



THIRTEENTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
PUBLIC UNDERTAKINGS
(2011-2014)**

THIRTY SIXTH REPORT

(Presented on 28th January, 2014)

SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2014

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On

**Kerala Tourism Development Corporation Ltd., based on the
Report of the Comptroller and Auditor General of India
for the years ended 31st March, 2004 and
31st March, 2008 (Commercial)**

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Smt. Lima Francis, Under Secretary.

INTRODUCTION

I, the Chairman, Committee on Public Undertakings (2011-2014) having been authorised by the Committee to present the Report on their behalf, present this Thirty Sixth Report on Kerala Tourism Development Corporation Limited based on the Reports of the Comptroller and Auditor General of India for the years ended 31st March, 2004 and 31st March, 2008 (Commercial) relating to the Government of Kerala.

The Reports of the Comptroller and Auditor General of India for the years ended 31st March, 2004 and 31st March, 2008 were laid on the Table of the House on 5th July, 2005 and 23rd June, 2009 respectively. The consideration of the audit paragraphs included in this Report and the Examination of the departmental witness in connection thereto was made by the Committee on Public Undertakings constituted for the years 2011-2014.

This Report was considered and approved by the Committee at the meeting held on 17-7-2013.

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

The Committee wish to express their thanks to the officials of the Tourism Department of the Secretariat and Kerala Tourism Development Corporation Limited for placing before them the materials and information they wanted in connection with the examination of the subject. They also wish to thank in particular the Secretaries to Government; Tourism Department and the officials of Kerala Tourism Development Corporation Limited who appeared for evidence and assisted the Committee by placing their considered views before the Committee.

Thiruvananthapuram,
28th January, 2014.

K. N. A. KHADER,
Chairman,
Committee on Public Undertakings.

REPORT

KERALA TOURISM DEVELOPMENT CORPORATION LIMITED

AUDIT PARAGRAPH

Loss of interest

The Company, engaged in tourism promotion activities, participated (February 1999) in the tenders for construction of a four star hotel on the land to be provided by Cochin International Airports Limited (CIAL). The offer of the Company was accepted (February 1999) and land measuring 20000 sq.m. was allotted. The Company made (May 1999) an interest free deposit of ₹ 49 lakh towards whole time lease of the land.

The Company did not go ahead with the implementation of the project due to financial constraints and also considering the project being unviable. Instead, it decided (June 2001) to hand over the land to Tourist Resorts Kerala Limited (TRKL), a subsidiary of the Company, for implementation as a joint venture project with private participation. CIAL, however, had not granted permission for this arrangement so far (June 2004). The Company has also not taken possession of the land. The liability for the amount of ₹ 49 lakh paid (May 1999) towards interest free deposit to CIAL was transferred to TRKL and the amount received (June 2004) from them.

Audit observed that the Company did not make a proper study on the feasibility of the project and tie-up finance before making financial commitment by way of interest free deposit towards whole time lease. Even before depositing (May 1999) the amount, the Company was also aware of the fact that the rates prescribed in the offer document by CIAL were quite high and the deposit amount was a deciding factor in the viability of the project. Ignoring this the Company deposited the amount and ultimately decided (July 2001) not to implement the project further, due to financial constraints.

Thus, the decision of the Company to deposit funds towards whole time lease without ensuring the viability of the project and financial tie-up resulted in locking of funds amounting to ₹ 49 lakh for the period from June 1999 to May 2004 and interest loss of ₹ 29.40 lakh.

Government while endorsing the views of the Management stated (July 2004) that TRKL had initiated action for implementing the project under a joint venture company and payment of the deposit amount was essential at that point of time to get the land reserved in their favour. The fact, however, remained that the Company unnecessarily deposited borrowed funds for a project that could not be implemented, leading to interest loss.

[Audit Paragraph 3.4 contained in the Report of the Comptroller and Auditor General of India for the year ended 31st March, 2004 (Commercial).]

Notes on the Audit Paragraph furnished by Government is given in Appendix II.

1. With regard to the deal with CIAL leading to an interest loss of ₹ 29.40 lakh, the witness elaborated that based on a proposal from Cochin International Airport Limited, KTDC took part in the tender for the construction of hotel and won the bid. Subsequently on 3-5-1999, as stipulated, ₹ 49 lakh was given to CIAL as interest free deposit. However, due to excessive financial commitment KTDC postponed the development of the Nedumbassery Project to the next phase.

2. In the meantime though CIAL expressed its willingness to sign an agreement or MOU, it did not fructify due to some reluctance from CIAL itself. In 2001, due to its severe financial constraints, KTDC found it difficult to invest money directly and hence decided to hand over the hotel project to its subsidiary TRKL with the suggestion to implement it as a joint venture project by associating with a suitable private partner. The deposit was transferred to TRKL and the amount was received from them in June 2004. The witness further added that TRKL couldn't proceed with the hotel project as CIAL did neither express any interest in the arrangement nor transfer the proposed land to them. However the loss of interest of ₹ 29.40 lakh, as pointed out by Accountant General, was informed to be hypothetical. The interest free deposit was made by KTDC as insisted by CIAL but neither by borrowing nor by withdrawing from current account. Hence the witness claimed that no interest cost was involved in the deal.

3. The witness added that KTDC has 100% stake in TRKL and that Government started TRKL with the prime intention of taking up new endeavors with private partnership, which KTDC was not authorised to do. This was why TRKL was entrusted with the project and authorised to find a suitable partner.

4. The Committee felt that the company neither conducted a proper study nor made a clear planning before making the interest free deposit. The witness admitted that there was definitely lack of planning and that it was essential at that time to get the land reserved for KTDC on the assumption that huge development would take place at Nedumbasseri Airport and its surrounding area. KTDC thought of it as an investment for future.

5. The Committee remarked that the financial position of KTDC has improved very much at present and enquired why KTDC was reluctant to rethink and reapproach CIAL for the same project. The witness replied that if CIAL would award the land giving preference to KTDC and based on the same old conditions, then KTDC would reconsider it. However KTDC expected that CIAL would, rather than making such an offer, allot the project only through a bid process.

6. The witness then stated that when KTDC requested CIAL to reconsider the grant of the project in 2006, CIAL replied that a decision could be made only after 2009. When Tourism Secretary wrote to CIAL in 2007, informing that State Government was very keen on the project and requesting CIAL MD for immediate personal intervention into the leasing of the land, CIAL placed the matter in its board meeting. It was then intimated that as part of the first phase they were proposing to start a convention centre and golf course, the completion of which would take about two years. Hence the decision to start the hotel project would come up only in the second phase of the land utilisation plan, which would start in the year 2009 only. Thereafter, CIAL refunded the deposit money to TRKL.

7. The Committee then commented that steps should have been taken much earlier to get back the interest free deposit from CIAL, so that the interest loss on the same could have been minimised.

Conclusions/Recommendations

8. **The Committee notices that KTDC deposited funds amounting to ₹ 49 lakh as interest free deposit without verifying all the aspects and viability of the project for the construction of a four star hotel on the land to be provided by CIAL. KTDC had neither conducted a proper study nor made a clear planning before making the interest free deposit. The Committee observes that steps should have been taken much earlier to get back the interest free deposit from CIAL, so that the interest loss on the same could have been averted. Hence care should be taken to avoid such instances in future. The Committee also views that in the backdrop of the improvement in the financial position of KTDC and the decision of CIAL that starting of the hotel project would come only in the second phase of the land utilisation plan, any move on the part of KTDC in this direction would consider to be a positive approach. Therefore the Committee wants to know the present position of the project. The Committee recommends that the Corporation should conduct a study on the feasibility and viability of the project before venturing into it. The Committee also recommends to be submitted with a report regarding details of the land allotted for the construction of hotel and present stage of the implementation of the project.**

Avoidable extra expenditure

The Company had been outsourcing the cleaning works of its hotel units since March 2001. The work was entrusted to Flowrence Nightingale Professional Service Agencies (March 2001) at ₹ 1,200 per 1000 sq. ft. per month for premium properties. In the case of other properties, the work was entrusted to Safe Security Services (November 2001-March 2007) @ ₹ 574 per 1000 sq. ft. per month and Omega Security Agencies (June 2007) @ ₹ 670 per 1000 sq. ft. per month. Agreements were also executed (March/November 2001/June 2007). As per the terms of agreement, the rates fixed for all the three firms were all inclusive.

Audit observed (February 2008) that the Company paid service tax as claimed by the contractors even though the rates were all inclusive, which led to excess payment. The total excess payment made by the Company towards service tax to the above three firms for the period April 2004 to January 2008 worked out to ₹ 55.53 lakh. Thus the failure of the Company to regulate payments in accordance with the contractual provisions resulted in avoidable extra expenditure of ₹ 55.53 lakh.

Government stated (May 2008) that in the notification released for selecting manpower supply agencies and in the agreement the Company had not envisaged that the rate was inclusive of service tax, and EPF, ESI and other statutory labour welfare measures only was meant by the term “all inclusive”. The term “all inclusive” includes all and the Company cannot interpret it at its discretion later. If the taxes were not to be covered, the same should have been clearly specified in the agreements.

[Audit Paragraph 4.4 contained in the Report of the Comptroller and Auditor General of India for the year ended 31st March, 2008 (Commercial).]

Notes on the Audit Paragraph furnished by Government is given in Appendix II.

9. The Committee enquired about the reason for the payment of service tax by KTDC, as claimed by the contractors, the rates quoted in the contract agreement being all inclusive, which led to an avoidable extra expenditure of ₹ 55.53 lakh. The witness explained that KTDC had been outsourcing cleaning works without engaging permanent employees. Contracts were awarded by inviting tender and observing all necessary formalities. The Company demanded the rates for cleaning works, inclusive of all expenses. The “all inclusive” rate included Provident Fund, ESI etc. The rate was made “all inclusive” in the tender to take care of all such liabilities and KTDC was not bound to bear any additional liability. This practice was followed till the introduction of service tax for cleaning work on 10-9-2004.

10. The Committee pointed out that the service tax was introduced only on 10-9-2004, but KTDC had been paying service tax since April 2004 and sought explanation on the matter. The witness stated that the cleaning contract had been given to security contract agency, which was registered as security agency. Since 1998, the service tax was applicable to all security agencies. The agency had supplied manpower for both security and cleaning works. When Accountant General, in April 2004, carried out service tax audit in manpower supply agencies it was noticed that those agencies had not been paying service tax for security service since its inception on October 16, 1998. The money paying agency being responsible as per the Statute, KTDC was contacted on this matter either KTDC or the contracting agency was bound to remit tax. However, as per the, “all inclusive” rate quoted in the tender, KTDC could have kept away from the responsibility if it had clearly made a separation between security staff and cleaning staff and thus Service Tax for cleaning could have been avoided till September, 2004.

11. The Committee remarked that KTDC remitted service tax as claimed by contractors, though they also had equal responsibility, thus giving undue favour to the contractors. It was enquired if any steps had been taken by KTDC to get refund of the service tax so paid, from the contractors. If no steps had been taken, the reason for the unjustifiable action from the part of KTDC was sought for. The witness admitted the lapse and replied that KTDC could have at least served a notice to the contractor for refund. However this was not done as KTDC felt that if they had got it refunded, the contractor would have taxed on the labourers who were getting very meagre salary.

12. The Committee, being not satisfied with the reply, remarked that any concession given to such private entrepreneurs would not reach the hands of ordinary labourers as such private agencies would always try to exploit ordinary workers. KTDC, fully owned by Government, having remitted the tax on behalf of the private contractors, has allowed them to escape from their liability.

13. Government Secretary clarified that service tax being a tax demand from Government, payment of the same on behalf of contractors can't be treated as a distributable concession. If contractors were forced to pay the tax, they would have levied it on their labourers. This could be avoided by KTDC paying the tax.

Conclusions/Recommendations

14. The Committee finds that KTDC paid service tax amounting to ₹ 55.53 lakh as claimed by the cleaning contractors against contractual provision. The Committee understands that KTDC had been paying service tax for cleaning staff from April 2004 to January 2008 owing to non separation between security staff and cleaning staff since the tax was applicable only for supplying security manpower.

15. The Committee observes that having remitted service tax as claimed by contractors, KTDC gave undue favour and allowed the contracting agency to escape from their responsibility. The Committee finds that KTDC had not even served a notice to the contractor for refund.

16. The Committee is not satisfied with the reply of KTDC that if they had got it refunded, the contractor would have taxed on the labourers and opined that any concession given to such private entrepreneurs would not reach in the hands of ordinary workers. As such private agencies would always try to exploit ordinary workers. The Committee therefore comes to the conclusion that KTDC, fully owned by Government, having remitted the tax on behalf of the private contractors, has allowed them to escape from their liability to pay the service tax. The Committee recommends that whenever notifications are issued for selecting manpower supply agencies the Company has to ensure the provision to envisage all the items like service tax, EPF, ESI and other statutory labour welfare measures included in the term “all inclusive” in the agreement with the contractors. The Committee remarks that while outsourcing the works of the Corporation to contractors, the administrative department should supervise that the works are being executed as per the existing labour laws.

Thiruvananthapuram,
28th January, 2014.

K. N. A. KHADER,
Chairman,
Committee on Public Undertakings.

APPENDIX I

SUMMARY OF MAIN CONCLUSIONS/RECOMMENDATIONS

<i>Sl. No.</i>	<i>Para No.</i>	<i>Department concerned</i>	<i>Conclusions/Recommendations</i>
(1)	(2)	(3)	(4)
1	8	Tourism	The Committee notices that KTDC deposited funds amounting to ₹ 49 lakh as interest free deposit without verifying all the aspects and viability of the project for the construction of a four star hotel on the land to be provided by CIAL. KTDC had neither conducted a proper study nor made a clear planning before making the interest free deposit. The Committee observes that steps should have been taken much earlier to get back the interest free deposit from CIAL, so that the interest loss on the same could have been averted. Hence care should be taken to avoid such instances in future. The Committee also views that in the backdrop of the improvement in the financial position of KTDC and the decision of CIAL that starting of the hotel project would come only in the second phase of the land utilisation plan, any move on the part of KTDC in this direction would consider to be a positive approach. Therefore the Committee wants to know the present position of the project. The Committee recommends that the Corporation should conduct a study on the feasibility and viability of the project before venturing into it. The Committee also recommends to be submitted with a report regarding details of the land allotted for the construction of hotel and present stage of the implementation of the project.
2	14	„	The Committee finds that KTDC paid service tax amounting to ₹ 55.53 lakh as claimed by the cleaning contractors against contractual provision. The Committee understands that KTDC had been paying service tax for cleaning staff from April 2004 to January 2008 owing to non separation between security staff and cleaning staff since the tax was applicable only for supplying security manpower.

(1)	(2)	(3)	(4)
3	15	Tourism	The Committee observes that having remitted service tax as claimed by contractors, KTDC gave undue favour and allowed the contracting agency to escape from their responsibility. The Committee finds that KTDC had not even served a notice to the contractor for refund.
4	16	„	The Committee is not satisfied with the reply of KTDC that if they had got it refunded, the contractor would have taxed on the labourers and opined that any concession given to such private entrepreneurs would not reach in the hands of ordinary workers. As such private agencies would always try to exploit ordinary workers. The Committee therefore comes to the conclusion that KTDC, fully owned by Government, having remitted the tax on behalf of the private contractors, has allowed them to escape from their liability to pay the service tax. The Committee recommends that whenever notifications are issued for selecting manpower supply agencies the Company has to ensure the provision to envisage all the items like service tax, EPF, ESI and other statutory labour welfare measures included in the term “all inclusive” in the agreement with the contractors. The Committee remarks that while outsourcing the works of the Corporation to contractors, the administrative department should supervise that the works are being executed as per the existing labour laws.

APPENDIX II

NOTES FURNISHED BY GOVERNMENT ON THE AUDIT PARAGRAPH
**Action Taken Statement on the Report of the Comptroller and Auditor
 General for the years ended on 31st March, 2004 and 31st March, 2008**

<i>Sl. No.</i>	<i>Audit Paragraph</i>	<i>Reply furnished by the Government</i>
(1)	(2)	(3)
1	3.4	<p>As per invitation from M/s Cochin International Airport Limited, the Board of Directors of KTDC in its meeting held on 16-2-1999 authorised the Managing Director to participate in the tender for construction of 4-Star Hotel Project at Kochi International Airport at Nedumbassery. It was also decided by the Board to Deposit ₹ 49 lakh as interest free deposit for allotting space for construction of Hotel. They have allotted 20000 sq.m. of land to the Corporation as per their letter dated 12-4-1999. The security deposit was made on 3-5-1999.</p> <p>The question of loss of interest of ₹ 29.40 lakh is quite hypothetical as (a) KTDC Limited did not borrow any amount as loan for the deposit or for the project implementation and (b) the deposit does not earn any interest whether it was by KTDC or TRKL. The company has also got back the deposit from TRKL.</p> <p>The draft agreement and MOU have not been signed so far. As such, the Corporation have not taken over the land in possession for the construction of the Hotel Project. The lease rent has, therefore, not become due for payment.</p> <p>But later, due to financial constraints Kerala Tourism Development Corporation Limited could not start the work. The agreement or MOU has not been signed as it was decided to transfer the above project to Tourist Resorts (Kerala) Limited for commencing the project</p>

(1)	(2)	(3)
		<p>as a Joint Venture Project and the Board of Directors of the company at its meeting held on 18-7-2001 resolved that the Hotel Project at Nedumbassery Airport be handed over to TRKL with the permission of CIAL for implementing it as a joint project and that the amount of ₹ 49 lakh spent by the Corporation be got reimbursed from TRKL.</p>
		<p>The Board of Directors of TRKL, as desired by the holding Company—Kerala Tourism Development Corporation Limited, decided to take up the Airport Hotel Project at Nedumbassery Airport at Kochi in the joint sector and the Board of Directors at its meeting held on 18-7-2001 resolved that the Hotel Project at Nedumbassery Airport to be taken over from Kerala Tourism Development Corporation Limited with the permission of CIAL and implemented as a joint sector project and resolved that the Managing Director be authorised to find a suitable joint venture partner through the process vide G.O. (Ms.) No. 496/99/GAD dated 30-7-1999 and to place the matter before the Board for formal decision. The Board of Directors resolved further that the amount of ₹ 49 lakh spent by KTDC on the project be reimbursed to it.</p>
		<p>As regards the payment of the deposit amount of ₹ 49 lakh, it was essential at that point of time to get the land reserved for the purpose in favour of the Corporation. The only think is that the implementing agency was decided to be a joint sector company in order not to strain the scarce resource of the Government in tune with the policy decision of the Government. KTDC did not hasten to collect the deposit amount of ₹ 49 lakh from TRKL with the good intention that the joint venture partner would reimburse the amount once the joint venture programme is cleared by the Government. The Corporation also got the deposit back from TRKL on 16-9-2004.</p>

(1)	(2)	(3)
2	4.4	<p>The question of loss of interest of ₹ 29.40 lakh is quite hypothetical since the amount is deposited by the Company as per the decision of the Board as interest free deposit. The decision taken was bona fide and was in the best interest of the Companies concerned and the Government.</p> <p>The Service Tax being paid to the Cleaning contractors in their monthly bills is as per Service Tax Rules. The expenditure incurred by KTDC on this account was neither avoidable nor an excess expenditure. KTDC has been outsourcing security/cleaning works even before the introduction of Service Tax by Central Government. Hotel Industry is manpower intensive one which can not run only with permanent employees. That is why outsourcing is arranged for cleaning, security, gardening, etc., where special skill is not required. Outsourcing is less expensive and profitable to the company compared to the cost for engaging permanent employees. Contracts are awarded after observing all formalities in a transparent manner by inviting quotations through newspapers. Contracts have been awarded to the lowest rate quoted parties. As per tender conditions all labour related welfare funds such as Provident Fund, ESI etc., pertaining to those employed for security/cleaning works has to be paid by the contractors. The rates to be quoted in the tender are 'all inclusive' and KTDC will not bear any liability on account of such contract employees. The words 'rates all inclusive' has been mentioned in the tender to take care of all such liabilities. This has been the practice even before introducing Service Tax. The same practice continued while inviting tenders after introducing Service Tax. Tenders invited after introducing Service Tax also, required to quote all inclusive rates. If the amount of service tax was not given extra to the contractors, they will have to remit the tax from the amount paid by KTDC and a</p>

(1)

(2)

(3)

corresponding deduction will have to be made in the wage of contract employees which in turn will adversely affect the day-to-day functioning of KTDC. That is the reason why KTDC had been paying service tax extra even though the rates were all inclusive. Contractors were not ready to carry on the contract without giving the Service Tax extra. KTDC insisted to submit chalangis of service tax paid each month along with the bill submitted next month.

As service tax can be legally collected from the person receiving the service and such tax collected is credited to the Government exchequer, it is not fair to interpret that KTDC incurred avoidable expenditure.

The above technical defects in the tender conditions have been rectified in the present contracts. Security contract has been given to Kerala State Ex-service men Development and Rehabilitation Corporation Limited, which is a Public Sector Undertaking. The contract contains provision to pay Service Tax extra and is being paid accordingly to them. Cleaning contract also contained a condition to give Service Tax extra. Thus ambiguity existed in the earlier contract conditions have been rectified.

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