Reddy, the then Chief Minister of Andhra Pradesh. In the above mentioned back ground, the Andhra Pradesh High Court held as follows:

Therefore, we are of the opinion that, in view of the stand taken by the Election Commission, the Petitioners are not entitled to the interim relief of permitting the Government to continue with the issuance of health cards. The Election Commission is entitled to issue such directions under Article 324(1) of the Constitution of India as it thinks fit, for conducting free and fair elections and for maintaining the purity of the election process. Further, it is clear that the Election Commission has only interdicted the Government from issuing fresh health cards and the continuance of the scheme has not been touched. It is for the authorities concerned to issue necessary instructions for alternative forms of identification of BPL families without insisting upon health cards being produced. The Election Commission has neither stopped the process of health care nor has it stopped health care camps, subject to the condition of political non-participation

In other words, the High Court did not interfere with the enforcement of the scheme, except the issuance of the above mentioned cards.

**18.** We are of the opinion that both the decisions of this Court [MANU/KE/0078/2006 : 2006 (2) KLT 137 and MANU/KE/0115/2006 : 2006 (2) KLT 454] and the interim order of the Andhra Pradesh High Court relied upon by the learned Counsel for the Respondents do not lay down any contradictory principles. In our opinion, both of them lay down the principle that the policy decisions taken by the State prior to the issuance of the election notification could be implemented and necessary steps for the implementation of the same could be continued even during the subsistence of the election notification. All that the interim order of the Andhra Pradesh High Court found fault with is the personalization of the scheme by affixing the photographs to the documents entitling the beneficiaries for the scheme.

**19.** In the case on hand, no such personalized propaganda is alleged to exist. In other words, the activity (such as the one carried on by the State of Andhra Pradesh in the above mentioned case) that the State was combining the official activity of the State, i.e. implementation of the policy, with the political propaganda is absent. An analysis of the said Model Code of Conduct indicates that the same is meant to prevent the ruling party from taking unjust advantage of its position, like exclusively using the infrastructural facilities of the State or spending the discretionary funds of the State.

**20.** We, therefore, are of the opinion that the impugned decision of the Respondents 1 and 2 to defer the implementation of the 3rd Respondent's decision dated 25.02.2011 is wholly arbitrary and unconnected with the purpose sought to be achieved (by Respondents 1 and 2) for securing a level playing field to all the political parties contesting the election. On the other hand, we are of the opinion that such a decision of Respondents 1 and 2 interdicts the implementation of a decision of the State of Kerala which is otherwise within the jurisdiction and authority of the State conferred by the Constitution.

We, therefore, set aside the impugned order and allow the writ petition.

© Manupatra Information Solutions Pvt. Ltd.