

MOOT PROPOSITION

DHARMANCHAL v UNION OF INDIA

Dharmanchal is a State in the Indian Union. The population of the State is 4,54,17000. Literacy is 95% and per-capita income is Rs. 30000/-. In 2001 the Dharmanchal Legislative Assembly enacted THE DHARMANCHAL INFRASTRUCTURE INVESTMENT FUND ACT, 2001. The preamble of the Act states that “it is expedient to constitute a fund for investments in the infrastructure projects in the State and for matters connected therewith or incidental thereto”. The Act contains all provisions of THE KERALA INFRASTRUCTURE INVESTMENT FUND ACT, 1999 (Act 4 of 2000), with *mutatis mutandis*. The DIIF Act was later comprehensively revised through THE DHARMANCHAL INFRASTRUCTURE INVESTMENT FUND (AMENDMENT) ACT 2016. The provisions of this Act are *in pari materia* with the provisions of Kerala Infrastructure Investment Fund (Amendment) Act 2016.

Various authorities under THE DHARMANCHAL INFRASTRUCTURE INVESTMENT FUND ACT, including the Dharmanchal INFRASTRUCTURE INVESTMENT FUND BOARD (DIIFB) were constituted in 2003. From 2004, DIIFB was very active in mobilizing the funds and supporting the infrastructure development programmes of the State. The annual report of DIIFB published in March 2023 states:

“Infrastructure is the backbone of development in any sector. It decides the status of each nation on the economic map and the quality of life its people has vis-à-vis other nations in the world. While the infrastructure needs have kept on emerging and evolving with the times, Government of Dharmanchal has addressed it effectively through sound policies and initiatives.

In this perspective, the following decisions taken by the State Government have been crucial:

1. To review the infrastructure requirements of vital sectors and identifying the critical gaps.
2. To constitute A Body Corporate titled DIIFB under DIIF Act.
3. To join hands with State/Central Public sector Agencies to have them onboard as Special Purpose Vehicles to support the Administrative Departments in developing infrastructure.

Accordingly, DHARMANCHAL INFRASTRUCTURE INVESTMENT FUND BOARD (DIIFB) was established as the principal funding arm of Government of Dharmanchal by the DHARMANCHAL INFRASTRUCTURE INVESTMENT FUND ACT. Through various functions provided in the Act, DIIFB aims

to channelize fund for critical and large public infrastructure projects in Dharmanchal. With the expanded scope and structure provided under the amended Act, DIIFB is now mobilising and channelling funds for facilitating planned, hassle-free and sustainable development of both physical and social infrastructure including major land acquisition needs that are integral to development ensuring all round wellbeing and prosperity, using financial instruments approved by Securities & Exchange Board of India (SEBI) and Reserve Bank of India (RBI).

The sharp spike in pace, coverage, competency and quality witnessed by the public infrastructure development ecosystem in the State within a short while, with the interventions of restructured DIIFB would remain as the all-time testimony for the highest degrees of commitment being showcased by it in harnessing innovative technologies and widely recognized standards of quality control in infrastructure project management.”

In 2021, through its report the Comptroller and Auditor General (CAG) rapped the State Government over Dharmanchal Infrastructure Investment Fund Board (DIIFB), which it termed as not adhering to Constitutional provision and "bypass the limits set on Government borrowings under Article 293 of the Constitution of India". The 'State Finance Audit Report' by the CAG was tabled in the Legislative Assembly on 3-9-2021 by Finance Minister Saharan Pal.

The CAG in its report found that DIIFB's case as a classic case of off-budget borrowings, which violated provisions of the Constitution.

"As the State Government chooses to raise funds in the name of DIIFB, and the debt is to be discharged from its own revenue, such as cess on petroleum and a part of the motor vehicle tax, then the State government has definitely created a liability on its own revenue resources. This is a classic case of off-budget borrowings, which firstly, bypasses the limits set on government borrowings under Article 293 of the Constitution of India and secondly, it violates the provision of entry 37 of List I,"

said CAG in its audit report.

The report also said that such borrowings for all practical purposes, represent the fiscal deficit of the State and should be treated as such while Saharan Pal all along had argued that it was not a liability to the state as the state was not directly borrowing. The CAG Report further argued that "Creating such liabilities, without disclosing them in the budget, raises questions both of transparency, and of inter-generational equity. Merely because the borrowing is not

shown in the budget does not mean that the liability of discharging it from the State revenues will disappear."

The audit report also criticised the 'Masala Bonds' undertaken by DIIFB on its check on debts incurred by the State government. It said,

"DIIFB borrowed and raised funds amounting to Rs 33,106.57 crores from financial institutions till 2019-20 by the issue of bonds, which were to be re-paid from the petroleum cess and part of motor vehicle tax set apart by the Dharmanchal government from its own revenue resources for transfer to DIIFB.

This included an amount of Rs 5,150 crores raised through Masala Bonds in foreign countries. Since DIIFB has no source of income, the borrowings by DIIFB for which State Government stood as a guarantor, may ultimately turn out to be a direct liability of the State Government.

Any servicing of these debts by the State Government would entail surpassing the fiscal deficit target of 3 per cent (in the current year it already stands at 3.45 per cent) and the debt- GSDP ratio of 30 per cent (in the current year it stands at 30.91 per cent). Further, such off-budget borrowings are not in accordance with Article 293 (1) of the Constitution of India,"

On 24-1-2022, the Dharmanchal Assembly passed a resolution against the report of the Comptroller and Auditor General (CAG). Moving the resolution, Chief Minister said that the CAG had made certain changes in the final report without hearing the departments concerned and it may affect the "checks and balances" between the executive and the legislature.

On 7-6-2023, the Dharmanchal Legislative Assembly passed DHARMANCHAL FISCAL RESPONSIBILITY BILL 2022. The provisions of this Bill are *in pari materia* with the provisions of THE KERALA FISCAL RESPONSIBILITY ACT, 2003. Though the Bill was sent for the assent to the Governor of the State no decision has been taken by the Governor so far.

On 12-7-2023, the State Government received a letter from the Central Government stating that the Central government has adjusted Rs. 18,000 crores worth off-budget borrowings (OBB) in the net borrowing ceiling (NBC) of the state government. The cut will be in a phased manner. This year it will go down by Rs 8,578 crores from the previously calculated NBC of Rs. 32,439 crores for 2022-23. The OBBs thus adjusted are loans availed of by Dharmanchal Infrastructure Investment Fund Board (DIIFB). The Finance Minister of the State informed this fact to the Assembly and called for serious attention of the House into the efforts of the Central government to destroy federalism and misuse of the central agencies to annul the financial powers of the state government. The minister said the Centre effected a cut of Rs 9500 crores in the revenue deficit grant this year.



On 14-8-2023, the state government filed a petition under Article 131 of the Constitution challenging the validity of the action of the Central Government adjusting Rs 18,000 crore worth off-budget borrowings (OBB) in the net borrowing ceiling (NBC) of the State Government on the ground of violation of the principles of federalism contained in the Constitution and misuse and abuse of power by Central Government.

On 16-8-2023, State Government approached the Supreme Court under Article 131 of the Constitution, praying to issue appropriate orders to direct the Governor of the state to take a decision on DHARMANCHAL FISCAL RESPONSIBILITY Bill, 2022 since the action of the Governor is against the principles of Constitution.

On behalf of the Union Government the contentions of the State Government in both the petitions are refuted. The Court decided to hear both the petitions together.