15 -ാം കേരള നിയമസഭ

9 -ാം സമ്മേളനം

നക്ഷത്ര ചിഹ്നം ഇല്ലാത്ത ചോദ്യം നം. 539 **09-08-2023 - ൽ മറുപടിയ്ക്ക്**

സാമ്പത്തിക പ്രതിസന്ധി നേരിടാൻ നടപടി

ചോദ്യം		ഉത്തരം	
ശ്രീ. അൻവർ സാദത്ത്		ശ്രീ കെ എൻ ബാലഗോപാൽ (ധനകാര്യ വകുപ്പ് മന്ത്രി)	
(എ)	2023-24 സാമ്പത്തിക വർഷത്തിൽ സംസ്ഥാനത്ത് ഏതെങ്കിലും തരത്തിലുള്ള സാമ്പത്തിക പ്രതിസന്ധി ഉള്ളതായി സംസ്ഥാന സർക്കാർ കേന്ദ്രത്തിനെ അറിയിച്ചിട്ടില്ല എന്ന കേന്ദ്ര ധനകാര്യ സഹമന്ത്രിയുടെ പ്രസ്താവന ശ്രദ്ധയിൽപ്പെട്ടിട്ടുണ്ടോ; എങ്കിൽ അതിന്റെ നിജസ്ഥിതി വ്യക്തമാക്കുമോ;	(എ)	സംസ്ഥാനത്തിന്റെ നിയന്ത്രണങ്ങൾക്ക് അതീതമായ ചില ഘടകങ്ങളാൽ സംസ്ഥാനം സാമ്പത്തിക ഞെരുക്കം നേരിടുന്നുവെന്നത് ഒരു വസ്തുതയാണ്. മുൻ സാമ്പത്തിക വർഷത്തെ അധികകടമെടുപ്പ്, പൊതുകണക്കിനത്തിലെ നീക്കിയിരിപ്പ് എന്നിവ ചൂണ്ടിക്കാട്ടിയും സർക്കാരിന് കീഴിലെ സ്ഥാപനങ്ങൾ എടുത്ത വായ്പകൾ സർക്കാർ കടമായി കണക്കിലെടുത്തും സംസ്ഥാന സർക്കാരിന്റെ കടമെടുപ്പിൽ കുറവ് വരുത്തുന്ന സമീപനമാണ് കേന്ദ്ര സർക്കാർ സ്വീകരിച്ചുവരുന്നത്. ഇതിനു പുറമേ ചരക്ക് സേവന നികുതി നഷ്ടപരിഹാരം 2022 ജൂൺ മാസം മുതൽ അവസാനിപ്പിച്ചതും, ഡിവിസിബിൾ പൂളിൽ നിന്നും കേരളത്തിന് ലഭിക്കുന്ന നികുതി വിഹിതം മുൻ ധനകാര്യ കമ്മീഷനുകളെ അപേക്ഷിച്ച് 15-ാം ധനകാര്യ കമ്മീഷനിൽ കുറവ് വന്നതും, റവന്യൂ കമ്മി ഗ്രാന്റ് ഒരോ വർഷവും കുറഞ്ഞു വരുന്നതും സംസ്ഥാനത്തിന്റെ ധനസ്ഥിതിയെ പ്രതികൂലമായി ബാധിച്ചിട്ടുണ്ട്. ഈ നിലപാടിൽ മാറ്റം വരുത്തണമെന്നും ഭരണഘടനയുടെ ആർട്ടിക്കിൾ 293(3), 293(4) എന്നിവയ്ക്കനുസൃതമായി, 2017 ഓഗസ്റ്റിന് മുൻപ് നിലനിന്നിരുന്ന പോലെ പൊതു കണക്കിനത്തിലെ (പബ്ലിക് അക്കൗണ്ടിലെ) നീക്കിയിരിപ്പും പൊതുമേഖലാ സ്ഥാപനങ്ങളുടെ വായ്പകളും സംസ്ഥാനത്തിന്റെ കടമെടുപ്പ് നിർണയിക്കുന്നതിൽ നിന്നും ഒഴിവാക്കണമെന്നും 22.07.2022-ലെ 134/2022/ എം.ധന കത്ത് പ്രകാരം സംസ്ഥാന ധനകാര്യ മന്ത്രി കേന്ദ്രധനകാര്യ മന്ത്രിയോട് അഭ്യർത്ഥിക്കുകയും ഈ വിഷയവുമായി ബന്ധപ്പെട്ട് ബഹു മുഖ്യമന്ത്രി 19-01-2023 ലെ 133/CM/2023 കത്ത് പ്രകാരം ഒരു നിവേദനം ബഹു. പ്രധാനമന്ത്രിക്ക് സമർപ്പിക്കുകയും ചെയ്തിട്ടുണ്ട്.

			ഇതിനു പുറമേ 12.07.2023-ൽ സംസ്ഥാന ധനകാര്യ മന്ത്രി കേന്ദ്രധനകാര്യ മന്ത്രിക്ക് അയച്ച കത്തിൽ ജി.എസ്.ടി നഷ്ടപരിഹാരം പുന:സ്ഥാപിക്കണമെന്നും സംസ്ഥാനത്തിന്റെ നിലവിലെ വായ്പാപരിധി 1% കൂടി വർദ്ധിപ്പിക്കണമെന്നും ആവശ്യപ്പെട്ടിട്ടുണ്ട്, കൂടാതെ റവന്യൂ ഡെഫിസിറ്റ് ഗ്രാന്റ് 2023-24 സാമ്പത്തിക വർഷത്തിൽ അവസാനിക്കുകയും ധനകാര്യ കമ്മീഷൻ നിർദ്ദേശപ്രകാരം സംസ്ഥാനത്തിന് വീതിച്ചു നൽകുന്ന നികുതി വിഹിതത്തിന്റെ ശതമാനത്തിൽ മുൻ കമ്മീഷനുകളെ അപേക്ഷിച്ച് കുറവുണ്ടാകുകയും ചെയ്യുന്ന പശ്ചാത്തലത്തിൽ പ്രത്യേക സാമ്പത്തിക സഹായം അനുവദിക്കണമെന്നും പ്രസ്തുത കത്തിൽ അഭ്യർത്ഥിച്ചിട്ടുണ്ട്. കത്തുകളുടെ പകർപ്പ് അനുബന്ധമായി ചേർക്കുന്നു.
(ബി)	ഈ സർക്കാർ അധികാരത്തിൽ വന്നതിനുശേഷം സംസ്ഥാനത്തിന്റെ സാമ്പത്തിക പ്രതിസന്ധി ചൂണ്ടിക്കാണിച്ച് കേന്ദ്രസർക്കാരിന് നൽകിയിട്ടുള്ള കത്തുകളുടെയും മറ്റു രേഖകളുടെയും പകർപ്പ് ലഭ്യമാക്കുമോ;	(ബി)	സംസ്ഥാനത്തിന്റെ നിയന്ത്രണങ്ങൾക്ക് അതീതമായ ചില ഘടകങ്ങളാൽ സംസ്ഥാനം സാമ്പത്തിക ഞെരുക്കം നേരിടുന്നുവെന്നത് ഒരു വസ്തുതയാണ്. മുൻ സാമ്പത്തിക വർഷത്തെ അധികകടമെടുപ്പ്, പൊതുകണക്കിനത്തിലെ നീക്കിയിരിപ്പ് എന്നിവ ചൂണ്ടിക്കാട്ടിയും സർക്കാരിന് കീഴിലെ സ്ഥാപനങ്ങൾ എടുത്ത വായ്പകൾ സർക്കാർ കടമായി കണക്കിലെടുത്തും സംസ്ഥാന സർക്കാരിന്റെ കടമെടുപ്പിൽ കുറവ് വരുത്തുന്ന സമീപനമാണ് കേന്ദ്ര സർക്കാർ സ്വീകരിച്ചുവരുന്നത്. ഇതിനു പുറമേ ചരക്ക് സേവന നികുതി നഷ്ടപരിഹാരം 2022 ജൂൺ മാസം മുതൽ അവസാനിപ്പിച്ചതും, ഡിവിസിബിൾ പൂളിൽ നിന്നും കേരളത്തിന് ലഭിക്കുന്ന നികുതി വിഹിതം മുൻ ധനകാര്യ കമ്മീഷനുകളെ അപേക്ഷിച്ച് 15-ാം ധനകാര്യ കമ്മീഷനിൽ കുറവ് വന്നതും, റവന്യൂ കമ്മി ഗ്രാന്റ് ഒരോ വർഷവും കുറഞ്ഞു വരുന്നതും സംസ്ഥാനത്തിന്റെ ധനസ്ഥിതിയെ പ്രതികൂലമായി ബാധിച്ചിട്ടുണ്ട്. ഈ നിലപാടിൽ മാറ്റം വരുത്തണമെന്നും ഭരണഘടനയുടെ ആർട്ടിക്കിൾ 293(3), 293(4) എന്നിവയ്ക്കനുസൃതമായി, 2017 ഓഗസ്റ്റിന് മുൻപ് നിലനിന്നിരുന്ന പോലെ പൊതു കണക്കിനത്തിലെ (പബ്ലിക് അക്കൗണ്ടിലെ) നീക്കിയിരിപ്പും പൊതുമേഖലാ സ്ഥാപനങ്ങളുടെ വായ്പകളും സംസ്ഥാനത്തിന്റെ കടമെടുപ്പ് നിർണയിക്കുന്നതിൽ നിന്നും ഒഴിവാക്കണമെന്നും 22.07.2022-ലെ 134/2022/ എം.ധന കത്ത് പ്രകാരം സംസ്ഥാന ധനകാര്യ മന്ത്രി കേന്ദ്രധനകാര്യ മന്ത്രിയോട് അഭ്യർത്ഥിക്കുകയും ഈ വിഷയവുമായി ബന്ധപ്പെട്ട് ബഹു മുഖ്യമന്ത്രി 19-01-2023 ലെ 133/CM/2023 കത്ത് പ്രകാരം ഒരു

			നിവേദനം ബഹു. പ്രധാനമന്ത്രിക്ക് സമർപ്പിക്കുകയും ചെയ്തിട്ടുണ്ട്. ഇതിനു പുറമേ 12.07.2023-ൽ സംസ്ഥാന ധനകാര്യ മന്ത്രി കേന്ദ്രധനകാര്യ മന്ത്രിക്ക് അയച്ച കത്തിൽ ജി.എസ്.ടി നഷ്ടപരിഹാരം പുന:സ്ഥാപിക്കണമെന്നും സംസ്ഥാനത്തിന്റെ നിലവിലെ വായ്പാപരിധി 1% കൂടി വർദ്ധിപ്പിക്കണമെന്നും ആവശ്യപ്പെട്ടിട്ടുണ്ട്, കൂടാതെ റവന്യൂ ഡെഫിസിറ്റ് ഗ്രാന്റ് 2023-24 സാമ്പത്തിക വർഷത്തിൽ അവസാനിക്കുകയും ധനകാര്യ കമ്മീഷൻ നിർദ്ദേശപ്രകാരം സംസ്ഥാനത്തിന് വീതിച്ചു നൽകുന്ന നികുതി വിഹിതത്തിന്റെ ശതമാനത്തിൽ മുൻ കമ്മീഷനുകളെ അപേക്ഷിച്ച് കുറവുണ്ടാകുകയും ചെയ്യുന്ന പശ്ചാത്തലത്തിൽ പ്രത്യേക സാമ്പത്തിക സഹായം അനുവദിക്കണമെന്നും പ്രസ്തുത കത്തിൽ അഭ്യർത്ഥിച്ചിട്ടുണ്ട്. കത്തുകളുടെ പകർപ്പ് അനുബന്ധമായി ചേർക്കുന്നു.
(സി)	പ്രസ്തുത വിഷയത്തിൽ കേന്ദ്രസർക്കാരിൽ നിന്ന് ലഭിച്ച മറുപടികളുടെ പകർപ്പ് ലഭ്യമാക്കുമോ?	(സി)	കേന്ദ്രസർക്കാരിൽ നിന്ന് ലഭിച്ച മറുപടിയുടെ പകർപ്പ് അനുബന്ധമായി ചേർക്കുന്നു.

സെക്ഷൻ ഓഫീസർ

K. N. BALAGOPAL
Minister for Finance
Government of Kerala

Room No. 131, North Block
Government Secretariat
Thiruvananthapuram
Office : 0471-2333294
Mobile: 9400887700
Email: min.fin@kerala.gov.in

12.07.2023

Dear Nirmala Sitharamanji,

The Covid-19 pandemic has severely affected economic activities in almost all sectors of the State economy of Kerala. Despite adverse impacts of Covid, now Kerala is back to the path of growth and prosperity. The State has been taking prudent measures to keep the fiscal indicators stable.Kerala may probably be the first state which implemented a comprehensive restructuring of the GST department in tune with the new GST regime, helping the department function with three verticals such as Tax Payer Service, Audit and Enforcement. We have been giving rigorous training to the audit officers. We could achieve around 50 percent growth in own revenue collection last year compared to 2020-21.

However, Kerala's efforts to improve its finances through the fiscal consolidation path have been hindered by a series of setbacks which are beyond the control of the State Government. It is anticipated that the fiscal constrains in 2023-24 will be more than that of previous years. This is because of the shortage of around Rs.8,400 Crore in Revenue Deficit Grant compared to 2022-23, the loss of around Rs.10000 to Rs.12000 Crore by way of GST compensation per year because of the cessation of compensation and the resource loss of around Rs.8,000 Cr due to the restriction on the borrowing limit. The reduction in borrowing limit in the name of off-budget borrowing is also another major setback to the State's resources.

In this context, it may be noted that during the tenure of the 10th Finance Commission, the tax share of Kerala was 3.875% of the divisible pool. It came down to almost one-half (1.92%) during the 15th Finance Commission period resulting in huge revenue loss. As the State recovers from the economic crisis, and is on the path of growth, this fiscal crunch due to the change in the policies of Union Government will adversely affect the growth.

Therefore, by considering all the above abnormal deductions, in order to help the State to overcome this drastic development stalling situation, it is requested that effective measures could be initiated by the Union Government like an *ad hoc* borrowing increase of 1% above the ceiling equation for the financial year 2023-24. We request to continue the period of GST compensation. Some kind of special financial assistance is also sought in the background of cessation of Revenue Deficit Grant and the declining share of tax in the Finance Commission devolution.

In addition to this, urgent steps may kindly be taken to release the pending funds to the states at the earliest. The details of pending release are furnished below.

1. **ULB Grant 2022-23 and Health Grant for 2021-22 and 2022-23 as per the recommendation of the 15th FC.**

Out of Rs. 265 Crore under Million Plus Cities grant for the year 2022-23, only Rs.213.45 Cr has been released. **Rs.51.55 Cr** has not been released so far. Out of Rs. 559 Cr under Health Grant for 2021-22, only Rs.521.43 Cr has been released so far. **Rs. 37.57 Cr** is remaining to be released. Similarly, out of 559 Cr under Health Grant for 2022-23, only Rs. 225.21 Cr has been released so far. **Rs.333.79 Cr** is pending to be released.

Thus, a total of **Rs.371.36 Cr** under Health Grant is pending to be released. Therefore, it is requested to release the above pending grants at the earliest.

2. **Pending reimbursement of central share in Indira Gandhi National Widow Pension Scheme (IGNWPS), Indira Gandhi National Disability Pension Scheme (IGNDPS), and Indira Gandhi National Old Age Pension Scheme (IGNOAPS) starting from January 2021.**

There is a pendingof reimbursement of around **₹521.9568 Cr** to Kerala Government towards the GoI share for Indira Gandhi National Widow Pension Scheme (IGNWPS) (300/month for 2,09,236 beneficiaries), Indira Gandhi National Disability Pension Scheme (IGNDPS) (300/month for 29,935 beneficiaries), and Indira Gandhi National Old Age Pension Scheme (IGNOAPS) (200/month for 3,62,145 beneficiaries), **starting from January 2021 to March 2023**. Therefore, it is requested to release the above pending reimbursement at the earliest.

3. **Reimbursement of pending arrears due to the implementation of the 7th UGC Pay revision.**

Despite the repeated requests from State Government for the reconsideration of reimbursement of 50% Central share for the implementation of revised pay (7th CPC) for teachers in State Universities and Colleges to State Government, no favourable action has been taken from Government of India. Calculation Statement and Copies of communications with Government of India are appended. Therefore, it is requested to revisit the stand on the issue regarding reimbursement of pending arrears of Rs.750.93 Cr and release the amount at the earliest.

4. **Scheme for Special Assistance to States for Capital Investment**

The State is eligible for an amount of Rs.1,925 Cr under Part I of the Scheme for Special Assistance to States for Capital Investment for the year 2023-24. Necessary proposal for availing the loan assistance has been sent to Government of India vide letter "No. Plg A2/43/2023/Fin dated 04/07/2023". Hence it is requested to expedite the release of 1st Instalment.

With warm regards

Yours Sincerely

K.N. BALAGOPAL

Smt.Nirmala Sitharaman
Hon'ble Union Minister for Finance
North Block, New Delhi, 110001

Annexure-A

Calculation Sheet for Reimbursement of Central share for implementation of Revised Pay for teachers in State Universities and Colleges.

Name of the State – KERALA							
Pre-Revised Scale	No. of posts filled up as on 01-01-2016	Additionality for the period from 01-01-2016-30-06-2016(A* col 2*6)	Additionality for the period from 01-01-2016-30-06-2017(B* col 2*12)	Additionality for the period from 01-01-2018-30-06-2018(C* col 2*12)	Additionality for the period from 01-01-2016-30-06-2019(D* col 2*9)	Total Additionality for the period from 01-01-2016-31-03-2019(Total of column 3-6)	Central Share (50% of Column 7)
1	2	3	4	5	6	7	8
15600-39100+ AGP 6000	1842	156540528	370905120	430453296	368843922	1326742866	663371433
15600-39100+ AGP 7000	2036	179257584	424408272	492280368	421635240	1517581464	758790732
15600-39100+ AGP 8000	925	83716200	198234900	229958700	196969500	708879300	354439650
37400-67000+	7529	1245537528	2929082160	3380189724	2883637116	10438446528	5219223264

AGP 9000							
37400-67000+ AGP 10000	743	116273556	275959116	320672856	275042997	987948525	493974263
67000-79000	27	4508460	10841364	12720564	10992105	39062493	19531247
Total	**13102**	**1785833856**	**4209430932**	**4866275508**	**4157120880**	**15018661176**	**7509330588**

<u>The request for the above amount was submitted to the Government of India as per the letters;</u>

(i) DO letter No.1821386/EDN-C1/209/2021-Fin dated: 03-01-2022

(ii) DO letter No.20220308/01/ACS/2022/Fin dated:08-03-2022 to Sri. K Sanjay Murthy to Secretary, Department of Hedn of Hon'ble Minister

(iii) DO letter No.1821386/Edn-C1/209/2021-Fin dated:10-08-2022 to Smt. Nirmala Sitharman, Hon'ble Minister of Finance and Corporate Affairs.

(iv) Letter.No.C3/212/2017/H.Edn-Part(2) dated:30-10-2022, 14-11-22 and 08.05.2023 to Joint Secretary (Higher Education) Ministry of Education.

AES (Fin)

Chief Secretary

21-1-23

GOVERNMENT OF KERALA

Pinarayi Vijayan

CHIEF MINISTER

D.O. No. 133/2023/CM, Dated 19.01.2023

Dear Shri. Modi ji,

I invite your kind attention to the Memorandum enclosed. It sets out certain crucial issues relating to financial powers on which the federal-state relationships so well safeguarded in the Constitution, is founded. I have addressed this to you as all the issues highlighted therein merit immediate resolution. Your kind intervention is urgently sought.

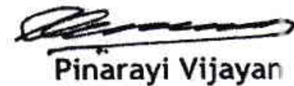
I feel that steps must be taken urgently and the concerns should be addressed. Otherwise, allowing them to remain unresolved will only serve to thwart the development agenda that both the Centre and the State have drawn up particularly in areas of infrastructure development and investments in higher education, Research and Development and Science and Technology.

As you yourselves have stressed on several occasions when you have addressed the State Chief Ministers individually and collectively as well as in your public speeches, joint efforts by the Centre and the States are needed to successfully usher in development of our country in various spheres. Unresolved issues such as the ones pointed out would only impair the spirit of cooperative federalism - a concept close to your heart.

I submit the memorandum for your kind attention and hope that you will initiate urgent steps to resolve the issues raised therein and in furtherance of cooperative federalism for our nation.

With regards,

Yours sincerely,



Pinarayi Vijayan

Shri. Narendra Modi
Hon'ble Prime Minister of India
152, South Block
Raisina Hill, New Delhi - 110 011.

Copy to :- Chief Secretary

141, 3rd Floor, North Block
Government Secretariat
Thiruvananthapuram Pin 695001

T 0471 2333241, 2333812, 2333610 F 0471 2333489
E chiefminister@kerala.gov.in
facebook.com/cmokerala twitter.com/cmokerala
www.keralacm.gov.in

Residence
Cliff House
T 0471 2318406, 2314853

MEMORANDUM ON VITAL CENTRE-STATE FINANCIAL ISSUES

INTRODUCTION

1. The composition of the financial liabilities of State Governments has changed significantly in the last 25 years. The share of loans and advances from the Centre has declined from over 15.8% of all State liabilities in 2005 to 3.0% in 2020. Kerala is no exception to this trend. The outstanding loans and advances from the Centre to Kerala State as a percentage of Kerala State's total liabilities have reduced from 12.4% in 2005 to 3.3% in 2020. This trend towards greater fiscal decentralisation in India was fundamentally on account of the recommendation of the Twelfth Finance Commission for disintermediation of the Central Government from raising public debt by State Governments. The rationale for this recommendation was that States would now rely on market borrowings to finance their expenditure and would, accordingly, be subject to the discipline of the financial markets. States that borrowed unsustainably would face higher interest rates, while fiscally prudent States would be able to borrow at cheaper rates.

2. Under the Constitution, the Finance Commissions constituted by the Government of India under Article 280 once in five years play an integral role in regulating sub-national borrowings, as evident from the recommendations of the Twelfth Finance Commission in 2004-05 for the disintermediation of the Central Government from the raising of public debt by State Governments. Over the years, Finance Commissions have been recommending targets for States' fiscal deficit and outstanding debt, the basis on which the Central Government fixes the Net Borrowing Ceiling of States for a particular financial year.

3. However, over the last five years, some of the actions of the Union Ministry of Finance while fixing the State's net borrowing ceilings has raised some grave concerns for the State Governments. It is pointed out that under the declared objective of fixing the net borrowing ceiling, Article 293(3) of the Constitution is being used to vitiate the State's independence and make systematic inroads into the financial autonomy of State Governments, enshrined in our Constitution.

4. The Constitution defines the scope of executive power of the Union and the State Governments. By virtue of the provisions of Articles 73 and 162, the executive power extends to all matters concerning which the Parliament and the State Legislature have the power to make laws. This executive power is broad. By the Entries 35 and 43 in Lists I and II of the 7th Schedule, the executive power of the Union and the States shall extend to the public debts. It appears that to put the matter beyond any shadow of doubt and enforce a kind of fiscal discipline, the framers of the Constitution made specific provisions in respect of 'borrowing' by the State and the Union Governments. These are contained in Chapter II of Part XII of the Constitution in Articles 292 and 293 of the Constitution. Article 292 deals with the executive power of borrowing upon the security of the Consolidated Fund of India, and Parliament, by law, has the power to regulate the limit. Article 293(1) deals with the executive power of a State to borrow within the territory of India upon the security of the Consolidated Fund of the State, and the Legislature of such State by law is empowered to fix the limit. Article 293 (2) enables the Government of India to make loans to any State so long as any limits set under Article 292 are not exceeded.

5. Article 293(3) of the Constitution fetters the state's power to raise loans. Under this provision, if there is still any part of a loan made to the State by the Government of India or in respect of which the Government of India has given a guarantee, State is forbidden from raising any loan without the consent of the Union Government. The words any loan in this chapter must be read in light of the accepted canons of Interpretation of Statutes. In ***S.R.Bommai Vs Union of India (1994) 3 SCC Page 1***, the Hon'ble Supreme Court held that federalism is part of the basic structure of the Constitution and no Act should impinge on this federal character. It is therefore clear that any interpretation of Article 293 that overrides the Constitution's federal character would be impermissible. Further, the liabilities of other instrumentalities of the State Government, like statutory bodies and companies, do not come within the definition of State debt as envisaged in this Chapter. The definition of 'State' in Article 12 only applies to the provisions of Part III of the Constitution. 'State' as defined in Article 293 of the Constitution will have to be construed as a reference to the States as defined under Article 1(2) of the Constitution read with the 1st Schedule to the Constitution. The Hon'ble Supreme Court in ***State of Bihar v. Union of India & Anr [(1970) 1 SCC 67]*** and ***Tashi Delek Gaming Solutions Ltd & Anr v. State of Karnataka & Ors*** has held that the enlarged definition of 'State' as defined under Article 12 of the Constitution would not apply to other parts of the Constitution. The move to combine the debts of legal entities owned by the State and the general debt of the State Government is contrary to the provisions of

the Constitution. It would imperil the borrowing powers of the States and jeopardise the development plans it seeks to achieve through its various agencies.

6. To further explain, the requirement that a State must obtain consent under clause (3) of Article 293 of the Constitution of India is applicable only when a State is **either indebted to the Centre, or when repayment of a loan taken by the State which the Centre has guaranteed remains outstanding.** This implies that the purpose of this provision in the Constitution is to protect the rights of the Centre in its capacity as a creditor. Clearly, therefore, the conditions under clause (4) of Article 293 must necessarily be directly related to the specific loan for which the Government of India issues consent under clause (3) of Article 293. In other words, using Article 293(3) and (4) of the Constitution to regulate and oversee the financial management of the State Governments and their agencies is far beyond what is contemplated in the Constitution.

7. In the succeeding sessions of this Memorandum, the issues that have recently surfaced in the area of Centre-State financial relations have been brought out.

I. Finance Commissions appointed by the Union Government under Article 280 of the Constitution of India

8. The Constitution of India provides that every fifth year or at such earlier time as the President considers necessary, the President must constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President. This Commission is constitutionally tasked with offering recommendations on the following subjects viz. the distribution between the Union and the States of the net proceeds of taxes, the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India, the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats and Municipalities in the State and any other matter referred to the Commission by the President in the interests of sound finance.

9. The Constitution does not contemplate making the recommendations of the Finance Commission as instruments for the Union Government to regulate the State Government in the exercise of its executive financial powers, duly provided for under the Constitution. Over the first seven decades of the country's existence, this cardinal principle of independence of financial powers of the States and the Centre, was respected in letter and spirit. However, as has been detailed in the succeeding paragraphs in this Memorandum, the Union Government has been consistently deviating from this unwritten premise.

10. While appointing the Fifteenth Finance Commission (FFC) in 2020, its Terms of Reference (ToR) provided that *"While making its recommendations, the Commission shall have regard, among other considerations, to: ....(vi) The conditions that GoI may impose on the States while providing consent under Article 293(3) of the Constitution."*

11. Furthermore, *"The Union Government requested us to define what is permissible as States' borrowing and prescribe that any liability taken outside permissible sources of borrowing should be prohibited. It also requested us to recommend a reporting system for any such borrowings. It held that the Union Government should have the authority to regulate market borrowings of a State, if the latter is found to be raising unauthorised off-budget borrowings. (Para 12.20 of the Report of the FFC).*

12. Thus, for the first time after the country secured independence and became a republic, the Union Government had sought to use the ToR of the Finance Commission to control the State's powers to regulate its debt. As mentioned above, the Union Government made an appeal to the FFC to recommend granting powers to itself for regulating market borrowing of the States if it is raising off-budget borrowings. This request was ostensibly made without due regard to the fact that this contravened the Constitutional arrangement in respect of financial powers assigned to the Centre and the States.

13. However, the FFC, to its credit, did not venture to upset the constitutional balance of financial powers. It did not act on the request raised by the Union Government. The FFC observed that at an aggregate level, the States have maintained their fiscal deficit (Para 12.36 of FFC Report) below the target of 3 per cent of GSDP for most of the years in our review period, except 2015-16 and 2016-17, the slippage being on account of the Ujjwal DISCOM Assurance Yojana (UDAY) scheme, under which States were to take over certain part of DISCOM debt stock on their own balance sheets reflected in higher fiscal deficit in those years. The FFC further recommended that the normal net borrowing limit of State Governments for the year 2021-22 may be fixed at 4 per cent of GSDP. 3.5 per cent for 2022-23 and 3 per cent for the period for the period 2023-24 to 2025-26. As regards contingent liabilities and off-budgetary borrowing, the FFC recommended that governments at all tiers may observe strict discipline by resisting any further additions to the stock of off-budget transactions and contingent liabilities which is against the norms of fiscal transparency and detrimental to fiscal sustainability. The FFC advised the Centre and the States to be transparent about both its contingent liability and off-budgetary borrowings.

Ravi

14. Thus, it may be observed that the present actions of the Union Government in using Article 293 to encroach into the powers of the State Government does not have either the explicit or implicit sanction of the Finance Commission – the sole body constituted under the Constitution to make recommendations on matters relating to finance between the Union and the States.

II. Interpretation of Article 293(3) & 293(4)

15. It is pointed out that this year, unfortunately, the above approach of the Finance Ministry in incrementally making inroads into the State's powers enshrined in the Constitution has gone further. The Ministry of Finance has now stipulated that along with balances maintained in the Public Account of a State Government, all borrowings of State Government entities receiving budgetary support from the State Budget will also be taken into consideration while setting the borrowing limits of the State Government. Vide Letter no. 40(2) PF-S/2022-23 dated 31.03.2022 of the Department of Expenditure containing instructions on the Net Borrowing Ceiling for the financial year 2022- it was stipulated that Borrowings by State Public Sector companies/corporations, Special purpose vehicles (SPVs) and other equivalent instruments, where principal and/or interest **are to be serviced out of the State Budgets and/or by assignment** of taxes/cess or any other State's revenue, **shall be considered as Borrowings made by the State itself for the purpose of issuing the consent under Article 293(3) of the Constitution of India.**

16. Presumably, an oft-repeated argument is **that the Comptroller and Auditor General (C&AG) of** India have classified borrowings of agencies of States Governments as off-budgetary borrowings. This is then touted as the basis for the current use of Article 293(3), as seen in the letter of the Ministry of Expenditure cited above. While the State Government has consistently maintained that such classification is erroneous, suffice it to say, the powers of the C&AG extend only to matters related to accounting and auditing of public money and not to the interpretation of the provisions that regulate the financial powers of the Union and the States under the Constitution. This solely falls within the domain of the Judiciary of the country in light of the principle of separation of powers enshrined in the Constitution

17. The Union Government and the State Governments have hundreds of companies and statutory bodies established by them. These agencies help the Governments, Union and States to carry out their respective development plans. Under the Union Government, several such institutions receive budgetary support through the Union Budget either as 'grants' or as 'investments'. These institutions further tap resources extensively from the financial markets through their own

borrowings. These borrowings help significantly in moving the development agenda of the country forward. Leveraging the markets through such mechanisms is now considered the cornerstone of modern financial management and is a practice that all countries resort to. While the letter of the Department of Expenditure, cited above attempts to impose restrictions on the States, the Union Government itself does not impose any such limits on its own borrowings by taking into account the borrowings of the agencies set up by it. Given this, the prescription that the borrowing of State Government Agencies will be reckoned to determine how State Government agencies should access the financial and money markets of the country becomes discriminatory, illogical and unfair – apart from the fact that it clearly violates the Constitution.

18. To reiterate, the scope of Article 293(3) and (4) are limited to the State as defined under Article I (1) of the Constitution. It cannot be extended to include the debt of Government Agencies, including Companies and Statutory Bodies, regardless of whether the Legislature of the State in its wisdom decides to finance them by way of grant or assignment of taxes and other revenues through its Budget.

19. Over the eight decades of independence, a very robust federal financial framework has evolved in the country. The Union Government has in place the Fiscal Responsibility and Budget Management Act, 2003 (Act No. 39 of 2003) enacted by Parliament. Based on this, the Union regulates its financial affairs. All State Governments have their own version of the Fiscal Responsibility framework. The State Legislature of Kerala enacted the Kerala Fiscal Responsibility Act, 2003 Act 29 of 2003. The Legislature also enacted the Kerala Ceiling on Government Guarantees Act, 2003 Act 30 of 2003.

20. Using Article 293(3) and (4) wrongly to drive the fiscal management of the States would seriously impinge on the federal-state financial architecture and would evidently be *ultra vires* the Constitution. Furthermore, the executive power of the Union and States is coextensive with the legislative power clearly specified in the Constitution. Consequently, the Parliament having no legislative power vis-à-vis Article 293, no executive power can be exercised by the Union Government under those provisions.

21. As the Twelfth Finance Commission points out, any inefficiency or lack of prudence shown by the State in its fiscal management would be evaluated and assessed by the financial markets themselves. The borrowings of States rated higher in terms of their fiscal management would naturally carry a lower risk premium in the market, while others would have to pay the price of a

higher risk premium. It is certainly not for the Union Government, through a constitutionally wrong and misplaced application of Article 293(3) and (4), to make any inroad into the State's financial powers enshrined in the Constitution.

22. There is yet another aspect that is equally disturbing. Under the federal-state financial architecture in the Constitution, the well-established constitutional structure for making recommendations is **the Finance Commission. None of the previous fourteen Finance Commissions have made any such recommendation that could serve as the basis for the above decision of the Department of Expenditure.**

23. **Furthermore,** the **Terms** of Reference of the Fifteenth Finance Commission had specifically **provided that, while making** its recommendations, the Commission shall have regard, among other considerations to the conditions that Government of India may impose on the States while providing consent under Article 293(3) of the Constitution. Despite this specific mandate being given to the Fifteenth Finance Commission, when the Commission recommended the borrowing **limits of States for FY** 2022-23 and FY 2023-24 at 3.5% and 3%, respectively, no recommendations/ comments were made by the Commission on any conditions that the Union Government may impose. The Fifteenth Finance Commission was mindful of the off-budget **borrowings of the State and Centre while allowing the limits and had discussed this subject extensively with the Finance Departments** of the various State Governments.

III. States and their Contingent Liabilities

24. The actions of the Union Government through its use of Article 293(3), ultra vires of the Constitution, seems to primarily stem from two considerations. The first is a wrong interpretation that the ambit of Article 293(3) can be extended to management of the State's contingent liabilities. The second is a heavy-handed notion that sans the 'disciplining' hand of the Union Government, the States, left to themselves, **may not take prudent decisions on their own!**

25. Article 293(1) reads as follows:

293. Borrowing by States

(1) Subject to the provisions of this article, the executive power of a State extends to borrowing within the territory of India upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law

and to the giving of guarantees within such limits, if any, as may be so fixed (emphasis added)

26. Evidently, under the provisions of the Constitution, the State legislature is empowered, and solely so, and fully competent to limit the amount of guarantees which a State Government may give. The Union has no role or business or grounds to intervene in this, as these are assigned to States under the Constitution. Prior consent of the Government of India is also not necessary before a **State Government issues guarantees. Article 293(1) specifically distinguishes between 'borrowing' and 'guarantees'. The term 'loan' mentioned in Article 293(3) is intended to cover borrowing only and is not intended to apply to guarantees as well. The constitutional position, therefore, would be that State governments do not require prior consent of Government of India before giving a guarantee. Hence, using the provisions of Article 293 to bridle powers guaranteed to the States is constitutionally untenable. States have absolute right to issue guarantees to its agencies**

27. Most States have established mechanisms to ensure prudent management of their contingent liabilities. Kerala was among the first few States which enacted legislation to regulate contingent liabilities. It enacted the "The Kerala Ceiling on Government Guarantees Act, 2003" to provide for ceiling on Government guarantees and other matters connected therewith or incidental thereto. Under the 2003 Act, initial ceiling limit was fixed at Rs 14,000 Cr which was subsequently revised to Rs 21000 Cr in 2015 and to 5% of GSDP in 2018. The Guarantee ceiling limit is currently fixed at 10% of GSDP.

28. Under the Guarantee Ceiling Act 2003, the Government charges a minimum of 0.75 per cent per annum as guarantee commission. The legislation provides that this Commission cannot be waived under any circumstances. Though the guarantee commission is taken into a general pool, the fees is adequate to take care of devolvement under the guarantees. It has also to be emphasised that the credit record of the State Government is excellent and there is no precedent of the Government of Kerala not honouring the guarantees extended by it.

29. One of the reasons that the Centre and the State Governments created Public Sector Undertakings either as Companies, Societies, or Statutory Bodies is to give special emphasis on sectoral growth in specific areas of public interest. Such agencies may also borrow from the market. These repayments of these borrowings and interest thereon are a charge on the income of the concerned agency. Depending on the financial health of these agencies, some of these borrowings may

sometimes have to be against Government Guarantees provided for credit enhancement. In some cases, Government may have to provide such guarantees over and above necessary viability gap funding or investments in these agencies as equity, loans or other capital grants. The guarantees issued by a State Government are obviously in the nature of contingent liabilities. It is for this reason that the relevant Acts of most States prescribe a maximum limit or extent to which Government guarantees may be given. As mentioned above, the Kerala Ceiling on Government Guarantee Act, 2003, as amended from time to time provides the Guarantee ceiling limits.

30. The use of Article 293 to control contingent liabilities, besides being ultra vires of the Constitution also stems from a misplaced and even perhaps an overbearing notion that the restraining hand of the Union is needed to get States to prudently regulate their contingent liabilities. Nothing can be more fallacious than this. In fact, on this issue of containing contingent liabilities, the track record of the State Government does not in any way compare less favourably with that of the State Government.

31. Without belabouring this point, suffice it to say that the State of Kerala has put in place very robust mechanisms of transparency and the required measures under the Kerala Fiscal Responsibility Act. The Kerala Fiscal Responsibility Act, 2003 enacted by the State's Legislature is an Act to provide for the responsibility of the Government to ensure prudence in fiscal management and fiscal stability by progressive elimination of revenue deficit and sustainable debt management consistent with fiscal stability, greater transparency in fiscal operations of the Government and conduct of fiscal policy in a medium-term fiscal framework and for matters connected therewith or incidental thereto. The State has also issued Rules under this Act called the Kerala Fiscal Responsibility Rules 2005.

32. This, *inter alia*, provides for the following:

> *5. Measures for Fiscal Transparency.- (1) The Government shall take suitable measures to ensure greater transparency in its fiscal operations and minimize as far as practicable in public interest official secrecy in the preparation of annual budget:*
>
> *Provided that the Government shall have the power to reserve any such information which would adversely affect the interest of the State Exchequer.*
>
> *(2) In particular and without prejudice to the generality of the foregoing provision the Government shall at the time of presentation of annual budget disclose in such manner as may be prescribed,-*

> *(a) the significant changes in the accounting standards, policies and practices affecting or likely to affect the compliance of the prescribed fiscal indicators;*
> *(b) as far as practicable, all outstanding contractual liabilities, revenue demand raised, but not realized, committed liability in respect of major works and supply contracts, losses incurred in providing public goods and services, off budget borrowings* ***and contingent liabilities created by way of guarantees having potential budgetary implications***. (emphasis added)

33. **Accordingly, the State Government makes a comprehensive disclosure of outstanding Guarantees to the legislature of the State through Table A38 of Budget Documents as published in Budget in Brief which is a public document. This disclosure is duly done in the format of Form B3 prescribed under Rule 7 of the Kerala Fiscal Responsibility Rules 2005. With such a robust and well-designed architecture in the State there is neither any legitimacy nor any need for the Union Government to attempt to bridle the State's contingent liabilities and restrict borrowings of agencies, PSUs and other institutions set up by a State Government.**

IV. Legal Basis for Fiscal Responsibility (FRL) Legislations of States and the Union

34. The Constitution defines the scope of legislative and executive powers of the Union and the States. In terms of legislative power-sharing, Article 246 of the Constitution confers legislative powers on the Parliament and the State Legislatures on the subjects enumerated in the Seventh Schedule. This schedule contains three lists i.e., List I or the Union List over which the Parliament has exclusive competence, List II or the State List over which the State Legislatures have exclusive competence and List III or the Concurrent List over which both the Parliament and the State Legislatures have competence.

35. By virtue of the provisions of Articles 73 and 162, the executive power extends to all matters concerning which the Parliament and the State Legislature have the power to make laws.

36. Article 73 reads as follows:

> *73. Extent of executive power of the Union*
> 1. *Subject to the provisions of this Constitution, the executive power of the Union shall extend*
>   a) *to the matters with respect to which Parliament has power to make laws; and*
>   b) *to the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty on agreement: Provided that the executive power referred to in sub clause (a) shall not, save as expressly provided in this constitution or in any*

law made by Parliament, extend in any State to matters with respect in which the Legislature of the State has also power to make laws

2. ***Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution Council of Ministers***

37. Article 162 reads as follows:

> *162. Extent of executive power of State Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof Council of Ministers.*

38. By the Entries 35 and 43 in Lists I and II of the 7th Schedule, the legislative power of the Union and the States shall extend to their respective public debts. The framers of the Constitution also made specific provisions in respect of 'borrowing' by the State and the Union Governments. These are contained in Chapter II of Part XII of the Constitution in Articles 292 and 293 of the Constitution. Article 292 deals with the executive power of borrowing upon the security of the Consolidated Fund of India, and Parliament, by law, has the power to regulate the limit. Article 293(1) deals with the executive power of a State to borrow within the territory of India upon the security of the Consolidated Fund of the State, and the Legislature of such State by law is empowered to fix the limit.

39. Under entry 35 of List 1 and Article 292, Centre has passed its FRL and under Article 73 of the Constitution, the Union's executive power is co-extensive with the law-making power of Parliament and shall extend to the matters with respect to which Parliament has the power to make laws.

40. Similarly, under entry 43 of List II and Article 293(1), the States have passed their Fiscal Responsibility Legislations and under Article 162, States' executive power is co-extensive with the law-making power of its legislature and shall extend to the matters with respect to which the Legislature of the State has the power to make laws. **This would unequivocally mean that**

lines of its authority and stray beyond what is legitimately its own domain and intervene extralegally into areas rightfully entrusted with the States, that needless constitutional disputes around issues that disturb the federal structure of the Constitution happens.

V. Management of the Public Account of the States

44. For over seven decades after the Constitution was enacted, successive Union Governments have always adhered to the constitutional provisions respecting the financial powers vested with the State Governments to manage their affairs. In August 2017, Article 293 (3) was wrongly and unconstitutionally administered to significantly constrain the financial freedom of State Governments. That same year *vide* letter No. 40(6) PF-I/2009-Vol III dated 28th August 2017; the Government of India decided to effectively include the balances in the Public Account of the State while reckoning the Net Borrowing Ceiling of the State Government.

45. Article 293(3) can only be legitimately used for imposing conditions related to a request for borrowing of a State Government. This cannot be used to control or administer the borrowing of the State Government. Under the Constitution, these are matters that exclusively remain in the domain of the State Government. Thus clearly, even if for argument's sake, conditions under Article 293(3) were to be made generalisable over the overall annual borrowing programme of States, this could at most apply to the State's share of Open Market Borrowings and the borrowings from Central PSUs and Financial Institutions like LIC, NABARD etc., which are **regulated administratively by the Union Government or are a necessary part of the monetary policy of the Union Government**. It is not difficult to see that such conditions cannot go beyond and be used to control and regulate the exercise of the State's financial powers itself.

46. Furthermore, the Public Account of the State is a constitutional provision in Article 266(2) where all transactions of the State Government other than those credited to or debited from the Consolidated Fund of the State. Article 283(2) confers on the States the powers of regulating its Public Account under law made by the Legislature of the State. The Public Account of the State reflects its internal financial transactions where constitutionally the State plays the role of a banker to itself. But, without a valid legal or financial basis, Government of India, by deciding to arbitrarily exclude amounts in the Public Account in assigning the net borrowing ceiling, has attempted to make serious inroads into the constitutional financial powers of the State Governments while at the same time seriously impairing the ability of the State to manage its liquidity from time to time.

VI. Reserve Bank of India's powers to control borrowings of State Government Agencies from Banks regulated by RBI

47. Following the unconstitutional use of Article 293 by the Union Government to repudiate the constitutional powers of the State Governments, the Reserve Bank of India has also now changed its stance on borrowings by States from Scheduled Commercial Banks. Contrasting earlier Master Circulars issued by RBI on this subject with the ones that it has issued after the changed stand of **the Union Government vis-a-vis setting the Net Borrow Ceilings, will help to appreciate this shift.**

48. Master Circular DBR. No. Dir.BC.10/13.03.00/2015-16 on 'Loans and Advances – Statutory and Other Restrictions' dated July 1, 2015, contained the consolidated instructions issued by the Reserve Bank of India to banks on statutory and other restrictions on loans and advances. The following is an extract from **Para 2.3.7.3 of the said Master Circular (from the year 2015)**

> *"(iii) In respect of projects undertaken by public sector units, term loans may be sanctioned only for corporate entities (i.e. public sector undertakings registered under Companies Act or a Corporation established under the relevant statute). Further, such term loans should not be in lieu of or to substitute budgetary resources envisaged for the project.* ***The term loan could supplement the budgetary resources if such supplementing was contemplated in the project design.*** *While such public sector units may include Special Purpose Vehicles (SPVs) registered under the Companies Act set up for financing infrastructure projects, it should be ensured by banks and financial institutions that these loans/investments are not used for financing the budget of the State Governments. Whether such financing is done by way of extending loans or investing in bonds, banks and financial institutions should undertake due diligence on the viability and bankability of such projects to ensure that revenue stream from the project is sufficient to take care of the debt servicing obligations and that the repayment/servicing of debt is not out of budgetary resources." (Emphasis added)*

49. The following is an extract from the instructions issued **(from the year 2022)**, vide Letter issued by Reserve Bank of India (RBI/2022-23/71 DOR.CRE.REC. No.47/13.03.00/2022-23 June 14, 2022) to all Scheduled Commercial Banks excluding Regional Rural Banks (RRBs)

*"3. Banks/ FIs have also been found to have violated our instructions which inter alia require that in case of projects undertaken by government owned entities, term loans should be sanctioned only for corporate bodies; **due diligence should be carried out on viability and bankability of the projects to ensure that revenue stream from the project is sufficient to take care of the debt servicing obligations; and that the repayment/ servicing of debt is not from budgetary resources.***

50. The RBI has clearly shifted its policy stand in the matter of loans availed by State Government Agencies. While, as seen above, Banks were hitherto allowed to finance State Government Agencies, where Budgetary support for the financing was part of the project design. This means that a project receiving viability gap funding to meet its obligations on repayment of liabilities (say those arising out of bank loans) would be eligible for bank financing. However, as per the Letter issued by RBI in June 2022, cited above, even projects financed through Viability Gap Funding by State Governments would stand restricted.

51. Annexure to Letter issued by Reserve Bank of India (RBI/2022-23/71 DOR.CRE.REC. No.47/13.03.00/2022-23 June 14, 2022, lists out the extant instructions on Bank finance to Government owned entities viz: -

  a) Para 2.3.7.3 - 'Criteria for Financing' of Master Circular DBR.No.Dir.BC.10/13.03.00/2015-16 on 'Loans and Advances - Statutory and Other Restrictions' dated July 1, 2015
  b) Para 2.3.7.5 - 'Appraisal' of Master Circular DBR.No.Dir.BC.10/13.03.00/2015-16 on 'Loans and Advances - Statutory and Other Restrictions' dated July 1, 2015
  c) Para 2.3.23 - 'Bridge Loans against receivables from Government' of Master Circular DBR.No.Dir.BC.10/13.03.00/2015-16 on 'Loans and Advances - Statutory and Other Restrictions' dated July 1, 2015
  d) Para 2(B)(ix) of Master Circular DOR.CRE.REC.No.06/08.12.001/2022-23 on 'Housing Finance' dated April 1, 2022

52. It is not difficult to see that the restrictions issued by RBI on bank finance are legally untenable and *ultra vires* of the powers conferred to RBI under the Banking Regulation Act 1949 and the amendments made in it from time to time. Section 21 of the said Act lays down the Power of Reserve Bank to control advances by banking companies.

53. Sub Section 21(1) of the said Section reads as follows:

(1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest or in the interests of depositors or banking policy so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined. *(Emphasis supplied)*

54. Sub Section 21(2) of the said Section reads as follows:

(2) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1) the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to-

(a) the purposes for which advances may or may not be made,

(b) the margins to be maintained in respect of secured advances,

(c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves and deposits of a banking company and other relevant considerations, may be made by that banking company to any one company, firm, association of persons or individual,

(d) the maximum amount up to which, having regard to the considerations referred to in clause (c), guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual, and

(e) the rate of interest and other terms and conditions on which advances, or other financial accommodation may be made or guarantees may be given.

55. The powers conferred on the RBI under Section 21 of the Banking Regulation Act, 1949 must pass the litmus test that it should be in (1) public interest, or (2) in the interests of depositors or (3) banking policy. The directions cannot be vague but must satisfy specifically at least one of the yardsticks. Restricting banks in financing Government owned entities does not satisfy public interest. In fact, it ends up impeding economic growth through State Agencies, handicaps the use of leverage – a vital instrumentality in modern day development finance – by Government Agencies and thus is clearly against 'public interest'. These directions clearly cannot be construed to be in the 'interests of depositors' because this has nothing to do with the creditworthiness of the banks or the security of the deposits. Furthermore, banks will only prudentially lend for projects and institutions that can repay the borrowed funds with interest. These relations cannot be linked with any 'banking policy' as no such restrictions have been enunciated as part of any banking policy in the country to date.

56. Furthermore, these restrictions imposed on bank financing, single out a specific set of borrowers viz. the Government owned entities. Regardless of the entities' credit rating, their use of proceeds (whether it is for infrastructure projects) the restrictions simply impose blanket sanctions of

(1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest or in the interests of depositors or banking policy so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined. *(Emphasis supplied)*

54. Sub Section 21(2) of the said Section reads as follows:

(2) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1) the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to-

(a) the purposes for which advances may or may not be made,

(b) the margins to be maintained in respect of secured advances,

(c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves and deposits of a banking company and other relevant considerations, may be made by that banking company to any one company, firm, association of persons or individual,

(d) the maximum amount up to which, having regard to the considerations referred to in clause (c), guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual, and

(e) the rate of interest and other terms and conditions on which advances, or other financial accommodation may be made or guarantees may be given.

55. The powers conferred on the RBI under Section 21 of the Banking Regulation Act, 1949 must pass the litmus test that it should be in (1) public interest, or (2) in the interests of depositors or (3) banking policy. The directions cannot be vague but must satisfy specifically at least one of the yardsticks. Restricting banks in financing Government owned entities does not satisfy public interest. In fact, it ends up impeding economic growth through State Agencies, handicaps the use of leverage – a vital instrumentality in modern day development finance – by Government Agencies and thus is clearly against 'public interest'. These directions clearly cannot be construed to be in the 'interests of depositors' because this has nothing to do with the creditworthiness of the banks or the security of the deposits. Furthermore, banks will only prudentially lend for projects and institutions that can repay the borrowed funds with interest. These relations cannot be linked with any 'banking policy' as no such restrictions have been enunciated as part of any banking policy in the country to date.

56. Furthermore, these restrictions imposed on bank financing, single out a specific set of borrowers viz. the Government owned entities. Regardless of the entities' credit rating, their use of proceeds (whether it is for infrastructure projects) the restrictions simply impose blanket sanctions of

Government owned agencies in availing funds. Thus, the action of RBI in issuing a circular that restricts financing of Government owned entities is blatantly ultra vires of their powers as it is neither in public interest, nor protects interests of depositors nor any part of any banking policy in India.

VII. Unequal treatment of agencies and companies of the Union Government vis-à-vis those under State Governments

57. The different infractions by the Union Government pointed out above that upsets the balance of financial powers established under the Constitution over the last seven decades of independence in the Country have been brought out above. But beyond the legal untenableness, infirmity and lack of rationale evident in such attempts, the series implications, and grave consequences of these on the country's economic development should not be ignored. Leverage in modern financial markets is recognised as a powerful tool to amplify economic growth. Any attempts to ignore the growth potential of debt in a modern economy is bound to be catastrophic. Needless to say, this comes with the obvious rider that leverage should be exercised with prudence. With the robust legal mechanisms that States have adopted in ensuring fiscal prudence particularly through the fiscal relations legislations and the legislations on contingent liabilities, that have been variously outlined above, there is no need of any ill-conceived or kneejerk reactions emergency on the part of the Union such as the ones outlined above in this memorandum. Badly conceived and ill-thought-out measures that are now being adopted will cripple many vital projects of the Union and State Governments. For instance, such measures will stymie well established models like Public Private Partnership models running on Viability Gap Funding (VGF) or models like Hybrid Annuity Models a popular pattern of financing relied on by agencies like National Highway Authority of India (NHAI) will become unworkable if RBI were to implement its direction discussed above.

58. But what makes these also starkly stand out is the discrimination evident in these measures. In the budget estimates of the Union Government for the current fiscal year 2022-2023, the budget estimate for capital outlay of Central PSUs is Rs.8.3 lakh crores, while the figures for equity and debt are Rs.3.34 lakh crores and Rs. 26,488 crores respectively. The outstanding debt of 26 of the large PSUs of the Government of India alone stood approximately Rs.11 lakh crores and Rs.17 lakh crores for FY 2021 and FY 2022 respectively. The restrictions above by either the Union Government or the Reserve Bank of India will not hit plans of PSUs and Statutory Bodies owned or controlled by the Union Government. The impact squarely falls on PSUs and Statutory Bodies

of the State Governments alone. In other words, the State institutions will be severely impeded in contributing to the economic development of the State and country particularly where large-scale funding (as in infrastructure projects) is required.

CONCLUSION

59. This Memorandum outlines recent developments that seriously threatens to undermine the federal character of the Constitution. The Memorandum seeks to address several pertinent legal and financial issues that are vital to health federal-state relationships. The issues where the Union Government have now ventured into in the absence of powers under the Constitution are classified into specific issues viz: -

    a. Overriding the framework in the Constitution under Article 280 for setting up and using the Finance Commissions as means to oversee federal state financial issues

    b. Constitutionally untenable attempt to control financial operations of Government Agencies of the States through incorrect interpretation of Article 293(3) & 293(4)

    c. Extending indirect control on the State's Contingent Liabilities without any powers assigned for the same under the Constitution

    d. Disregarding the robust Fiscal Responsibility Legislations enacted by the States for ensuring fiscal transparency and prudential financial management

    e. Controlling the management of the Public Account of the States through actions ultra vires Article 293(3)

    f. Using Reserve Bank of India to control borrowings of State Government Agencies from Banks regulated by RBI

    g. Unequal treatment of Central and State controlled institutions contravening Article 14 of the Constitution

60. Any overreach on the part of the Government of India directly or through other instrumentalities controlled directly or indirectly by it, holds portentous harm to the edifice of federal-state financial relations. Under the provisions of Articles 162, the executive power extends to all matters with respect to which the State Legislature have the power to make laws and that this executive power is broad. Through Entries 43 in List II of the Seventh Schedule, the executive power of the States

extends to public debts availed by the State. Any conditions imposed by Centre on States beyond the very specific and narrow scope permissible for clauses (3) and (4) of Article 293, would necessarily be untenable and seriously hits at the basic and fundamental architecture of the Constitution that governs the public financial management of the country.

61. It is urged that the Union Government take serious note urgently of the serious inroads by it and the unjustified and adverse trends that have recently surfaced in the matter of Union-State financial relations and take steps to remedy these worrisome aberrations.

K. N. BALAGOPAL
MINISTER FOR FINANCE
GOVERNMENT OF KERALA

Room No. 131, North Block
Government Secretariat
Thiruvananthapuram
Phone: Office : 0471-2333294
Fax : 0471-2333254
Mobile : 9400887700
E-mail : min.fin@kerala.gov.in

134/2022/Mfin

22.07.2022

Dear Smt. Nirmala Sitharamanji,

Sub: Regarding Borrowing consent Under Article 293(3) of the Indian Constitution

I am writing this letter to seek your kind, urgent intervention in an issue that threatens to seriously compromise the federal-state financial arrangements envisaged in the Constitution of India.

1. This letter is addressed to you in the backdrop of the grave financial crisis that the State Government is facing currently. The financial health of the state has been seriously affected by a reduction in the revenue deficit grant to the tune of around Rs 7000 crore this year and loss due to stoppage of GST compensation of around Rs 12000 crore. In addition, the Ministry of Finance has arbitrarily, in the name of off-budget borrowing, made a reduction of approximately Rs.4000 crores in the net borrowing limits of the State. In all the State Government will have to contend with a reduction of Rs 23000 crore in the financial resources available to it for financing the budget inthe current financial year. This poses a serious threat to the government in sustaining spending on welfare schemes for the poor, including housing, education and health among others. Unless the realities faced by the State, particularly given the fact that the State is struggling

Ranil

to emerge from the economic debilitation wrought by the Covid pandemic, are recognised by the Union Government, the safety of the socio-economic security system that the state has worked so hard to build over the last several decades will be in jeopardy.

2. The composition of the financial liabilities of State Governments has changed significantly in the last 25 years. The share of loans and advances from the Centre has declined from over 15.8% of all State liabilities in 2005 to 3.0% in 2020. Kerala is no exception to this trend. The outstanding loans and advances from the Centre to Kerala State as a percentage of Kerala State's total liabilities have reduced from 12.4% in 2005 to 3.3% in 2020. This trend towards greater fiscal decentralisation in India was fundamentally on account of the recommendation of the Twelfth Finance Commission for disintermediation of the Central Government from raising public debt by State Governments. The rationale for this recommendation was that States would now rely on market borrowings to finance their expenditure and would, accordingly, be subject to the discipline of the financial markets. States that borrowed unsustainably would face higher interest rates, while fiscally prudent States would be able to borrow at cheaper rates.

3. The Finance Commissions constituted by the Government of India under Article 280 of the Constitution, once in five years play an integral role in regulating sub-national borrowings, as evident from the recommendations of the Twelfth Finance Commission in 2004-05 for the disintermediation of the Central Government from the raising of public debt by State Governments.

Over the years, Finance Commissions have been recommending targets for States' fiscal deficit and outstanding debt, the basis on which the Central Government fixes the Net Borrowing Ceiling of States for a particular financial year.

4. However, over the last five years, some of the actions of the Union Ministry of Finance while fixing the State's net borrowing ceilings has raised some grave concerns for the State Governments. It is pointed out that under the declared objective of fixing the net borrowing ceiling, Article 293(3) of the Constitution is being used to vitiate the State's independence and make systematic inroads into the financial autonomy of State Governments, enshrined in our Constitution.

5. The Constitution defines the scope of executive power of the Union and the State Governments. By virtue of the provisions of Articles 73 and 162, the executive power extends to all matters concerning which the Parliament and the State Legislature have the power to make laws. This executive power is broad. By the Entries 35 and 43 in Lists I and II of the 7th Schedule, the executive power of the Union and the States shall extend to the public debts. It appears that to put the matter beyond any shadow of doubt and enforce a kind of fiscal discipline, the framers of the Constitution made specific provisions in respect of 'borrowing' by the State and the Union Governments. These are contained in Chapter II of Part XII of the Constitution in Articles 292 and 293 of the Constitution. Article 292 deals with the executive power of borrowing upon the security of the Consolidated Fund of India, and Parliament, by law, has the power to regulate the limit. Article 293(1) deals with the executive power of a

State to borrow within the territory of India upon the security of the Consolidated Fund of the State, and the Legislature of such State by law is empowered to fix the limit. Article 293 (2) enables the Government of India to make loans to any State so long as any limits set under Article 292 are not exceeded.

6. Article 293(3) of the Constitution fetters the state's power to raise loans. Under this provision, if there is still any part of a loan made to the State by the Government of India or in respect of which the Government of India has given a guarantee, State is forbidden from raising any loan without the consent of the Union Government. The words 'any loan' in this chapter must be read in light of the accepted canons of Interpretation of Statutes. In ***Chandra Mohan* v. *State of U.P.* AIR 1966 SC 1987**, a five-judge Bench of the Supreme Court held that the words *"service of the Union or the State"* do not mean any other service of the Union or the State except the *Judicial Service* as defined in Article 236(*b*) of the Constitution. Applying the Latin maxim *"ejusdem generis"*, which means "of the same kind or nature", which is an accepted principle of statutory construction,the words *any loan* appearing in Article 293(3) similarly must be read as any loan advanced by the Central Government. Any different construction to the words *any loan* would cut at the root of our country's federal nature, one of the salutary edifices on which our founding fathers of the constitution has rested the idea of India. In ***S.R.Bommai Vs Union of India* (1994) 3 SCC *Page* 1**, the Hon'ble Supreme Court held that federalism is part of the basic structure of the Constitution and no Act should impinge on this federal

character. It is therefore clear that any interpretation of Article 293 that overrides the Constitution's federal character would be impermissible. Further, the liabilities of other instrumentalities of the State Government, like Statutory bodies and companies, do not come within the definition of State debt as envisaged in this Chapter. The definition of 'State' in Article 12 only applies to the provisions of Part III of the Constitution. 'State' as defined in Article 293 of the Constitution will have to be construed as a reference to the States as defined under Article 1(2) of the Constitution read with the 1st Schedule to the Constitution. The Hon'ble Supreme Court in ***State of Bihar v. Union of India & Anr [(1970) 1 SCC 67]*** and ***Tashi Delek Gaming Solutions Ltd & Anr v. State of Karnataka &Ors*** has held that the enlarged definition of 'State' as defined under Article 12 of the Constitution would not apply to other parts of the Constitution. The move to combine the debts of legal entities owned by the State and the general debt of the State Government is contrary to the provisions of the Constitution. It would imperil the borrowing powers of the States and jeopardise the development plans it seeks to achieve through its various agencies.

7. To further explain, the requirement that a State must obtain consent under clause (3) of Article 293 of the Constitution of India is applicable only when a State is **either indebted to the Centre, or when repayment of a loan taken by the State which the Centre has guaranteed remains outstanding.** This implies that the purpose of this provision in the Constitution is to protect the rights of the Centre in its capacity as a creditor. Clearly, therefore, the conditions under

clause (4) of Article 293 must necessarily be directly related to the specific loan for which the Government of India issues consent under clause (3) of Article 293. In other words, using Article 293(3) and (4) of the Constitution to regulate and oversee the financial management of the State Governments and their agencies is far beyond what is contemplated in the Constitution.

Controlling the management of the Public Account of the States through actions *ultra vires* Article 293(3)

8. For over seven decades after the Constitution was enacted, successive Union Governments have always adhered to the constitutional provisions respecting the financial powers vested with the State Governments to manage their affairs. In August 2017, Article 293 (3) was wrongly and unconstitutionally administered to significantly constrain the financial freedom of State Governments. That year *vide* letter No. 40(6) PF-I/2009-Vol III dated 28th August 2017; the Government of India decided to effectively include the balances in the Public Account of the State while reckoning the Net Borrowing Ceiling of the State Government.

9. Article 293(3) can only be legitimately used for imposing conditions related to a request for borrowing of a State Government. This cannot be used to control or administer the borrowing of the State Government. Under the Constitution, these are matters that exclusively remain in the domain of the State Government. Thus clearly, even if for argument's sake, conditions under Article 293(3) were to be made generalisable over the overall annual borrowing programme of

States, this could at most apply to the State's share of Open Market Borrowings and the borrowings from Central PSUs and Financial Institutions like LIC, NABARD etc., which are **regulated administratively by the Union Government or are a necessary part of the monetary policy of the Union Government**. It is not difficult to see that such conditions cannot go beyond and be used to control and regulate the exercise of the State's financial powers itself.

10. Furthermore, the Public Account of the State is a constitutional provision in Article 266(2) where all transactions of the State Government other than those credited to or debited from the Consolidated Fund of the State. Article 283(2) confers on the States the powers of regulating its Public Account under law made by the Legislature of the State. The Public Account of the State reflects its internal financial transactions where constitutionally the State plays the role of a banker to itself. But, without a valid legal or financial basis, Government of India, by deciding to arbitrarily exclude amounts in the Public Account in assigning the net borrowing ceiling, has attempted to make serious inroads into the constitutional financial powers of the State Governments while at the same time seriously impairing the ability of the State to manage its liquidity from time to time.

Constitutionally untenable attempt to control financial operations of Government Agencies of the States through incorrect interpretation of Article 293(3) & 293(4)

11. It is pointed out that this year, unfortunately, the above approach of the Finance Ministry in incrementally making inroads into the State's powers enshrined in

the Constitution has gone further. The Ministry of Finance has now stipulated that along with balances maintained in the Public Account of a State Government, all borrowings of State Government entities receiving budgetary support from the State Budget will also be taken into consideration while setting the borrowing limits of the State Government. Vide Letter no. 40(2) PF-S/2022-23 dated 31.03.2022 of the Department of Expenditure containing instructions on the Net Borrowing Ceiling for the financial year 2022-23 it was stipulated that Borrowings by State Public Sector companies/corporations, Special purpose vehicles (SPVs) and other equivalent instruments, where principal and/or interest are to be serviced out of the State Budgets and/or by assignment of taxes/cess or any other State's revenue, **shall be considered as Borrowings made by the State itself for the purpose of issuing the consent under Article 293(3) of the Constitution of India.**

12. Presumably, an oft-repeated argument is that the Comptroller and Auditor General (C&AG) of India have classified borrowings of agencies of States Governments as off-budgetary borrowings. This is then touted as the basis for the current use of Article 293(3), as seen in the letter of the Ministry of Expenditure cited above. While the State Government has consistently maintained that such classification is erroneous, suffice it to say, the powers of the C&AG extends only to matters related to accounting and auditing of public money and not to the interpretation of the provisions that regulate the financial powers of the Union and the States under the Constitution. This solely falls

within the domain of the Judiciary of the country in light of the principle of separation of powers enshrined in the Constitution

13. The Union Government and the State Governments have hundreds of companies and statutory bodies established by them. These agencies help the Governments, Union and States to carry out their respective development plans. Under the Union Government, several such institutions receive budgetary support through the Union Budget either as 'grants' or as 'investments'. These institutions further tap resources extensively from the financial markets through their own borrowings. These borrowings help significantly in moving the development agenda of the country forward. Leveraging the markets through such mechanisms is now considered the cornerstone of modern financial management and is a practice that all countries resort to. While the letter of the Department of Expenditure, cited above attempts to impose restrictions on the States, the Union Government itself does not impose any such limits on its own borrowings by taking into account the borrowings of the agencies set up by it. Given this, the prescription that the borrowing of State Government Agencies will be reckoned to determine how State Government agencies should access the financial and money markets of the country becomes discriminatory, illogical and unfair – apart from the fact that it clearly violates the Constitution.

14. To reiterate, the scope of Article 293(3) and (4) are limited to the State as defined under Article I (1) of the Constitution. It cannot be extended to include the debt of Government Agencies, including Companies and Statutory Bodies, regardless

Ravi S.

of whether the Legislature of the State in its wisdom decides to finance them by way of grant or assignment of taxes and other revenues through its Budget.

15. Over the eight decades of independence, a very robust federal financial framework has evolved in the country. The Union Government has in place the Fiscal Responsibility and Budget Management Act, 2003 (Act No. 39 of 2003) enacted by Parliament. Based on this, the Union regulates its financial affairs. All-State Governments have their own version of the Fiscal Responsibility framework. The State Legislature of Kerala enacted the Kerala Fiscal Responsibility Act, 2003 Act 29 of 2003. The Legislature also enacted the Kerala Ceiling on Government Guarantees Act, 2003 Act 30 of 2003. Using Article 293(3) and (4) wrongly to drive the fiscal management of the States would seriously impinge on the federal-state financial architecture and would evidently be *ultra vires* the Constitution. Furthermore, the executive power of the Union and States is coextensive with the legislative power. Consequently, the Parliament having no legislative power vis-à-vis Article 293, no executive power could be exercised by the Union Government under those provisions.

16. As the Twelfth Finance Commission points out, any inefficiency or lack of prudence shown by the State in its fiscal management would be evaluated and assessed by the financial markets themselves. The borrowings of States rated higher in terms of their fiscal management would naturally carry a lower risk premium in the market, while others would have to pay the price of a higher risk premium. It is certainly not for the Union Government, through a

constitutionally wrong and misplaced application of Article 293(3) and (4), to make any inroad into the State's financial powers enshrined in the Constitution.

17. Yet another aspect is equally disturbing. Under the federal-state financial architecture in the Constitution, the well-established constitutional structure for making recommendations is the Finance Commission. None of the previous fourteen Finance Commissions have made any such recommendation that could serve as the basis for the above decision of the Department of Expenditure.

18. Furthermore, the Terms of Reference of the Fifteenth Finance Commission had specifically provided that, while making its recommendations, the Commission shall have regard, among other considerations to the conditions that Government of India may impose on the States while providing consent under Article 293(3) of the Constitution. Despite this specific mandate being given to the Fifteenth Finance Commission, when the Commission recommended the borrowing limits of States for FY 2022-23 and FY 2023-24 at 3.5% and 3%, respectively, no recommendations/ comments were made by the Commission on any conditions that the Union Government may impose. The Fifteenth Finance Commission was mindful of the off-budget borrowings of the State and Centre while allowing the limits and had discussed this subject extensively with the Finance Departments of the various State Governments.

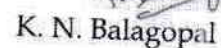
19. To conclude, for your kind consideration, it would be wrong to interpretatively and selectively use Article 293(3) to undermine the federal character of the Constitution. Going beyond what is strictly required under the provision to

protect the Central Government's rights as a creditor would amount to an overreach on the part of the Government of India. Given that firstly by virtue of the provisions of Articles 73 and 162, the executive power extends to all matters with respect to which the Parliament and the State Legislature have the power to make laws and that this executive power is broad, and secondly, by virtue of the Entries 35 and 43 in Lists I and II of the VII Schedule, the executive power of the Union and the States shall even extend to the public debts, any conditions imposed by Centre on States beyond the narrow scope permissible for clauses (3) and (4) of Article 293, would necessarily be untenable and seriously hits at the basic and fundamental architecture of the Constitution that governs the public financial management of the country.

20. Hence, I request your kind self to immediately intervene in the matter and issue instructions to restore the *status quo ante* to the position that prevailed before August 2017 and exclude (1) all balances in the Public Account of the State and (2) the borrowings of State Government entities in determining the net borrowing ceiling of the State Governments in accordance with Article 293(3) and 293(4) of the Constitution.

With Warm Regards,

Yours sincerely



K. N. Balagopal

Shri. Nirmala Sitharaman
Union Minister for Finance
Ministry of Finance
North Block
New Delhi 110001

7259981/2023/WSPTG A

निर्मला सीतारामन
वित्त एवं कॉर्पोरेट कार्य मंत्री
भारत सरकार

Nirmala Sitharaman
Minister of Finance and Corporate Affairs
Government of India

D.O. No. 13(1)/PF-S/2022-23
May, 2023

Dear Shri Pinarayi Vijayan ji,

Please refer to your D.O. letter No. 133/2023/CM dated January 19, 2023 addressed to the Prime Minister enclosing a Memorandum regarding certain issues on Central-State financial relations.

The issues have been examined in detail. At the outset and without necessarily repeating this against each and every item, it may be noted that we do not agree with several of the interpretations of the Constitutional provisions contained in the Memorandum.

As regards terms of reference of the Finance Commission, in paragraph 9, the Memorandum states that the Constitution does not contemplate making of recommendations to regulate the exercise of financial powers by the State Government, and gives an impression that it is only in the latest Finance Commission that this has been deviated from. It may kindly be noted that the Constitution expressly permits the President to refer "any other matter in the interest of sound finance". Over the years, several Finance Commissions have made recommendations on how the States ought to exercise their financial powers. Almost all have given many tied grants to be administered by the Centre with various conditions attached. They have also in some cases, tied the borrowing limits of States to be accorded by the Centre, to fiscal performance (e.g. 14th Finance Commission). The 12th Finance Commission linked debt relief to fiscal responsibility measures. Hence the impression contained in the Memorandum, that something unusual was done in the Terms of Reference of the 15th Finance Commission, is not correct.

In paragraph 12 an impression is given that the Union Government made an appeal to the FFC to recommend "granting powers to itself" for regulating market borrowings of the States in connection with raising off-Budget borrowings. This is factually incorrect. No request was made to "grant" any power, since such powers are already granted by the Constitution expressly in Article 293 (4). An opinion was sought, but such opinion is not necessary for the exercise of the said power. As acknowledged in para 13, the Commission did state clearly that:

> *"..........we recommend that governments at all tiers may observe strict discipline by resisting any further additions to the stock of off-budget transactions and contingent liabilities which is against the norms of fiscal transparency and detrimental to fiscal sustainability."*

Contd...2/-

Office : 134, North Block, New Delhi-110001 Tel. : 23092810, 23092510 Fax : 23092828
Residence : 15, Safdarjung Road, New Delhi - 110011, Tel. : 23793791 Fax : 23793792

D.O. No. 13(1)/PF-S/2022-23

CONTINUATION SHEET

As regards the issue of off budget borrowings referred to in Part II of the Memorandum, it should be noted that only those borrowings where principal and/or interest are to be serviced out of the State Budgets and/or by assignment of taxes/cess or any other States' revenue are being considered for the purpose of issuing the consent. Hence it is not correct to state that "all borrowings of State Government entities receiving budgetary support" are being covered. The statement in paragraph 16 that the C&AG's powers are related to accounting and not to regulation of financial powers is correct but not relevant to the question. The point is that the C&AG has, from an accounting and audit point of view, under its constitutional powers, stated that certain borrowings are to be accounted for and disclosed as de facto State borrowings. The correct substantive characterization of a particular financial item under the well established principle of "substance over form", is very much the domain of accounting. Hence, the views of the C&AG are extremely relevant, and indeed necessary, for the interpretation of whether a particular item is or is not to be treated as State borrowing. In this connection, your attention is invited to the following observations of the C&AG in the Kerala State financial audit report for the year ended on 31st March, 2021.

> *"Off-budget borrowings by the State Government have the effect of bypassing the Net Borrowing Ceiling (NBC) of the State by routing loans outside State budget through Government owned or controlled Companies statutory bodies despite being responsible for repayment of such loans. Such borrowings naturally have impact on the Revenue Deficit and Fiscal Deficit and thus, have the effect of surpassing the targets set for fiscal indicators under 'The Kerala Fiscal Responsibility Act, 2003' (as amended from time to time). Creating such liabilities, without disclosing them in the budget, raises questions both of transparency and of the intergenerational equality."*

CAG has further observed that:

> *"Kerala Infrastructure Investment Fund Board (KIIFB) has no revenue of its own and the State Government has to defray the debt obligations of KIIFB by transferring its own revenue resources through budget every year. As such, these borrowings cannot treated be contingent liability, but a direct liability on the States own resources."*

In paragraph 17, it is stated that leveraging the markets is a corner stone of modern financial management. Without disagreeing, it may be noted that only those borrowings of State entities which are serviced from the Consolidated Fund through appropriations or pre-empting of receipts, are being accounted for in the borrowing

Contd...3/-

CONTINUATION SHEET

ceiling and <u>NOT</u> the borrowings which are serviced by undertakings from their own resources. In essence, the treatment merely and correctly emphasizes "substance over the form" which is an established principle of accounting. The guidelines are intended only to prevent the circumvention of ceilings and not to curtail legitimate borrowing.

In Part III, several points have been made regarding guarantees being issued by the State. The entire section of the Memorandum seems to be based on a factually incorrect assumption that ceilings or controls have been imposed by the Central Government on contingent liabilities. This is not correct. No restriction has been placed on issuance of guarantees by the Central Government.

As regards Part IV of the Memorandum, there is no disagreement that the power to manage the public debt of the State falls within the executive power of the State. However, this power is to be exercised harmoniously with the restrictions which the Central Government may impose under Article 293.

In Part V, an issue regarding liabilities under the Public Account has been raised. An impression is given that the Centre is attempting to control the operation of the Public Account. This is incorrect. The Central Government has not imposed any control or restrictions on the operation of the Public Account. However, when deciding the amount of borrowing permissions, the liabilities arising from the Public Account are being considered in order to fix the ceiling for loans to be taken under Article 293 (3). Considering other existing liabilities when permitting a loan is a normal matter of financial prudence. As an analogy, the existence of a house loan from one bank may be a relevant factor to be considered when sanctioning an overdraft limit by another bank. The reference to the Public Account in the Central Government borrowing guideline is not for the purpose of regulating the Public Account but only for the purpose of determining the prudent borrowing ceilings. Hence consideration of liability under Public Account is proper.

Part VI of the Memorandum deals with the various instructions issued by the Reserve Bank of India. In our view, the actions of the RBI are *intra vires* its powers. An impression is given that RBI has somehow changed its position and had earlier allowed lending to be repaid from budgetary resources. A circular of 2015 has been quoted. However, that circular itself states:

> "........*It should be ensured by banks and financial institutions that these loans/investments are* ***not used for financing the budget of the State Governments****. Whether such financing is done by way of extending loans or*

Contd...4/-

Ravi S

D.O. No. 13(1)/PF-S/2022-23

सत्यमेव जयते

CONTINUATION SHEET

investing in bonds, banks and financial institutions should undertake due diligence on the viability and bankability of such projects to ensure that revenue stream from the project is sufficient to take care of the debt servicing obligations and that the ***repayment/servicing of debt is not out of budgetary resources.***"

Hence, the stand of Reserve Bank of India has been consistent. It has never permitted taking of loan by Public Sector Units if repayment/servicing is out of budgetary resources.

In Part VII, it is said that there has been an unequal treatment of agencies of the Union Government. Firstly, as already noted, the restrictions on off-budget borrowings relate only to those borrowings which are serviced through the Consolidated Fund or through revenues which would otherwise be credited thereto. There are many State entities which continue to raise funds to be repaid from their own resources for which no restrictions have been placed by the Central Government. The Central government has not objected to State public sector undertakings raising borrowings on the strength of their own resources and balance sheets, and no limits have ever been fixed for such leverage. Hence, the reference to the borrowings of the Central public sector undertakings in paragraph 58 has no relevance to the matter at all. The Central Government has discontinued off-budget borrowings.

Last but not least, in the introductory section of the Memorandum, there appears to be an implication that Article 293(3) relates to the Centre's role as a creditor, and because loans and advances from the Centre now form a lower share of State borrowings, the relevance of Article 293(3) has diminished. The fact is that loans from the Centre continue to be substantial, both loans for Externally Aided Projects and more recently for capital investment. External aid would not be available for States if not intermediated by the Government of India, as the concerned agencies are only willing to lead to the sovereign or with sovereign guarantee. The Centre invariably and automatically services such loans on due date, thereby protecting the creditworthiness of the States.

There is a risk borne by the Centre which is not imaginary or theoretical. Some States have defaulted from time to time, but the Centre's intermediation protects them from the adverse reputational consequences. For instance, the Kochi Metro Rail Ltd. has failed to make payments to the Agence Française de Développement (AFD) since 2014. It is the legal responsibility of Government of Kerala to repay in the event of failure by the SPV but this also has not been done. A sum of Rs. 50.23 crores has been paid by the Centre and remains due from the State (copy of relevant letter from Secretary, Ministry of Housing and Urban Affairs, is enclosed).

Contd...5/-

D.O. No. 13(1)/PF-S/2022-23

CONTINUATION SHEET

Hence, it may be appreciated that Articles 293(3) and 293(4) remain extremely relevant in the interest of sound finances; the actions of the Central Government are fully proper and within what is contemplated in the Constitution.

We would also like to inform that in view of the magnitude of off-budget borrowing and difficulties expressed by some States including State of Kerala, the adjustment for such off-budget borrowing done by the States in 2021-22 was spread across up to four remaining financial years of 15th Finance Commission award period (2022-23 to 2025-26). Further, replacement borrowing for repayment of off-budget borrowing, which has been raised on or after 01.04.2021, has also been allowed to the State of Kerala.

In addition to allowing higher borrowing limit of 4% of GSDP and 3.5% GSDP during FY 2021-22 and FY 2022-23 respectively, additional borrowing of Rs. 1,700 crore has been allowed during FY 2022-23 to State of Kerala, equivalent to the employer's and employee's share of contribution to be deposited with National Pension System (NPS). Further, additional borrowing of Rs. 4,060.00 crore (being 0.45 percent of GSDP) and Rs. 4,263.00 crore (being 0.46 percent of GSDP) has also been allowed to the State of Kerala for meeting certain performance criteria in power sector for the year 2021-22 and year 2022-23 respectively.

Also, in order to boost capital expenditure by State, fifty year interest free loan of Rs. 1,903 crore was released to the State of Kerala during FY 2022-23 under 'Scheme for Special Assistance to State for Capital investment for 2022-23' over and above, the normal net borrowing ceiling. An amount of Rs. 1,925 crore has also been allocated for the State of Kerala under Part-I of the 'Scheme for Special Assistance to State for Capital Investment for 2023-24'. This inter-alia is aimed at fostering transparency and avoiding built up of non-transparent liabilities.

Overall you will appreciate that the Government of India has been fair and provided substantial resources to Kerala beyond the Constitutional obligations.

With regards,

Yours sincerely,

(Nirmala Sitharaman)

Shri Pinarayi Vijayan
Chief Minister
Government of Kerala
141, 3rd Floor, North Block
Government Secretariat
Thiruvananthapuram – 695001.

मनोज जोशी
सचिव
Manoj Joshi
Secretary

भारत सरकार
आवासन और शहरी कार्य मंत्रालय
निर्माण भवन नई दिल्ली-110011
Government of India
Ministry of Housing and Urban Affairs
Nirman Bhawan, New Delhi-110011

D.O. No.K-14011/03/2023-UT-V
2nd May, 2023

Dear Sir

I am writing you regarding pendency of repayment of long term loan taken for Kochi Metro Rail Project Phase-I.

2. A long term loan of ₹1,327.11 Crore was taken from external funding agency viz. Agence Française de Développement (AFD) to Kochi Metro Rail Limited (KMRL) for implementation of Kochi Metro Rail Project Phase-I. KMRL vide email dated 27.04.2023 has indicated outstanding of ₹33.18 Cr towards principal repayment and ₹17.05 Cr towards interest (Total amount ₹50.23 Cr). The above repayment has been made by Government of India to EIB as per loan repayment schedule since year 2014(**Copy enclosed**).

3. As per clause 12.26 of Memorandum of Understanding (MoU) duly signed by MoHUA, Government of Kerala (GoK) and KMRL, the responsibility of loan repayment lies with KMRL (SPV) and in case of any failure of repayment by SPV, the responsibility of repayment lies with GoK (copy of MoU is enclosed). KMRL has not repaid the loan installment due, therefore the responsibility of loan repayment always lay with GoK. However, as mentioned above, in this case, Government of India has done repayment of loan.

4. It is requested that GoK should pay an amount of ₹33.18 cr towards principal repayment and ₹17.05 cr towards interest (Total ₹50.23 cr) within 7 days i.e. by 9th May 2023 to Chief Aid Account and Audit (CAAA) positively. The complete loan repayment schedule is also being **enclosed** for ensuring timely repayment of future installments.

Yours sincerely,
Manoj Joshi
(Manoj Joshi)

Encl : As above.

Dr. V.P Joy
Chief Secretary
Government of Kerala
Room No. 202, North Sandwich Block
Secretariat, Kerala

Office Address: Room No. 122 C Wing, Nirman Bhawan, New Delhi-110011
Tel: 011-23062377, 23061179 Fax: 011-23061459 Email: secyurban@nic.in
Website: www.mohua.gov.in

Raul