



2026:KER:14042

W.P (C) No.824/2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 17TH DAY OF FEBRUARY 2026 / 28TH MAGHA, 1947WP(C) NO. 824 OF 2026PETITIONER/S:

1 M.K. SURESH KUMAR, NM
AGED 67 YEARS, 'KAIVALYAM', THOTTUDA P.O.,
KANNUR, PIN - 670007

2 K. PADMANABHAN,
AGED 60 YEARS, S/O. KUNHIRAMAN, THAYANADATH HOUSE,
PALAYAD P.O., THALASSERY, KANNUR, PIN - 670661

BY ADVS.
SRI.ANAND B. MENON
SHRI.VIJAYAKUMAR K.
SRI.A.ABDUL NABEEL

RESPONDENT/S:

1 THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY, MINISTRY OF LABOUR AND
EMPLOYMENT, GOVERNMENT OF INDIA, SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI, PIN - 110001

2 THE JOINT SECRETARY
TO GOVERNMENT, MINISTRY OF LABOUR AND EMPLOYMENT,
GOVERNMENT OF INDIA, SHRAM SHAKTI BHAWAN, RAFI MARG,
NEW DELHI, PIN - 110001

3 KERALA STATE ROAD TRANSPORT CORPORATION WORKERS
FEDERATION,
REG. NO.283/71, NANTHancode, THIRUVANANTHAPURAM
DISTRICT, REPRESENTED BY ITS PRESIDENT, S. SEETHILAL,
AGED 60 YEARS, S/O. SUKUMARAN, RESIDING AT KANDATHIL
HOUSE, KAROOR, AMBALAPUZHA P.O., ALAPPUZHA DISTRICT
[ADDL. 3RD RESPONDENT IS IMPLEADED AS PER ORDER DATED
06-02-2026 IN IA No.1/2026 IN WPC No.824/2026]



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JOSE CHALISSERY,
S/O. VARUNNI, SECRETARY OF PHARMACEUTICAL CORPORATION
(IM) WORKERS UNION (INTUC), CHALISSERY HOUSE,
MANNUTHY P.O., TIRISSUR
[ADDL. 4TH RESPONDENT IS IMPLEADED AS PER ORDER DATED
17-02-2026 IN IA No.2/2026 IN WPC No.824/2026]

BY ADVS.

SHRI.VISHNU J., CGC
SRI.LIJU.V.STEPHEN
SMT.INDU SUSAN JACOB
SMT.JIJI JOY
SHRI.SANJAY JOHNSON MATHEW
SMT.PREETHI RAMAKRISHNAN (P-212)
SRI.PRATAP ABRAHAM VARGHESE
SHRI.MANOJKUMAR G.
SHRI.ASHOK MENON

OTHER PRESENT:

SRI. AR.L SUNDARESAN (ASGI)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12.01.2026, THE COURT ON 17.02.2026 DELIVERED THE FOLLOWING:

**'C.R'****JUDGMENT**

This writ petition has been filed seeking a writ of *Certiorari* to quash Ext.P1 notification issued as S.O. 5683(E) dated 08-12-2025 by the Government of India in the Ministry of Labour and Employment in the exercise of jurisdiction under Section 103 of the Industrial Relations Code, 2020 (hereinafter referred to as 'the 2020 Code') *inter alia* providing that existing Labour Courts, Industrial Tribunal and National Tribunals constituted under the Industrial Disputes Act, 1947 (hereinafter referred to as 'the 1947 Act') shall continue to adjudicate the existing as well as new cases arising under the provisions of the Trade Unions Act, 1926, the Industrial Employment (Standing Orders), 1946 and the 1947 Act as well as the 2020 Code till the constitution of Industrial Tribunals and National Industrial Tribunals under the 2020 Code. It is the case of the petitioners that Ext.P1 notification is *ultra vires* the provisions of the 2020 Code and cannot be sustained in law.

2. The learned counsel appearing for the petitioners vehemently contends that Ext.P1 notification dated 08-12-2025 cannot be sustained in law. It is submitted that such a notification is not contemplated by the provisions of Section 103(1) of the 2020 Code. It is submitted that the power



to remove difficulties, which has been conferred on the Central Government in terms of the provisions contained in Section 103 of the 2020 Code, makes it clear that the removal of difficulties clause only permits the making of an order or provision not inconsistent with the provisions of the 2020 Code. It is submitted that Ext.P1 notification runs counter to the provisions of Section 44(7) of the 2020 Code, which specifies that a certain category of disputes shall be adjudicated only by a Bench consisting of a Judicial Member and an Administrative Member. It is submitted that permitting the adjudication of such disputes by Labour Courts or Tribunals constituted under the 1947 Act, consisting only of one Presiding Officer, is contrary to the provisions of the 2020 Code. It is submitted that Section 51(1) of the 2020 Code mandates the transfer of all pending cases to the newly formed Tribunals and permitting the adjudication of disputes by existing Courts/Tribunals is against the provisions of the 2020 Code. It is submitted with reference to the decision of the Supreme Court in ***State of West Bengal v. Anindya Sundar Das and others, (2022) 16 SCC 318***, that under the cover of the removal of difficulties clause, the Central Government cannot '*remove all obstacles in its path which arise due to statutory restrictions*'. It is submitted that the same decision holds that if such a course of action is permitted, the same would be antithetical to the Rule of Law. It is



submitted that permitting adjudication of disputes by the existing Labour Courts/Tribunals would amount to sidestepping the provisions of the 2020 Code and defeating the purposes of the legislation. It is submitted that the Central Government cannot, therefore, take refuge under Section 103 and the terms of Ext.P1 notification.

3. Sri. A.R.L Sundaresan, the learned Additional Solicitor General of India, appearing for the official respondents, would submit that the writ petition is not maintainable. He has questioned the *locus standi* of the petitioners to file the present petition. The learned Additional Solicitor General has taken me through the provisions of Sections 47, 51, 103, and 104 of the 2020 Code. He contends that the failure to issue a notification specifying that the existing Labour Courts/Tribunals shall continue to exercise jurisdiction to decide disputes would result in a stalemate. It is submitted that the transfer of cases contemplated by provisions of Section 51 can be made only after new Forums are constituted, keeping in mind the provisions of the 2020 Code and directions issued by the Supreme Court in the matter of appointment of Tribunal members, and it would not be in the public interest if the adjudicatory Forums presently functioning are abruptly stopped. It is submitted that the issue had gained the attention of the Division Bench of the Delhi High Court in W.P (C) No.18325/2025, as also a Division



Bench of the Madras High Court in W.P No.47257/2025. It is submitted that in both the aforesaid judgments, the Court noted the terms of Ext.P1 notification, as also two other notifications issued as S.O. Nos. 464(E) and 465(E), both dated 02-02-2026, and concluded (essentially) that there is no illegality whatsoever in Ext.P1 notification. It is submitted that allowing the existing adjudicatory mechanism to continue till the new Tribunals are constituted under the 2020 Code does not cause any prejudice to the petitioners, and the terms of Ext.P1 cannot be said to be *ultra vires* to the provisions of the 2020 Code.

4. Having heard the learned counsel for the petitioners and the learned Additional Solicitor General of India appearing for the official respondents, as also the learned counsel appearing for the additional 4th respondent, I am of the opinion that the petitioners have not made out any ground for interference with Ext.P1 notification. Section 103 of the 2020 Code reads thus:

“103. (1) *If any difficulty arises in giving effect to the provisions of this Code, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Code as may appear to it to be necessary for removing the difficulty:*

Provided that no order shall be made under this section after the expiry of three years from the date of commencement of this Code.



(2) Every order made under this section shall be laid before each House of Parliament.”

It is true that when issuing the notification dated 21-11-2025, the Central Government did not deem it appropriate to specify the dates on which the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947, will stand repealed. However, by a subsequent notification as S.O. No. 464 (E) dated 02-02-2026, the Central Government has specified that the provisions of the Trade Unions Act, 1926, the Industrial Employment (Standing Orders), 1946, and the Industrial Disputes Act, 1947, stand repealed with effect from the date of giving into force of the 2020 Code, which is 21-11-2025. The provisions of Section 103 of the 2020 Code empower the Central Government to issue orders or make provisions not inconsistent with the provisions of the Code for removing any difficulties in giving effect to the provisions of the 2020 Code. The provisions of 103 indeed make it clear that this provision will not empower the issuance of any order or the making of any provision inconsistent with the provisions of the 2020 Code. Ext.P1 notification dated 08-12-2025 and the notification published as S.O. 464(E) dated 02-02-2025, enabling all statutory authorities under the Trade Unions Act, 1926, the Industrial Employment (Standing Orders), 1946, and the Industrial Disputes Act, 1947, to function, is not *ultra*



vires the provisions of the 2020 Code. In ***Anindya Sundar Das and others (supra)***, it was held that, under the guise of exercising the power to remove difficulties, the Government cannot sidestep statutory provisions and cannot remove all obstacles in its path that arise due to statutory restrictions. However, one must be conscious of the fact that permitting the existing adjudicatory mechanisms and the statutory authorities to continue till the new adjudicatory mechanisms are put in place cannot be said to be an instance of sidestepping the provisions of the 2020 Code or the removal of obstacles by the Government to get over statutory restrictions. Holding that in respect of any pending proceedings, the adjudicatory bodies under the repealed enactments continue to have jurisdiction presents no difficulty. In ***Garikapati Veeraya v. N. Subbiah Choudhry, AIR 1957 SC 540***, it was held:

*“25. In construing the Articles of the Constitution we must bear in mind certain cardinal rules of construction. It has been said in Hough v. Windus [(1884) 12 QBD 224 at 237] that “statutes should be interpreted, if possible, so as to respect vested right”. **The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed** [Leeds and County Bank Ltd. v. Walker, (1883) 11 QBD 84 at p. 91 : Moon v. Durden, (1848) 2 Ex. 22 : 76 RR 479 at p. 495]. The following observation of Rankin, C.J. in *Sadar Ali v. Dalimuddin* at p. 520 is also apposite and helpful: “Unless the contrary can be shown the provision which takes away the jurisdiction is itself subject to the implied saving of the litigant's right”.”*



In **Gammon India Ltd. v. Union of India, (1974) 1 SCC 596**, Section 34 of the Contract Labour (Regulation and Abolition) Act, 1970, which contained a similarly worded ‘removal of difficulties’ clause, was challenged before the Supreme Court. It was held:

“38. Section 34 of the Act was challenged as unconstitutional. Section 34 of the Act provides that if any difficulty arises in giving effect to the provisions of the Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of the Act as appears to it to be necessary or expedient for removing the difficulty. Reliance was placed by petitioners on the decision of this Court in *Jalan Trading Co. v. Mazdoor Union*. Section 37 of the Act in that case authorised the Government to provide by order for removal of doubts or difficulties in giving effect to the provisions of the Act. This Court held that it is for the legislature to make provisions for removal of doubts or difficulties. The section in that case contained a provision that the order must not be inconsistent with the purposes of the Act. Another provision in the section made the order of the Government final. This Court held that in substance there was the vice of delegation of legislation to executive authority. Two reasons were given. First the section authorised the Government to determine for itself what the purposes of the Act were and to make provisions for removal of doubts or difficulties. Second, the power to remove the doubts or difficulties by altering the provisions of the Act would in substance amount to exercise of legislative authority and that could not be delegated to an executive authority. In the present case, neither finality nor alteration is contemplated in any order under Section 34 of the Act. Section 34 is for giving effect to the provisions of the Act. This provision is an application of the internal functioning of the administrative machinery. Difficulties can only arise in the implementation of rules. Therefore, Section 34, of the Act does not amount to excessive delegation.”



In ***Bengal Iron Corp. v. CTO, 1994 Supp (1) SCC 310*** Section 42 of the Andhra Pradesh General Sales Tax Act, 1957, which contained a similar clause, was considered by the Supreme Court. It was held:

*“17. A word about the validity of Section 42 of the A.P. Act. Section 37 of the Payment of Bonus Act conferred a similar power upon the Central Government; it further declared that any such order would be final. It was struck down by a Constitution Bench of this Court in *Jalan Trading Co. (P) Ltd. v. Mill Mazdoor Sabha*, as amounting to excessive delegation of legislative power. However, in a subsequent decision in *Gammon India Ltd. v. Union of India*, it has been explained by another Constitution Bench that the decision in *Jalan Trading* was influenced by the words occurring at the end of Section 37 of the Payment of Bonus Act to the effect that the direction of the Government issued thereunder was final. Inasmuch as the said words are not there in Section 34 of the Contract Labour (Regulation and Abolition) Act, 1970, it was held, Section 34 cannot be said to suffer from the vice of excessive delegation of legislative power. It is meant “for giving effect to the provisions of the Act”, it was held. Sub-section (2) of Section 42 of the A.P. Act does no doubt not contain the aforesaid offending words, and cannot therefore be characterised as invalid. Yet, it must be remembered that the said power can be exercised “for giving effect to the provisions of the Act”, and not in derogation thereof. As we shall presently indicate it is necessary to bear this limitation in mind while examining the effect of G.O.Ms. No. 383.”*

The decisions in ***Gammon India (supra)*** and ***Bengal Iron Corp. (supra)*** elaborate on the scope of a ‘removal of difficulties clause’ and reiterate the necessity of such a clause when a new law is enacted. Furthermore, the Division Bench of the Madras High Court in W.P.



No.47257/2025 and the Division Bench of the Delhi High Court in W.P. (C) No.18325/2025 have taken cognizance of the subsequent notifications and have determined that there is no ground for interference with those notifications. Furthermore, it is crucial to acknowledge that Section 103 of the 2020 Code incorporates inherent safeguards. The authority to issue an order under this provision is subject to a three-year limitation. Additionally, the provision stipulates that every order "*made under this section shall be laid before each House of Parliament*". In the celebrated work '**Principles of Statutory Interpretation, G.P Singh, 13th Edition, 2012**', (at page 1053) it has been observed:

"The object of any requirement of laying provided in enabling Acts is to subject the subordinate law making authority to the vigilance and control of the Legislature."

For all the aforesaid reasons, I find no reason to grant the relief sought. The writ petition fails, and it is accordingly dismissed.

Sd/-
GOPINATH P.
JUDGE



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APPENDIX OF WP(C) NO. 824 OF 2026**PETITIONER EXHIBITS**

Exhibit P1 A TRUE COPY OF NOTIFICATION NO.5683 (E) DATED 08.12.2025 ISSUED BY THE MINISTRY OF LABOUR AND EMPLOYMENT

Exhibit P2 A TRUE COPY OF NOTIFICATION NO. 5320 (E) DATED 21.11.2025 ISSUED BY THE CENTRAL GOVERNMENT

RESPONDENT EXHIBITS

Exhibit R1(a) A true copy of the order of the Division Bench of the Honourable High Court of Madras in W.P.No.47257 of 2025 and W.M.P.No.52794 of 2025 dated 09.12.2025

RESPONDENT EXHIBITS

Exhibit R3 A TRUE COPY OF THE REGISTRATION CERTIFICATE NO. 283/1971 OF THE KERALA STATE ROAD TRANSPORT CORPORATION WORKERS FEDERATION DATED 17/10/1971