

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MR. JUSTICE BASANT BALAJI

FRIDAY, THE 22ND DAY OF MAY 2026 / 1ST JYAISHTA, 1948

WA NO. 1051 OF 2026

AGAINST THE JUDGMENT DATED 08.04.2026 IN WP(C) NO.14179 OF
2026 OF HIGH COURT OF KERALA

APPELLANTS/PETITIONERS IN WPC:

- 1 M.K. SURESH KUMAR, AGED 67 YEARS
'KAIVALYAM', THOTTUDA P.O, KANNUR, PIN - 670007
- 2 K. PADMANABHAN, AGED 60 YEARS
THAYANADATH HOUSE, PALAYAD, THALASSERY, KANNUR, PIN -
670661

BY ADV SRI.A.ABDUL NABEEL

RESPONDENTS/RESPONDENTS:

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

BY ADV SHRI.AMAL PARTHASARADHY, CGC
ADV. SRI. P. SREEKUMAR - ASGI.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 22.05.2026,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

Devan Ramachandran, J.

The appellants call into question the correctness of the judgment of the learned Single Judge in WP(C) No.14179/2026.

2. Through the afore writ petition, the appellants sought a declaration that the Industrial Relations Code (Amendment) Act, 2026 (Act No.1 of 2026) (for short 'the Amendment Act') is unconstitutional, arbitrary and *ultra vires* the provisions of the Industrial Relations Code, 2020 ('Code' for short); and that it is also violative of Articles 14 and 21 of the Constitution of India. They also sought that the amendment dated 16.02.2026, to the extent to which sub-section (1A) was introduced in Section 104 of 'the Amendment Act', be declared illegal; and consequently, that a writ of prohibition be issued, to restrain Labour Courts, Industrial Tribunals and National Tribunals constituted under the Industrial Disputes Act, 1947 (for short 'ID Act') from adjudicating any existing or new cases under the Code.



3. The learned Single Judge considered the rival contentions and repelled them, finding that the impugned provision does not suffer from any vice from the standpoint of constitutional propriety or incorrectness; and the appellants are before us in appeal.

4. Sri.A.Abdul Nabeel – learned counsel for the appellants, argued that sub-section (1A) of Section 104 of the 'Code' is manifestly illegal and unconstitutional because, it permits the earlier Tribunals and Judicial Forums to act, even though the Statutes under which they were constituted stand expressly repealed. He argued that, by allowing this, Sections 44(7) and 51(1) of the 'Code' would stand violated and defeated, because they provide for mandatory transfer of all cases to Forums which have multiple members, and not single, as are permitted by the repealed Statutes. He then argued that the 'Code' also creates legal issues since, the powers of the respective States have been curtailed; and hence that his clients were justified in having approached this Court.

5. In response, Sri.P.Sreekumar, learned Additional Solicitor General of India, instructed by Sri.Amal Parthasarathy – learned Central Government Counsel,



appearing for the respondents, argued that Section 104(1A) of the 'Code' is only a transitory provision, which provides for adjudication of matters pending the establishment of the Tribunals under it. He pointed out that if the challenge to the provision is to be upheld by this Court, then it would lead to a situation where there would be no Tribunals or Forums to adjudicate any of the existing disputes; and that this would culminate in a virtual “cryonic freeze”, thus bringing disservice to litigants, rather than any benefit to them. He argued that, in any event, this would be not necessary for this Court to evaluate because, the provision in question does not suffer from any constitutional error; and hence that the endeavour of the appellants is a misadventure and nothing more.

6. We have evaluated the afore rival submissions, on the touchstone of the judgment of the learned Single Judge.

7. The learned Judge has adverted to the provisions of the 'Code' and has relied upon the judgment of the Hon'ble Supreme Court in **Shayara Bano v. Union of India** [(2017) 9 SCC 1], to analyse whether the impugned provision can be construed to be “manifestly arbitrary”, so as to bring it within the vice of constitutional impropriety. The conclusion entered



is to the contrary, and we are now to verify whether it is otherwise.

8. As rightly argued by Sri.P.Sreekumar – learned ASGI, Section 104(1A) of the 'Code' is a non-obstante provision, which provides that the functionaries and statutory authorities under the repealed Acts as per it, would continue to function till the Tribunals and other Authorities become functional under it. This Court is cognizant that the issues relating to the constitution of the Tribunals and statutory Authorities under the 'Code' are pending before the Hon'ble Supreme Court and that interim orders have also been issued by it. In fact, we are told by the learned ASGI that the constitution of the Tribunals and the statutory Authorities is underway and that it is likely to be completed within the shortest period of time.

9. Be that as it may, when a statutory provision is challenged, the appellants will indubitably have to bring it within the purlieus of either an imputation that the legislature did not have the power to legislate under the Doctrine of Pith and Substance, or that the provision is so arbitrary that it shocks the constitutional conscience.



10. As rightly found by the learned Single Judge, in **Shayara Bano** (*sic*), the Hon'ble Supreme Court has rendered it apodictic that it is only in the case of manifestly and shockingly arbitrary provisions, will the jurisdiction of Courts be normally attracted.

11. As per the impugned sub-section, it merely enables the existing Tribunals and statutory Authorities to continue. Far from being arbitrary and shocking, this creates a transitory mechanism, for the period until new Tribunals and statutory Authorities are brought into existence; thus removing any event to cause prejudice to litigants and claimants. If it is to be seen otherwise, then, as also rightly pointed out by Sri.P.Sreekumar – learned ASGI, a situation would surely present itself, where there would be a complete cessation of the judicial functions as required either under the repealed Acts or under the new 'Code'; and this would certainly not behoove any interest – be that of the litigant, or that of the State.

12. Finally, on the argument of Sri.A.Abdul Nabeel, that the transitory provision is in conflict with Sections 44(7) and 51(1) of the 'Code', we think otherwise, for the singular



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reason that these provide for mandatory transfer of cases and for constitution of the Tribunals. It is precisely during the time it takes for the Tribunals to be so constituted, that the transitory provision applies. We cannot bring ourselves to find anything wrong in this, particularly when there is no case for the appellants that the legislature did not have the competence to legislate in the manner it has done.

We thus find full favour with the views and holdings of the learned Single Judge; and consequently, dismiss this appeal.

Sd/- DEVAN RAMACHANDRAN
JUDGE

Sd/- BASANT BALAJI
JUDGE

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