

**പതിമൂന്നാം കേരള നിയമസഭ
പതിനഞ്ചാം സമ്മേളനം**

നക്ഷത്ര ചിഹ്നമിടാത്തചോദ്യം നം.899

02.12.2015 ൽ മറുപടിയിൽ

പ്ലാച്ചിമട - ടിബ്യൂണൽ ബിൽ

ചോദ്യം

ശ്രീ. എ. കെ. ബാലൻ
,, എം. ചന്ദ്രൻ
,, കെ. വി. വിജയദാസ്
ശ്രീമതി കെ. എസ്. സലീഖ

മറുപടി

ശ്രീ. പി. ജെ. ജോസഫ്
(ജലവിഭവ വകുപ്പുമന്ത്രി)

എ] സംസ്ഥാന നിയമസഭ ഐക്യ കണ്ണനെ പാസ്സാക്കിയ പ്ലാച്ചിമട കൊക്കൊക്കോള വിക്റ്റിംസ് റിലീഫ് ആൻഡ് കോമ്പൻസേഷൻ ക്ലെയിംസ് ടിബ്യൂണൽ ബിൽ പിൻവലിക്കാനുള്ള കേന്ദ്ര ആഭ്യന്തര മന്ത്രാലയത്തിന്റെ നിർദ്ദേശം അംഗീകരിക്കുവാൻ കഴിയില്ലെന്ന് കേന്ദ്ര സർക്കാരിനെ അറിയിച്ചിട്ടുണ്ടോ; കത്തിന്റെ പകർപ്പ് ലഭ്യമാക്കുമോ; എന്തടിസ്ഥാനത്തിലാണ് ബിൽ പിൻവലിക്കാൻ കേന്ദ്രസർക്കാർ ആവശ്യപ്പെട്ടത്?

എ] കേന്ദ്ര ആഭ്യന്തര മന്ത്രാലയം മടക്കിയ പ്രസ്തുത ബിൽ രാഷ്ട്രപതിയുടെ അംഗീകാരത്തിനായി സമർപ്പിക്കാൻ അഭ്യർത്ഥിച്ചുകൊണ്ട് ബിൽ വീണ്ടും ബഹുഗവർണ്ണർ മുഖാന്തിരം കേന്ദ്ര ആഭ്യന്തര മന്ത്രാലയത്തിന് അയച്ചിട്ടുണ്ട്. കത്തിന്റെ പകർപ്പ് അനുബന്ധമായി ചേർക്കുന്നു.

2010-ലെ ദേശീയ ഹരിത ടിബ്യൂണൽ ആക്റ്റിൽ വിഭാവനം ചെയ്തിട്ടുള്ള നിയമങ്ങൾ തന്നെ ഇക്കാര്യത്തിൽ മതിയായതാണെന്ന കാരണത്താലാണ് ബിൽ തിരികെ അയച്ചത്.

ബി] കേന്ദ്ര സർക്കാരിന്റെ പ്രസ്തുത നിലപാടിൽ പ്രതിഷേധം അറിയിച്ചിട്ടുണ്ടോ; വിശദാംശം നൽകുമോ;

ബി] 19/09/2015-ലെ321/ലെഗ് എഫ്2/2011/നിയമം നമ്പർ കത്ത് പ്രകാരം ബഹുഗവർണ്ണർ മുഖേന പ്രതിഷേധം അറിയിച്ചിട്ടുണ്ട്.

സി] ഇക്കാര്യത്തിൽ നിയമോപദേശം തേടിയിരുന്നോ; വിശദാംശം വ്യക്തമാക്കാമോ?

സി] കേരള അഡ്വക്കേറ്റ് ജനറലിൽനിന്നും നിയമോപദേശം തേടിയിരുന്നു.

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സെക്ഷൻ ഓഫീസർ



B. G. HARINDRANATH
LAW SECRETARY

1335
കേരളം

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No. 321/Leg.F2/2011/Law.

Dated, Thiruvananthapuram, 19.09.2015.

The Secretary to Governor,
Kerala Raj Bhavan,
Thiruvananthapuram.

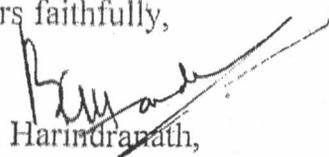
Sir,

Sub:- The Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Bill, 2011 –the views of the State Government with regard to the stand taken by the Ministry of Home Affairs, Government of India - forwarding of- reg.

Ref:- Your office letter No.GS5-736/2011 dated 09.07.2015.

With reference to the letter cited, I am forwarding herewith the draft letter with the views of the State Government on the actions taken by the Central Government on the Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Bill, 2011 along with the authenticated copies of the Bill, which was also returned to the State Government from the Ministry of Home Affairs, Government of India with the endorsement that "returned herewith to the State Government treating the same as withdrawn". I request that the letter along with the authenticated copies of the Bill may be forwarded to the Ministry of Home Affairs, Government of India, for necessary action.

Yours faithfully,


B.G. Harindranath,
Law Secretary.

No.

Thiruvananthapuram,
Dated, . . .2015.

From

The Secretary to Governor.

To

The Secretary to Government of India,
Ministry of Home Affairs,
New Delhi.

Sir,

Sub:- Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Bill, 2011 –copies of the Bill in triplicate reserved by the Governor for obtaining the assent of the Hon'ble President of India- returned - reg.

Ref:- 1. This office letter No.GS5-736/2011 dated 29.03.2011.
2. Letter No.17/12/2009-Jud. & PP dated 09.07.2015 of that office.
3. Letter of even number dated 01.12.2014 of that office.

I am to invite your attention to the references cited and to forward you the following reply. I am also directed to return herewith the three copies of the Bill as passed by the State Legislature and reserved by the Governor of Kerala for the consideration and assent of the President of India for further action, which was returned from that office to this State Government, with the endorsement "returned herewith to the State Government treating the same as withdrawn".

“The Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Bill, 2011 was unanimously passed by the Kerala Legislative Assembly on 24.02.2011 and reserved by the Governor of Kerala as per Article 200 of the Constitution of India for the consideration and assent of the President of India under Article 201 of the Constitution of India. As per Article 201 of the Constitution, when a Bill is reserved by the Governor for the consideration of the President, the President shall declare that he assents to the Bill or that he withholds assent therefrom.

It appears that the said Bill was not submitted to the President of India for his consideration and assent as provided in Article 201 of the Constitution of India. The Bill as reserved by the Governor has been returned by the Ministry of Home Affairs to the State Government. As per the Constitution of India, only the President of India is empowered to take a decision as to a Bill passed by the Legislature of a State and reserved by the Governor of that State for the consideration and assent of the President. This power has been specified in Article 201 of the Constitution of India. As per the Constitution of India, a Bill reserved by the Governor of a State cannot be returned by the Ministry of Home Affairs or any other Department of the Government of India as a part of

their executive action. The executive wing of the Central Government cannot exercise a Constitutional power vested with the President of India and they cannot instruct a State Government to withdraw a Bill passed by a Legislature of the State. It is not legally possible to withdraw a Bill passed by a Legislature of the State by the State Government. It is not legally possible to withdraw a Bill pending with the Ministry also. Thus, the action of the Ministry of Home Affairs, Government of India is irregular and is against the spirit of the Constitution of India.

In *Kaiser-I-Hind Pvt. Ltd. And Ors vs National Textile Corporation (AIR 2002 SC 3404)*, the Hon'ble Supreme Court of India has clarified that "*....., the words "reserved for consideration" would definitely indicate that there should be active application of mind by the President to the repugnancy pointed out between the proposed State law and the earlier law made by the Parliament and the necessity of having such a law....*"

As per the proviso to Article 201 of the Constitution of India, when a Bill is reserved by a Governor for the consideration of the President, the President may direct the Governor to return the Bill to the House of the Legislature of the State together with a message as is mentioned in the first proviso to Article 200 and when a Bill is so returned, the House shall

reconsider it accordingly within a period of six months from the date of receipt of such message. Therefore, in the absence of such a message, the State Legislature cannot reconsider or withdraw a Bill passed by the Legislature. Hence, the instructions on the part of the Government of India is unconstitutional as the Government cannot withdraw a Bill passed by the State Legislature and also that without receiving a message from the Governor as stated above the Government cannot take up the matter before the State Legislature.

Earlier, during the very same tenure of the 13th Kerala Legislative Assembly itself, when the Central Government demanded to withdraw the Kerala Grants and Leases (Modification of Rights) Bill, 1999 and when the Centre was appraised of the legal position, the direction of the President was informed to the House as a message of the Governor and the Bill was withdrawn based on the same. Hence the Hon'ble Speaker of the Kerala Legislative Assembly has Ruled that the Law Department should intimate the Central Home Ministry that the present action taken by them is not legally tenable while passing ruling to the Point of Order raised by Shri C.Mammutty M.L.A. with regard to the action of unilateral withdrawal of the said Bill.

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Hence, the State Government would like to bring to the notice of that Ministry that this Government is not in a position to withdraw the said Bill which was unanimously passed by the State Legislature and reserved by the Governor of Kerala under Article 200 of the Constitution of India for the consideration and assent of the Hon'ble President of India under Article 201 of the Constitution of India. In the above circumstances, the Ministry of Home Affairs is requested to reconsider their views in the light of the Constitutional provisions explained above and the clarifications and explanations already furnished by the State Government and the Bill may be placed before the Hon'ble President of India for his consideration and assent."

The Reserved Copies of the Bill in triplicate which was returned to the State Government is enclosed herewith for placing it before the Hon'ble President of India.

Yours faithfully,

.....
Secretary to Governor.

Enclosure: As above.

[Handwritten signature]
omath 22/12/12