

**15 -ാം കേരള നിയമസഭ**

**8 -ാം സമ്മേളനം**

**നക്ഷത്ര ചിഹ്നം ഇല്ലാത്ത ചോദ്യം നം. 2368**

**27-02-2023 - ൽ മറുപടിയ്ക്ക്**

**കിഫ്ബി രൂപീകരണവുമായി ബന്ധപ്പെട്ട് നിയമോപദേശം**

ചോദ്യം		ഉത്തരം	
<b>ശ്രീ. എ. പി. അനിൽ കുമാർ</b>		<b>ശ്രീ കെ എൻ ബാലഗോപാൽ (ധനകാര്യ വകുപ്പ് മന്ത്രി)</b>	
(എ)	കിഫ്ബി രൂപീകരണവുമായി ബന്ധപ്പെട്ട് സംസ്ഥാന സർക്കാർ നിയമോപദേശം തേടിയിട്ടുണ്ടോ; എങ്കിൽ ആരിൽ നിന്നാണ് നിയമോപദേശം തേടിയത്; എത്ര രൂപയാണ് ഫീസിനത്തിൽ ചെലവഴിച്ചത്; വിശദാംശം വ്യക്തമാക്കുമോ;	(എ)	കിഫ്ബി രൂപീകരണവുമായി ബന്ധപ്പെട്ട് നിയമ വകുപ്പിന്റെയും അഡ്വക്കേറ്റ് ജനറലിന്റെയും നിയമോപദേശം ലഭ്യമാക്കിയിരുന്നു.
(ബി)	പ്രസ്തുത നിയമോപദേശത്തിന്റെ പകർപ്പ് ലഭ്യമാക്കുമോ?	(ബി)	പ്രസ്തുത നിയമോപദേശങ്ങളുടെ പകർപ്പുകൾ അനുബന്ധമായി നൽകുന്നു.

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**NOTE FOR CIRCULATION TO GOVERNOR**

Infrastructure development is a sine qua non for economic progress. Infrastructure projects require massive capital expenditure. In the past, these were met wholly from budgetary sources. However the range of infrastructure projects now demanded in a State and the scale of investment that this calls for, the budget of a state can no longer accommodate the requirements. Many states are now resorting to sources outside the budget for financing infrastructure projects. The State of Kerala has very large requirements in the major infrastructure sectors like power, roads, irrigation Port Water supply Inland Navigation solid waste management and drainage and urban Infrastructure Mobilisation of adequate funds to invest in vital infrastructure projects has been a subject for consideration of the government for some time.

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Government are of the view that notwithstanding agencies that already exist in some sectors, the overall quantum of funds mobilised remains insignificant against the scale of resources needed for infrastructure projects in the State. The Government of Kerala feels the need for an umbrella agency in the nature of the proposed Kerala Infrastructure Investment Fund. Such an agency will give a significant impetus to bringing in prospective investment into the State. The State of Kerala should also, like other States in the country, be able to take advantage of the current liquidity in the money market and garner a fair share of resources.

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The proposed Fund will be an effective instrument for the State to avail of resources in an unified and concerted manner, rather than resorting to separate attempts to mobilise funds in various sectors. A single autonomous agency like the Fund will be able to achieve significant economies of scale in transaction and borrowing costs. Furthermore, by creating a Central institution, Government will be



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able to take a wholistic view of infrastructure investment in the State and take up major projects needing significant capital outlay on the basis of their economic viability.

62 As the Legislative Assembly is not in session and as the above proposals have to be given effect to immediately, it was decided to promulgate an ordinance to give effect to the proposals.

63 The decision of the Council of Ministers may be seen at Para 54. ante. The Council at its meeting held on 10.11.99 approved the draft Kerala Infrastructure Investment Fund Ordinance and decided to recommend to the Governor to promulgate the ordinance.

64 The draft ordinance falls mainly under entries ~~30~~ and <sup>and 43</sup> 32 of the State List in the Seventh Schedule to the Constitution of India, namely:-

#### State List

*"32. Incorporation, regulation and winding up of corporation, other than those specified in List I and Universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies"*

*"43. Public Debt of the State"*

The State Legislature is, therefore, competent to enact the measure. The Governor is therefore, competent to promulgate the ordinance. The provisions of the draft ordinance are not inconsistent with any of the provisions of the Constitution, particularly those relating to the Fundamental Rights. Instructions from the President are not necessary for the promulgation of the ordinance.



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Two Sign Manual copies of the draft ordinance are submitted at pages 281-<sup>303</sup>cf. The Governor may be pleased to approve the draft ordinance and to promulgate the same.

66 One copy of the ordinance as promulgated may be retained in the Governor's Secretariat and the other copy may be returned to this Department for further action.

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*[Signature]*  
M. DEIVANABER  
Joint Secretary to Govt.  
Law Department  
Secretariat, Thiruvananthapuram  
Phone: 468665

*[Signature]*  
10/11

*[Signature]*  
10-11-99

C. S. Padmanabhan Nair -  
Special Secretary to Govt.  
Law Department  
Phone: 333497 | 468384

*[Signature]*  
10/11/99

M. Mohankumar  
Chief Secretary

*[Signature]*  
10/11/99

E. Chandrasekharan Nair  
Minister for Food, Tourism & Law

(F, T & L)

(Fin & Excise)

*[Signature]*  
10/11/99  
T. SIVADASA MENON  
Minister (Fin. & Ex.)

*[Signature]*  
10/11/99

B. K. NATHAN  
Chief Minister  
Kerala

GOVERNOR

*[Signature]*

11/11/99  
GOVERNOR

*[Signature]*  
11/11/99





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Promotions 2

K. DAMODARAN  
ADVOCATE-GENERAL  
KERALA

Phone

Office { 395052  
          395096  
Per. : 394505  
Res. (Per.) : 390886  
" (Off.) : 390051  
FAX 0484-394674

No.

ERNAKULAM  
Kochi-31  
Pin Code : 682 031

12th October 1999.

The Principal Secretary (Finance),  
Government of Kerala,  
Thiruvananthapuram.

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place on  
Spring  
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Sir,

My opinion has been solicited about the draft Kerala Infrastructure Investment Fund Bill, 1999 with specific reference Article 293(3) of the Constitution of India.

Under Article 246 of the Constitution the Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule and the Legislature of any State has exclusive power to make laws for such State in respect of any matter specified in List II of the Seventh Schedule.

Under entries 35 and 37, List I, Parliament has exclusive power to make laws in respect of the public debt of India and in respect of foreign loans. Under entry 43, List II, the State Legislatures have exclusive power to make laws with respect to the public debt of the State.

*W. H. C.*



Ordinarily if there were no other provision in the Constitution, the executive power of the Union and the States would have been co-extensive with this legislative power. Article 292 of the Constitution, however, provides that the executive power of the Union extends to borrowing upon the security of consolidated Fund of India, within such limits, if any, as may be fixed by Parliament, and to give guarantees within those limits. The Government of India can borrow by floating loans in Foreign Countries.

Under Article 293, the executive power of the States extends to borrowing money on the security of the consolidated Fund of the State. The limits for such borrowings may be prescribed by the State Legislature. Similarly the executive power also extends to giving guarantees within such limits. Foreign loans are not within the legislative competence of the States. Hence the borrowing power of the States does not extend to floating foreign loans.

The borrowing power of the States extends to borrowing money from the Government of India or obtaining guarantees from the Government of India in respect of loans raised by States. The limits ~~then~~ for borrowals or giving guarantees can, under Article 293(1), be fixed by State Legislatures.

Article 293(3) specifies that a State cannot, without the consent of the Government of India, raise

*Under the act*



any loan if there is still outstanding any part of the loan which has been made to any State by the Government of India or by its predecessor Government or in respect of which a guarantee has been given by the Government of India or its predecessor Government. By virtue of Articles 294 and 295 the rights, liabilities and obligations of the Dominion of India or the Provinces, became the rights, liabilities and obligations of the Union or the States.

I have examined the Bill relating to the Kerala Infrastructure Investment Fund. The two provisions in the Bill which have to be examined in the light of Article 293 of the Constitution are Section 9 and Section 18. These provisions relate to guarantees by the Government of the loans raised by the Board.

Section 9 provides that the Government may guarantee the repayment of any loan raised by the Board together with interest thereon. The Section prescribes a limit to the total amount of guarantee that could be issued by the Government. The Section also mandates that the Government shall annually, during the Budget Session, place before the State Legislature the statement of the guarantees given during the current financial year and also accounts of the total sums paid out of the consolidated fund by reason of any guarantee and amounts paid into the consolidated fund towards repayment of monies so paid out. Section 18(3)

*W. A. G.*



provides that notwithstanding the dissolution of the Board the liability of the Government in respect of the guarantees issued by it shall subsist.

The limitations under Article 293 requiring the prior consent of the Government of India applies only to the raising of loans by the State. The requirement of prior consent of the Central Government is not attracted in respect of the guarantees issued by the State Government. The Article is explicit on this aspect because it deals with outstanding loans. Where Government of India has granted a loan and that loan remains outstanding or where the Government of India has guaranteed any loan raised by the State and such loan or guarantee is outstanding the consent of the Government of India is necessary for raising of any loan by the State Government. Where the State Government only gives a guarantee such guarantee is not in present ~~time~~ an outgo on the Consolidated Fund of the State. Therefore Section 9 of the Bill which provides that the Government may guarantee loans raised by the Board is not hit by Article 293(3) and the consent of the Government of India is not necessary for the State Government to stand guarantee for loans raised by the Board. In view of the fact that loans and guarantees stand on different footings in the sense that a loan is an outgo in present ~~time~~ and a guarantee is only a possible out go in futuro,

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any guarantee by the State Government for loans raised by the Board will not be hit by Article 293(3).

The reference to Section 21(a) of the Reserve Bank of India Act 1934 made by the Department of ~~law~~/law does not seem quite relevant here.

The question of conformity with Article 293(2) does not arise since Article 292 deals with the power of the Union to borrow or to provide guarantee. The Bill does not purport to deal with any power of the Union for raising loans or providing guarantees.

Under the aforesaid circumstances in my considered opinion the proposed bill for creation of investment fund for Infrastructure is not violative of Article 293(3) of the Constitution of India.

Yours Sincerely,

U K K S  
12/10/99

*[Handwritten signature]*  
Omprab B. B. B.