

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.T.RAVIKUMAR

&

THE HONOURABLE MR. JUSTICE A.M.BABU

TUESDAY, THE 09TH DAY OF OCTOBER 2018 / 17TH ASWINA, 1940

OP (KAT) .No. 349 of 2018

AGAINST THE ORDER IN OA 1780/2018 of KERALA ADMINISTRATIVE  
TRIBUNAL, THIRUVANANTHAPURAM

PETITIONERS:APPLICANTS

- 1 KERALA N.G.O.SANGH  
REPRESENTED BY ITS PRESIDENT SUNIL KUMAR P,  
AGED 49 YEARS, S/O PUSHKARAN, TC 14/2020(2),  
VANROSE JUNCTION,  
UNIVERSITY P.O, THIRUVANANTHAPURAM - 695034
- 2 KERALA N.G.O. SANGH  
REPRESENTED BY ITS GENERAL SECRETARY JAYAKUMAR  
S.K., AGED 49 YEARS, S/O. K. SUKUMARAN NAIR, TC  
14/2020(2), VANROSE JUNCTION, UNIVERSITY P.O,  
THIRUVANANTHAPURAM - 695034
- 3 RATHEESH KUMAR K.S., AGED 38 YEARS,  
S/O. LATE KUMARAN, ATTENDANT,  
KOCHI TALUK OFFICE, FORT COCHIN - 682  
001, RESIDING AT KAKKANATTU HOUSE, KUMBALAM  
P.O., KOCHI - 682 506.
- 4 SATHEESAN M.R.  
AGED 41 YEARS, S/O. RAGHAVAN, STATISTICAL  
INVESTIGATOR, OFFICE OF THE TALUK STATISTICAL  
OFFICE, NORTH PARAVUR, ERNAKULAM - 683 513,  
RESIDING AT MADAVANAPARAMBIL, VALLUVALLY,  
KONNAMMAVU P.O., ERNAKULAM - 683 518.

BY ADVS.

DR.K.P.SATHEESAN (SR.)  
SRI.K.SUDHINKUMAR  
SRI.MUHAMMED IBRAHIM ABDUL SAMAD  
SRI.P.MOHANDAS (ERNAKULAM)

SRI .PRATHAP. S.R.K.  
SRI .SABU PULLAN  
SRI .S.K.ADHITHYAN  
SRI .S.VIBHEESHANAN

RESPONDENTS : RESPONDENTS

- 1 STATE OF KERALA  
REPRESENTED BY THE CHIEF SECRETARY,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM - 695001
- 2 SECRETARY TO GOVERNMENT OF KERALA  
MINISTRY OF FINANCE, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM - 695 001
- 3 KERALA NGO UNION  
N.G.O. UNION BUILDING, P.M.G. JUNCTION,  
THIRUVANANTHAPURAM, PIN-695 033, REPRESENTED BY  
ITS GENERAL SECRETARY, T.C.MATHEWKUTTY, AGED 53  
YEARS, S/O CHACKO T.M, RESIDING AT THOONICKAVIL  
HOUSE ANICKAD P.O, KOTTAYAM, PIN 686 503, MOB-  
9447355137
- 4 T.C.MATHEWKUTTY  
AGED 53 YEARS, S/O CHACKO T.M, JUNIOR  
SUPERINTENDENT, PUBLIC WORKS DEPARTMENT,  
NATIONAL HIGHWAY SOUTH CIRCLE,  
THIRUVANANTHAPURAM, PIN-695 033.

BY ADVS.

ADVOCATE GENERAL SRI C.P SUDHAKARA PRASAD-R1 ,R2  
SRI .S.P.ARAVINDAKSHAN PILLAY-R3, R4  
SMT.K.N.REMYA  
SMT.L.ANNAPOORNA  
SMT.N.SANTHA  
SRI.PETER JOSE CHRISTO  
SRI.S.A.ANAND  
SRI.V.VARGHESE

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR  
ADMISSION ON 09.10.2018, THE COURT ON THE SAME DAY PASSED  
THE FOLLOWING:

**JUDGMENT**

*Ravikumar, J.*

The petitioners who are applicants in O.A (EKM) No.1780 of 2018 on the files of the Kerala Administrative Tribunal filed the captioned original petition on being aggrieved by the order dated 19.9.2018 passed thereon.

2. Unprecedented landslide and incessant rain made havoc in the State of Kerala during the second half of the year 2018. The outrage of the nature was outlived evidently by the strength of unity. After the disaster, extensive revamping became essential in the form of rehabilitation, reconstruction, restoration of infrastructure etc. For raising the resources for resurgence, the Hon'ble Chief Minister of Kerala exhorted all Malayalees around the world to extend helping hand for the said noble cause. He also appealed to all government employees and other earning group to make contribution of a month's salary to the Chief Minister's Distress Relief Fund (CMDRF). Pursuant to the said exhortation, Government has issued Annexure A1 G.O. (P) No.144/18/Fin. dated 11.9.2018 formulating guidelines in the matter

of making donation of a month's salary to CMDRF. Clause 10 therein carries an element of compulsion and in fact, attributing that it is nothing short of extortion that the petitioners preferred the above mentioned original application before the Tribunal contending, inter alia, that a good number of employees had also become victims of nature's onslaught and though they too are willing to contribute, owing to straitened circumstances, they are not in a position to donate an amount as has been fixed under Annexure-A1. By way of an interim order, the petitioners sought for staying the operation of Annexure-A1 G.O dated 11.9.2018. The Tribunal, after hearing the learned counsel for the petitioners and the learned Senior Government Pleader, passed the impugned order dated 19.9.2018. As per the same, the Tribunal granted two week's time to the Government to file statement and ordered to post the matter after two weeks. Normally, when that be the nature of an order passed by the Administrative Tribunal, this Court would not entertain an original petition against such an order. But at the same time, we are constrained to entertain the matter owing to the reasons explained hereinafter:- From the pleadings and also

contentions of the learned counsel for the petitioners, it is evident that the main grievance of the petitioners is against Clause 10 of Annexure-A1. It is apposite to note that the exhortation of the Hon'ble Chief Minister is to donate a month's salary to CMDRF and Annexure-A1 has been issued thereupon, formulating the guidelines in the matter. In Annexure-A1, a cut off date is given as 22.9.2018, as the date for submission of letter of dissent as opposed to the normal rule of seeking letter of consent. Essentially, the Tribunal, going by the pleadings and the nature of Annexure-A1, may have to consider as to what should be solicited is a letter of consent or a letter of dissent and what exactly is the impact of non-submission of a letter of dissent? Whether non-submission of letter of dissent could be taken as a positive note for effecting deduction of one month's salary? If that be the impact, whether such deduction of one month's salary is permissible in law? The Tribunal has skipped to take note of the fact that Clause 10 provides a cut off date for giving letter of dissent and also of the fact, by passage of time without an order of interdiction on Clause 10 may make the subject matter a *fait accompli*. We will

reveal the *raison d'etre* for arriving at such a conclusion a little later. The Tribunal, as per order impugned dated 19.9.2018, posted the matter after two weeks. It is also pertinent to note that when this matter came up before us on 26.9.2018, at the request of the respondents, we had adjourned the matter to 3.10.2018. The matter was thereafter got adjourned to 4.10.2018 and then, to 8.10.2018 and to 9.10.2018, certainly, for placing affidavits to clarify certain questions put by the Court. The learned Advocate General submitted that what dissuaded the Tribunal from taking up the matter after two weeks, may be the pendency of this original petition before this Court. It may be true.

3. We have heard the learned senior counsel for the petitioners, the learned Advocate General and Sri. S.P.Aravindakshan Pillai appearing for additional respondents 3 and 4. We are fully aware of the fact that the source of jurisdiction of this Court to entertain a challenge against an order passed by an Administrative Tribunal is the decision of the Hon'ble Apex Court in **L. Chandra Kumar v. Union of India** [AIR 1997 SC 1125]. It is also a fact that the original

application is still pending before the Tribunal. We have pointedly asked a question to the learned Advocate General as to what would be the impact of non-submission of letter of dissent on or before 22.9.2018. The answer is that in such circumstances, it will be treated as consent and in fact, it was considered as consent and deduction of the first instalment from the salary was also effected from such persons. In such circumstances, we are of the view that further delay in considering the prayer for interim order may make the matter *fait accompli*. Hence, we will proceed to consider the matter. In such circumstances and in view of the facts and reasons expatiated earlier, we will confine our consideration only with respect to the question as to what should be the order to be passed to keep the matter alive especially in view of Clause 10 in Annexure- A1.

4. The learned senior counsel for the petitioners raised various contentions. We are not going into the details of all such contentions as any such consideration or making any observation by us on such matters would certainly cause prejudice to either of the parties before the Tribunal. But at the same time, the nub of the contentions of the

learned senior counsel is that Clause 10 carries an element of compulsion. That apart, in the society the employees who did not give consent would be treated as persons standing against the noble cause and no one would care for the reason or reasons that constrained the employee concerned to refrain from giving a month's salary as donation. The learned counsel further contended that it is not as if the petitioners and the members of the association are unwilling to give contribution to the noble cause. The petitioners have narrated such circumstances in the O.A as also in the O.P. We may hasten to add that it is an admitted fact that almost all the employees have already made some contribution towards CMDRF and that is why in Annexure-A1 it is stated that such contributions on production of receipts, would be deducted from the amount payable by virtue of Annexure-A1.

Shortly stated, the grievance is against Clause 10 which in truth carries an element of compulsion there. Per contra, the learned Advocate General contended that Clause 10 in Annexure-A1 would make it explicitly clear that there is absolute absence of any element



of compulsion therein. That apart, it is submitted that Exts.R2(u) and (v) made the position more clear. The learned Advocate General drew our attention to various orders, virtually circulars, passed by the various institutions including the Apex Court in a bid to canvass the position that there is nothing wrong in asking for letter of dissent. As stated earlier, we are of the considered view that expressing any opinion on that issue would make some prejudice to the parties and therefore, we refrain ourselves from making any observation. Be that as it may, the question to be considered is whether the Tribunal was justified in not considering the scope of passing the interim prayer taking note of the fact that the objectionable clause in Annexure A1 viz., Clause 10, carries a cut off date for giving letter of consent. The learned Advocate General submitted that from the employees who did not submit letter of dissent, the first among the ten instalments in terms of Clause 10 in Annexure A1, was already deducted and due to non-submission of letter of dissent, in terms of Annexure A1, the entire ten instalments could be deducted from such employees. Even when the matter was taken up on the previous posting date, the

learned senior counsel appearing for the petitioners submitted that pending the proceedings, list of persons who gave dissenting letters was prepared and published. Taking note of the said submission, we sought for clarification on that issue. In the affidavit accompanying I.A.No.3 of 2018, it is stated that there is no such proposal to prepare and publish details/lists of employees who are unwilling to contribute. It is also stated therein that HoDs/DDOs and other Heads of Institutions were directed not to prepare and publish details/lists of employees unwilling to contribute to CMDRF. At the same time, a document was handed over to us, for our perusal, by the learned senior counsel appearing for the petitioners to strengthen the contention that such lists are being prepared and published. We do not think it necessary to go into those details at this stage especially in view of Ext.R2(w) circular dated 6.10.2018, produced along with I.A.No.3 of 2018 carrying directions that all HoDs/DDOs and other Heads of Institutions not to prepare and publish details/lists of employees unwilling to contribute to CMDRF and that any violation of the said circular shall be viewed seriously. We believe that

instances of violation of the circular would be curbed appropriately. At the same time, we deem it appropriate to say that preparation of such lists would create a cleavage among the employees and any such publication, would depict person/class of persons as who stand against the noble cause. In such eventuality, they may be estimated in low profile by the public. Reverence of man's self viz., self respect cannot but be better explained by quoting Luis VI of France who said:- "better a thousand times to die with glory than live without honour". Such is the intensity and value of self respect. Whatever be rank or position, no one would like to be viewed by the public as an odd-man-out. Anything which would convey such message would affect social life. Taking into account the entire aspects and the impact of non-submission of letter of dissent and also of the prima facie view that it carries some element of compulsion, we are of the view that till the Tribunal disposes of the original application or passes interim order on the prayer for interim relief, Clause 10 in Annexure A1 shall stand stayed. Accordingly, it stands stayed till the Tribunal disposes of the original application or passes interim order on the prayer for interim

relief, whichever is earlier. At the same time, we make it clear that this order will not stand in the way of collecting donation/voluntary contribution being made by the employees in the State towards CMDRF based on their financial capacity. With this order, we dispose of the original petition with a direction to the Tribunal to dispose of the original application as expeditiously as possible. Taking into account the nature of the issues involved in this original petition, it is only befitting to dispose of the original application within a period of one month from today and needless to say that in case it is impossible, to dispose of the prayer for interim relief within the aforesaid period.

**Sd/-**

**C . T . RAVIKUMAR**

**JUDGE**

**Sd/-**

**A . M . BABU**

**JUDGE**

APPENDIX

PETITIONERS' EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE ORDER DATED 17.09.2018  
IN W.P. (C) NO. 30154/2018.
- EXHIBIT P2 TRUE COPY OF THE ORDER NO. 74/2018/FIN  
DATED 14-08-2018 ISSUED BY THE 2ND  
RESPONDENT.
- EXHIBIT P3 TRUE COPY OF THE NOTE NO. 69/C.S./2018  
DATED 15-09-2018 ISSUED BY THE FIRST  
RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE O.A. (EKM)NO.1780/2018.
- EXHIBIT P5 TRUE COPY OF THE ORDER DATED 19.09.2018  
IN O.A. (EKM) NO. 1780/2018.

RESPONDENTS' EXHIBITS:

- EXHIBIT R2 (A) TRUE PHOTOCOPY OF THE MINUTES OF THE  
MEETING DATED 04.09.2018.
- EXHIBIT R2 (B) TRUE PHOTOCOPY OF THE CIRCULAR NO.FN  
12/SCI/CASH/2018 DATED 20.08.2018.
- EXHIBIT R2 (C) TRUE PHOTOCOPY OF THE CIRCULAR  
NO.A.60011/01/2018/ECC DATED 20.08.2018  
OF AIRPORT AUTHORITY OF INDIA.
- EXHIBIT R2 (D) TRUE PHOTOCOPY OF THE LETTER DATED  
21.08.2018 OF THE CHAIRMAN, RAILWAY  
BOARD AND EX-OFFICIO, PRINCIPAL  
SECRETARY, GOVERNMENT OF INDIA,  
MINISTRY OF RAILWAYS.
- EXHIBIT R2 (E) TRUE COPY OF OFFICIAL MEMORANDUM  
NO.G1(2) 79236/2018 DATED 18.09.18  
ISSUED BY THE JOINT REGISTRAR (DDO)

- EXHIBIT R2 (F) TRUE PHOTOCOPY OF THE JAMMU AND KASHMIR GOVERNMENT ORDER NO.385-F OF 2018 DATED 10.09.2018.
- EXHIBIT R2 (G) TRUE PHOTOCOPY OF THE JUDGMENT OF HONOURABLE HIGH COURT OF KARNATAKA IN NIJAGUNI V. STATE OF KARNATAKA AND OTHERS ILR 2005 KAR 2638, 2005(1) KARLJ 248
- EXHIBIT R2 (H) TRUE PHOTOCOPY OF THE LETTER DATED 21.08.2018 OF SRI.RAMESH CHENNITHALA.
- EXHIBIT R2 (I) TRUE PHOTOCOPY OF THE ACKNOWLEDGE LETTER NO.CC 799/2018/CMO DATED 30.8.2018 OF CHIEF MINISTER OF KERALA.
- EXHIBIT R2 (J) TRUE PHOTOCOPY OF THE FORWARDING LETTER DATED 29.08.2018 OF JUSTICE M.R.HARIHARAN NAIR.
- EXHIBIT R2 (K) TRUE PHOTOCOPY OF THE STATEMENTS OF SUPPORT FELICITATED FROM THE GOVERNMENT OF ANDRA PRADESH.
- EXHIBIT R2 (L) TRUE PHOTOCOPY OF THE FORWARDING LETTER DATED 28.09.2018 FROM THE CHAIRMAN OF THE JHARKHAND GRAMIN BANK.
- EXHIBIT R2 (M) TRUE PHOTOCOPY OF THE LETTER DATED 31.08.2018 OF THE VICE CHANCELLOR IN CHARGE OF THE MAHARASHTRA NATIONAL LAW UNIVERSITY, MUMBAI.
- EXHIBIT R2 (N) TRUE PHOTOCOPY OF THE LETTER DATED 06.09.2018 FROM THE CHIEF EXECUTIVE OFFICER OF THE DISTRICT CO-OPERATIVE CENTRAL BANK LTD., VISHAKAPATANAM.
- EXHIBIT R2 (O) TRUE PHOTOCOPY OF THE SUBMISSION DATED 08.09.2018 OF AJAYAKUMAR A, ASSISTANT SECTION OFFICER, GENERAL ADMINISTRATION (B) DEPARTMENT.

- EXHIBIT R2 (P) TRUE PHOTOCOPY OF THE SUBMISSION DATED 22.09.2018 OF DHANYA K.S, ASSISTANT, CULTURAL AFFAIRS (C) DEPARTMENT.
- EXHIBIT R2 (Q) TRUE PHOTOCOPY OF THE SUBMISSION DATED 19.09.2018 OF CINY JOHN, SENIOR GRADE ASSISTANT, HIGHER EDUCATION (A) DEPARTMENT.
- EXHIBIT R2 (R) TRUE PHOTOCOPY OF THE SUBMISSION DATED 22.09.2018 OF S.PADMAJA, ASSISTANT SECTION OFFICER, GENERAL EDUCATION (S) DEPARTMENT.
- EXHIBIT R2 (S) TRUE PHOTOCOPY OF THE SUBMISSION OF THUSHAR S., SENIOR GRADE ASSISTANT, TAXES (A) DEPARTMENT.
- EXHIBIT R2 (T) TRUE PHOTOCOPY OF THE SUBMISSION DATED 18.09.2018 OF UDAYAKUMARAN NAIR S., ASSISTANT SECTION OFFICER, GOVERNMENT SECRETARIAT.
- EXHIBIT R2 (U) TRUE PHOTOCOPY OF NOTE NO.69/CS/2018 DATED 15.09.2018 OF THE CHIEF SECRETARY TO GOVERNMENT.
- EXHIBIT R2 (V) TRUE PHOTOCOPY OF CIRCULAR NO.111/2018/FIN. DATED 29.09.2018.
- EXHIBIT R2 (W) A TRUE PHOTOCOPY OF THE CIRCULAR DATED 6.10.2018.

spc/