

# KERALA ELECTRICITY EMPLOYEES' CONFEDERATION INTUC



( Reg.No. 01-14/87- Aff. 10485 )

V.P. MARAKKAR SMARAKA MANDIRAM

AMBUJAVILASOM ROAD, THIRUVANANTHAPURAM - 695 001

Phone: 0471-2471087, Fax: 0471-2471087

Email: keecintuchq@gmail.com, Web: www.intuckeec.com



**PRESIDENT**  
K.P. DHANAPALAN Ex.M.P

**GENERAL SECRETARY**  
SIBYKUTTY FRANCIS

**TREASURER**  
V. GOPAKUMAR

KEEC/GL/2014

Thiruvananthapuram

15.10.2014

To

The Chairman & Managing Director  
Kerala State Electricity Board Limited  
Vaidyuthi Bhavan, Pattom  
Thiruvananthapuram

Sir,

Sub:- Non deduction of Income Tax on the terminal leave encashment- commuted value of Pension- KSEB Limited's status as "State" under Article 12 – Constitution of India regarding-

Income Tax Act 1961 fully exempted tax on the terminal leave surrender value and commuted value of pension of the Government Employees. In the case of non Government employees

- leave encashment at the time of retirement is exempted only on the least of, 30 days salary for each year or ten months average salary or Rs.300000/- or actual amount
- Commutated value of 1/3 of normal pension is exempt if the employee receives gratuity and ½ of normal pension is exempt from tax if the employee does not receive gratuity

Many of the offices in KSEB Ltd deducting Tax on the terminal values whereas some other officer are not deducting. The officers who are deducting tax are in the contention that KSEB Ltd is not fall in the definition of Government. But it is totally against the fact and law. Kerala State Electricity Board was included in the list of State (Article 12 of the Constitution) (Judgement of Supreme Court). In the case of a company when all the shares except the directors share (one each) within may be of the Government, when more than 97% of the share capital of the company has been contributed by the State Governments it can be treated as state under article 12. Various decision of Supreme Court reveals this fact. Also when company comply with all the directors of the Government, Government can appoint its members, when over all control is exercised by the Government, then the company will fall in the meaning of Article 12 "State". KSEB Ltd is satisfying all the conditions of State. The Supreme Court in Ajay Hsia V Khalid Majit that a Government may symbolize state.

According to the various judgments of Supreme Court, Kerala State Electricity Board is “State” under Article 12 of the Constitution of India. Because of existence of KSEB as “State”, employees of KSEB were deputed for election duties.

If a corporation or a Government company is regarded as “State”, all actions, deed, conducts etc of the Corporation/ Government Company must not advisedly affect the fundamental rights of the citizens of India; Corporation/ Government Company cannot act arbitrarily, irrationally or in the utter disregard to the right of the citizen of India or its employees; Corporation/Government Company shall be subject to writ jurisdiction under Article 32 and 226 of the constitution of the India. Kerala State Electricity Board and Kerala State Electricity Board Limited are under the purview of above clauses. Hence both are “State” under Article 12 of the constitution of India. Also the Tripartite agreement signed on 1.8.2014 in connection with revesting of KSEB, assures the protection of all benefits enjoyed in Kerala State Electricity Board. No tax was imposed for the above claims (leave encashment, commutation of pension) in Kerala State Electricity Board. Imposing tax is the violation of Tripartite agreement signed. If there is any special order from income tax department for the remittance of tax, the same may be remitted by KSEB Limited for the time being so as to satisfy the tripartite agreement condition.

This privilege may be applied in the case of Income Tax of terminal leave encashment and commuted value of pension. Hence directions may please be given for not deducting the tax on the above. A clarification in the matter of Income tax is necessary. If the employees of KSEB Ltd are treated as non Government, then tax will be charged in excess of 300000/- in the case of leave encashment and tax will be charged in excess of 1/3 of commuted value. Hence Board may issue orders for not deducting the tax.

The relevant judgments in connection with the issue of including KSEB and KSEB Limited in the definition of “State” under Article 12 constitution of India are detailed below.

1. Electricity Board Rajasthan V Mohanlal (AIR 1967, SC 1857).  
In this case the court held that Electricity Board is “State” under Article 12
2. Star Enterprises V CTDC of Maharashtra [(1990) 3 SCC 280].  
In this case the court held that Government Company registered under Companies Act 1956 is “State” under Article 12.
3. Soorya Narain Yadav V BSE Board (AR 1985, SC 94)  
In this case court held that Bihar “State” Electricity Board is “State” under Article 12.

Yours faithfully,



General Secretary