

Presented on : 27/5/2015

Subject:-

**BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM**  
(Special Original Jurisdiction)

W.P.(C) No. \_\_\_\_\_ of 2015

Kerala Electricity Employees Confederation  
(INTUC), Represented by its General Secretary : Petitioner

Vs.

State of Kerala & others : Respondents

**MEMORANDUM OF WRIT PETITION (CIVIL) FILED UNDER ARTICLE**  
**226 OF THE CONSTITUTION OF INDIA**

**G.S. RAGHUNATH (R.372)**  
**K. RAJESH KANNAN (R. \_\_\_\_\_ )**  
**&**  
**A.S. SHAMMY RAJ (S. \_\_\_\_\_ )**

Counsel for the Petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM

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Kerala Electricity Employees Confederation  
(INTUC), Represented by its General Secretary :

Petitioner

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Respondents

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Dated this the 26<sup>th</sup> day of May, 2015

Counsel for the Petitioner

: A :

**BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM**

W.P.(C) No. of 2015

Kerala Electricity Employees Confederation (INTUC), Represented by its General Secretary :	Petitioner
Vs.	
State of Kerala & others :	Respondents

**SYNOPSIS**

The Petitioner is a Trade Union registered under the Trade Union Act. Petitioner has more than 7000 members, who are all employees of 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent is the successor of Kerala Electricity Board, which is now made a Limited Company wholly owned by Government of Kerala pursuant to the notification as per G.O. (MS) 46/2013 dt. 31.10.2013. The employees of K.S.E.B. were treated as Government servants and all benefits and liabilities of Government servants as provided under KSR and Government Servant Conduct Rules were made applicable to them. All appointments to K.S.E.B. were also through Kerala Public Service Commission as the nature of the functions and duties of K.S.E.B. are that of the Government. After the Second Transfer Scheme notified in G.O. (MS) 46/2013 mentioned above, all assets, interest, rights, obligations and liabilities of K.S.E.B. are vested in the 2<sup>nd</sup> respondent. An agreement was also executed between the Government, the 2<sup>nd</sup> respondent, and the Trade Unions of the employees of the 2<sup>nd</sup> respondent assuring all the service benefits due to the employees of K.S.E.B. due to the 2<sup>nd</sup> respondent. The KSR and the Government Servant Conduct Rules are made applicable to the employees of the 2<sup>nd</sup> respondent and appointment to 2<sup>nd</sup> respondent are



: B :

also made through Kerala Public Service Commission. Thus the employees of 2<sup>nd</sup> respondent are Government servants entitled to all benefits and Income Tax available to K.S.E.B. Consequently the members of the petitioner have been enjoying the benefits under Section 10 (10A) (i) and 10 (10AA) (1) of the Income Tax Act in the matter of exemption of the Terminal Earned Leave Surrender amount and commutation amount received by them at the time of the retirement. As per Exhibit-P2, 2<sup>nd</sup> respondent is bound to provide the said exemption to the members of the petitioner. But now attempts are made to recover Income Tax from the employees of the 2<sup>nd</sup> respondent, who are members of the petitioner without giving exemption under the provisions of Income Tax. It is in the said circumstances, this Writ Petition is filed praying for a direction to the respondent not to deduct any Income Tax from the employees retiring from the 2<sup>nd</sup> respondent on the amounts due to them under commuted value of pension and accumulated earned leave encashment.

Dated this the 26<sup>th</sup> day of May, 2015

Counsel for the Petitioner

**BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM**  
(Special Original Jurisdiction)

W.P.(C) No.

of 2015

**PETITIONER:**

Kerala Electricity Employees Confederation (INTUC),  
Registration No.01 – 04/87,  
Affiliation No.10485,  
V.P. Marakkar Smaraka Mandiram,  
Ambujavilasom Road, Thiruvananthapuram,  
Represented by its General Secretary.

Vs.

**RESPONDENTS:**

1. State of Kerala,  
Represented by the Secretary to Government,  
(Power Department),  
Secretariat,  
Thiruvananthapuram – 695 001.
2. Kerala State Electricity Board Ltd.,  
Represented by its Secretary,  
Vyduthi Bhavan, Pattom,  
Thiruvananthapuram.
3. Chairman & Managing Director,  
Kerala State Electricity Board,  
Vyduthi Bhavan, Pattom,  
Thiruvananthapuram.
4. Chief Engineer (HRM),  
Kerala State Electricity Board,  
Vyduthi Bhavan, Pattom,  
Thiruvananthapuram.
5. Deputy Chief Engineer (HRM-2),  
Vyduthi Bhavan, Pattom,  
Thiruvananthapuram.

Address for service of notices and processes upon the Petitioner is that of his Counsel **G.S. RAGHUNATH, K. RAJESH KANNAN & A.S. SHAMMY RAJ**, Advocates, "Vaisakh", Judges Avenue, Kaloor, Cochin-17, and the Respondents may be served on the above address.

**WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA**

**Statement of Facts**

1. The Petitioner is a trade union registered under the Indian Trade Union Act. The petitioner union has more than 7000 members. Copy of the Certificate of Registration of petitioner's union is produced herewith and marked as **Exhibit-P1**.

2. The members of the petitioner are either employees of Kerala State Electricity Board or its successor the 2<sup>nd</sup> respondent or employees who have already retired from the service of the K.S.E.B. and the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent is a company registered under the Companies Act, 1956 wholly owned by the Government of Kerala and which is the successor of the Kerala State Electricity Board which was a State Government institution formed under the Electricity Supply Act, 1948.

3. By G.O. (MS) 37/2008 P&D dt. 25.9.2008, Government of Kerala notified the first transfer scheme for the purpose of vesting of functions, properties, interest, rights, obligations and liabilities of K.S.E.B. in Government of Kerala.

4. As per G.O. (MS)46/2013 P&D dt. 31.10.2013, Government of Kerala notified Kerala Electricity Second Transfer Scheme for the purpose of vesting of functions, properties, interest, rights, obligations



and liabilities of K.S.E.B. vested in Government to K.S.E.B. Ltd. namely the 2<sup>nd</sup> respondent. Thus the 2<sup>nd</sup> respondent, which is wholly owned by Government of Kerala, was formed.

5. After the first Government Order was notified, the employees of K.S.E.B. comprising of the petitioner's Union and other Unions strongly objected the conversion of K.S.E.B. into a Limited Company. Strong agitations were going on against the conversion of K.S.E.B. Accordingly, a Tripartite Agreement was entered into between the 1<sup>st</sup> respondent, the 2<sup>nd</sup> respondent and the Trade Unions and Associations representing the workers and officers of the erstwhile Kerala Electricity Board. A copy of the said agreement issued to the petitioner is produced herewith and marked as Exhibit-P2. Copy of the covering letter is produced herewith and marked as Exhibit-P2(a).

6. As per the said agreement, it is agreed that the terms and conditions of the services of the existing employees such as promotions, transfers, wages, compensation, leave, allowances etc. upon transfer to K.S.E.B. Ltd. shall continue to be regulated by existing regulations/service rules in vogue and is guaranteed to continue in the agreement. Consequently the 2<sup>nd</sup> respondent assured that all payments of pension including dearness scheme and other terminal benefits of the existing employees and pensioners as on the date of re-vesting in the same pattern as on that date including periodical revisions as applicable.

7. It is further agreed that all the existing welfare benefits to the retiring employees shall continue. All obligations in respect of payment of pension and other retirement benefits including Provident Fund, Welfare Fund, superannuation pension, encashment of leave and gratuity to the



employees who have retired and who are going to be retired from the service of the Board/K.S.E.B. as on the date of re-vesting shall be the liability of the K.S.E.B. Ltd. and in respect of all statutory and other schemes relating to the employees existing on the date of re-vesting, K.S.E.B. Ltd. shall stand substituted for K.S.E.B. to all intents and purposes.

8. It is respectfully submitted that Kerala State Electricity Board constituted by Government of Kerala as per Order dated 7.3.1957 under the Electricity Supply Act 1948 is for the business of generation, transmission and distribution of electricity and to provide electricity at affordable cost to all classes of consumers in the State of Kerala which is the fundamental duty of a Government. Consequently all the employees of Kerala State Electricity Board were treated as Government servants entitled to all the benefits due to Government servants. All appointments to K.S.E.B. were also made through Kerala State Public Service Commission. Kerala Service Rules Part-I, II and III were also made applicable to the employees of K.S.E.B. Accordingly the members of the petitioner were treated as Government servants.

9. Being treated as Government servants the employees of K.S.E.B. who are the members of the petitioner have been enjoying the benefit under Section 10 (10A) (1) and 10 (10AA) (1) of the Income Tax Act. Consequently, the members of the petitioner and other employees of the K.S.E.B. have been enjoying the benefit of Income Tax exemption for their Terminal Earned Leave Surrender Amount received by them treating them as Government servants. As stated above by the constitution of the 2<sup>nd</sup> respondent there were absolutely no shift in status

of entity, status of employees or change of the business carried out by the 2<sup>nd</sup> respondent. The duties and responsibilities of the 2<sup>nd</sup> respondent and its employees remain the same. Thus the 2<sup>nd</sup> respondent which is fully owned by Government of Kerala comes under the definition of the "State" under Article 12 of the constitution and the 2<sup>nd</sup> respondent continue to discharge the duties of a State Government and its employees, Government servants.

10. In this connection it may be noted that the 1<sup>st</sup> respondent issued G.O. (MS) 26/2014 dt. 14.8.2014 ordering that the 2<sup>nd</sup> respondent is a Government Company as defined under Section 2(b) of Kerala Public Service Commission Act 19 of 1970 and all matters relating to the methods of recruitment shall be through Kerala Public Service Commission. The Government ordered that the Kerala State Electricity Board Ltd. shall be included in the Kerala Public Service Commission (Consultation by Corporations and Companies) Rules 1971 and the 2<sup>nd</sup> respondent can seek the advice of Kerala Public Service Commission on the matters relating to the recruitment of its employees. Copy of the said order is produced herewith and marked as Exhibit-P3.

11. In the said circumstances, the members of the petitioner are entitled to exemption in respect of commuted value of pension and accumulated earned leave encashment without any limit/conditions, under Section 10 (10A) (1) and 10 (10AA) (1) of the Income Tax Act, 1961 as they are Government employees to whom KSR and all other Rules regarding appointment, promotion and pension and pensionary benefits are applicable.



12. The members of the petitioner are also entitled to full value of accumulated earned leave encashment and commuted value of pension without any deduction on the basis of Exhibit-P2 tripartite agreement. It may be noted that Exhibit-P2 is a statutory agreement and the petitioners are entitled to enforce the same through this Hon'ble Court.

13. Claiming benefit of a Government servant one of the retired employee of the 1<sup>st</sup> respondent Smt. Annamma John, Retired Director (Generation) filed W.P.(C) No.34829/2014 and prayed for release of amounts due to her Under Terminal Earned Leave Surrender Scheme sanctioned to her, without any deduction under the Income Tax Act as respondents 2 to 5 refused to release the entire amount sanctioned to her under the aforesaid account. An interim order dated 20.1.2015 was passed by this Hon'ble Court directing the 2<sup>nd</sup> respondent to retain the said amount without remitting the same to the Income Tax Department. Copy of that order is produced herewith and marked as Exhibit-P4.

14. It is respectfully submitted that Smt. Annamma John did not claim any right under Exhibit-P2 Tripartite Agreement. Hence, the interim order is limited to the extent mentioned in Exhibit-P4.

15. The petitioner on getting information about the illegal deductions of the amounts due to some of the employees of 2<sup>nd</sup> respondent towards Terminal Earned Leave Surrender Value, submitted a detailed representation to the 2<sup>nd</sup> respondent on 15.10.2014 praying not to deduct income tax from such amounts. Copy of that representation is produced herewith and marked as Exhibit-P5.

16. Thereafter when the petitioner got information about a representation submitted by the 3<sup>rd</sup> respondent to Central Board of Direct Taxes, New Delhi for clarification regarding the procedure to be followed regarding payment of commuted value of pension and accumulated earned leave encashment, submitted a representation to respondents 2 and 3 on 19.2.2015 praying not to deduct income tax from such amounts. Copy of that representation is produced herewith and marked as **Exhibit-P6**. Another representation was submitted praying for the same relief to the 3<sup>rd</sup> respondent as per representation dated 30.3.2015. Copy of that representation is produced herewith and marked as **Exhibit-P7**.

17. The petitioner is informed by the 4<sup>th</sup> respondent that he has already submitted a representation to the 1<sup>st</sup> respondent requesting for necessary clarification from the 1<sup>st</sup> respondent regarding the orders to be passed on the aforesaid representation of the petitioner. A copy of the said letter dated 30.3.2015 sent by the 4<sup>th</sup> respondent is produced herewith and marked as **Exhibit-P8**. A copy of the note submitted to the Secretary by the 4<sup>th</sup> respondent received by the petitioner from the 4<sup>th</sup> respondent is produced herewith and marked as **Exhibit-P9**.

18. The petitioner is informed that respondents 2 to 5 are awaiting orders from the Government regarding the claim put forward by the petitioner. They are also awaiting orders from the Central Board of Direct Taxes, New Delhi on the claim of the petitioner, it is informed. In the meanwhile, respondents are attempting to recover Income Tax on commuted value of pension and accumulated earned leave pension due to the members of the petitioner who are employees of the petitioner. If



they proceed to recover such income tax, hundreds of members of the petitioner will be seriously affected.

It is in the said circumstances, this Writ Petition is filed on the following among other:-

### **GROUND S**

1. The petitioner is a trade union of the employees of the 1<sup>st</sup> respondent. The petitioner and respondents 1 and 2 have entered into Exhibit-P2 Tripartite Agreement by which all the rights originally granted to the petitioner are agreed to be extended even after the formation of the 2<sup>nd</sup> respondent as a Limited Company under the Kerala Electricity Re-vesting Scheme 2013.

2. As per the said agreement, the members of the petitioner are entitled to the benefit of exemption from Income Tax for the amounts due to them towards Terminal Earned Leave Encashment and Commutation.

3. As per Exhibit-P2, the 1<sup>st</sup> respondent or for that matter respondents 2 to 4 have no right to deduct Income Tax from the amounts due to the members of the petitioner towards Terminal Earned Leave Encashment and Commutation.

4. Clause (2) (i) of Exhibit-A1 clearly provides that all existing welfare benefits to the retired employees shall continue. It is further provided that all obligations in respect of payment of pension and other retirement benefits including Provident Fund, Welfare Fund, Superannuation Pension, encashment of leave and gratuity to the employees who have retired and who are going to be retired from the

service of the Board/K.S.E.B. as on the date of re-vesting shall be the liability of the K.S.E.B. and in respect of all statutory and other schemes relating to the employees existing on the date of re-vesting, K.S.E.B. Ltd. shall stand substituted for the Board/K.S.E.B. to all intents and purposes.

5. Clause 2(e) also ensure that the 1<sup>st</sup> respondent shall take all steps to ensure the payment of pension and other terminal benefits of existing employees and pensioner as on the date of re-vesting as on the same pattern on the date of re-vesting.

6. In view of the aforesaid clauses in Exhibit-P2, the respondents have no authority or power to deduct Income Tax from the Terminal Earned Leave Encashment and Commutation amounts as it is agreed that the members of petitioner shall be provided all benefits available to them when they were employees of K.S.E.B.

7. As per Exhibit-P2 even if the Income Tax Department imposes tax on the amounts of terminal earned leave encashment and commutation, the 2<sup>nd</sup> respondent is bound to pay the same and the same cannot be recovered from the members of petitioner.

8. The members of the petitioner are Government servants appointed through Kerala Public Service Commission and so they are entitled to exemption from Income Tax for the Terminal Earned Leave Surrender Value as per Clause 10 AA (1) and (ii) of the Income Tax Act as incorporated in the consecutive Finance Act since 1982.

9. As the members of petitioner are governed by the KSR and Government Servants Conduct Rules 1960, and treated as Government servants entitled to exemption under Clause 10AA (1) and (ii) of Income Tax Act right from the date of their appointment, the respondents have no

authority or power to deduct Income Tax from the amounts due to them towards Terminal Earned Surrender Value due to them.

10. The Kerala Electricity Board Ltd. is a "State" as defined under Article 12 of the constitution as it is discharging the duties of State in all matters of its working and re-vesting of the assets of KSEB in 1<sup>st</sup> respondent under the Electricity Second Transfer Scheme (Re-vesting) 2013 will not change its nature, character or its working. Hence, the 2<sup>nd</sup> respondent is a wing of the State Government and all its employees are Government servants for all purposes. Consequently, members of petitioner are liable to be treated as Government servants for the purpose of exemption from Income Tax as provided in Section 10AA (1) and (ii) of the Income Tax Act as incorporated in the consecutive Finance Acts since 1982 for the employees of State and Central Government.

11. The petitioner submitted Exhibits-P5, P6 and P7 representations requesting the respondents 2 and 3 not to deduct Income Tax for the amounts due to the members of the petitioner towards commuted value of pension and accumulated earned leave encashment and continue the benefit under Section 10 (10A) (1) and 10(10AA) (i) of Income Tax Act 1961 treating them as Government employees while retiring from the service of the 2<sup>nd</sup> respondent as they are agreed to be treated as Government servants.

12. The respondents 3 and 4 have informed the petitioner that they have sent letters to the 1<sup>st</sup> respondent for necessary orders as prayed for by the petitioner. Accordingly they have not passed any order on the ground that they are awaiting orders from the 1<sup>st</sup> respondent.



13. There is no need for getting such an order from 1<sup>st</sup> respondent for respondents 2 to 5 from continuing the exemption mentioned above or issuing necessary orders or circulars exempting the members of the petitioner from Income Tax towards commuted value of pension and accumulated leave encashment value without deducting income tax from the said amounts.

14. In fact respondents 2 to 5 have no right to deduct Income Tax in view of the specific provisions in Exhibit-P2 Tripartite Agreement, which is binding on them.

15. As the aforesaid respondents are attempting to deduct income tax or are not passing any orders as prayed for, the petitioner is left with no other alternative, but to file this Writ Petition.

It is therefore prayed that the petitioner be granted the following:-

#### **RELIEFS**

- A. That a writ of Mandamus or other order be passed declaring that the respondents are not entitled to deduct any Income Tax from the employees retiring from the 2<sup>nd</sup> respondent on the amounts due to them towards commuted value of pension and accumulated earned leave encashment and are entitled to the benefit under Section 10 (10A) (1) and Section 10(1010A) (1) of the Income Tax Act, 1961;
- B. That a writ of mandamus or other order be passed directing the respondents not to deduct any amount towards Income Tax from the amounts due to employees retiring from 2<sup>nd</sup> respondent towards commuted value of pension and accumulated earned leave encashment;



- C. That a writ of mandamus or other order be passed declaring that the employees of the 2<sup>nd</sup> respondent are entitled to receive full amount towards commuted value of pension and accumulated earned leave encashment without any deduction under the Income Tax Act, 1961;

And

- D. Issue such other reliefs as this Hon'ble Court deem fit and proper in the facts and circumstances of the case.

Dated this the 26<sup>th</sup> day of May, 2015

**G.S. RAGHUNATH**  
Counsel for the Petitioner

**INTERIM RELIEF**

For the reasons stated in the Writ Petition(Civil) and as in the accompanying affidavit, it is humbly prayed that this Hon'ble Court may be pleased to direct the respondents not to deduct any amount towards Income Tax from the amounts due to employees retiring from 2<sup>nd</sup> respondent towards commuted value of pension and accumulated earned leave encashment, pending final disposal of this case.

Dated this the 26<sup>th</sup> day of May, 2015

**G.S. RAGHUNATH**  
Counsel for the Petitioner

From

**Anil K S**

STANDING COUNSEL FOR KSEB,  
POWER HOUSE, KOCHI-682018

Mob: 9388602634 E-mail: [anil.sundaram@gmail.com](mailto:anil.sundaram@gmail.com)

To

**The Chief Engineer (HRM),**  
KSEB, Vidyuthi Bhavanam,  
Trivandrum.

=====

**SC/KSEB/AKS/WPC 15726/2015**

**28.05.2015**

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Sir,


Sub : WPC no: 15726/2015, filed by M/s. Kerala Electricity Employees Confederation (INTUC), against the deduction of Income Tax from the pension arrears etc.- regarding

The above case came up for admission today and the Hon'ble Court was pleased to post the case for instructions to **08.06.2015**. The Hon'ble Court wanted me to ascertain as to the deductions made regarding income tax from the employees (pensioners) before and after the formation of the Company.

I am enclosing herewith the copy of the writ petition for your perusal and paragraph wise comments. Please do furnish the instructions in time so that effective submissions could be made, when the case comes up again on the aforementioned date.

Encl: Copy of WP

Yours truly,

  
Anil K S

Copy to:-

*The Chairman and Managing Director,  
KSEB Ltd., Vidyuthi Bhavanam, Thiruvananthapuram.*

*The Secretary,  
KSEB Ltd., Vidyuthi Bhavanam, Thiruvananthapuram.*

*The Deputy Chief Engineer (HRM-II),  
KSEB Ltd., Vidyuthi Bhavanam, Thiruvananthapuram.*