



FOURTEENTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
PUBLIC UNDERTAKINGS
(2016-2019)**

**FIFTY FIRST REPORT
(Presented on 23rd May, 2017)**

**SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2017**

FOURTEENTH KERALA LEGISLATIVE ASSEMBLY

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ON
PUBLIC UNDERTAKINGS
(2016-2019)**

FIFTY FIRST REPORT

On

**The Action Taken by Government on the Recommendations contained in the
Third Report of the Committee on Public Undertakings (2006-2008)
relating to Kerala State Electricity Board based on the
Report of the Comptroller and Auditor General of
India for the year ended 31 March, 2008
(Commercial)**

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COMMITTEE ON PUBLIC UNDERTAKINGS (2016-2019)

COMPOSITION OF THE COMMITTEE

Chairman:

Shri C. Divakaran.

Members:

Shri T. A. Ahammed Kabeer

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Shri C. Krishnan

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Shri Thiruvanchoor Radhakrishnan

Shri P. T. A. Rahim

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Shri Sunny Joseph

Shri C. F. Thomas

Shri P. Unni.

Legislature Secretariat :

Shri V. K. Babu Prakash, Secretary

Smt. P. K. Girija, Additional Secretary

Shri P. B. Suresh Kumar, Deputy Secretary

Smt. Deepa, V., Under Secretary.

INTRODUCTION

I, the Chairman, Committee on Public Undertakings (2016-2019) having been authorised by the Committee to present the Report on their behalf, present this Fifty First Report on Action Taken by the Government of the recommendation contained in the third report of the Committee on Public Undertakings (2006-2008) on the working of the Kerala State Electricity Board based on the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2000 (Commercial).

The Statement of action taken by the government included in this Report was considered by the Committee constituted for the years 2016-2019.

This Report was considered and approved by the Committee at its meeting held on 2-5-2017.

The Committee place on record their appreciation for the assistance rendered to them by the Accountant General (Audit), Kerala in the examination of the action taken statements included in this Report.

Thiruvananthapuram,
2nd May, 2017.

C. DIVAKARAN,
Chairman,
Committee on Public Undertakings.

REPORT

This Report deals with the Action Taken by Government on the recommendations contained in the Third Report of the Committee on Public Undertakings (2006-2008), relating to Kerala State Electricity Board, based on the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2008 (Commercial).

The Third Report of the Committee on Public Undertakings (2006-2008) was presented to the House on 17th October 2006 and it contained 12 recommendations in para numbers 9, 10, 11, 14, 17, 18, 22, 23, 29, 34, 38, 43 and the Government furnished replies to all of them. The Committee considered the replies received from the Government on para 14, 17, 18, 34 and 43 at its meeting held on 8-11-2013, Para 11 on 23-12-2014, Para 29 on 9-9-2015, Para 9 on 24-11-2015, and Para numbers 10, 22, 23 and 38 on 30-11-2016.

The Committee accepted the replies to the recommendation in para Nos. 9, 10, 11, 17, 18, 22, 23, 29, 34, 38 and 43 without any remarks. These recommendations and the replies furnished by Government form Chapter I of the Report.

The Committee accepted the reply to the recommendations in Para No. 14 with remarks. The recommendation, the reply furnished by Government and the remark of the Committee form Chapter II of the Report.

CHAPTER-I

Action Taken Statements furnished by Government which has been accepted by the Committee without remarks

Sl. No.	Para No.	Department Concerned	Conclusions/Recommendations	Action taken by the Government
1	2	3	4	5
1	9	Power	The Committee finds that the Board procured defective low voltage distribution fuse boards without conducting adequate material inspection for ensuring the utility of the materials, resulting an infructuous expenditure of 12.28 crores. The Committee is shocked to find that 95% of the payment for the item was effected though only 15% of the items were received in working condition. The Committee is very particular to know the details regarding the working condition of	Based on the recommendation of the Committee, the KSE Board as per B.O. No. 2735/07/(AUC-1)/505(A)/COPU/07 dated 1-12-2007 constituted a four member Committee to probe into the whole deal behind the purchase of distribution fuse boards and to submit the enquiry report within 3 months. As the relevant records were not made available to the Committee, they could not unearth any thing. Hence they suggested a detailed probe by a statutory agency. Based on this, the matter was referred to Government for

			<p>the item received. The Committee suspects some unholy motive behind the hurriedly effected advance payment and therefore recommends an enquiry into the whole deal and bring to light the circumstances which led the advance payment before supply of materials. The action taken in this regard should be furnished to the Committee immediately.</p>	<p>conducting a Vigilance & Anti Corruption Bureau enquiry. Accordingly the Vigilance Department ordered an enquiry by the Vigilance & Anti Corruption Bureau, as per letter No. 9829/D2/2008/Vig. Dated 2-3-2009.</p> <p>As per letter dated 23-12-2013, the Vigilance Department informed that VACB conducted a vigilance enquiry in to the allegation of corruption and irregularities in the purchase of materials and sale of scrap in KSEB. It was also informed that the report had been examined in detail and it was decided to accept the recommendation of the Enquiry Officer for no further action duly endorsed by the Superintendent of Police and the Director, VACB. A copy of the letter is attached as Annexure I.</p>
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			<p>The Vigilance Department has now clarified that two enquiries viz VE 09(09) SIU and VE 16/15/SIU were conducted by the VACB on the allegations regarding various purchases made by KSEB etc. and that the allegation regarding purchase of transformers and distribution of fuse boards were included in both the enquiries. But the same was enquired in VE 16/05/SIU. A copy of the forwarding endorsement of the enquiry report No. VE 16/2005/SIU-I dated 11-11-2013 is appended herewith as Annexure II.</p> <p>The relevant extract of Para -V Conclusion & Recommendation of the forwarding Endorsement of the enquiry report dated 11-11-2013 from the Superintendent of Police, VACB pertaining to the purchase of fuse board</p>
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				<p>is reproduced here under:- "1st allegation is that during 1996 & 1997 the SOs purchased sub-standard Transformers, Fuse Boards, its accessories, distribution boards etc. and thereby caused a loss of Rs. 13 crores to the KSEB and that the officials of KSEB had not carried out proper quality assessment before transporting the materials from supplier's Godown/Factory and quality was relied solely on the basis of the certificate produced by the suppliers.</p> <p>1500 numbers of LV Distribution Fuse Boards were also purchased for the Master Plan Works since the Distribution fuse boards are essential for the installation of Transformers. Tenders were invited for the</p>
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				<p>purchase of the same through International competitive bidding as per norms. Wide publicity was given for the tenders and tender notification was also published in Dailies. In response to the publicity given 22 firms purchased tender documents and of these only four firms had presented the tender documents before the scheduled time. Of the four firms, M/s Indo Asian Fuse Gear Ltd, New Delhi had quoted the lowest rate and so the contract was awarded to them. The selection committee of the Board approved the lowest rate presented by M/s Indo Asian fuse Gear Ltd. Board issued Orders as per Order No. 1732/96 TC2-WBP-231/96 dated 22-7-1996. Following this purchase Order No. 34/96-97 dated 7-8-1996</p>
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				<p>was issued by the Chief Engineer (Elec) WBP (SO-1) for the supply of 750 numbers of type A distribution fuse boards and 750 numbers of type B distribution fuse boards. The total amount for the destination cost ₹ 12,53,64,900. The purchase order conditions of aforesaid distribution fuse boards were same as that of transformers. No violation of conditions of supply was noticed during the enquiry. The company had also furnished performance bank guarantee of ₹ 1,25,36,49 in favour of KSEB.</p> <p>2nd allegation is that the quantity as specified in the agreement has not reached that office/store of KSEB by which loss occurred due to the short supply.</p>
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				<p>In the case of distribution fuse boards also there was no shortage of supply. However, of the 1500 fuse boards supplied by the company, the Deputy Chief engineer (Consignee) accepted only 722 numbers of fuse boards including A and B types and the remaining fuse boards were rejected since they were found defective. The firm was requested to produce a bank guarantee of ₹ 61,41,960 being the rectification cost of the fuse boards which they had complied with. The Board had recovered ₹ 50,78,241 from M/s Indo Asian Fuse Gear Ltd. is liquidated damages for the belated supply of materials. As such no loss had been sustained by KSEB from the above transactions.</p>
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				<p>All tests and inspections were conducted as per specifications stated in the purchase order to distribution transformers and distribution Fuse Boards and they were satisfactory. As far as 2nd allegation is concerned, it is evident that no pecuniary gain was obtained by the suspect officers and no wrongful loss had been caused to KSEB.</p> <p>In para 9 of the Vigilance enquiry report dealing with discussion of evidence, the procedure/formalities adopted by the officials of KSEB with regard to the purchase of the distribution fuse boards have been examined in detail. It is stated that 100% payment was made for the accepted quantity of 914 numbers of fuse boards 95% payment for the quantity to be rectified was made, accepting the</p>
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			<p>maintenance Bank Guarantee for ₹ 61,41,960. The Deputy Chief Engineer, World Bank project, Thrissur had worked out an amount of ₹ 48,60,476 a liquidated damages to be recovered from the supplier for belated supply of materials. Payment to the materials was made after releasing liquidated damages. But later, an amount of ₹ 50,78,241 was recovered from the suppliers as liquidated damages. Regarding the Inspection and Testing carried out in respect of the materials, the report States as follows:-</p> <p>The first inspection was conducted by Shri. K. Krishnankutty, the then Chief Engineer (SO-1), WBP, assisted by Shri. Ugrasenan, the then executive Engineer, World Bank Project, Thiruvananthapuram. Expenditure for the</p>
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				<p>inspection was borne by the supplier. All tests and inspections were conducted as per specification stated in the purchase order. Inspections were conducted as per specification at the work site of M/s Indo Asian fuse Gear Ltd. by the company. Copies of test certificate were accepted by the Chief Engineer (Elec) (WBP) and approved by him (Ext.AA). Test result was satisfactory. After the first inspection conducted by the Chief Engineer, officials from KSEB also conducted tests/inspection at the company. The following tests were conducted before the supply was effected:</p> <ol style="list-style-type: none">1. Temperature rise Test.2. Dielectrick test.3. Insulation test.
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				<p>4. Visual Inspection test.</p> <p>5. Dimensional test.</p> <p>6. Measurement of clearance and creepage clearance test.</p> <p>7. Canopy slope test with water and HRC fuse test.</p> <p>Government have accepted the recommendations of the enquiry report to the effect that no action may be taken against the offices of KSEB as it was revealed that there was no evidence to substantiate the allegations leveled against them.</p> <p>In view of the aforesaid position, the Committee may be pleased to drop the recommendations.</p>
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2	10	Power	<p>The Committee finds that an infructuous expenditure of ₹ 3.95 crore was incurred due to inability of the Board to proceed with the drawing of 11 KV double circuit overhead line under the master plan project for Thiruvananthapuram, Kochi, and Kozhikode. The Board designed 14 M special type steel post which required a minimum of 2.2 x 2.2 m foundation for erection while the rules permit a foundation width of only 0.5 M on PWD/NH road. The Committee finds that lack of proper planning and failure to negotiate with the concerned Department were the reasons for the huge loss. The Committee wants to be furnished with the details regarding the procurement and utilization of the poles. The Committee further recommends to take up the matter once again after seeking permission from PWD.</p>	<p>An agreement was executed on 19-12-1997 (agreement number 53/EE/WBP/EKM/97-98) by K.S.E.B with the contractor for the subject work. The notice to the Executive engineer, PWD Roads division, Ernakulam along with drawing was served on 7-1-1998 regarding the construction of OH line along Kalamassery-Irumpanam Road. But, since the PWD authorities did not respond to the letters, as per rules it was assumed that there is no objection in carrying out the work. The Assistant Executive Engineer, Master Plan Subdivision also informed the matter to the Executive Engineer, PWD on 5-3-1998, stating that the work would start on 6-3-1998.</p> <p>The Assistant Executive Engineer, PWD Subdivision, Ernakulam prevented KSEB from</p>
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				<p>execution of the work on 1-6-1998. The matter was taken up with the Executive Engineer, PWD and District Collector Ernakulam. The subject matter was discussed in the District level Co-ordination Committee on 4-7-1998 convened by the District Collector. The District Collector suggested to carry out joint inspection and to resolve the issue, but the PWD authorities did not accept the suggestion, stating that they had referred the matter to Government.</p> <p>A joint inspection was conducted with the PWD authorities and decided not permit erection of 14m poles along the road, as foundation pits were large and would render a major portion of road useless and stated that the acquired land extends beyond the boundary</p>
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			<p>of the existing road and as there was proposal for widening the road to 4 lane traffic, the poles would be in the middle of the road.</p> <p>They suggested using ordinary PSC pole or A-pole instead of special type poles. The foundations of the poles have to be limited to a maximum of 50x50cm in size.</p> <p>The matter was also brought up in the District Level Co-ordination Committee meeting (DCC) on 6-8-1998, but PWD authorities insisted to use PSC poles or A poles with foundation below 50cm in size. The District Collector also held a meeting exclusively for discussing issue on 21-8-1998. In that meeting, the Assistant Executive Engineer, PWD stated that KSEB will have to pay usage charge of ₹ 1.25 Crore for drawing the proposed line.</p>
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				<p>Finally there was a meeting with the Principal Secretary (PWD) on 17-11-1998 wherein, the PWD authorities demanded to share the cost of the Railway overbridge, at Irumpanam, with KSEB for allowing the proposed 11 KV line drawing along this road. This kind of objection on the part of PWD was not anticipated. Negotiations were done at every level up to Principal Secretary to Government (PWD), but the issue was not settled amicably, resulting in cancellation of the proposed project. The negotiations made were not fruitful at all.</p> <p>It may be noted that all the poles procured for the subject work had been completely utilized by the Board for similar works such as river crossing. 33KV Line works etc., as per the statement given as Annexure.</p>
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				<p>The permission of PWD/NH Authority as recommended by the Committee is not now required as the work has become irrelevant since the city has grown beyond the outskirts and under ground cable (UG Cable) works are presently being carried out in those areas.</p>
3	11	Power	<p>The Committee finds that the mobile cable fault locating equipment purchased could not be put to use till March, 2000 for want of transfer of registration of the vehicle to which it was installed due to the dispute over payment of entry tax. The Committee understands that the failure of the Board to take up the matter with the concerned authorities and the rigid stand taken by the officer who dealt with the case was responsible for the inordinate delay. The</p>	<p>Based on the Government direction enquiry was conducted by the Vigilance Wing of the Board and disciplinary action for major punishment was initiated against Sri. Cherian Oommen, Chief Engineer, (Rtd), who held the post of Executive Engineer, Master plan Division, WBP, Thiruvananthapuram and Shri R. Baburajan, Deputy Chief Engineer (Rtd.) who held the post of Executive Engineer, electrical Division Thiruvananthapuram (East). As the statement of defense of accused found</p>

			<p>Committee views this as a serious lapse on the part of the Board and recommends that strict action should be taken against the officers who failed to accept the pattern followed in the similar case at Kozhikode and Kochi for the settlement of entry tax.</p>	<p>unsatisfactory and unacceptable the case was referred to LA & DEO, Kerala State electricity Board for detailed enquiry. The LA & DEO found that grave lapse and dereliction of the duty resulted in deterioration of the equipment causing loss to Board. The delinquent officials are,</p> <ol style="list-style-type: none"> 1. Shri C. K. Prasad (Executive Engineer) 2. Shri A. Shajahan (Executive Engineer) 3. Shri C. Radhakrishna Pillai (Executive Engineer) <p>Later Board had remitted an amount of ₹ 5,56,470 on 27-9-2001 at the District Treasury, Thiruvananthapuram as penal interest for the delay in registration of the equipment. Also the expense require for pre registration maintenance of the vehicle was</p>
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			<p>estimated at ₹ 36,959 at the time of registration in the year 2002. The matter was taken up with Full Board on 23-1-2008, and it was decided to absolve C.Radhakrishna Pillai, Executive Engineer from the recovery and also decided to apportion the liability among others. Aggrieved by this, three of them filed WP's before the Hon'ble High Court of Kerala.</p> <p>The Hon'ble High Court heard the case on 5-8-2009 and allowed the WP quashing the recovery order as it is totally without jurisdiction and unsustainable (Copy enclosed) where in it is also ordered that if any amounts have been withheld from their retirement benefits or received from them other wise, the same shall be refunded to them expeditiously as possible at any rate within 2 months from</p>
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				<p>the date of receipt of a copy of judgment, with interest at the rate of 9% per annum on the said amount from them till date of payment.</p> <p>The Honourable court also observed that without departmental proceedings, Rule 3 part III of KSR could not be invoked and the proceedings initiated against the petitioners are totally without jurisdiction and unsustainable. Board after analyzing the judgments, found that there was no scope for any further appeal in this case and hence constrained to comply with the judgment of Honourable High Court of Kerala.</p>
4	17	Power	The Committee understands that the application for concessional rate of customs duty in the execution of the Lower Periyar Hydro Electric Projects was rejected on the ground that the imports	The recommendation of the Committee will be strictly complied with in future.

			made for transmission and distribution works of power did not come under the purview of concessional rate of customs duty for imports made under registered projects as per projects imports (Regulation of contract) Regulation 1965.	
5	18	Power	The Committee finds that the audit paras could have been avoided, if proper reply had been furnished to the audit in time. The Committee, therefore, recommends that replies to audit should be furnished promptly so as to avoid audit paras in future.	
6	22	Power	The Committee observe that the decision of the Board to effect payment to the contractor on monthly basis at 2.1594 per cent of the value of work done instead of effecting payment on the basis of actual	<p>Para 22&23</p> <p>The care and diversion of the river during the entire period of construction was envisaged for taking care of the river flow during the period of construction in order to avoid any</p>

			<p>work done in respect of the care and diversion of the river and maintenance during the entire period of construction of the Lower Periyar Hydro Electric Project against the contractual agreement has resulted an excess payment of ₹ 25.45 lakh.</p>	<p>damage to the dam and its allied structures, being constructed.</p>
7	23	Power	<p>The Committee opines that the decision of the Board to effect payment on monthly basis without the prior sanction of the Government to favour the contractor is highly irregular. The Committee understands that it is an unholy practice to invite tenders on certain conditions and after them on a later date while effecting payment. The Committee views this as a serious irregularity and recommends that the loss caused to the Board in this regard</p>	<p>Split up of items required for care and diversion works was not given in the agreement, as it was not possible at the time of preparation of estimate to assess what all works may become necessary for taking care of the flood. In the absence of any clear definition of items, the bidders were allowed to quote a lump sum price base on their assessment of items of work that may be required for taking care of floods and river flow. Accordingly M/s HCC quoted a lump sum price of ₹ 1.1 crore for this item.</p> <p>Clause 46 of the general conditions of contract of the agreement provides payment method for L.S items. As per this the payment</p>

			<p>should be realised from those responsible. The action taken in this regard should be intimated to the Committee without fail.</p>	<p>will be regulated for the actuals carried out based on application from the contractor and as approved by the Engineer in charge. Accordingly K.S.E.B. resorted to making payments based on measurements of works being done for care and diversion works.</p> <p>Earth work, concrete, random rubble, rock excavation, pumping out water etc done as part of care and diversion works which measured based on the agreed rates for these items in the contract.</p> <p>However, a lot of items such as providing temporary sack bunds, dumping loose earth and tunnel muck at slushy areas inside construction site, providing temporary barriers using shuttering plates, cleaning the water way inside diversion tunnel, providing temporary bridge for the usage of workers with the help of structural steel and steel plates owned by the</p>
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				<p>contractor and other similar items were done. These items involve a good quantum of manual labour, usage of trucks, other equipment and their hire charges etc, which could not be measured for want of rates in the agreed schedule. Such items were done as per necessity and could not be executed in a preplanned manner, whereas the works like construction of bund, excavation in foundations for de-silting, pumping out etc could be preplanned and measured. Real fact being, the items of works carried out based on some drawings, sketches or approved plans were only measured at site.</p> <p>It was because of the involvement of such unpredictable items of works, as described above, the item of care and diversion was made as lump sum. However estimate for the item</p>
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				<p>was prepared considering that the works that may become necessary would be limited to maintenance of existing bund, pumping etc, that are generally required, and hence was decided to be paid for after measurement. Minute details of the works that may become actually necessary were not available.</p> <p>M/s HCC being a much experienced contractor had assessed the real situation that might happen at a site like this and quote a lump sum amount of ₹1.1 crore. Once the works commenced, the contractor found that a lot of incidentals were involved, over and above what they were getting through actual measurement. Considering the difficulties felt during construction and based on the request of the contractor and recommendation of the</p>
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			<p>project management consultant who appointed as per directions of the World Bank, the Board had changed the payment procedure on pro-rata basis, but the total amount to be paid as per agreement was not changed.</p> <p>Thus even though the measured quantum of work amounts to ₹ 82,15,620.97 only, the actual value of works carried out by the contractor for care and diversion could not be fully assessed based on any measurements. Here it may be noted that whenever the works of dam, intake and its appurtenant works were carried out by the contractors, they had to do the works required for care and diversion of the river. The contractor completed works costing ₹ 49.35 crore only against the agreed PAC of ₹ 50.94 crore. Had they done the full</p>
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				<p>contract value even then they would have bagged the lump sum amount of ₹ 1.1 crore only, and nothing more. Hence it may be admitted that the contractor has been paid only the proportionate amount based on the progress and that they had not bagged any illegitimate amount. The amount of ₹ 25.45 lakh noted as over payment is not actually so, but only the payment towards the non measurable works the contractor had done for protection of the construction site and partly completed works during the entire period of construction. Even during over flood in the monsoon seasons the contractor had resorted to providing sufficient protective covering and either such measure over the already constructed structures, such protective</p>
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				<p>measures were also not measured and no additional payments were effected.</p>
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Soon after fore closure of the contract M/s HCC came with compensation claim on various issues including that for care and diversion and sought for arbitration, but the Board disagreed with this. They filed arbitration petition before the Hon'ble High Court of Kerala, and the Hon'ble Court appointed Justice Padmanabhan (Rtd.) as sole Arbitrator. The Arbitrator fixed the amount towards Care and diversion for the subject work on pro rata basis and in the arbitration award an additional amount of ₹1,24,463 was also included as balance amount due to M/s HCC towards Care and Diversion works. Hon'ble High Court and Supreme Court of

			<p>India also upheld the arbitrator's award. So the total amount awarded by the arbitrator under care and diversion comes to ₹ 1,07,80,568.56, which is still within the lump sum provision of ₹ 1.10 crore. It may please be noted that the amount awarded by the arbitration and upheld by Hon'ble Supreme court along was paid by KSE Board. Hence there was no overpayment made by KSEB on the basis of pro-rata payment.</p> <p>The contract period originally envisaged was only 28 months whereas, the contract period was extended up to 47 months and HCC had to do care and diversion works for 3 seasons which was due to the delay in completion of the work beyond the control of the contractor. Hence HCC was required to do</p>
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				<p>care and diversion work for one more monsoon also, but no additional payment was released and only payment proportionate to the value of work done for the dam and appurtenant works only has been paid.</p> <p>In the light of the facts & explanations the Hon'ble Committee on Public Undertakings may please be appraised of the above explanations and drop the above recommendations.</p>
8	29	Power	<p>The Committee finds that the Board had sought for conducting negotiation, instead of going for a short tender notice for the sale of 2137.799 MT of various items of scraps for a total value of ₹ 5.28crore resulting in a loss of ₹ 03.01 crore. The Committee is shocked to find that, not even</p>	<p>M/s SILK who were sold the scrap though rate contract during 1994-1996 did not lift the scrap due to following reasons:</p> <ol style="list-style-type: none"> 1. The loss on the sale of scrap during the period from 1994 to 1996 has been calculated by comparing with the rates quoted during June 1992, when the rates were abnormally

			<p>an explanation was sought from the concerned officers by the purchase committee nor did it follow the tender procedures strictly. The Committee, therefore, recommends that stringent action should be taken against those responsible for such an avoidable loss and the action taken in this regard should be intimated to the Committee. The Committee also desires to be furnished with a copy of the order which deals with tender-cum-auction procedure that prevails in the Board of the sales of scraps at present.</p>	<p>high, Most of the tenderers who were awarded the contract during December 1992 failed to execute the contract. They did not lift the scrap and their orders were cancelled and the security furnished by them amounting to ₹ 50,000 was forfeited. The fact that successful bidders including M/s SILK failed to lift the scrap, indicates that the price had fallen.</p> <p>Valuewise, the major portion of scrap purchased by M/s SILK was Copper and Aluminium scrap. The rate contract entered with M/s SILK was based on market price during November/December 1993. The price of Copper scrap in the national market as on 7-10-1993 was ₹ 95. This got reduced to ₹ 88 as on 17-11-1993. The price of Copper scrap</p>
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				<p>increased to ₹ 113 during December 1994. The rate used to calculate the loss was ₹ 112.98 (₹ 122/- including ST), Even with the increased price, it is not economical for bidder to buy Copper scrap from KSEB at ₹ 122(including ST).</p> <p>2. Even though M/s Vishwambaran was give time extension for many times to lift the Aluminium scrap at the rate of ₹ 69.55, he lifted only a very small portion of Aluminium scrap. It can be inferred that it was uneconomical to lift the Aluminium scrap at his quoted price of ₹ 69.55 during that period. The market rate of Aluminium during July/August 1994 was enquired from the Office of Chief Engineer (MM) and found to be between ₹ 55 to ₹ 60 per kg. While the rate</p>
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				<p>taken to calculate the loss was ₹ 69.55 per kg. (75.11 including ST @8%). The chances of anybody purchasing Aluminium scrap at ₹ 69.55, when the price of aluminium in the market has between ₹55 to ₹60 per kg. is also very low.</p> <p>3. The contract was entered with a public sector company, after conducting negotiation many times and taking into consideration the rates of scrap in the national market. It is not true that negotiations were not carried out with M/s. SILK. It can be seen from the attached report that the rates were arrived at after carrying out many negotiations with SILK and considering the rate published in ECONOMIC TIMES daily. The decision to enter into a rate contract with M/s. SILK was taken as successful bidders including M/s. SILK failed to lift the scrap. The Purchase committee</p>
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				<p>members sought a safe option of negotiating with a PSU.</p> <p>The purchase committee of the KSE Board took a decision to enter into rate contract with M/s. SILK as the normal tendering procedure for disposal of scrap had not succeeded at that time and Board's funds were blocked and complaints were received from the field offices regarding non availability of space. The committee members acted in good faith to remove the scrap that was piling up. Considering the situation, it was an appropriate management decision. The decision enabled the board to realize an amount of ₹ 3.82 crore from SILK during 1994-95 and to solve the problem of availability of storage space.</p>
9	34	Power	<p>The Committee understands that tenders were invited in February 1997 for rewinding and uprating of 5 stator units of</p>	<p>It may kindly be noted that sealed quotations were invited on 4-2-1997 for "rewinding the stator with F class insulation of two/five units</p>

			<p>50MW hydro generators at the Sabarigiri Hydro Electric Project. But at the time of witness examination it was stated that tenders were given for rewinding works only. The Committee expresses its dissatisfaction at the casual and irresponsible way in which replies are being furnished to Audit paras by the Department and recommends that the department should be more serious while furnishing replies to audit paras. Reply should be furnished only after verification of facts.</p>	<p>of 50MW hydro generators". Uprating was not mentioned in the quotation notice (Copy enclosed). The recommendation of the committee is taken proper note of giving its due gravity and seriousness. It is assured that while furnishing reply to the audit, maximum effort will be made to furnish a comprehensive, specific and proper reply.</p> <p>In view of the facts stated above the committee may kindly consider dropping the recommendations.</p>
10	38	Power	<p>The Committee observe that as per the Amendment made in the Excise Duty Act 1991, the buyer, i.e the Board, as the primary manufacturer of the poles had the right to apply for refund of central excise</p>	<p>The Honourable High Court of Kerala in the Judgment dated 30-3-2010 in WP(C) No. 811/06 filed by M/s Venad structurals, Kottayam quashed the Kerala State electricity Board's demand notice amounting to</p>

		<p>duty, if the sale price included excise duty as well. But the Board didn't file the application for refund of the excise duty already paid before the Assistant Commissioner, Kottayam within the stipulated period. As a result, the application was rejected. The Committee finds that unpardonable delay of 9 months had occurred in submitting the application and therefore, recommends that immediate action should be taken against the concerned officer who failed to file the application in time.</p>	<p>₹ 12.61 lakh served to M/s Venad Structural, Kottayam to make good the loss of ₹ 12,61,426 caused to the Board paid in advance for PSC Poles. In the Judgement it was clearly stated that "by virtue of contractual obligation the petitioner is liable for payment of amount under demand, and allowed the Board to seek civil remedy through appropriate civil forum, if available under law".</p> <p>In pursuance to the above, the Board sought legal opinion from its counsel at TVPM in the matter of exploring the possibilities of refund through Civil Suit. As it hailed within the jurisdiction of the Sub Court, Kottayam the Counsel of KSEB advised to file suit for compensation before the Honorable Sub Court, Kottayam. On scrutiny of the entire records, the counsel opined that the claim intended to be put forward in the Civil Court was one</p>
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			<p>barred by limitation. He further added that Board had to spend an amount of ₹1,19,320 more as court fee to conduct such a civil suit. Based on the legal opinion, as the claim was hopelessly barred by limitation, Board reviewed the matter once again in detail by relying on the records and the Member (finance) viewed the following:</p> <ol style="list-style-type: none">1. There was no malafide intention or carelessness on the part of the any officials at the time of making the original payment of ₹ 16.56 lakh.2. At the time when the payment was made the actual tax liability was ₹ 16.56 lakhs itself, since the vendor was not eligible for SSI registration.3. The problem of over payments arose because the benefit of SSI registration was granted to vendor with prospective effect.
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				<p>4. On getting the SSI registration it is seen that the vendor did apply for refund promptly.</p> <p>5. It is seen that the Board was really not aware of its rights to claim refund as per the provisions of the Excise Act. The Board became aware of this only in 1998 after the appeal of vendor was rejected by CEGAT.</p> <p>Further, the Legal Adviser and Disciplinary Enquiry Officer (LA&DEO) of the Board also concurred the views of the counsel and recommended that the chance of a successful filing of the civil suit at this distant point of time was remote on the following grounds.</p> <ul style="list-style-type: none">a. Barred by limitationb. The earlier legal action by the Board before the various fora were also turned down on the ground of delay and the Board was not
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				<p>able to put up a solid defense to explain the reason for delay. Nor were the Board able to produce certain evidences (like payment, challan etc.) before the Appellate authorities.</p> <p>c. Honorable High Court of Kerala have given a detailed reasoned decision that there was no lapse as part of Venad structurals.</p> <p>The Board examined the matter in detail and decided as follows in the matters. "The entire facts may once again be submitted before the COPU. Since the impugned amount had actually been paid as excise Duty to Central Excise Department, in good faith and in accordance with the rules, it appears that no officers of the Board can be specifically held responsible for such payment of excise duty. Therefore directed to request the COPU to</p>
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				<p>allow the Board to drop further proceedings in this regard, in view of the concurrent legal advise received from the counsel and LA & DEO".</p> <p>The Committee may take kind cognizance of the above facts and position and agree to drop the remarks in the para.</p>
11	43	Power	<p>The Committee understands that in certain units of the Board arrears of overtime and holiday wages were drawn and credited to the Provident Fund Account of employees unauthorisedly. The Committee learns that the recovery of such amount is in progress and desires to be furnished with the details of recovery. The Committee also recommends that immediate steps should be taken to recover the interest on the amount unauthorisedly</p>	<p>The arrears of overtime holiday wages, consequent on the revision of pay in 1995, were not claimed in all the units of the Board, but claimed in certain units, especially in the project areas. By strictly observing the recommendation of the Committee, the Board has taken all efforts to ascertain the actual figures. As the case is very old, the recovery becomes all the more difficult for the fact that a good majority of the beneficiaries were either retired or expired.</p>

			sanctioned, and write back the interest on the amount credited to the provident fund accounts.	However, till date, an amount of ₹ 15,24,415 has been recovered and the process of recovery is still going on. Kerala State Electricity Board reported that the updated position of recovery will be furnished periodically.
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CHAPTER-II

Action Taken Statements furnished by Government on the recommendations of the Committee which has been accepted by the Committee with remarks

Sl. No.	Para No.	Department Concerned	Conclusions / Recommendations	Action taken by the Government
1	2	3	4	5
1	14	Power	The Committee finds that the site at Nallalam was notified for acquisition (considering its advantages) at an estimated cost of ₹ 0.55 crore for setting up a 126 MW Thermal Power Plant. But the Board could not go ahead with the acquisition as State Pollution Control Board denied permission owing to proximity of the site to residential areas. The Board then decided to relocate the	<p>The Kerala State Electricity Board has instituted an enquiry by the Assistant Engineer (Civil Circle) KSEB Vigilance Wing to look into the issues involved in setting up of a Thermal Plant at Nallalam and the report was submitted on 19-12-2008. The findings and recommendations of the enquiry officer are as follows :-</p> <p>1. Had the Board conducted a detailed study considering the practical aspects as done during 09/1996 before tendering and advance possession of land, the land acquisition of Thalakkulathur could have been averted.</p>

2. The enquiry officer recommended that the acquired land at Thalakkulathur may

be utilised for the construction of a training school for the officers of KSEB at Malabar region.

			<p>plant to Thalikulathur in spite of its disadvantages already known and spent ₹ 23.03 lakh on land and another ₹ 19.85 lakh for development of the land. After spending so much amount for land and its development, the Board finally decided to setup the thermal power plant at the original site itself i.e. at Nallalam. The land acquired at Thalikulathur was declared unsuitable owing to scarcity of water and disadvantages in transmission of power generated in the plant. The Committee suspects something 'fishy' in the purchase and development of land at</p>	<p>2. The Board have examined the enquiry report along with the related documents, the Chairman, KSE Board has observed that there appears to be no malafide and only poor management and for such poor decisions, individuals cannot be held responsible. Hence, no cases have been registered nor any responsibility fixed in this regard against any Board officials involved in the Investigation, Planning and Implementation of the project.</p>
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1	2	3	4	5
			<p>Thalikulathur as only after developing the land spending nearly ₹ 20 lakh the Board realized that the land was unsuitable owing to unavailability of water and difficulty in the transmission of power generated there, resulting in locating the plant at the original site itself at Nallalam. But the Board had to incur an additional expenditure of ₹ 5.50 crore for acquisition of land owing to increase in land value. The Committee finds that lack of foresight and planning on the part of KSEB resulted in an infructuous expenditure of ₹ 5.5 crore and therefore recommends that the Board should study and ensure the suitability and</p>	<p>Government had concurred with the views of the Chairman, Kerala State Electricity Board.</p>

			<p>Viability of a project at a particular site, before acquiring land for the project. The Committee also recommends that action should be taken against those responsible for the loss.</p>	
<p><i>Remarks:-</i> The Committee refused to accept the following statement detained from the Power department, "KSE Board has observed that there appears to be no malafide and only poor management and for such poor decisions, individuals cannot be held responsible". The Committee expressed its dissatisfaction with the Board for appointing an Assistant Engineer as the investigation officer for the critical investigation of a case which involved many top officials. The Committee consider this instance as a glancing example of negligence and the Committee directs that the Board should devise a regulating mechanism to root out such instance.</p>				

Thiruvananthapuram ,
2-5-2017.

C. DIVAKARAN,
Chairman,
Committee on Public Undertakings.

ANNEXURE - I



GOVERNMENT OF KERALA

No.14705/D2/2013/Vig.

Vigilance (D) Department,
Thiruvananthapuram
Dated: 23/12/2013.

From,

The Principal Secretary to Government.

To,

Principal Secretary to Government,
Power Department.

Sub - Vigilance Department - Allegation of corruption and irregularities in the purchase of materials and sale of scrap in Kerala State Electricity Board
Vigilance Enquiry Report - Reg.

Ref. Letter No. E16(VE 16/2005/SIU)8217/2005 dated 26.11.2013 from the Director, Vigilance & Anti-Corruption Bureau.

I am to inform you that the Director, Vigilance & Anti Corruption Bureau conducted a vigilance enquiry on the above issue and forwarded the report to Government with his recommendation along with the findings of Enquiry of Superintendent of Police, Vigilance & Anti-Corruption Bureau. Government have examined the report in detail and have accepted the recommendation of the Enquiry Officer for no further action duly endorsed by the Superintendent of Police and the Director, Vigilance & Anti-Corruption Bureau.

A Copy of the report is also enclosed herewith for information.

Yours faithfully,

D.LEENA LITTY,
Under Secretary,

For Principal Secretary to Government

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ANNEXURE-II

CONFIDENTIAL

OFFICE OF THE SUPDT. OF POLICE
 Vigilance & Anti-Corruption Bureau
 Special Investigation Unit-I
 Thiruvananthapuram
 Dated : 11.11.2013

No.VE 16/2005/SIU-IFORWARDING ENDORSEMENT

Sub:- Allegation of corruption and irregularities in the purchase of materials and sale of scrap in KSEB - Vigilance Enquiry Report - forwarding of

Ref:- 1) Govt. letter No.3736/D2/2000/Vig. dated 24.01.2005
 2) No.E16(VE 16/05/SIU-I)8217/2005 dated 08.04.2005
 of the Director, VACB, Thiruvananthapuram

PARA - I
INTRODUCTION

Vide reference cited 1st, the Government forwarded a petition along with some press reports, sent by Sri.K Sukumaran, Chamakkada regarding serious allegations of corruption and irregularities in the purchase of materials by KSEB during the year 1996 and 1997 to the Director, Vigilance & Anti-Corruption Bureau for conducting a Vigilance Enquiry. The Director, Vigilance & Anti-Corruption Bureau forwarded the same to the Superintendent of Police, Vigilance & Anti-Corruption Bureau, Special Investigation Unit-I for conducting Vigilance Enquiry as per the reference cited 2nd. The Vigilance Enquiry was conducted by Sri.K. Sreekumaran Nair, Sri.Vadarajan, Sri.K C Sasikumar, Sri.K Mohan Kumar, Sri.R Sukesan, Sri.K B Ravi, Sri.E Sharafudeen, Sri.M Saibudeen and Sri.B Varghese, Deputy Superintendents of Police and the later completed the enquiry and submitted this report.

PARA - II
PARTICULARS OF SUSPECT OFFICERS

- SO-1 : Sri.K Krishnankutty, S/o Kunjachan, House No.27, NCC Nagar, Kudappanakunnu Village, Thiruvananthapuram
Formerly Member (Technical), KSEB
- SO-2: Sri.Ravindrakutty, S/o Govindan Nair, Heera Castle, Flat No.5 D, Marappalam, Pattom, Kowdiar Village, Thiruvananthapuram
Formerly Chief Engineer, KSEB
- SO-3 : Sri.Aruna Gireeswara Iyer, S/o Vaidyanatha Iyer, "Sreyas", TC 15/715, PRA - 100, Palottukonam Road, Edappazhinji, Pangode Village, Thiruvananthapuram
Formerly Finance Adviser, KSEB

PARA - III
ALLEGATIONS

01. That during 1996 & 1997, the Suspect Officers purchased Sub Standard Transformers, Fuse Board, its accessories, Distribution Board etc. and caused a loss of Rs.13 crores to the KSEB.
02. That the officials had not carried out proper quality assessment before transporting the materials from supplier's Godwon / Factory and quality was relied solely on the basis of the certificate produced by suppliers.
03. That the quantity as specified in the agreement has not reached the office / store of KSEB, by which loss occurred due to the short supply.
04. That irregularities occurred in the disposal of scrap items from the Store of Cantonment Electrical Major Section, Kollam

PARA - IV
EVIDENCE

In connection with this enquiry, the Enquiry Officer questioned and recorded the statement of 36 witnesses. The details are enumerated in Para VI of the Enquiry Report. Similarly, the Enquiry Officer collected and marked Exhibits A to AF (except 'I' and 'O'). The details are available in Para VII of this report.

PARA - V
CONCLUSION & RECOMMENDATION

I have gone through the Enquiry Report and connected oral and documentary evidences collected during the enquiry. The enquiry revealed the following facts :-

Kerala State Electricity Board commenced functioning on 31.03.1957 as per order No.EL1-6475/56/PW dated 07-03-1957 of the Kerala State Government. The 'Board' consists 7 Members headed by the Chairman and 6 other Members viz. Power Secretary, Finance Member, Technical Member, Civil Member, Accounts Member and one Political Member and it is the Supreme Governing Body of the Kerala State Electricity Board. All members except the Political Member are selected from Government Service.

Allegations enquired into in this Vigilance Enquiry are pertaining to the purchase of sub-standard Transformers, Fuse Boards, its accessories, Distribution Boards etc. by the KSEB with the aid of the World Bank during the period 1996 & 1997. SO-1 was the Chief Engineer (Ele.), World Bank Project of KSEB during the said period and in the year 1998 he was appointed as Technical Member of KSEB and he continued in that post for 3 ½ years. SO-2 is the former Chief Engineer of KSEB and while he was working in the post of Executive

Engineer at the Office of the Chief Engineer (Planning), on 4-11-96 he was posted as World Bank Aided Project Executive Engineer and he continued in that post till 3-3-97 when he got promoted to the post of Deputy Chief Engineer (Materials). He continued in that post till 02.08.1999 when he got promoted to the post of Chief Engineer (Materials). SO-3 joined in KSEB on 17-9-1992 as Deputy Chief Accounts Officer through PSC and continued in that post till January 1999 when he was promoted to the post of Financial Advisor of KSEB. He continued in that post till his retirement on 28-2-2011. While holding the office of the Finance Advisor, he was nominated as Member of Project Report Committee, Purchase Committee and Pre-qualification Committee of KSEB.

The allegations that are enquired into during this Vigilance Enquiry with a brief account of the findings in respect of each are given hereunder.

1st allegation is that during 1996 & 1997 the SOs purchased sub-standard Transformers, Fuse Boards, its accessories, distribution boards etc. and thereby caused a loss of Rs.13 crores to the KSEB and that the officials of KSEB had not carried out proper quality assessment before transporting the materials from supplier's Godown / Factory and quality was relied solely on the basis of the certificate produced by the suppliers.

During the enquiry, it is revealed that in the early 1990s due to the overloading of feeders, transformers etc. there was no systematic uninterrupted distribution of power supply in the major cities namely

Thiruvananthapuram, Kochi and Kozhikkode. For the smooth distribution of power supply there necessitated the development of power supply for industrial, commercial and domestic purpose. To solve these problems the KSEB decided to implement the Master Plan which was financed by World Bank. In order to implement the Master Plan Project, Government of India had entered into an agreement with World Bank. The condition put forward by the World Bank was that the loan amount for implementing the Master Plan project should be drawn before 1991. The distribution transformers and LV distribution fuse boards are not the only items required for the implementation of the Master Plan Project. Many other equipments / materials were also purchased by KSEB for the implementation of the above project. The allegations related to the purchase of other equipments / materials are not included in this Vigilance Enquiry.

The tender procedures for the purchase of transformers were started during the period prior to SO-1 had taken over charge as Chief Engineer (Ele.), WBP. But, it is learnt that the loan amount earmarked for Master Plan Project had not been drawn fully before 1991. So period of availing the loan was extended by World Bank up to December 1994. Even after extension was given by the World Bank, KSEB could not utilize the full amount of loan because World Bank had closed the loan by 31-12-1994. Though tender for the procurement of Transformers was opened on 07-05-94, the relevant files relating to tender proceedings could not be traced out during the enquiry. From the available records, it is learnt that the contract for the supply of distribution transformers was awarded to two firms namely M/s KEL, Mamala a Government of Kerala Undertaking and M/s Vijaya Electricals, Hyderabad. Purchase Order was given to both the Companies for the supply of 750 numbers of distribution transformers.

each on 8-12-94. Consequent to the cessation of the World Bank Loan, KSEB had approached the Power Finance Corporation (PFC) for the purchase of distribution transformers and distribution fuse boards at a higher rate than World Bank loan. Accordingly, PFC had disbursed the World Bank Loan through State Government at a higher rate of interest than the low interest rate of World Bank. It is pertinent to note that Master Plan Project aided by the World Bank had been approved by KSEB, Central Electricity Authority and the World Bank Office at Washington.

During the period of supply of materials, SO-1 was holding the charge of Chief Engineer (Ele.) WBP.

Purchase Order was given to M/s KEL as per tender No.KSEB/WBP/trans/ICB/1/94 for the supply of the following items.

1.	100 KVA transformer with open bushing	
	-250 Nos	Rs.3,41,88,903.00
2.	315 KVA transformer with cable box	
	-250 Nos.	Rs. 2,48,08,753.00
3.	315 KVA transformer with open bushing	
	-250 Nos	Rs,2,22,35,770.00

	Total	Rs.8,12,33,426.00

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Purchase Order was also placed with M/s Vijay Electricais, Hyderabad for the supply of another 750 transformers. But the details of supply and other transactions are not available in the Board except a few details.

As per the purchase order, 95% value of the total cost of the materials shall be paid in each consignment on presentation of the following certificates. (1) Material Dispatch Clearance Certificate, (2) Inspection Certificate, (3) Test Certificate and (4) Manufacturer's Guarantee Certificate and the remaining 5% value of the total cost of materials shall be paid within 30 days of the presentation of the Taking Over Certificate (TOC). In other words, the 5% of the entire cost of the materials is released only after accepting the entire quantity of supply by the consignee. Another condition is that if the company fails to deliver the materials within the time stipulated in the contract, the Board will recover liquidated damages a sum of one half of 1% which will not exceed 10% of the contract price. If the material or equipment is lost or damaged during transit or found in short supply the cost of such material will be recovered from the bill. If the material is found defective it shall be rectified or replaced as per the conditions in the purchase order. Another condition is that the Board may depute a representative, if considered necessary, for inspection and witnessing tests at the company. Board can also waive the inspection in certain occasions or it shall be carried out by the company itself.

During the enquiry, it is revealed that M/s KEL had commenced their supply of transformers in January 1995 and it was completed on 30-9-97. They had supplied the entire quantity of transformers as per the purchase order. But M/s Vijay Electricals, Hyderabad had supplied only 400 numbers of transformers out of 750 numbers of transformers for which purchase order was placed. In the meantime, on 24-6-97, the Board had taken a decision with the consent of selection committee to stop the supply of transformers with M/s Vijay Electricals because, they were not sufficient in capacity basis in Cities.

As a result, there necessitated the requirement of additional quantity of transformers for the implementation of Master Plan Project. So it was decided to place an additional order of 113 numbers of transformers to M/s KEL and as per the request, M/s KEL had supplied the additional quantity of transformers. During the supply, M/s KEL demanded for a price hike of 25%. But it was disagreed by the Board and agreed to give 15% of the price hike. It was decided to give price hike for 692 transformers supplied after 01.01.1996. The total financial commitment sustained by KSEB due to the additional procurement of 113 numbers of transformers amount to Rs.1,35,63,270/- (One crore, thirty five lakhs, sixty three thousand, two hundred and seventy only). This amount was paid separately from the Board's fund.

In the above transaction, even though the Board had sustained a loss to the tune of Rs.1,35,63,270/-, it is revealed that no corruption or irregularity was committed in the purchase of transformers for the Master Plan Project. During the enquiry nothing was revealed to prove the role of Suspect Officers 1 to 3 with regard to the allegations raised by the petitioner against them. There is no pecuniary gain to the Suspect Officers or wrongful loss to the KSEB due to the above purchase.

1500 numbers of LV Distribution Fuse Boards were also purchased for the Master Plan Works since the Distribution Fuse Boards are essential for the installation of Distribution Transformers. Tenders were invited for the purchase of the same through International competitive bidding as per norms. Wide publicity was given for the tenders and tender notification was also published in Dailies. In response to the publicity given 22 firms purchased tender

documents and of these only four firms had presented the tender documents before the scheduled time. Of the four firms, M/s Indo Asian Fuse Gear Limited, New Delhi had quoted the lowest rate and so the contract was awarded to them. The selection committee of the Board approved the lowest rate presented by M/s Indo Asian Fuse Gear Limited and the Board issued Orders as per Order NO. 1732/96 TC2-WBP-231/96 dated 22-7-96. Following this, purchase Order No. 34/96-97 dated 7-8-96 was issued by the Chief Engineer (Elec) WBP (SO-I) for the supply of 750 numbers of type A distribution fuse boards and 750 numbers of type B distribution fuse boards. The total amount for the destination cost was Rs.12,53,64,900/-. The purchase order conditions of aforesaid distribution fuse boards were same as that of transformers. No violation of conditions of supply was noticed during the enquiry. The company had also furnished performance bank guarantee of Rs 1,25,36,490/- (One crore, twenty five lakh, thirty six thousand, four hundred and ninety only) in favor of KSEB.

2nd allegation is that the quantity as specified in the agreement has not reached the office/store of KSEB by which loss occurred due to the short supply.

Enquiry revealed that there was no short supply of materials by M/s KEL, Mamala in the supply of Transformers. But M/s Vijay Electricals had to stop the supply of materials during the course of supply since there was interference from the board due to the supply of defective transformers. The amount was paid only for the 400 numbers of transformers supplied by them. The defective materials were replaced by them. In the case of distribution fuse boards also there was no shortage of supply. However, of the 1500 fuse boards supplied by the company, the Deputy Chief Engineer consignee accepted only 223 numbers of fuse boards including A and B types and

the remaining fuse boards were rejected since they were found defective. The firm was requested to produce a bank guarantee of Rs.61,41,960/- (Sixty one lakhs, forty one thousand, nine hundred and sixty only) being the rectification cost of the fuse boards which they had complied with. The Board had recovered Rs 50,78,241/- (Rupees fifty lakhs, seventy eight thousand, two hundred and forty one only) from M/s Indo Asian Fuse Gear Ltd. as liquidated damages for the belated supply of materials. As such no loss had been sustained by KSEB from the above transactions.

All tests and inspections were conducted as per specifications stated in the purchase order to distribution transformers and distribution Fuse Boards and they were satisfactory. As far as 2nd allegation is concerned, it is evident that no pecuniary gain was obtained by the suspect officers and no wrongful loss had been caused to KSEB.

3rd allegation is that irregularities occurred in the disposal of scrap items from the store of Cantonment Electrical Major Section, Kollam.

The disposal of scrap items was conducted at the Electrical Major Section, Cantonment Kollam after inviting quotations. Survey report was prepared for the scrap items before conducting auction for its disposal. Survey report is prepared by the concerned Assistant Engineers in charge of Electrical Section Offices. The scrap materials collected from the fields are accumulated in the office premises of Deputy Chief Engineer. The practice followed is that before bringing the scrap items to the office premises of the Deputy Chief Engineer, the Assistant Engineer had to enter the details of these materials in

the MASA (Materials At Site Account) and after that he had to prepare survey report and send it for approval to the Executive Engineer through proper channel. The sanction of the Board is also obtained for conducting the auction. With regard to this allegation, it is revealed that the auction of scrap items for disposal was held during the year 1997-98. It was held at the office of the Deputy Chief Engineer, Electrical Circle, Kollam. Allegation was raised against Sri.R Santhosh Kumar, the then Assistant Engineer of Electrical Section, Cantonment, Kollam. Survey Report was prepared for eight unserviceable scrap items. The alleged survey report was prepared by Sri.R Santhosh Kumar, then Assistant Engineer, Kollam. The allegation was raised on iron scraps only. As per the survey report, there were only 440 kgs. of scrap items. But after the auction, at the time of transportation it was noticed that iron scrap was in abundance against the quantity survey report. There was a committee for supervising the disposal of scraps at the direction of Deputy Chief Engineer, Electrical Circle Kollam. It was noticed by the committee that there was an excess quantity of 4924 kgs. of iron scraps than mentioned in the survey report. The excess quantity was sold to the same contractor at the contract rate of Rs.12/- per kg without conducting another auction. The Deputy Chief Engineer had given instructions to the Executive Engineer to submit a formal survey report of the excess quantity. The cost of excess quantity was remitted by the contractor. The formal survey report was approved and ratified by the Deputy Chief Engineer. He had given such an instruction for its speedy disposal. It is mentioned in the petition that SO-1 and SO-2 are responsible for lapses committed with regard to the disposal of scraps. But in the enquiry, the allegation is mainly leveled against Sri.R Santhoshkumar, then Assistant Engineer, Cantonment Section, Kollam. Enquiry revealed the allegation against him not proved.

He had survey reported only what was available in his account. He was not authorized to prepare the survey report of other scrap items collected from other Section offices and accumulated in the auction place. Hence, no action can be taken against him. There is no records to prove that Sri.R.Santhoshkumar was directed and authorized by the Deputy Chief Engineer to prepare the survey report. It is revealed that no loss was sustained by KSEB with regard to the disposal of scraps.

It is evident that the lapse was committed by the then Deputy Chief Engineer Sri.P R Kamalan. He had to supervise it properly. No action can be recommended against him since he is no more. The Suspect Officers (SO-1 and SO-2) mentioned in the petition have no role related to the disposal of scrap items. No action is recommended against Suspect Officers.

Recommendation

During the enquiry, it is revealed that there is no evidence to substantiate the allegations leveled against the Suspect Officers. Hence no action is recommended against them.

ANNEXURE					
DETAILS OF PROCUREMENT & UTILISATION OF POLES					
Sl.No.	NAME OF OFFICE	TYPE OF POLES			REMARKS
		A	B	C	
	POLES PROCURED				
1	M/s.ARM Limited Hyderabad	423	423	94	
2	M/s.Jindal Steel Products	47	0	0	
	TOTAL	470	423	94	
	POLES UTILISED				
1.	Transmission Circle, Malappuram	186	150	46	
2	Transmission Circle, Alappuzha	20	50	11	
3	Transmission Circle, Kottarakkara	40	0	0	
4	Transmission Construction Section, Manarkkad	46	176	25	
5	Transmission Circle, Kannur	84			
6	Electrical Circle, Perumbavoor	8	12	4	
7	Electrical Circle, Thrissur	10		2	
8	Electrical Circle, Alappuzha	10			
9	Electrical Circle, Quilon	2			
10	Master Plan Subdivision, Kalseer	15	15	6	
11	Transmission Construction Circle, Thrissur	49			
	TOTAL	470	423	94	

The poles were utilised for 11 KV/ 33KV line construction works.

S. SIRI JAGAN, J

W.P(C) Nos.32275, 32396
of 2007 & 26127 of 2008

Dated this the 5th day of August, 2009

J U D G M E N T

These three writ petitions bring to light a case of utter mismanagement, by the top officers of the Kerala State Electricity Board, of its affairs resulting in huge loss to the Board and then passing on the buck to junior officers alleging misconduct on their part directing recovery of the loss from them, although the loss could not have been attributed to any action or omission on their part. The facts giving rise to these three writ petitions are as follows

2. In December 1994, the KSEB placed orders for three Van Mounted Mobile Cable Fault Locating Equipments from manufacturers in New Delhi. These equipments, being Motor Vehicles as defined under the Motor Vehicle Act, had to be registered under the said Act. The manufacturers themselves got the same registered in their name, before despatching them to Kerala. The equipments arrived in Kerala in November 1996. One each was allotted to Thiruvananthapuram, Kochi and Kozhikode

Divisions of the KSEB in respect of the equipment allotted Thiruvananthapuram division, the petitioner in W.P(C) No. 2617 of 2008, who was the Executive Engineer-in-charge, applied to the Regional Transport Officer for transfer of ownership of the equipment on 9.4.1997. By Ext.P5(a) letter dated 9.9.1997, the Regional Transport Officer insisted on remittance of Entry Tax. As directed by the Board, the Executive Engineer submitted letter dated 5.12.1997 to the Sales Tax Officer, Pererokada, Thiruvananthapuram, seeking exemption from payment of entry tax, which is produced as Ext.P2(9) in W.P(C) No. 26127 of 2008. The Sales Tax Officer did not consider the request favourably. By Ext.P5(b) letter, (in W.P(C) No. 32275 of 2007), dated 28.1.1998, the Secretary of the Board wrote to the Principal Secretary to the Government of Kerala, for favourable consideration of the request for exemption from payment of entry tax. Ext.P5(c) note dated 26.3.1999, the Financial Adviser of the Kerala State Electricity Board advised the Chief Engineer to move the Government for exemption from payment of entry tax. By Ext.P5(d) dated 4.6.1999, the Secretary of the Board again took up the matter with the Power Secretary. That was followed by Ext.P5(e) letter dated 12.11.1999

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from the Secretary of the Board to the Power Secretary for exemption from entry tax. Ext.P5(f) dated 31.01.2000 is another letter from the Board Secretary to the Power Secretary in that regard. On 6.2.2001 the Board Secretary, by Ext.P5(g) letter, requested the Joint Commissioner (Sales Tax) for the exemption. By Ext.P5(h) letter dated 10.3.2001, the Taxes Commissioner informed the Secretary of the Board that there is no provision for tax exemption. By Ext.P5 (i) letter dated 11.4.2001, the Secretary of the Board wrote to the Chief Engineer (Distribution-South) conveying the decision of the Board to remit the entry tax. By Ext.P5(j) letter dated 25.9.2001, the Government informed the Board that exemption cannot be granted and that the request is rejected. On 27.9.2001 the Board remitted an amount of Rs.4,45,176/- towards entry tax and Rs.5,56,470/- towards penal interest for delayed payment of tax. By Ext.P5(k) letter dated 28.1.2002 the Secretary of the Board wrote to the Principal Secretary (Taxes) for waiver of penal interest, since the delay was caused because the Board was expecting exemption from payment of entry tax. This was followed up by Ext.P5(l) letter dated 22.8.2002 to the Principal Secretary, Power Department, from

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Board Secretary.

3. In the meanwhile, the equipment allotted to Thiruvananthapuram division was kept idle, since for want of registration, the equipment could not be put to use. While the petitioner in W.P(C) No. 32275 of 2007, another Executive Engineer of the Board retired from service on 30.6.2000. The petitioner in W.P(C) No. 32396 of 2007, who was also an Executive Engineer of the Board retired on 30.4.2001. On 12.7.2002, the petitioner in W.P(C) No. 26127 of 2008 was issued with memo of charges on 12.7.2002, Ext.P1 marked in that writ petition, alleging that he did not take appropriate steps for registration of the equipment which resulted in the said equipment being kept idle and consequent damage to the same causing loss of Rs.44.52 lakhs to the Board. It was also alleged therein that the petitioner did not take appropriate steps to keep the vehicle in good repair. The petitioner filed his statement of defence. An enquiry officer was appointed who conducted an enquiry and submitted Ext.P7 report, in which it was found that the petitioners in these writ petitions and 2 others were found jointly liable for the loss caused to the Board on account of non-maintenance of the vehicle properly. On the same

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charges another officer by name Sri. R. Baburajan were also proceeded against. The enquiry Officer found the two officers, who were charge sheeted, guilty of dereliction of duty and misconduct and liable for punishment. It was also found that the amounts of Rs. 7385.80 each being the proportionate loss has to be recovered from the petitioner in W.P(C) No.26127 of 2008. That enquiry report was forwarded to the petitioner in W.P(C) No. 26127 of 2008 under cover of Ext.P6 show cause notice. The petitioner filed his reply. Thereafter, by Ext.P9 order, the chairman of the Board found that the petitioners in these three writ petitions and two others are jointly liable not only for the loss caused on account of non-maintenance of the equipment but also for the penal interest the Board had to pay. Accordingly, it was ordered to recover an amount of Rs.1,18,686/- from the DCRG of the petitioner in W.P(C) No. 26127 of 2008. It appears that Sri. Baburajan, who was proceeded against along with the petitioner in W.P(C) No. 26127 of 2008, filed an appeal before the Board and he was exonerated in the appeal. Therefore, by Ext.P10, his share also was added as liability of the others, and the petitioner in W.P(C) No. 26127 of 2008 was directed to pay an amount of Rs. 1,48,358/- as his share

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of the alleged loss caused to the Board. By Ext.P1 notice dated 22.3.2007 in W.P(C) No. 32275 of 2007, the petitioner in that petition was directed to show cause as to why an amount of Rs.1,18,686/- being 1/3th portion of the total loss of Rs. 5,93,858/- caused to the Board on account of the non-payment of entry tax in respect of the equipment in time and the non-maintenance of equipment should not be recovered from the petitioner in that petition. The petitioner in W.P(C) No. 32396 of 2007 was also issued with an identical notice, Ext.P1 in that writ petition, also dated 22.3.2007. These notices ultimately culminated in identical orders, Ext.P4 (in both writ petitions) directing recovery of the said amount from the petitioners in those writ petitions, invoking Rule 10 of Part III of the Kerala Services Rules. Petitioners in these three writ petitions are challenging the abovesaid orders.

4. The common contention of all the petitioners is that the decision not to pay the entry tax was not taken by them at all. That decision was taken at the highest level of the Board and it was the Secretary of the Board himself who wrote letters to the Government seeking exemption from payment of entry tax. Therefore for the non-payment of entry tax and idling of the

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equipment, on account of non-registration, the petitioners are not at all responsible. Hence they could not have been proceeded against for recovery of the alleged loss caused to the Government, is their contention. Petitioners in W.P(C) No. 32275 of 2007 and 32396 of 2007 has got an additional contention that they cannot be proceeded against under Rule 3 of Part III for more than one reason. The first is that no disciplinary proceedings whatsoever as contemplated under Rule 3 of Part III of KSR had ever been initiated or continued against them. Further the said Rule prescribes that in order to invoke that rule the event in respect of which proceedings are to be initiated or continued must not have taken place more than four years before such institution.

According to them in their cases no enquiry was conducted and further notices were issued to them only on 22.3.2007 more than 13 years after the alleged event.

5. In W.P(C) No. 26127 of 2008, no counter affidavit has been filed. In the other two writ petitions, counter affidavits have been filed supporting the demand against those petitioners.

6. I have considered the rival contention in detail.

7. It cannot be disputed that, for the purpose of proceeding

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against these petitioners, first of all there should have been a culpable conduct on their part. The allegation against them is that they are responsible for non-registration of the equipment for which payment of entry tax was a condition. Only if that is true, the proceedings which are impugned in these writ petitions could have been initiated and concluded against them. For that the Board must first of all prove that the decision not to pay the entry tax and to apply for exemption was taken by these officers. The documents placed before me not only prove that the petitioners had nothing to do with that decision and that the decision was taken at the highest level of the Board as evidenced by Ex. P5 series of correspondence exchanged between the Secretary of the Board and various Government officials. In view of those documents, I am at a complete loss to understand how these petitioners could have been, by any stretch of imagination, found guilty of any negligence or improper conduct on their part in not paying the entry tax and not getting the vehicle registered. Therefore the entire blame for the loss caused to the Board as a result of non-payment of entry tax and non-registration of the vehicle rests exclusively with the Board and the Secretary and to

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nobody else. Therefore, if at all anybody is liable to make good the loss caused to the Board, that is the members of the Board and the Secretary and certainly not the petitioners. Therefore there was absolutely no basis for the disciplinary proceedings against the petitioner in W.P.(C) No. 26127 of 2008. Added to that, the enquiry officer did not find the petitioner in that writ petition guilty of any misconduct in respect of non-payment of the entry tax, which resulted in payment of penal interest. The enquiry officer found them liable only for the loss caused to the Board on account of non-maintenance of the equipment, at the rate of Rs. 7385.00 each. The Chairman while fixing the responsibility for the penal interest also on the petitioners did not choose to differ with the findings of the enquiry officer or to issue notice to the petitioner in W.P.(C) No. 26127 of 2008 as to why he should not differ with the findings of the enquiry officer. Without such a procedure, which is mandatory under law, the chairman has simply mulcted the petitioners with the liability in respect of the penal interest also. It is per se illegal and unsustainable.

8. Regarding the loss caused to the Board on account of the non-maintenance of the vehicle it is not a secret that a mechanical

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equipment, if kept idle for long years, would get rusted and become unserviceable. Without registration of the equipment by paying the entry tax, nobody could have used the same. If that be so, one fails to understand how these innocent employees could be mulcted with the liability to make good the loss on account of non-maintenance of the vehicle for long years, which happened only because of the failure on the part of the Board to pay the entry tax and get the equipment registered at the appropriate time.

9. As far as the petitioners in W.P(C) No. 32396 of 2007 and 32275 of 2007 are concerned, Rule 3 of part III could not have been invoked against them at the time when it was actually invoked. The institution of the proceedings was on 22.3.2007. Rule 3 contains a bar for institution of proceedings under that Rule in respect of any event which took place more than four years before such institution. Here evidently, the institution of the proceedings under Rule 3, by Ext.P1 is 13 years after the alleged event. Apart from that Rule 3 presupposes a departmental proceedings. The two petitioners in the above two writ petitions were not served with any charge memo or any other proceedings whatsoever in a departmental proceedings. Without departmental proceedings

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Rule 3 of Part III of KSR could not have been invoked. Even note 3 to Rule 3 of Part III of the KSR could have been invoked against them since notices were issued to their only on 22.3.2007 far beyond the 3 years limitation prescribed since they had retired from service on 30.5.2000 and 30.4.2001. Therefore in any event the proceedings initiated against the petitioners in W.P.(C) Nos. 32396 of 2007 and 32275 of 2007, are totally without jurisdiction and unsustainable. For all the above reasons I am satisfied that the orders impugned in all these three writ petitions are totally unsustainable. Accordingly they are quashed. If any amounts have been withheld from their retirement benefits or recovered from them otherwise, the same shall be refunded to them, as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment, with interest at the rate of 9% per annum on the said amount from the date on which the same were due to them or recovered from them, till date of payment.

10. Before parting with these cases, I wonder whether the increase in electricity charges from time to time which the poor citizens of this state have to pay is on account of increase in the

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cost of generation of electricity as such. Cases of these kind would prompt one to think that it is more because of mismanagement by the electricity Board, of its affairs. It is also not the first time that I am coming across such mismanagement. I recollect another case where the Chief Engineer filed an affidavit before this court justifying payment of project allowance to employees, where it was not payable at all, that too against the earlier pleading of the Board in that case to the contrary. I am of opinion that it is high time that somebody bestows their serious attention to this malady affecting the Kerala State Electricity Board and finds creative solution for the same so that the consumers of electricity would not have to shell out more money as electricity charges on account of such mismanagement as well. With this solemn hope I remain,

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