IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE GOPINATH.P.

FRIDAY, THE 20 TH DAY OF MAY, 2020/30TH VAISAKHA, 1942

W.P(C) NO.9749 OF 2020

Petitioners :

Kerala Municipal and Corporation Workers Congress, INTUC Bhavan New Bazar, Alappuzha – 688 001, represented by its Secretary.

By Advocates Sri. C.A.RAJEEV & A.KRISHNAN

RESPONDENTS:

1. State of Kerala, represented by the Chief Secretary, Government Secretariat, Thiruvananthapuram, Pin – 695 001.

2. Additional Chief Secretary (Finance), Finance Department, Government Secretariat, Thiruvananthapuram - 695 001.

3. The Local Self Government Department, Government Secretariat, Thiruvananthapuram, Pin - 695 001, Represented by its Secretary.

R1 TO R3 BY SMT. GOVERNMENT PLEADER SMT.VINITHA.B

THIS WRIT PETITION HAVING COME UP FOR ADMISSION ON 08.05.2020, ALONG WITH W.P.(C) NO.9791 OF 2020 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR.JUSTICE GOPINATH.P.

FRIDAY, THE 20TH DAY OF MAY, 2020/30TH VAISAKHA, 1942

W.P(C) NO.9791 OF 2020

PETITIONERS:

1. THE FINANCIAL ENTERPRISES EMPLOYEES ASSOCIATION (FEEA),
HAVING ITS OFFICE AT KSFE MAIN BRANCH,
THAMBANOOR, THIRUVANANTHAPURAM-1,
REPRESENTED BY ITS SECRETARY SRI. VINCENT JOSE,
AGED 38, S/O JOSE, OFFICE ATTENDANT, KSFE LTD.
PH:9747213299

2. SOMAN P.G., AGED 57, S/O GOPALAN,
ASSISTANT MANAGER (NC),
KERALA STATE FINANCIAL ENTERPRISES LTD,
BRANCH OFFICE, KALAMASSERY, ERNAKULAM-683504,
RESIDING AT PARACKALPUTHENPURA HOUSE,
PATTATH ROAD, CHALICKAVATTOM, VENNALA P.O.,
ERNAKULAM-682028.
PH: 9037652238.

BY ADVS.: SRI.ELVIN PETER P.J. &
SRI.K.R. GANESH

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHPUARAM-695001.

2. THE SECRETARY,
FINANCE DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.

3. THE KERALA STATE FINANCIAL ENTERPRISES LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
HAVING ITS HEAD OFFICE AT 'BHADRATHA',
MUSUEM ROAD, THRISSUR-680029

4. THE MANAGING DIRECTOR,
THE KERALA STATE FINANCIAL ENTERPRISES LTD.,
HEAD OFFICE AT 'BHADRATHA',
MUSUEM ROAD, THRISSUR-680020.

R1-2 BY GOVERNMENT PLEADER SRI.K.P.HARISH

THIS WRIT PETITION HAVING COME UP FOR ADMISSION ON 08.05.2020, ALONG WITH W.P.(C) NO.9749 OF 2020 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

[W.P.(C) NOS.9749 & 9791 of 2020]

Dated this the 20th day of May, 2020

ORDER

These writ petitions are filed essentially seeking to interdict the deferment of a portion of the salaries in terms of power vested in the Government of Kerala by virtue of provisions contained in the Kerala Disaster and Public Health Emergency (Special Provisions) Ordinance 2020 (hereinafter referred to as 'the Ordinance').

2. W.P.(C)No.9749 of 2020 has been filed by the Kerala Municipal and Corporation Workers Congress represented by its Secretary. In this Writ Petition there is no challenge to the provisions of Ordinance No.30/2020. However, a declaration is sought to declare that the provisions the Ordinance do not apply to contingent Workers of the various Municipalitites and Municipal Corporations in the

State of Kerala. The principal ground raised in this writ petition is that the Municipalities and Municipal Corporations are constituted in terms of Part IXA of the Constitution of India and therefore that they are not owned and controlled or aided by the Government of Kerala and thus provisions of Section 5 of the Ordinance cannot apply to contingent employees of Municipalities and Municipal Corporations. The other substantial ground taken in the writ petition is that the State Government has no authority to issue any direction to the Municipalities/Municipal Corporations. It is stated that the law on this point has been settled by this Court in ***Kerala State Municipal Workers Federation & anr v. Kozhikode Corporation & ors (2007 (1) KLT 882).***

3. W.P.(C)No.9791 of 2020 has been filed by the Financial Enterprises Employees Association and others. In this writ petition, the first petitioner represents various employees of the Kerala State

Financial Enterprises Ltd, which is a company incorporated by the Government of Kerala and governed by its articles of association. The constitutional validity of the Ordinance is called in question, in this case. It is the case of the petitioners in this writ petition that Ext.P2 ordinance is in direct conflict with the provisions of the Industrial Disputes Act and a settlement which is binding on the employer as well as the employee in terms of Section 18 of the Industrial Disputes Act 1947. It is contended that the provisions of the ordinance will result in a violation of the terms of the settlement and thus, it must be taken that the provisions of the ordinance are in conflict with a Central Statute and therefore, that by virtue of the provisions contained in Article 254 of the Constitution of India the Central law will prevail over any conflicting provision in the State law unless, of course, the State law had received the assent of the President of India under Clause(2) of Article 254. It is contended

that 'salary' and 'money' should be treated as species of property and therefore, by virtue of the provisions contained in Article 300A of the Constitution of India the right to receive salary cannot be taken a way except in terms of a valid law providing for such taking. It is also alleged that since that the law does not provide for payment of compensation, it is to that extent arbitrary and in violation of Article 14 of the Constitution of India.

4. I have heard Sri.A.Krishnan, learned counsel appearing for the petitioner in W.P.(C).No.9749 of 2020 and Sri.Elvin Peter & Sri.K.R.Ganesh, learned counsel appearing for the petitioners in W.P.(C) No.9791 of 2020. I have also heard Sri.N.Manojkumar, learned Special Govt. Pleader for the Govt of Kerala.

5. Some of the the grounds raised regarding the constitutional validity of the ordinance;the question as to whether the State had the legislative competence which, is the premise upon which the ordinance has been issued; whether the deferment of

salary constitutes a violation of Article 300A of the Constitution of India and the question as to whether health workers are to be treated differently from other employees were considered by this Court while refusing interim relief in W.P.(C) TMP.No.279 of 2020 and connected cases. My learned brother Justice Bechu Kurian Thomas has found, *prima facie*, that there is nothing wrong in the haste shown in the promulgation of the Ordinance; that the Legislature of the State has the legislative competence to enact law in the nature of the Ordinance and thus the promulgation of the Ordinance was in respect of a subject which the State had legislative competence and that health workers cannot be treated as a separate class; through interim order dated 5.5.2020. I am in respectful agreement with the *prima facie* view of my learned brother and therefore, I do not intend to deal with those contentions again in this interim order except to the extent that they require examination in view of the contentions, distinct from

those raised in W.P.(C) TMP.No.279 of 2020 and connected cases.

6. The learned counsel for the petitioner in W.P.(C).No.9749 of 2020 very fairly submitted that the Kerala Panchayath Employees Organisation and others had approached this Court representing the interests of employees who are similarly placed as those represented by the petitioner in W.P.(C)No.9749 of 2020, through W.P(C) TMP No.338 of 2020. The learned counsel would however contend that the two contentions raised by him this writ petition and pressed into service before me now, were not raised or considered earlier and therefore, this Court must consider those contentions also while deciding whether the petitioner is entitled to any interim relief.

7. First among these contentions is that Section 5 of the Ordinance does not apply to institutions other than those owned or controlled or aided by the Government. Section 5 of the Ordinance reads as

follows:

> *"Power of Government to defer the pay in part, due to an employee of certain institutions including local self-government institutions, statutory bodies etc.- Notwithstanding anything contained in any other law, rule or order of code or judgment or order of any Court or Tribunal, in the event of any disaster of public health emergency, it shall be competent and lawful for the government to defer, by notification, the pay in part, to the extent not exceeding one-fourth of the total monthly pay, due to an employee in any institution, owned or controlled or aided by the Government, including the aided school and college teachers, local self-government institutions as well as statutory bodies, universities, corporations, aided educational institutions and such other institutions as may be notified, for such period for the management of the situation arising out of such disaster or public health emergency or otherwise".*

The learned counsel would contend that the words

'owned or controlled or aided by the Government' should govern all institutions which are mentioned in the latter part of the Section. On a plain reading of Section 5, I am not in a position to accept the contention of the learned counsel. It appears to me that the words '*owned or controlled or aided by the Government*' actually defines or gives color to the word '*institution*' used before those words and not to any of the other bodies/institutions mentioned in the latter part of the Section. Thus in my view Section 5 applies to any institution owned or controlled or aided by the Government and includes(i) aided school and college teachers; (ii) local self-government institutions; (iii) statutory bodies;(iv) universities;(v) corporations; (vi) aided educational institutions and (vii) such other institutions as may be notified, within the sweep of the statutory provision. I am therefore, *prima facie* of the view that this contention of the petitioner in W.P.(C)No.9749 of 2020 cannot be accepted.

8. The next contention of the learned counsel in W.P.(C)No.9749 of 2020 is based on the law laid down by this Court in ***Kerala State Municipal Workers Federation & anr v. Kozhikode Corporation & ors (Supra).*** It is the submission of the learned counsel that the promulgation of the Ordinance and the provisions contained therein result in the issue of a notification which, is in the nature of a direction issued by the Government to the Municipal Corporation and amounts to an unauthorized interference in the administration of the Municipality. I am not impressed with this contention of the learned counsel. When the State issues a notification in terms of a law which empowers the State to issue such a notification and such notification has some effect on employees working in Municipalities, that cannot by any stretch of imagination be treated as an interference with the administration of the Municipality, as contended by the learned counsel for the petitioner. I am of the view that the provisions

of the Ordinance and any notification issued thereunder cannot be treated as an interference with the administration of the Municipality. Therefore, the law laid down by this Court in ***Kerala State Municipal Workers Federation & anr v. Kozhikode Corporation & ors*** **(supra)** does not come to the aid of the petitioner in any manner.

9. Sri.Elvin Peter && Sri.K.R.Ganesh, learned counsel appearing for the petitioner in W.P.(C).No.9791 of 2020 submitted that they have raised a substantial ground in the writ petition which, has not been considered by this Court in the earlier batch of writ petitions. It is their contention that employees of the Kerala State Financial Enterprises whose interests are being projected by the petitioners in W.P.(C).No.9791 of 2020 are, governed by the provisions of a settlement under the provisions of the Industrial Disputes Act 1947, a Central Legislation traceable to Entry 22 of List III of the VIIth Schedule to the Constitution of India.

They state that by virtue of the provisions contained in Section 18 of the Industrial Disputes Act, the provisions of such settlement are binding on both the employer and the employee and therefore, that any deferment or non payment of salary which is in conflict with the terms of that settlement would have to be declared illegal. This argument has two parts. The first is that any notification under the provisions of the ordinance cannot have the effect of overreaching the provisions of Section 18 of the Industrial Disputes Act, 1947. The Second limb of that argument is that since both the ordinance and the Industrial Disputes Act relate to legislative power traceable to entries in List-III (the Concurrent List) of Schedule VII of the Constitution of India, the provisions of the ordinance which, run counter or conflicts with the provisions of the Central Legislation will be invalid as the State law (here the ordinance) has not been reserved for the assent of the President of India. I have no

difficulty in rejecting these contentions.

10. In ***U. Unichoyi v. State of Kerala, (1962) 1 SCR 946,*** a question (amongst others) arose before a bench of 5 Judges of the Supreme Court as to whether a settlement entered into under the provisions of the Industrial Disputes Act, 1947 can override a statutory notification under the Minimum Wages Act, 1948. This question was answered in the following terms:-

> *"18. There is, however, one aspect of this problem to which we must refer before we part with this case. It appears that soon after the notification was issued as many as 62 tile factories in Trichur closed their works and that led to unemployment of nearly 6000 employees. In order to resolve the deadlock thus created, the respondent referred the industrial dispute arising between the Trichur factories and their employees for industrial adjudication (ID 45 of 1958). On this reference an interim award was made and it was followed by a final award on September 26, 1960. Both the interim and the final awards were the result of settlement between the parties and the order passed by the tribunal shows that the respondent, acting through its Labour Minister, "left aside the prestige of the Government, came to the scene and*

effected a settlement". Mr Nambiar has strongly criticised the conduct of the respondent in permitting a departure from the notification in respect of 62 tile factories at Trichur contrary to the provisions of the Act, and in insisting upon its implementation in respect of the other parts of the State. His argument is two-fold. He suggests that the settlement reached between the parties in Trichur shows that the minimum prescribed by the notification was above the legally permissible minimum and beyond the capacity of the Trichur factories, and that would support his grievance that the rates prescribed are not the minimum but they are such above that level. We are not impressed by this argument. As we have already observed, we would ordinarily refuse to consider the merits of the wage structure prescribed by the notification. Besides, the closure of the factories in Trichur may either be because the factories there found it difficult to pay the wage structure or may be for reasons other than industrial. We propose to express no opinion on that point because that is not a point in issue before us, and so the settlement can have no bearing on the fate of the present petition; but the other argument urged by Mr Nambiar raises a serious question. Under the Act, the notification has to apply to all the tile factories in the State and breach of the provisions of the notification is rendered penal under Section 22 of the Act. An agreement or contract contrary to the notification would be void under Section 25 of the Act. It is to be regretted that the respondent, acting

> *through its Labour Minister, appears to have assisted in bringing about a settlement contrary to the terms of the Act. If the respondent thought that such a settlement was necessary in respect of Trichur factories, it may consider the question of withdrawing the notification in respect of that area and in fairness may also reconsider the problem in respect of all the other areas and decide whether any modification in the notification is required. It is not appropriate that the respondent should be associated, though indirectly, with the settlement which is in breach of the provisions of the Act. We would, therefore, suggest that the respondent should seriously consider this aspect of the matter and should not hesitate to do what may appear to be just, reasonable and fair on an objective consideration of the whole problem."*

Thus in ***Unichoyi (supra)*** it was categorically held that a settlement cannot override a statutory notification under the Minimum Wages Act, 1948. Again in ***Oswal Agro Furane Ltd. v. Workers Union, (2005) 3 SCC 224;*** a question arose as to whether a settlement under the Industrial Disputes Act can be used to circumvent the provisions contained in Sections 25-N & 25-O of the same Act. It was held:-

"15. A settlement within the meaning of Section 2(p) read with sub-section (3) of Section 18 of the Act undoubtedly binds the workmen but the question which would arise is, would it mean that thereby the provisions contained in Sections 25-N and 25-O are not required to be complied with? The answer to the said question must be rendered in the negative. A settlement can be arrived at between the employer and workmen in case of an industrial dispute. An industrial dispute may arise as regards the validity of a retrenchment or a closure or otherwise. Such a settlement, however, as regards retrenchment or closure can be arrived at provided such retrenchment or closure has been effected in accordance with law. Requirements of issuance of a notice in terms of Sections 25-N and 25-O, as the case may be, and/or a decision thereupon by the appropriate Government are clearly suggestive of the fact that thereby a public policy has been laid down. The State Government before granting or refusing such permission is not only required to comply with the principles of natural justice by giving an opportunity of hearing both to the employer and the workmen but also is required to assign reasons in support thereof and is also required to pass an order having regard to the several factors laid down therein. One of the factors besides others which is required to be taken into consideration by the appropriate Government before grant or refusal of such permission is the interest of the workmen. The aforementioned

> *provisions being imperative in character would prevail over the right of the parties to arrive at a settlement. Such a settlement must conform to the statutory conditions laying down a public policy. A contract which may otherwise be valid, however, must satisfy the tests of public policy not only in terms of the aforementioned provisions but also in terms of Section 23 of the Indian Contract Act.*
>
> *16. It is trite that having regard to the maxim "ex turpi causa non oritur actio", an agreement which opposes public policy as laid down in terms of Sections 25-N and 25-O of the Act would be void and of no effect. Parliament has acknowledged the governing factors of such public policy. Furthermore, the imperative character of the statutory requirements would also be borne out from the fact that in terms of sub-section (7) of Section 25-N and sub-section (6) of Section 25-O, a legal fiction has been created. The effect of such a legal fiction is now well known. (See East End Dwellings Co. Ltd. v. Finsbury Borough Council [(1951) 2 All ER 587 : 1952 AC 109 (HL)] , Om Hemrajani v. State of U.P. [(2005) 1 SCC 617] and Maruti Udyog Ltd. v. Ram Lal [(2005) 2 SCC 638 : (2005) 1 Scale 585] .)"*

Thus it is clear that when in conflict with law the settlement cannot be allowed to operate. Therefore I have no hesitation to take a *prima facie* view that

this contention of the learned counsel for the petitioner cannot be accepted.

11. The contention of the Learned Counsel for the petitioner that the ordinance can have effect only if it has received the assent of the President of India is also to be rejected. This argument, as already noticed, is obviously on the premise that the Industrial Disputes act being a Central Legislation, relatable to Entry 22 of List III of the Constitution of India and the impugned ordinance being relatable to certain other entries in the Concurrent list, the State law can prevail only if it has received the assent of the President of India under Article 254(2) of the Constitution of India. I have no hesitation to reject this argument as well, at this stage. Firstly this Court through order dated 5.5.2020 in W.P.(C).TMP No.279 of 2020 and connected cases has found, *prima facie* that the impugned ordinance can be treated as a piece of legislation relatable to Entry 6 and 41 of List II(please see

para 17 of the order dated 5.5.2020 in W.P.(C).TMP No.279 of 2020 and connected cases). If the ordinance is a piece of legislation relatable to Entries 6 and 41 of List II, the question of applicability of Article 254 does not arise. Secondly, even if the ordinance is a piece of legislation relatable to Entries 20,23 and 41 of List III, as has been, *prima facie,* found in para 17 of the order dated 5.5.2020 in W.P.(C).TMP No.279 of 2020 and connected cases, the question of reserving the legislation for the assent of the President of India under Article 254(2) of the Constitution of India arises only if the State law is in direct conflict with a Central Law. In ***Engineering Kamgar Union v. Electro Steels Castings Ltd.,*** **(2004) 6 SCC 36,** it was held:-

> *19. Article 254 of the Constitution of India would be attracted only when legislations covering the same ground both by the Centre and by the Province operate in the field, both of them being competent to enact. (See Deep Chand v. State of U.P. [AIR 1959 SC 648] , M. Karunanidhi [(1979) 3 SCC 431 : 1979 SCC (Cri) 691] and State of W.B. v. Kesoram Industries Ltd. [(2004)*

1 Scale 425 : (2004) 10 SCC 201])

> *20. Recourse to the said principles, however, would be resorted to only when there exists direct conflict between two provisions and not otherwise. Once it is held that the law made by Parliament and the State Legislature occupy the same field, the subsequent legislation made by the State which had received the assent of the President of India indisputably would prevail over the parliamentary Act when there exists direct conflict between two enactments. Both the laws would ordinarily be allowed to have their play in their own respective fields. However, in the event there exists any conflict, the parliamentary Act or the State Act shall prevail over the other depending upon the fact as to whether the assent of the President has been obtained therefor or not.*

The laws in question here (i) the Ordinance and (ii)The Industrial Disputes Act, 1947 are clearly not in direct conflict with each other. They do not cover the same subject or occupy the same field. The fact that they may incidentally overlap or have the semblance of appearing to govern the same subject matter is no ground to apply the provisions of Article 254(1) of the Constitution of India.

Therefore the contentions of the learned counsel for the petitioner in W.P(C) 9791/2020 cannot be accepted, at least at the stage of the proceedings.

I therefore reject the prayer for interim relief in both the above cases. I direct that these cases be listed along with W.P(C)TMP No.279/2020 and connected cases for hearing.

GOPINATH.P, JUDGE

pm

W.P.(C).NO.9749 OF 2020

APPENDIX

PETITIONER'S EXHIBITS :

Ext. P1 – True copy of the Registration Certificate, dated 17.06.2019.

Ext. P2 – True copy of the Order dated 23.04.2020.

Ext. P3 – True copy of the Ordinance dated 30.04.2020.

RESPONDENTS EXHIBITS: NIL

W.P.(C).NO.9791 OF 2020

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