

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 05TH DAY OF MAY, 2020/15TH VAISAKHA, 1942

W.P(C) TMP NO.279 OF 2020

PETITIONERS:-

1. KERALA N.G.O. ASSOCIATION,
REPRESENTED BY ITS PRESIDENT CHAVARA JAYAKUMAR,
N.G.O. BHAVAN, BAKERY JUNCTION,
THIRUVANANTHAPURAM - 695 034.
2. KERALA PRADESH SCHOOL TEACHERS ASSOCIATION,
REPRESENTED BY ITS GENERAL SECRETARY M. SALAHUDEEN,
KPSTA BHAVAN, CHINMAYA LANE,
THIRUVANANTHAPURAM - 695 001;
3. KERALA GAZETTED OFFICERS' UNION,
REPRESENTED BY ITS GENERAL SECRETARY,
DR. MANOJ JOHNSON,
OFFICE OF THE STATE COMMITTEE, KGOU BHAVAN,
MANJALIKULAM, THIRUVANANTHAPURAM - 695 001.
4. KERALA SECRETARIAT ASSOCIATION,
REPRESENTED BY ITS PRESIDENT JYOTHISH M.S.,
TC. XXVI/250-251, SECRETARIAT ASSOCIATION BUILDINGS,
THIRUVANANTHAPURAM - 695 039.
5. KERALA STATE AUDIT ASSOCIATION,
REPRESENTED BY ITS GENERAL SECRETARY ANIL KUMAR S.,
REG. NO. 1-A/1956, THIRUVANANTHAPURAM - 695 001.
6. P.S.C. EMPLOYEES ASSOCIATION,
REPRESENTED BY ITS PRESIDENT RAMESH M. THAMPI,
REG. NO. 267/91, PATTOM,
THIRUVANANTHAPURAM - 695 004.
7. HIGHER SECONDARY SCHOOL TEACHERS ASSOCIATION,
REPRESENTED BY ITS GENERAL SECRETARY ANIL M. GEORGE,
REG. NO. 22/2011, OFFICE OF THE STATE COMMITTEE,
TC 11/416(1), NANTHANCODE,
THIRUVANANTHAPURAM - 695 003.

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8. AIDED HIGHER SECONDARY TEACHERS ASSOCIATION,
REPRESENTED BY ITS GENERAL SECRETARY S. MANOJ,
TC -14/2178(6), EBENEZER, MARKET ROAD,
PALAYAM, THIRUVANANTHAPURAM - 695 034.
9. KERALA PRIVATE COLLEGE TEACHERS ASSOCIATION,
REPRESENTED BY ITS PRESIDENT DR. JOBY THOMAS K.,
KPCTA MANDIRAM, TC 25/2814, MBRRA 36,
MATHRUBHOOMI ROAD, VANCHIYOOR,
THIRUVANANTHAPURAM - 695 035;
10. GOVERNMENT COLLEGE TEACHERS ORGANISATION (GCTO),
REPRESENTED BY ITS GENERAL SECRETARY
DR. BIJU LONA K.,
POTHUJANAM ROAD, KUMARAPURAM, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM - 695 011.
11. KERALA PRIVATE COLLEGE MINISTERIAL STAFF FEDERATION,
REPRESENTED BY ITS STATE GENERAL SECRETARY
GEORGE SEBASTIAN,
MARY MATHA ARTS & SCIENCE COLLEGE,
P.O. VEMOM, MANANTHAVADY,
WAYANAD - 670 645.
12. KERALA WATER AUTHORITY STAFF ASSOCIATION-INTUC,
REPRESENTED BY ITS WORKING PRESIDENT M.J. MARTIN,
REG. NO. 373/85, TC 14/1457(1),
PARIS ROAD, THIRUVANANTHAPURAM - 695 014
13. FORUM FOR JUSTICE (FFJ),
REPRESENTED BY ITS SECRETARY SHAJAN P.
K.S.R.T.C. EMPLOYEES AND FAMILY WELFARE SOCIETY,
ABHILASH NIVAS, T.C. 48/321, MITHRA NAGAR,
POONTHURA P.O., THIRUVANANTHAPURAM - 695 026,
14. R. BAJI,
DRIVER, K.S.R.T.C., ATTINGAL DEPOT,
THIRUVANANTHAPURAM.

BY ADVS. SRI. DR. K.P. SATHEESAN (SR.)
SRI.P. MOHANDAS,
SRI.K. SUDHINKUMAR
SRI. S.K. ADHITHYAN &
SRI. SABU PULLAN

W.P.(C) TMP NOS. 279, 285, 310,313, 334, 337 AND 338 OF 2020

RESPONDENTS:-

1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. THE ADDITIONAL CHIEF SECRETARY (FINANCE),
FINANCE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

BY SMT.VINITHA B., GOVERNMENT PLEADER

THIS WRIT PETITION HAVING COME UP FOR ORDERS ON
05.05.2020, HEARD ALONG W.P.(C) TMP NOS. 285, 310,313,
334, 337 AND 338 OF 2020 WITH THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

W.P.(C) TMP No. 279, 285, 310, 313, 334 337 and 338 of 2020

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 5TH DAY OF MAY, 2020/15TH VAISAKHA, 1942

W.P(C) TMP. NO.285 OF 2020

PETITIONERS:-

1. KERALA N.G.O. SANGH,
REPRESENTED BY ITS GENERAL SECRETARY T.N. RAMESH,
OFFICE OF THE STATE COMMITTEE,
TC 14/2020, VANROSS JUNCTION,
UNIVERSITY P.O., THIRUVANANTHAPURAM - 695 034.
2. KERALA VYDYUTHI MAZDOOR SANGHAM (BMS),
REPRESENTED BY ITS GENERAL SECRETARY GIREESH
KULATHOOR, I.S. PRESS ROAD, ERNAKULAM, KOCHI - 682 018.
3. P.S. MANOJ KUMAR,
AGED 47 YEARS, S/O. SREEDHARAN NAIR,
OVERSEER, K.S.E.B., ELECTRICAL SECTION,
ALUVA TOWN, ERNAKULAM - 683 101.

BY ADVS.SRI. DR. K.P. SATHEESAN (SR.),
SRI.P. MOHANDAS
SRI.K. SUDHINKUMAR
SRI.S.K. ADHITHYAN
SRI.SABU PULLAN

RESPONDENTS:-

1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

W.P.(C) TMP No. 279, 285, 310, 313, 334 337 and 338 of 2020

2. THE ADDITIONAL CHIEF SECRETARY (FINANCE),
FINANCE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

BY SMT.VINITHA B., GOVERNMENT PLEADER

THIS WRIT PETITION HAVING COME UP FOR ORDERS ON 05.05.2020,
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 5TH DAY OF MAY, 2020 /15TH VAISAKHA, 1942

W.P. (C) . TMP NO.310 OF 2020

PETITIONERS:

1. UNITED DEMOCRATIC ELECTRICAL EMPLOYEES FRONT
(A JOINT BARGAINING COUNCIL RECOGNIZED BY STATUTE)
REPRESENTED BY ITS GENERAL SECRETARY
K.C.RAJAN AGED 57, S/O
BALAN, JYOTHISH, NADUVATHOOR, KOYLANDY
KOZHIKODE - 673620.
2. SHIBU.V,
AGED 45, S/O VELAYUDHAN, THOTTUMPULLY
HOUSE, THENARI.P.O
ELAPPULLY VILLAGE, PALAKKAD TALUK,
PALAKKAD- 678622
3. SURESH KUMAR.V,
AGED 53, KALAYAM KURICHI VEEDU, KAZHIVOOOR.P.O
KANJIRAMKULAM,
THIRUVANANTHAPURAM.
PRESENTLY WORKING AS OVERSEER.
4. LIDSON RAJ D.S,
AGED 49, S/O DAVY, THAMARAVILA PUTHENVEEDU,
AMARAVILA.P.O, CHENGAL VILLAGE,
NEYATTINKARA TALUK,
THIRUVANANTHAPURAM.
PRESENTLY WORKING AS LINE MAN ELECTRICAL SECTION
KALLIYOOR, THIRUVANANTHAPURAM.
5. SURESH.P AGED 41,
S/O SREEKUMARAN.P,
PULAYANKONATHU MEKKUMKARAVEEDU,
THOTTUMPURAM, PACHA, NANNIYODE, NEDUMANGAD TALUK,
THIRUVANANTHAPURAM

W.P.(C) TMP No. 279, 285, 310, 313, 334 337 and 338 of 2020

PRESENTLY WORKING AS LINE MAN ELECTRICAL SECTION
CHELARI ,MALAPPURAM.

6. SREEKUMAR.B,
AGED 46, S/OBHASKARAN NAIR,
CHENGAZHIKATHU VEEDU, ANCHALUMMOOD PERINAD.P.O KOLLAM.691601
(PRESENTLY WORKING AS SENIOR ASSISTANT,ELECTRICAL
CIRCLE ,KSEB POWER HOUSE ,KOLLAM)

BY ADV. M.KIRANLAL

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY SECRETARY,
FINANCE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM PIN-695001
2. THE KERALA STATE ELECTRICITY BOARD LIMITED,
VYDYUTHI BHAVAN, PATTOM PALACE POST,
THIRUVANANTHAPURAM-695 004,
REPRESENTED BY ITS CHAIRMAN & MANAGING
3. THE SECRETARY (ADMINISTRATION) ,
KERALA STATE ELECTRICITY BOARD LIMITED,
VYDYUTHI BHAVAN, PATTOM PALACE POST,
THIRUVANANTHAPURAM-695 004
4. THE SECRETARY ,
DEPARTMENT OF POWER, ROOM NO. 640, II ND FLOOR,
SOUTH BLOCK SECRETARIAT,
THIRUVANANTHAPURAM

BY SRI.HARISH K.P., GOVERNMENT PLEADER

THIS WRIT PETITION HAVING COME UP FOR ORDERS ON 05.05.2020,
HEARD ALONG W.P.(C) TMP NOS. 279,285, 313, 334, 337 AND 338 OF
2020 WITH THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

W.P.(C) TMP No. 279, 285, 310, 313, 334 337 and 338 of 2020

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 5TH DAY OF MAY, 2020/15TH VAISAKHA, 1942

W.P(C) TMP. NO.313 OF 2020

PETITIONERS/ PETITIONERS:

1. ABDUL KAREEM PADUKUNDIL,
AGED 52 YRS, S/O MUHAMMED,
PADUKUNDIL HOUSE, VATTAMANNAPURAM POST,
EDATHANATTUKARA, PIN - 678601,
PALAKKAD DISTRICT, (WORKING AS HSA AT
KALLADI HIGH SCHOOL, KUMARAMPUTHUR 679582,
CURRENTLY WORKING AS CLUSTER CO ORDINATOR,
BRC, AGALI, PALAKKAD -AIDED EMPLOYEE-
STATE GENERAL SECRETARY, KERALA SCHOOL
TEACHERS UNION)
2. ABDUL LATHEEF,
AGED 49 YRS, S/O ABDULLA T M,
KAYANOTH HOUSE, AVADUKKA POST,
PIN - 673528, KOZHIKODE.
(WORKING AS PRINCIPAL, VELLOM HSS CHERAPURAM,
CALICUT, PIN 673507,- AIDED EMPLOYEE-
STATE PRESIDENT, KERALA HIGHER
SECONDARY TEACHERS UNION)
3. ABDUL HUCK,
AGED 51 YRS, S/O ABDU RAHIMAN,
THEKKEPURAYIL, EDAKKAPARAMBA,
KANNAMANGALM, PIN 676304,
MALAPPURAM DISTRCT.
WORKING AS UPSA, ARABIC TEACHER,
AUP SCHOOL, IRUMBUCHOLA MALAPPURAM - 676505-
AIDED EMPLOYEE- STATE GEN. SECRETARY OF
KERALA ARABIC TEACHERS FEDERATION)
4. SALAHUDHEEN P M,

W.P.(C) TMP No. 279, 285, 310, 313, 334 337 and 338 of 2020

AGED 42 YRS, S/O MAMMU MASTER,
POONKAVANTHIL HOUSE, KANJIRAPUZHA POST,
PALAKKAD DISTRICT, (WORKING AS LECTURER,
MES COLLEGE, MANNARKKAD, PIN - 678 583,
AIDED EMPLOYEE - STATE PRESIDENT OF
CONFEDERATION OF KERALA COLLEGE TEACHERS)

5. MUHAMMAD IQBAL KOROTH,
AGED 47 YRS, S/O USMAN KALLAYI,
KOYIPRA VELLORA POST,
MATHAMANGALAM BAZAR, KANNUR PIN 670306.
(WORKING AS HEAD ACCOUNTANT,
SIR SYED COLLEGE, THALIPARAMBA, KARIMBAM POST,
KANNUR 670142 - AIDED EMPLOYEE -
STATE GENERAL SECRETARY OF KERALA AIDED COLLEGE
MINISTERIAL STAFF ASSOCIATION)

BY ADVS. C.R. REKHESH SHARMA
HAROON RASHEED
O.N. RAJESH

RESPONDENTS/ RESPONDENTS:

1. THE STATE OF KERALA, REPRESENTED BY THE CHIEF
SECRETARY TO GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM - 695001
2. THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT OF KERALA,
DEPARTMENT OF FINANCE, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001
3. THE SECRETARY TO DEPARTMENT OF LAW,
ROOM NO. 375, 1ST FLOOR, MAIN BLOCK,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001

BY SMT.VINITHA B., GOVERNMENT PLEADER

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TUESDAY, THE 05TH DAY OF MAY, 2020/15TH VAISAKHA, 1942

W.P(C) TMP NO.334 OF 2020

PETITIONER

KERALA GOVT. NURSES UNION,
REGISTRED AND RECOGNIZED AS PER
G.O. (P) NO. 29/86-SL.NO. 256,
VASANTHA BUILDING, ATHANE LANE,
ROOM NO. 15, VANCHIYOOR PO,
THIRUVANANTHAPURAM,
REPRESENTED BY ITS STATE PRESIDENT MARY K.D,
AGED 54 YRS, C/O. T.J. BABU,
THATTIL VALLACHIRA HOUSE, P.O.
POOTHOLE, THRISSUR -4,
THRISSUR DISTRICT.

BY ADVS. SRI. REKHESH SHARMA,
SRI.HAROON RASHEED AND
SRI.O N RAJESH

RESPONDENTS:

4. THE STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY TO
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM - 695001
5. THE ADDITIONAL CHIEF SECRETARY TO
GOVERNMENT OF KERALA,
DEPARTMENT OF FINANCE, SECRETARIAT,
THIRUVANANTHAPURAM- 695001
6. THE SECRETARY TO DEPARTMENT OF LAW,
ROOM NO. 375, 1ST FLOOR, MAIN BLOCK,
SECRETARIAT, THIRUVANANTHAPURAM - 695001

W.P.(C) TMP No. 279, 285, 310, 313, 334 337 and 338 of 2020

SRI.HARISH K.P. , GOVERNMENT PLEADER

**THIS WRIT PETITION HAVING COME UP FOR ORDERS ON 05.05.2020,
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W.P.(C) TMP No. 279, 285, 310, 313, 334 337 and 338 of 2020

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 5TH DAY OF MAY, 2020/15TH VAISAKHA, 1942

W.P(C) TMP. NO.337 OF 2020

PETITIONER:-

B. RAGESH,
HEAD CLERK, KERALA WATER AUTHORITY,
P.H. SUB DIVISION, ALUVA,
ERNAKULAM DISTRICT.

BY ADVS. SRI. DR. K.P. SATHEESAN (SR.)
SRI.P. MOHANDAS
SRI.K. SUDHINKUMAR
SRI.S.K. ADHITHYAN
SRI.SABU PULLAN

RESPONDENTS:-

1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. THE ADDITIONAL CHIEF SECRETARY (FINANCE),
FINANCE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

BY SMT.VINITHA B., GOVERNMENT PLEADER

THIS WRIT PETITION HAVING COME UP FOR ORDERS ON 05.05.2020,
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N THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 5TH DAY OF MAY, 2020/15TH VAISAKHA, 1942

W.P(C) TMP. NO.338 OF 2020

PETITIONERS :

1. THE KERALA PANCHAYAT EMPLOYEES ORGANIZATION,
STATE COMMITTEE (REGISTER NO. G.O (MS)
59/2006/LSGD), RAJEEV BHAVAN,
NEERAZHI LANE, PULIMOODU JUNCTION,
THIRUVANANTHAPURAM,
REPRESENTED BY ITS GENERAL SECRETARY
MR. NAITO BABY AREEKAL,
RESIDING AT AREEKAL HOUSE, ANGAMALY,
ANGAMALY P.O,
ERNAKULAM DISTRICT
2. THE KERALA MUNICIPAL AND CORPORATION STAFF ASSOCIATION,
(REG NO. 39/76), STATE COMMITTEE,
NEAR CORPORATION OFFICE, ERNAKULAM,
REPRESENTED BY ITS GENERAL SECRETARY,
SRI. VASANTHAN, AGED 53 YEARS,
S/O. MADHAVAN, WORKING AS REVENUE OFFICER,
CORPORATION OFFICE, KANNUR DISTRICT
RESIDING AT NANGELIL HOUSE, MARUDH KAVALA,
PERUMBAVOOR P.O, ERNAKULAM DISTRICT - 683 542
3. RAHIM KHAN.U,
AGED 43 YEARS, S/O. USAF KUNJU,
WORKING AS JUNIOR HEALTH INSPECTOR,
CORPORATION OFFICE, THIRUVANANTHAPURAM -
RESIDING AT P.V HOUSE, VADAKKEKONAM,
PULLAMPARA P.O, VENJARAMOOD,
NEDUMANGADU TALUK,
THIRUVANANTHAPURAM DISTRICT - 695 607

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4. MUHAMMED BASHEER.A,
AGED 54 YEARS, S/O. HAMSA,
WORKING AS ASSISTANT SECRETARY,
MAKKARAPARAMBU GRAMA PANCHAYAT, MALAPPURAM DISTRICT,
RESIDING AT ANDIKKODAN HOUSE,
PUTHANANGADI P.O, ANGADIPURAM,
MALAPPURAM - 679 321

BY ADV. SRI.ANOOP.V. NAIR

RESPONDENTS :

1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. THE ADDITIONAL CHIEF SECRETARY (FINANCE) ,
FINANCE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
3. THE SECRETARY TO LOCAL SELF GOVERNMENT
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001

SRI.HARISH K.P. , GOVERNMENT PLEADER

THIS WRIT PETITION HAVING COME UP FOR ORDERS ON 05.05.2020,
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W.P.(C) TMP No. 279, 285, 310, 313, 334 337 and 338 of 2020

BECHU KURIAN THOMAS, J.

**W.P.(C) TMP No. 279, 285, 310, 313,
334, 337 and 338 of 2020**

Dated this the 5th day of May, 2020

ORDER

These Writ petitions challenge the Kerala Disaster and Public Health Emergency (Special Provisions) Ordinance 2020 (Ordinance No. 30) of 2020 dated 30.04.2020 (for brevity "The Ordinance") and the consequent orders issued in exercise of the powers vested under the ordinance as unconstitutional and illegal.

2. All these writ petitions are admitted. The Government Pleader takes notice for the respondents in all the cases. Once again, on account of the importance involved in these cases, learned Counsel for the petitioners press for an emergent consideration of the matter. The respondents sought time to file counter affidavit. However since the matter is urgent in nature and affects the vested rights of several persons in the employment of the State, I have heard through video conferencing, the learned

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Counsel for petitioners as well as the respondents, in all the cases, for the purpose of interim order.

3. Senior Advocate Dr.K.P Satheeshan led the arguments on the side of the petitioners. He, assisted by Adv.Sri.Sudhin Kumar, submitted that the impugned ordinance is promulgated with undue haste and without deliberation, solely for the purpose of overcoming the order dated 28.04.2020 passed by this Court in WP(C) TMP No.182/2020 and connected cases. Learned Senior Counsel submitted that the Kerala Service Rules which govern the field is legislative in character and rights under that cannot be taken away by another statute. It is submitted that the Ordinance is unconstitutional as there is no legislative competence and that there is discrimination writ large, under the impugned Ordinance. According to him, the only method in which the deduction of salary could have been carried out, was by resort to Article 360 4(a) of the Constitution and not by an Ordinance. Since the impugned Ordinance is unconstitutional, he submits that, the notification Ext.P3 produced in WP(C) TMP No. 279/2020, must of necessity, be stayed. Learned Senior Counsel referred to Ext.P5 and P6 orders to

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impress upon the Court that, workers of private establishments and Government employees are treated with discrimination

4. Adv. Shri. M. Kiran Lal who appears for the petitioner in W.P.(C) TMP No. 310/2020, who are employees of KSE Board and their Union submitted, in addition to the contention of the Senior Counsel, that, the concept of salary itself is to meet the essential needs of every individual and also that it is part of right to life under Article 21 and that depriving the salary or part of it is akin to depriving the right to livelihood. Taking cue from the decision in **Olga Tellis and Others Vs. Bombay Municipal Corporation and Others (1995 (3) SCC 545)**, case he submits that the right to livelihood of the employees of KSEB are deprived by the ordinance and the consequent order Ext.P5 issued by the Board is without authority of law. It is also his submission that the Electricity Board having now become a private limited company, the impugned ordinance cannot be applied to them.

5. Advocate Rekesh Sharma who appears for the writ petitioners in WP(C) TMP No.313 /2020 and WP(C) TMP No. 334/2020, submits that, there is discrimination in the impugned

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ordinance in as much as the health workers who have been rendering selfless and brave services for the State during the entire period of lock-down, have not been exempted at all, on the contrary, they have also been targeted under the ordinance. He also invited my attention to Section 9 of the Ordinance, to show that the Act can be arbitrarily utilized, especially since unbridled powers are given under the Act. He also submitted that the ordinance was intended to belittle this court and to overcome the earlier decision. It is his further submission that the state has not yet declared any public health emergency and hence provisions of ordinance are unconstitutional.

6. Advocate Anoop.V.Nair, who also appears for some of the petitioners, submits that a glance at the wordings used in the ordinance, especially the word "**or otherwise**" appearing in Section 3, 4 and 5 clearly shows that the purpose of the ordinance is doubtful and that the same confers unbridled power on the legislature to deduct or defer the salary at any time it feels. He submits that such conferment of unbridled power is certainly arbitrary and the Ordinance is liable to be struck-down as

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unconstitutional.

7. Controverting the contentions of learned counsel, the learned Advocate General Sri. C.P.Sudhakara Prasad assisted by Senior Government Pleader Sri. N Manojkumar submitted that, the Ordinance is promulgated in the light of the earlier interim order of this Court in W.P(C). T.M.P No.182/2020 and connected cases whereby this Court noted the absence of a law for the State to issue an executive order, deferring the salary of employees of a State. He further traced the source of authority of the Ordinance to entry 6 and Entry 41 of list II apart from entries 20, 23 and 29 of list III of the 7th schedule of the Constitution of India and also submitted that no fundamental rights have been entrenched upon. It was pointed out that the alleged haste in passing the ordinance is nothing but a reflection of the urgency of the situation that warranted promulgation of the Ordinance as contemplated in Article 213 of Constitution of India. He also referred to the balance of convenience being in favour of the State and also submitted that the court should be loathe to pass interim orders when constitutional validity of an ordinance is challenged. Referring to a

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plethora of decisions especially **Health for Millions Vs. Union of India & Ors (2014 (14) SCC 496)**, and **Bhubhaneshwar Singh and Another Vs. Union of India and Others (1994 (6) SCC 77)**, he submits that this Court may not interfere at this stage with the Ordinance.

8. The learned Advocate General also submitted that it is certainly within the province of the legislature to cure the defect pointed out in the judgment and the same is not an action that militate against the judgment but is infact in consonance with it. He also submits that an Act of legislature will take precedence over any Rule made under Article 319 of the Constitution of India.

9. Advocate Sri. Kaleeswaram Raj, who submitted that he had filed an impleading petition in WP(C) TMP No. 285 of 2020 and whose petition is not before this Court, sought permission to address arguments in support of the learned Advocate General. Though the impleading petitioner does not have any legal right as such, since he is only a law student, since it is a matter involving legal issues, permission was granted to the counsel to submit his arguments also.

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10. It was submitted that there is no enforceable right on the employees to challenge the Ordinance or the orders issued consequent thereon, since, what is done by the ordinance is only a deferment of salary and not deduction of salary and in view of the situation now prevailing, State is certainly competent to enact an ordinance in the nature of the one impugned. It is also the submission of the said counsel that the Ordinance is not passed in defiance of interim orders of this Court, instead it only cures or removes the defect pointed out in the judgment.

11. In reply, the learned Senior Counsel Dr.K.P.Satheesan referring to the decision in **Medical Council of India v. State of Kerala (2018 (4) KLT 297)** pointed out that an Ordinance promulgated by the State was interfered with on the ground that the same was intended to overcome the decision of the Supreme Court. Relying upon the said decision, it was submitted that the impugned Ordinance is certainly unconstitutional.

12. Having considered the contentions, I am of the opinion that *prima facie* petitioners are not entitled for a grant of stay either of the Ordinance or of the orders passed under the Ordinance.

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13. The Ordinance was promulgated on 30.4.2020 under Article 213 of the Constitution of India. Article 213 vests power upon the Governor to promulgate Ordinances when the legislature is not in session and when he is satisfied that circumstances exist which render it necessary for him to take immediate action. In order to ascertain whether circumstances existed, that warranted invocation of the power under Article 213 of the Constitution, it is essential to glance through the dates. On 23.4.2020, an order was passed by the Government deferring the salary of its employees equivalent to six days every month for five months, on 28.4.2020 this Court stayed the said order, after finding that there is no law authorising the State to issue such an executive order, on 30.4.2020, the Governor promulgates the Ordinance, conferring power upon the Government to issue orders deferring a portion of the salary of its employees.

14. The haste surrounding the Ordinance as alleged by the petitioners is, in fact, nothing but a reflection of the existence of circumstances that warranted immediate action by the Governor to promulgate an Ordinance. I am not swayed, at this moment, to

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jump to a conclusion that the haste with which the Ordinance was promulgated erodes its sanctity. On the other hand, I feel that the situation warranted the State to act with alacrity and by promulgating the Ordinance, it acted with the adeptness required.

15. A reference to the preamble to the Ordinance and Sections 3, 4 and 5 will show that the Ordinance is intended to make special provisions for the deferment of pay in the event of Disaster and Public Health Emergency in the State. The words, Disaster and Public Health Emergency, surrounds the entire scope of the Ordinance. If at all there is any ambiguity, the same will certainly be controlled by those words - disaster and public health emergency and the State will not be able to wriggle out of those controlling words in the statute. Since the words "or otherwise" in the above Sections will be controlled by the principle of "ejusdem generis", the apprehension of the petitioners that the Act could be misused is without any basis. Section 7 which provides for issuing an order within six months from the date of the first notification, specifying the manner in which the amount shall be given back to such person or institution is a protective mechanism created under

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the Ordinance to prevent absolute deprivation of property of the persons affected by the deferment. There is no justification to assume that such a notification will not be issued nor is it legally possible to make such assumptions at this stage.

16. Though consideration of the constitutionality of a statute is certainly within the realm of powers of the Courts, it is the duty of this Court to act as the guardians of the Constitution. In that process, Courts while safeguarding its citizens from unconstitutional enactments, it must also protect constitutional enactments and protect the legislative mechanism as long as it is within the constitutional frame work. However, wide the power of judicial review may be, when it considers the constitutionality of a statute, that power is narrowed down by certain principles of which "presumption in favour of the constitutionality of a statute" is an important one. Judicial invalidation of a legislation should be the last measure of adjudication in the process of dispute resolution when the Court is called upon to consider the validity of a law. Constitutionality of a statute can be challenged within a very narrow sphere, of which, lack of legislative competence is the primary.

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17. With the aforesaid principles in mind, when I analyse the provisions of the Ordinance, I find, *prima facie*, that, the source of the Ordinance can be traced to entry 6 and 41 of List II and Entry 20, 23 and 29 of List III. Entry 6 of List II deals with public health and sanitation while entry 41 of List II deals with State Public Services. Similarly entry 20 of List III relates to economic and social planning while entry 23 of List III deals with social security, social insurance, employment and unemployment and entry 29 of List III deals with prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants. It is no longer *res integra* that the entries in the schedule are fields of legislation and the same has to be liberally and widely construed. When the State submits that the Ordinance is based upon the fields under the aforesaid entries, I think it is not justifiable on the part of this Court at this stage to hold otherwise. Certainly, the legislation can be brought within one, or if not more, of the entries in List II and List III of the 7th Schedule to the Constitution. With the presumption of constitutionality of a statute and tracing the field of legislation to entry 6 and 41 of List II and

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Entry 20, 23 and 29 of List III, I, *prima facie*, find that there is legislative competence for the State to promulgate the Ordinance.

18. The contention that the Ordinance is intended to overcome the order of this Court passed on 28.4.2020 and belittles the authority of this Court is not legally correct. The State is entitled to remove the basis of a law or rectify a mistake apparent in a law or create a new law to apply to a peculiar situation that has arisen. This legislative power is not curtailed by the existence of a judgment except in limited circumstances. None of the circumstances exist to even suggest that the Ordinance is promulgated to overcome a judgment of this Court. As a matter of fact, what was passed on 28.4.2020 was not even a judgment but only an interim order wherein, absence of a law to issue an executive order of that nature, was the reason to stay that order. When the mistake pointed out is rectified by creation of a new law, that too with the legislative competence, I cannot subscribe, even for a moment, that the authority of this Court is belittled by the Ordinance.

19. This Court is certainly mindful of the submission of the

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learned Advocate General that the State is going through a difficult situation unheard of, since its formation and extraordinary measures are required from the part of all to overcome it. The Ordinance is undoubtedly intended to overcome the position which the State has fallen into and this Court cannot be oblivious of the situation now prevailing. This Court cannot question the wisdom in the promulgation of the impugned Ordinance, especially when the Ordinance does not partake the character of appropriating the salary of an employee, but only defers it for a time, that too, under authority of law. Article 300A which grants authority to the State to deprive a person of property has, as its condition, "by authority of law". The law has now been promulgated. This Court does not find that the law, now promulgated, is unjustified and on the contrary finds it timely and within the constitutional frame work.

20. Notifications impugned in the writ petitions are those issued on the same date as that of the Ordinance exercising powers under Sections 4 and 5 of the Ordinance. It directs 20% of the total monthly pay and allowances (six days), due to various categories of employees of the Government or other bodies, to be

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deferred, for a period of five months from April 2020 to August 2020, for managing the situation arising out of the Disaster and Public Health Emergency of Corona Virus Disease (Covid 19 pandemic). I find that the notifications issued are based on the powers conferred under an Ordinance validly promulgated. It applies to those whose gross monthly pay is above Rs.20,000/- and even excludes those who have already contributed to the Chief Ministers Distress relief Fund in the wake of Covid-19 pandemic. The notification cannot be faulted at this stage of the lis. The notification is within the powers conferred under the Ordinance and hence at this stage, this Court cannot interfere with the issuance of the notification produced as Ext.P3 in W.P.(C) TMP No.279 of 2020 and connected cases.

21. As regards the claim that the health workers were entitled to be treated as a different class altogether and ought to have been excluded from the deferment of salary, I feel that when the Government thought it fit not to exclude any person based upon the nature of work but only upon the quantum of salary or wages they earn, it cannot be held, at this stage, by this Court, that there

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is any discrimination in including health workers also in the category of employees whose salary is liable to be deferred. Certainly there are several categories of workers, not merely health workers, who have been rendering selfless work. Perhaps the police force is one such category. When none are excluded, on the basis of category or nature of work, no fault can be found with the notification. At the most, those are all matters which the Government can reckon, if appropriate representations are made. Merely because certain categories have not been excluded, that is not a ground to stay the notification.

22. In such circumstances, I am not inclined to stay the notifications, deferring the salary to the extent specified therein, issued in exercise of the powers under the Ordinance.

All interim applications for stay are dismissed.

Post the Writ Petition for further consideration in the second week of June, 2020.

**BECHU KURIAN THOMAS
JUDGE**

W.P.(C) TMP No. 279, 285, 310, 313, 334 337 and 338 of 2020

APPENDIX OF W.P.(C) TMP NO.279/2020

PETITIONERS EXTS:

EXT. P1:- TRUE COPY OF THE ORDINANCE NO. 30 OF 2020
PUBLISHED IN THE KERALA GAZETTE AS NOTIFICATION
NO. 6936/LEG.A1/2020/LAW DATED 30-04-2020

EXT. P2:- TRUE COPY OF THE ERRATUM NOTIFICATION
ISSUED AS SRO NO. 295/2020 DATED 30-04-2020

EXT. P3:- TRUE COPY OF THE ORDER ISSUED BY THE
2ND RESPONDENT AS G.O. (P)NO. 53/2020/FIN.
DATED 30-04-2020

EXT. P4:- TRUE COPY OF THE SALARY, ALLOWANCES AND
PENSION OF MEMBERS OF PARLIAMENT (AMENDMENT)
ORDINANCE 2020 PUBLISHED IN THE GAZETTE AS
ORDINANCE NO. 3 OF 2020 DATED 7-4-2020

EXT. P5:- TRUE COPY OF THE CIRCULAR NO. 11 /2020 (2)
DATED 28-03-2020 ISSUED BY THE LABOUR COMMISSIONER,
GOVERNMENT OF KERALA

EXT. P6:- TRUE COPY OF THE LETTER WRITTEN BY THE
SECRETARY, MINISTRY OF LABOUR AND EMPLOYMENT,
GOVERNMENT OF INDIA TO ALL CHIEF SECRETARIES OF THE
STATES AS D.O. NO. M-11011/08/2020-MEDIA DATED
20-03-2020

W.P.(C) TMP No. 279, 285, 310, 313, 334 337 and 338 of 2020

APPENDIX OF WPC TMP NO.285/2020

PETITIONERS' EXHIBITS :

- EXT. P1 : TRUE COPY OF THE ORDINANCE NO. 30 OF 2020
PUBLISHED IN THE KERALA GAZETTE AS NOTIFICATION
NO. 6936/LEG.A1/2020/LAW DATED 30-04-2020
- EXT. P2 : TRUE COPY OF THE ERRATUM NOTIFICATION ISSUED AS
SRO.NO. 295/2020 DATED 30-04-2020
- EXT. P3 : TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT
AS G.O. (P)NO. 53/2020/FIN.DATED 30-04-2020
- EXT. P4 : TRUE COPY OF THE SALARY, ALLOWANCES AND PENSION
OF MEMBERS OF PARLIAMENT (AMENDMENT) ORDINANCE
2020 PUBLISHED IN THE GAZETTE AS ORDINANCE NO. 3
OF 2020 DATED 7-4-2020
- EXT. P5 : TRUE COPY OF THE CIRCULAR NO. 11 /2020(2)
DATED 28-03-2020 ISSUED BY THE LABOUR COMMISSIONER,
GOVERNMENT OF KERALA
- EXT. P6 : TRUE COPY OF THE LETTER WRITTEN BY THE SECRETARY,
MINISTRY OF LABOUR AND EMPLOYMENT, GOVERNMENT OF
INDIA TO ALL CHIEF SECRETARIES OF THE STATES AS
D.O. NO. M-11011/08/2020-MEDIA DATED 20-03-2020

APPENDIX OF WPC TMP 310/2020**Petitioner's Exhibits:**

EXHIBIT P1: A TRUE COPY OF THE RELEVANT PAGES OF THE MEMORANDUM OF SETTLEMENT DATED 17/02/2016

EXHIBIT P2: A TRUE COPY OF THE ORIGINAL CERTIFICATE OF REGISTRATION OF TRADE UNION DATED 01/01/2003 ISSUED BY THE REGISTRAR OF TRADE UNIONS

EXHIBIT P3: A TRUE COPY OF THE ORDINANCE DATED 30/04/2020

EXHIBIT P4: A TRUE COPY OF THE ORDER DATED 30/04/2020 ISSUED BY THE FINANCE DEPARTMENT

EXHIBIT P5: A TRUE COPY OF THE ORDER DATED 02.05.2020 ISSUED BY THE SECRETARY (ADMINISTRATION) KSEB

EXHIBIT P6: A TRUE COPY OF THE SALARY SLIP OF THE 2ND PETITIONER

W.P.(C) TMP No. 279, 285, 310, 313, 334 337 and 338 of 2020

APPENDIX OF WPC TMP NO.313/2020

PETITIONERS' EXHIBITS :

- EXHIBIT P1 : TRUE COPY OF THE G.O. P NO. 46/2020/ FIN DATED
23-04-2020
- EXHIBIT P2 : TRUE COPY OF THE INTERIM ORDER OF THIS HON'BLE
COURT IN WPC TMP NO. 182 / 2020
- EXHIBIT P3 : TRUE COPY OF THE THE KERALA DISASTER AND PUBLIC
HEALTH EMERGENCY (SPECIAL PROVISIONS) ORDINANCE
2020
- EXHIBIT P4 : TRUE COPY OF THE ERRATUM ISSUED BY THE LAW
SECRETARY TO THE GOVERNMENT, DTD 30.04.2020
- EXHIBIT P5 : THE TRUE COPY OF THE CIRCULAR ISSUED BY
DEPARTMENT OF REVENUE AND MINISTRY OF FINANCE
DATED 17.04.2020
- EXHIBIT P6 : THE TRUE COPY OF THE CIRCULAR ISSUED BY THE
REGISTRAR OF SUPREME COURT OF INDIA ON 29.03.2020.

W.P.(C) TMP No. 279, 285, 310, 313, 334 337 and 338 of 2020

APPENDIX OF W.P. (C) TMP NO.334/2020

PETITIONERS EXTS:

EXHIBIT P1. : TRUE COPY OF THE G.O. P NO. 46/2020/ FIN DATED 23-04-2020

EXHIBIT P2. : TRUE COPY OF THE INTERIM ORDER OF THIS HON'BLE COURT IN WPC TMP NO. 182 / 2020

EXHIBIT P3. : TRUE COPY OF THE THE KERALA DISASTER AND PUBLIC HEALTH EMERGENCY (SPECIAL PROVISIONS) ORDINANCE 2020

EXHIBIT P4. : TRUE COPY OF THE ERRATUM ISSUED BY THE LAW SECRETARY TO THE GOVERNMENT, DTD 30.04.2020

EXHIBIT P5. : THE TRUE COPY OF THE CIRCULAR ISSUED BY DEPARTMENT OF REVENUE AND MINISTRY OF FINANCE DATED 17.04.2020

EXHIBIT P6. : THE TRUE COPY OF THE CIRCULAR ISSUED BY THE REGISTRAR OF SUPREME COURT OF INDIA ON 29.03.2020.

W.P.(C) TMP No. 279, 285, 310, 313, 334 337 and 338 of 2020

APPENDIX OF WPC TMP NO.337/2020

PETITIONER'S EXHIBITS :

- EXT.P1:- TRUE COPY OF THE ORDINANCE NO. 30 OF 2020
PUBLISHED IN THE KERALA GAZETTE AS NOTIFICATION
NO. 6936/LEG.A1/2020/LAW DATED 30-04-2020
- EXT.P2:- TRUE COPY OF THE ERRATUM NOTIFICATION ISSUED AS
SRO NO. 295/2020 DATED 30-04-2020
- EXT.P3:- TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT
AS G.O. (P)NO. 53/2020/FIN. DATED 30-04-2020
- EXT.P4:- TRUE COPY OF THE SALARY, ALLOWANCES AND PENSION OF
MEMBERS OF PARLIAMENT (AMENDMENT) ORDINANCE 2020
PUBLISHED IN THE GAZETTE AS ORDINANCE NO. 3 OF 2020
DATED 7-4-2020
- EXT.P5:- TRUE COPY OF THE CIRCULAR NO. 11 /2020(2) DATED
28-03-2020 ISSUED BY THE LABOUR COMMISSIONER,
GOVERNMENT OF KERALA
- EXT.P6:- TRUE COPY OF THE LETTER WRITTEN BY THE SECRETARY,
MINISTRY OF LABOUR AND EMPLOYMENT, GOVERNMENT OF
INDIA TO ALL CHIEF SECRETARIES OF THE STATES AS
D.O. NO. M-11011/08/2020-MEDIA DATED 20-03-2020

W.P.(C) TMP No. 279, 285, 310, 313, 334 337 and 338 of 2020

APPENDIX OF WPC TMP NO.338/2020

PETITIONERS' EXHIBITS :

- EXHIBIT -P1: TRUE COPY OF THE ORDINANCE NO. 30 OF 2020 PUBLISHED IN THE KERALA GAZETTE AS NOTIFICATION NO. 6936/LEG.A1/2020/LAW DATED 30-04-2020.**
- EXHIBIT -P2: TRUE COPY OF THE ERRATUM NOTIFICATION ISSUED AS SRO NO. 295/2020 DATED 30-04-2020**
- EXHIBIT -P3: TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT AS G.O. (P)NO. 53/2020/FIN. DATED 30-04-2020**
- EXHIBIT -P4: TRUE COPY OF THE SALARY, ALLOWANCES AND PENSION OF MEMBERS OF PARLIAMENT (AMENDMENT) ORDINANCE 2020 PUBLISHED IN THE GAZETTE AS ORDINANCE NO. 3 OF 2020 DATED 7-4-2020**
- EXHIBIT -P5: TRUE COPY OF THE CIRCULAR NO. 11 /2020(2) DATED 28-03-2020 ISSUED BY THE LABOUR COMMISSIONER, GOVERNMENT OF KERALA**
- EXHIBIT -P6: TRUE COPY OF THE LETTER WRITTEN BY THE SECRETARY, MINISTRY OF LABOUR AND EMPLOYMENT, GOVERNMENT OF INDIA TO ALL CHIEF SECRETARIES OF THE STATES AS D.O. NO. M-11011/08/2020-MEDIA DATED 20-03-2020**
- EXHIBIT -P7: TRUE COPY OF THE ORDER ISSUED BY THE LSGD DEPARTMENT BEARING NO. G O 55/2020 /LSGD DATED 20.03.2020 TO ALL THE MAJOR OFFICERS OF THE LSGD DEPARTMENT**
- EXHIBIT -P8: TRUE COPY OF THE ORDER ISSUED BY THE LSGD DEPARTMENT BEARING NO. G O 713/2020 /LSGD DATED 26.03.2020 TO ALL THE MAJOR OFFICERS OF THE LSGD DEPARTMENT I**

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**EXHIBIT -P9: TRUE COPY OF THE GOVERNMENT ORDER BEARING NO.
G.O. (P) NO. 620/2020 LSGD DATED 14.03.2020
ISSUED BY THE SECTION OFFICER**