



GOVERNMENT OF KERALA

Abstract

Power Department- Writ Petition (Civil) No. 25360/2023 filed by KSEB Pensioners Koottayma - Judgment dated 07.08.2023 of the Hon. High Court of Kerala - Complied with -Orders issued

POWER (C) DEPARTMENT

G.O.(Rt)No.165/2024/POWER Dated,Thiruvananthapuram, 06-09-2024

Read: -

1. 4G.O. (Ms) No.37/2008/PD dated 25/09/2008 published as SRO No. 990/2008 in Kerala Gazette extra ordinary No. 2090 dated 25/09/2009.
2. G.O. (P) No.46/2013/PD dated 31/10/2013 published as SRO No. 871/2013 in Kerala Gazette extra ordinary No. 3103 dated 31/10/2013.
3. Tripartite agreement with Government of Kerala, KSEBL and Unions of Workers and Officers of erstwhile KSEB dated 01/08/2014.
4. G.O. (P) No.03/2015/PWR dated 28/1/2015 published in Kerala Gazette as Extra ordinary No. 191 dated 28/01/2015.
5. G.O. (Ms) No.17/2015/PWR dated 13/5/2015 published in Kerala Gazette as Extra ordinary No. 1209 dated 20/05/2015.
6. Judgement of the Hon'ble High Court of Kerala dated 07.08.2023 in W.P. (C) 25360/2023 filed by KSEB Pensioners Koottayma.
7. Representation submitted by KSEBL Pensioners Koottayma before the Government on 07/09/2023.
8. Hearing of the petitioners held on 01/11/2023 by the Additional

Chief Secretary (Power).

9. G.O. (P) No.06/2023/PWR dated 01/11/2023 published in Kerala Gazette as Extra ordinary No. 1146/2023 dated 01/11/2023.
10. W.P (C) 37302/2023 filed by KSEB Pensioners Koottayma before the Hon'ble High Court of Kerala.
11. Stay Order of the Hon'ble High Court of Kerala dated 13.11.2023 and subsequent extension orders in W.P (C) 37302/2023 filed by KSEB Pensioners Koottayma.

ORDER

As part of re-organisation of the Kerala State Electricity Board, the Government of Kerala took over all the functions, properties and all interests, rights in properties, all rights and liabilities of the Kerala State Electricity Board as per the Kerala Electricity First Transfer Scheme issued as per notification read as 1st paper above.

(2) Government have issued the Kerala Electricity Second Transfer Scheme (Re-vesting), 2013 as per notification read as 2nd paper above, re-vesting all the functions, properties and all interest, rights in properties, all rights and liabilities vested in the State Government to a company named Kerala State Electricity Board Limited (KSEBL).

(3) Government have amended the Kerala Electricity Second Transfer Scheme (Re-vesting), 2013 as per notification read as 4th paper above.

(4) As part of re-vesting of Assets and liabilities of erstwhile Kerala State Electricity Board (KSEB) to the Kerala State Electricity Board Limited (KSEBL), Government have issued orders for netting off dues between Government and KSEB as on 31.10.2023 as per Government order read as 5th paper above.

(5) KSEB Pensioners Koottayma, a registered association of pensioners of the KSEBL had filed Writ Petition (Civil) No. 25360/2023 before the Hon'ble High Court of Kerala inter alia inviting attention of the

respondents to the non functioning of the Master Trust formed for disbursement of pension and other benefits of the employees of the erstwhile KSEB absorbed by the newly created KSEBL.

(6) The Hon'ble High Court has disposed off the W.P.(C) 25360/2023 on 07.08.2023 with the following directions;

*"In the afore circumstances, and since it will certainly be for the 1st respondent (i.e., **Chief Secretary**) to take a decision on the aspects projected by the petitioner in this writ petition - they being the supervisory policy Authority for the KSEB - I order this writ petition, granting liberty to the petitioner to make an appropriate representation before its competent Authority; and if this is done within a period of one month from the date of receipt of a copy of this judgement, same shall be considered by its competent Authority after affording them, as also the 3rd respondent (i.e., **CMD, KSEBL**), an opportunity of being heard; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later than four months thereafter.*

*I make it clear that, though I have not entered into the merits of any of the rival contentions, the 1st respondent shall keep in mind the specific contention of the petitioner that, ever since its inception, the 6th respondent (i.e., **Master Trust**) has not been able to function on account of lack of support from Government or the KSEB, as the case may be"*

(7) In pursuance of the above order, the petitioners submitted a representation before the Government as per reference 7th cited. The following are the requests of the petitioners;

- i. Accord sanction to extend the existing permission (*the then existed*) to retain Electricity Duty with KSEBL from 01.11.2023 onwards, as Government share of unfunded pension liability till alternate funding arrangements are made in this behalf.
- ii. Permit KSEBL for releasing Bonds for meeting the additional pension liability, as per latest actuarial valuation, to the Master Trust.
- iii. Devise arrangements for the Government and KSEBL, to meet the unfunded shares of the pension liability to the Master Trust, for every financial year based on the actuarial valuation.

- iv. Issue directions to KSEBL for remitting all the amounts allotted by Regulatory Commission and State Government to the Master Trust, contrary to the present unlawful practice of remitting only monthly pension expenses to the Trust.
- v. Necessary directions to exclude the Terminal Leave Surrender liability from the purview of the Master Trust.
- vi. include KSEB Pensioners Koottayma representative as a trustee to the Master Trust.
- vii. Separate the administrative mechanism of the Master Trust from KSEB Limited in to an independent entity, in order to enable autonomy in decision making.

(8) The Petitioners along with the officials of Kerala State Electricity Board Limited were heard by the Additional Chief Secretary (Power) on 01.11.2023. The petitioners have reiterated their demand mentioned above. Government have examined the demands put forward by the petitioners vis-a-vis the existing Government Orders, notifications, tripartite agreement etc.

(9) As per Government Order read as 4th paper above, the State Government had agreed to fund Rs.5861 Crore (Rupees Five thousand Eight hundred and Sixty one crore only) over a period of next 10 years from the date of transfer to the KSEBL on annual basis for meeting of unfunded terminal liabilities by way of retention of Electricity Duty. Accordingly Government have allowed for retention of Electricity Duty with KSEBL for ten years, i.e. up to 31/10/2023 for meeting liability towards contribution to Master Trust.

(10) Since the period allowed for retention of Electricity Duty with KSEBL ended on 31/10/2023 Government have issued orders read as 9th paper above directing KSEBL to remit the Electricity Duty to Government from 01/11/2023. This decision was also announced in the State Budget for the financial year 2023-24 also.

(11) Aggrieved by the above decision, the petitioners approached the Hon'ble Court of Kerala with W.P.(C) 37302/2023 requesting the cancellation of the Notification read as 9th paper above. The petitioners have contended that the issuance of the said notification has taken away some of the rights of the pensioners. As per the order read as

11th paper above, the Hon'ble Court of Kerala stayed the operation of the notification read as 9th paper above. Government is examining whether the said notification has taken away any of the rights of the pensioners. In the present situation, the operation of this Government Order will be subject to the orders issued by the Hon'ble High Court of Kerala in WP(C)37302/2023.

(12) Government is of the view that the question of retention of Electricity Duty by KSEBL beyond 31.10.2023 does not arise now as it was a short-term measure to compensate the unfunded liability consequent to the conversion of Kerala State Electricity Board to a corporate entity, Kerala State Electricity Board Limited (KSEBL). Government is losing a revenue of Rs.1265 crore per year (approx.) due to the retention of Electricity Duty by KSEBL and this amount is not being accounted anywhere in Government account (Consolidated fund of the State) and finally it reduces the Gross State Domestic Product (GSDP) of Kerala.

(13) Government orders viz G.O.(P) 46/2013/PD dated 31/10/2013, G.O.(P) 03/2015/PD dated 28.01.2015 allowed KSEBL to retain Electricity Duty only up to 31.10.2023 with them as a short-term arrangement. So, after this period KSEBL has to pay the Electricity Duty collected by them naturally to Government account.

(14) Additional funding to the Master Trust from Government side is not possible towards the proposed actuarial value of terminal benefits, as it has clearly been ordered in the order read as 4th paper above that the KSEBL has to remit the share of the contribution on the actuarial valuation of terminal benefits on yearly basis to the Master Trust.

(15) In the above circumstances, Government are pleased to comply with the direction contained in the judgement of the Hon'ble Court of Kerala dated 07.08.2023 in W.P. (C) 25360/2023 filed by KSEB Pensioners Koottayma read as 6th paper above, in respect of the requests of the petitioners put forward in their representation read as 7th paper above, as detailed below;

(i) The demand to permit retention of Electricity Duty

The question of retention of Electricity Duty by KSEBL does not arise now as it was a short-term measure to compensate the unfunded liability consequent to the conversion of Kerala State Electricity Board

to a corporate entity Kerala State Electricity Board Limited. Government is losing a revenue of Rs.1265 Crore per year (approx.) due to the retention of Electricity Duty and also this amount is not being accounted anywhere in Government account and finally it reduces the GSDP of the State. Hence this request is rejected.

(ii) The demand to permit KSEBL to issue bonds

This matter is being examined in consultation with the concerned Departments and final decision will be taken.

(iii) The demand to devise arrangements for the Government and KSEBL to meet the unfunded shares of the pension liability to Master Trust

Additional funding to the Master Trust from Government side is not possible towards the proposed actuarial value of terminal benefits, as it has clearly been ordered in the order read as 4th paper above, that the KSEBL has to remit the share of the contribution on the actuarial valuation of terminal benefits on yearly basis to the Master Trust. KSEBL is hereby directed to release funds to the Master Trust towards the redemption of bonds as per its redemption rates along with penal interest @24% as a request of KSEBL for reduction of penal interest from 24% to 12% is rejected.

(iv) The demand to Issue directions to KSEBL for remitting all the amounts allotted by the Regulatory Commission to the Master Trust

Government agrees in principle to prepare and put in place Standard Operating Procedure for the operation of the Master Trust in addition to that available in the bye-law.

(v) Demand to exclude terminal surrender from the purview of the Master Trust

Government will examine this and a final decision will be taken in consultation with the concerned Departments at Government and with all stakeholders including employees' organisations and pensioners' organisations.

(vi) Demand to include KSEB Pensioners Kootayma representative as a trustee to the Master Trust

Government agree in principle for the reconstitution of the Master Trust by incorporating additional members representing Government

from Power Department, Finance Department and Law Department and also members from the Pensioners organisations of KSEBL after due consultation at different levels at Government and also with all stakeholders including employees' organisations and pensioners' organisations.

(vii) Demand to Separate the administrative mechanism of the Master Trust from KSEB Limited in to an independent entity

Government agree in principle to prepare and put in place Standard Operating Procedure for the operation of the Master Trust in addition to that available in the bye-law.

(16) As stated above, the directions of the Hon'ble High Court in the judgement dated 07.08.2023 in WP(C)25360/2023 is complied with subject to the outcome of W.P.(C) 37302/2023 pending before the Hon'ble High Court of Kerala.

(By order of the Governor)

K R JYOTHILAL

ADDITIONAL CHIEF SECRETARY

To:

The General Secretary, KSEBL Pensioners Koot tayma, Krishna Nivas, TC.-82/4275, Malloor Rd, Vanchiyoor, Thiruvananthapuram-695035

The Registrar, Hon'ble High Court of Kerala, Ernakulam (with CL)

The Advocate General Kerala, Ernakulam (With CL)

The Chairman and Managing Director, KSEBL, Thiruvananthapuram

Finance (PU-A) Department

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Section Officer