

**STATEMENT OF FACTS ON BEHALF OF THE SECOND and THIRD  
RESPONDENTS IN WRIT PETITION (C) DIARY NO. 11282 OF 2020 FILED  
BY THE KERALA STATE SMALL INDUSTRIES ASSOCIATION BEFORE  
THE HON'BLE SUPREME COURT OF INDIA .**

All the averments and allegations except those which are specifically admitted here under are denied.

1 : As the world is facing a catastrophic situation due to the outbreak of Covid- 19 pandemic and in order to combat this challenge, the Ministry of Labour and Employment, Government of India have directed the State authorities through DO letter No M-11011/08/2020-Media dated 20-03-2020 to advise all the employers of the Public/Private Establishments not to terminate their employees particularly casual or contractual workers from the Job if any worker takes leave he/she should be, deemed to be on duty without any consequential deduction in wages for that period. In pursuance of the above circumstances, the state Labour department has issued , circular numbered 11/2020 (Enf 4113/2020) dated 24th March 2020 in compliance with the above direction of Central Government.

2 & 3 : No Comments.

4 : Government of India have directed the State authorities through DO letter No M-11011/08/2020-Media dated 20-03-2020 to advise all the employers of the Public/ Private Establishments not to terminate their employees particularly casual or contractual workers from the job if any worker takes leave she should be deemed to be on duty without any consequential deduction in wages for that period. In pursuance of the above circumstances, the State Labour department has issued circular numbered 11/2020 (Enf 4113/2020) dated 24<sup>th</sup> March 2020 in compliance with the above direction of Central Government.

5 : Government of India have directed the State authorities through DO letter No M-11011/08/2020-Media dated 20-03-2020 to advise all the employers of the Public/Private Establishments not to terminate their employees particularly casual or contractual workers from the job and if

any worker takes leave she should be deemed to be on duty without any consequential deduction in wages for that period. In pursuance of the above circumstances, the State Labour department has issued circulars numbered 11/2020, 11/2020(2) (Enf 41 13/2020) dated 24<sup>th</sup> March 2020 and 26<sup>th</sup> March 2020 respectively in compliance with the above direction of Central Government. In the outbreak of the Covid-19 pandemic the coordinated joint efforts of all sections of the society is required to combat the challenge. In the backdrop of challenging situations employers of the public or private establishments have to extend their cooperation.

6(A) to (F) : No Comments.

6(D) : The Covid 19 pandemic has hit the citizens of the country in ways still beyond our grasps and is a global event that may have forever changed the way we conduct ourselves in our micro and macro surroundings. The unfolding events of the crisis, the magnitude of which is still based on mathematical projections is quite appalling. It was under such circumstances that the Government and its departments including 3'4 respondent had issued various guidelines and directives on measures to tackle an unfolding crisis and preserve the populace of the country and its activities as it is while protecting the dignity and right to life of the citizens of the country. It would not be out of place to say that Governments and its departments have never been faced with such a situation where it had to take up such a stance to ensure that everyone including the weakest strata's of the population are protected from the unabated outfall of the crisis.

It is under these circumstances that the impugned circular No 04/2020/F&B dated 11.01.2020 (P-8) has been issued by the 3 respondent for ensuring the health, safety and welfare of the workmen employed by various factories in the state of Kerala in wake of Covid 19 pandemic. The circular was based on broad grounds for shut down/ operation of the factories in the state when the Covid 19 crisis was still unfolding. It was

primarily intended on ensuring the safety and health of the workers. However, welfare is also an indispensable part and hence guidelines on ensuring the same ;was also included in the circular. As, the Department of Factories and Boilers is mandated with ensuring the Health, Safety and Welfare of all workers under employment in a factory, a broad based above said Circular was issued primarily based on the rights of the workers guaranteed by the Constitution of India, The Factories Act, 1948 and The Kerala Factories Rules, 1957.

6(C) and (F) : No Comments.

6(G) : It is submitted that the Circular 04/2020/F&B dated 23.03.2020 was issued subsequent to DO letter No.M-11011-08-2020-Media dated 20.03.2020 of the Secretary, Ministry of Labour and Employment, Government of India (P-7) which contains in spirit the directive under GO (MS) No. 49/2020 dated 23.03.2020 (produced and marked as Annexure R1) of the Government of Kerala. Hence the contention that the Circular was issued without any authority or merit of instruction on a national level is misplaced.

6(H) to (FF): No Comments.

### **GROUND**

A and B: The State Government is liable to function in consonance with the orders of the Central Government. In this alarming situation the circular issued by the State Government was in compliance with the orders of the Central Government. In the outbreak of the Covid-19 pandemic the coordinated joint efforts of all sections of the society is required to combat the challenge. In the backdrop of challenging situations employers of the public or private establishments have to extend their cooperation.

C to H: Section 10 of Disaster Management Act,2005 provides ample authority to Government of India and State Government to lay down guidelines

for effectively managing the disaster.

I to J: As the world is facing a catastrophic situation due to the outbreak of Covid - 19 pandemic the coordinated joint efforts of all sections of the society is required to combat the challenge. In moral/ humanitarian/ obligation of all the sectors of society. The social commitment of everyone is necessary for the social and economical development of the country. In this regard such an order issued by the Central Ministry and the State Government followed the same. Government of India directed the state authorities through Order No.40-3/2020-DMAI(A) dated 29/03/2020 to advise all the employers, be it in the industry or in the shops and commercial establishments shall make payment of wages of their workers, at their work places on the due date without any deduction for the period their establishments are under closure during the lock down. The termination of employee from the job or reduction in wages in this scenario would further deepen the crises and will not only weaken the financial condition of the employee but also hamper their morale to combat their fight with this epidemic.

K: It can be deduced from the contention that, the workers are being treated as an expendable asset from the point of view of the factory management at a time of crisis and hence the contention that there are inherently no obligations on the part of the employer to pay wages during such period is against principles of natural justice as such on lock |down period may be considered as Extended Period of work.

L to Q : As the world is facing a catastrophic situation due to the outbreak of Covid - 19 pandemic the coordinated joint efforts of all sections of the society is required to combat the challenge. In moral/ humanitarian/ obligation of all the sectors of society. The social commitment of everyone is necessary for the social and economical development of the country. In this regard such an order issued by the Central Ministry and the State Government followed the same. Government of India directed the state authorities through Order No.40-

3/2020-DMAI(A) dated 29/03/2020 to advise all the employers, be it in the industry or in the shops and commercial establishments shall make payment of wages of their workers, at their work places on the due date without any deduction for the period their establishments are under closure during the lock down. The termination of employee from the job or reduction in wages in this scenario would further deepen the crises and will not only weaken the financial condition of the employee but also hamper their morale to combat their fight with this epidemic.

R to Z : No Comments.

AA to JJ : No Comments.

Hence it is humbly submitted that the contentions put forth by the petitioner is devoid of merits and hence liable to be dismissed.