



FIFTEENTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
PUBLIC UNDERTAKINGS
(2023-2026)**

TWENTY FIFTH REPORT
(Presented on 25th June, 2024)

**SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM**

2024

FIFTEENTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
PUBLIC UNDERTAKINGS
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TWENTY FIFTH REPORT

On

Kerala State Electricity Board Limited

**(Based on the Report of the Comptroller and Auditor General of India
for the year ended 31st March, 2015)**

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COMMITTEE ON PUBLIC UNDERTAKINGS
(2023-2026)

COMPOSITION

Chairperson :

Shri E. Chandrasekharan.

Members :

Shri A. P. Anil kumar

Shri Anwar Sadath

Shri Ahammad Devarkovil

Shri T. V. Ibrahim

Shri P. Mammikutty

Shri K. P. Mohanan

Shri D. K. Murali

Shri P. Nandakumar

Shri Kadakampally Surendran

Shri P. Ubaidulla.

Legislature Secretariat :

DR. N. Krishna Kumar, Secretary

Shri Venugopal R., Joint Secretary

Shri Anil kumar B., Deputy Secretary

Shri Mohanan O., Under Secretary.

INTRODUCTION

I, the Chairperson, Committee on Public Undertakings (2023-26) having been authorised by the Committee to present the Report on its behalf, present this 25th Report on The Kerala State Electricity Board Limited based on the report of the Comptroller and Auditor General of India for the year ended 31st March, 2015 relating to the Public Sector Undertakings of the State of Kerala.

The aforesaid Report of the Comptroller and Auditor General of India was laid on the Table of the House on 28-6-2016. The consideration of the audit paragraphs included in this report and the examination of the departmental witness in connection thereto were made by the Committee on Public Undertakings (2021-2023) at its meeting held on 23-9-2021.

This Report was considered and approved by the Committee (2023-26) at its meeting held on 20-6-2024.

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

The Committee wishes to express thanks to the officials of the Power department of the Secretariat and the Kerala State Electricity Board Limited for placing the materials and information solicited in connection with the examination of the subject. The Committee also wishes to thank in particular the Secretaries to Government, Power and Finance Department and the officials of the Kerala State Electricity Board Limited who appeared for evidence and assisted the Committee by placing their views before the Committee.

Thiruvananthapuram,
25th June, 2024.

E. CHANDRASEKHARAN,
Chairperson,
Committee on Public Undertakings.

REPORT

ON

KERALA STATE ELECTRICITY BOARD LIMITED

Audit Paragraph 3.8 – 3.10 (2014-2015)

Audit Para 3.8

Loss due to undue favour to cable TV operators

Failure of KSEBL to execute agreement with Asianet and other cable TV operators resulted in loss of ₹14.70 crore and short collection of service tax of ₹1.75 crore.

As per Rule 181 of Kerala Financial Code, no work which is to be executed under a contract should be started until the contractor has signed a formal written agreement. If no formal agreement is executed, there should at least be a written understanding specifying terms and conditions of the contract including prices and rates, etc. All cable TV operators including Asianet Satellite Communications Limited (Asianet) have been using electric poles of Kerala State Electricity Board Limited (KSEBL) for their cable TV operations on payment of annual pole rental of ₹108 for urban areas and ₹54 for rural areas fixed in 2002 based on cost of erection of poles plus margin. Pole rental was subject to annual increase of 12.5 per cent. The existing agreement with Asianet for 10 years, upon its expiry in March 2011, was extended (July 2011) up to September 2011. Extension was given subject to the condition that rates would be revised with effect from April 2011 based on the report of an Expert Committee constituted to revise pole rentals.

Based on the report (December 2011) of the Expert Committee, KSEBL increased (February 2012) the annual pole rent to ₹311 in urban/ semi-urban areas and ₹155.50 in rural areas with annual increase of five per cent from April 2011 for all cable TV operators. KSEBL did not execute fresh agreement with Asianet reckoning pole rentals suggested by Expert Committee. Asianet and other Cable TV operators, however, continued to use the electric poles of KSEBL.

The Asianet and other cable TV operators challenged the enhanced rate before the Hon'ble High Court of Kerala. The Court directed (November 2012) KSEBL to charge pole rental at ₹250 in urban/ semi urban areas and at ₹125 in rural areas, as an interim arrangement, subject to "a final appropriate decision to be taken by KSEBL after considering the representation of cable TV operators". KSEBL considered the representations and decided (January 2014) to uphold the enhancement of pole rentals i.e. ₹311 in urban and ₹155.50 in rural areas as done in February 2012. Meanwhile, Asianet filed a petition before District Legal Services Authority¹ (DLSA), Thiruvananthapuram against the decision of KSEBL. In the Lok Adalat held (August 2014) by DLSA, as part of a mutual settlement between Asianet and other cable TV operators and KSEBL at the instance of Minister for Power and Transport and other political leaders/representatives, pole rental was finally fixed at ₹250 in urban/semi-urban areas and ₹125 in rural areas with an annual increment of five per cent for the period from 2011-12 to 2020-21. KSEBL had also decided (September 2014) to apply the same pole rental to all cable TV operators using electric poles of KSEBL in the State. Reduction of pole rental to ₹250 for urban/ semi-urban areas and ₹125 for rural areas as part of a mutual settlement before Lok Adalat was unjustified. Reduction of pole rental as part of a mutual settlement before Lok Adalat resulted in loss of pole rental amounting to ₹14.70 crore and short collection of service tax of ₹1.75 crore during 2011-12 to 2014- 2015.

It was observed by Audit as under:

- the revised rates of ₹250 and ₹125 for urban and rural areas respectively were not only lower than the rates fixed by Expert Committee but even lower than the pre-April 2011 rates of ₹277.06² (urban area) and ₹138.53 (rural area) as shown in Table below:

1. The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to provide free legal service to the weaker sections of the society and to organise Lok Adalats for amicable settlement of disputes. In every State, State Legal Services Authority has been constituted to give effect to the policies and directions of NALSA. In every District, District Legal Services Authority has been constituted to implement Legal Services Programmes in the District. The District Legal Services Authority is situated in the District Courts Complex in every District and chaired by the District Judge of the respective district.

2. An appeal filed by Asianet against this rate was also pending before the Court.

Table 3.12: Details of pole rentals charged by KSEBL*(Amount in ₹)*

Urban/Semi urban areas			Rural areas		
Pole rental as per existing agreement upto April 2011	Rate revised from April 2011 for all cable TV operators	Rate finally agreed from April 2011 for all cable TV operators	Pole rental as per existing agreement upto April 2011	Rate revised from April 2011 for all cable TV operators	Rate finally agreed for all cable TV operators
277.06	311.00	250.00	138.53	155.50	125.00

- KSEBL's settlement of rent by downward revision "as a matter of goodwill and to put to rest prolonged litigation" was against the commercial interest of the Company, which was also upheld by the High Court.
- Asianet had been using poles of KSEBL from November 1992 onwards. Valid agreements were also in force up to September 2011. Therefore, KSEBL did not have to go in for out of court settlement and petitions of Asianet challenging rate enhancement of pole rentals in 1999 and 2005 were dismissed by Hon'ble High Court.

KSEBL replied (September 2015) that it had upheld the revised rate on the Hon'ble High Court's interim order and the decision for downward revision, to a meagre extent, was taken after considering representations of various political parties, people's representatives and associations of cable TV operators and to avoid litigation. It was further replied (December 2015) that Asianet was remitting revised pole rental charges, in spite of disputes regarding the number of poles and rate, even though there was no existing formal agreement.

The reply was not acceptable since reduction of rate was due to absence of a conclusive agreement. Besides, KSEBL had taken the appropriate decision to uphold rate enhancement after considering the representations of cable operators as directed by Hon'ble High Court. Subsequent downward revision in the Lok Adalat at the instance of Minister for Power and Transport, Government of Kerala and

other political representatives as admitted by the KSEBL resulted in loss of pole rental of ₹14.70 crore to KSEBL. In the absence of agreement, pole rentals paid by Asianet was at the reduced rate (₹250 for urban and ₹125 for rural areas) and not at an enhanced rate (₹311 for urban and ₹155.50 for rural areas).

[Audit Paragraph 3.8 contained in the Report of the Comptroller and Auditor General of India for the year ended 31st March 2015]

(The Notes furnished by the Government on the audit paragraphs are given in Appendix II)

Discussion and Findings of the Committee

The Committee enquired about the audit observation regarding failure of KSEBL to execute an agreement with Asianet and other Cable TV Operators which resulted in loss of ₹14.70 crore and short collection of service tax of ₹1.75 crore.

The witness informed that KSEBL has been providing their electric poles for the cable drawal facility for cable TV operators since 2010. The revenue from this item during 2010-11 was ₹4.7 crores and it was not provided on cost basis of the poles since it was a non-tariff item. He added that when Asianet made its first entry in Kerala in the 1990s, the annual pole rent per pole per year was one rupee and of the One crore 30 lakh poles of KSEBL, 20 lakhs poles has been used for data cabling. Asianet digital acquired a major share of those poles and pole rental was subject to an annual increase of 12.5 percent from 2002 which was challenged by Asianet in the court. He further informed that Asianet came up with dispute on every occasion when KSEBL decided to increase tariff rates. At present the rate per pole is ₹300 in urban areas and ₹145 in rural areas. The witness also informed that Asianet was not willing to accept the latest decision of enhancing the pole rates as ₹390 in urban and ₹195 in rural areas by KSEBL. Asianet approached the Government to reduce the rates as ₹300 in urban areas and ₹145 in rural areas against the demand of KSEBL considering the situation in the context of Covid-19. He further explained that in 2002 KSEBL fixed the annual increase of pole rental as 12.5%. Asianet challenged the said order before the Honbl'e High Court and the court had declined the challenge and disposed the case. The Court had observed that as a special provider Asianet should have the privilege in getting special

consideration in pole rentals. Consequent to this, KSEBL had to reduce the annual rental increase to 5% for a short period. When KSEBL decided to uphold the enhancement of pole rentals ie. ₹311 in urban areas and ₹155.50 in rural areas as done in 2012, Asianet approached DLSA(District Legal Service Authority) and DLSA as a mutual settlement fixed the rate as ₹250 in urban areas and ₹125 in rural areas.

Considering Asianet as an important service provider that provides internet facility to people, KSEBL could not implement the increased rates without the consensus of the Government. If KSEBL insisted on the increased rates, the Asianet would have definitely passed on the burden to consumers. Moreover the service providers would have the choice of adopting alternative technologies which are easily available and there is a chance of terminating the agreement if KSEBL insisted on an annual increase of 12.5%. But the Government has not agreed with the 12.5% annual revision and reduced the existing annual increase of 5% to 3%. The witness also explained that as this is a revenue without any additional capital investment, the loss of ₹14.70 crore calculated by Accountant General could not be considered to be a loss as such. Fixing pole rental was purely a business decision of KSEBL and it was competent to do so. The Accountant General referred the matter by computing the rate at 5% and the loss as the difference when the rate was lowered to 3% from 5%. The witness informed that since the new rate of 3% was fixed by the Government considering all these matters and since there is no capital investment from the Company, this may not be considered as a loss in the practical sense.

To the query of the Committee whether the enhancement of rate of 12.5% has been included in the agreement, the witness replied that after the execution of the agreement, the Expert Committee decided to enhance the rates. At this juncture, the Committee opined that the agreement should have been renewed when KSEBL's Expert Committee decided to increase the pole rentals. The witness informed the Committee that now the poles are given to cable operators after executing formal agreement. After considering the above explanation, the Committee approved the reply.

Conclusion/Recommendation of the Committee

1. The Committee opines that a formal agreement has to be executed in time in order to avoid such litigation in future. The Committee insists KSEBL to avoid such lapses and strictly adhere to the norms.

Audit Para 3.9

Avoidable expenditure

Avoidable expenditure of ₹68.31 lakh due to delay in surrendering railway siding.

KSEBL owned a railway siding under its Building and Stores Division at Angamaly for transportation of bulk quantity of departmental material like steel, cement, high quality structural steel and special machineries, etc., required for implementation of various projects of KSEBL. The railway siding was beneficial to KSEBL as transportation of material through rail was cheaper compared to the freight charges by road. As per agreement with Southern Railway, KSEBL was to pay annual maintenance charges for the railway siding.

In June 2007, KSEBL changed conditions of tenders for implementation of projects. According to new conditions, cement and steel supplied departmentally hitherto became the responsibility of contractors. Thereafter, supply of departmental material to contractors was limited in respect of transmission wing only. Hence, the railway siding ceased to be in use and no material was transported by the KSEBL using railway siding since 2010.

As annual maintenance charges paid to the Railways increased in line with the salary and allowances of Railways' staff, despite there being no usage of railway siding, Financial Adviser of KSEBL recommended (June 2010) the Board to discontinue operation of railway siding. The Board, however, decided (November 2010) to continue the railway siding since a proposal for installation of a 1026 MW³ Liquified Natural Gas based Combined Cycle Power Plant at Brahmapuram (LNG project) was in the pipeline and it was expected that the

railway siding would be needed to handle the equipment for the proposed plant. The LNG project was subsequently abandoned (February 2011) as the land earmarked for the LNG project was handed over to Government of Kerala (GoK) for Smart City Project. Thereafter, KSEBL decided (November 2013) to surrender the railway siding.

Due to delay in surrender of railway siding, KSEBL had to incur avoidable expenditure of ₹68.31⁴ lakh during November 2010 to November 2013 towards annual maintenance charges.

KSEBL replied (January 2016) that decision to surrender the railway siding was not taken until November 2013 as large projects like installation of 400 MW Combined Cycle Power Plant at Brahmapuram and replacement of faulty Diesel Generating units of Brahmapuram Diesel Power Project with gas based generators were under active consideration.

The reply was not acceptable as KSEBL's decision (30 November 2010) to continue the railway siding was based solely on the requirement to handle equipment for the LNG project at Brahmapuram. The land ear-marked for LNG Project was handed over to GoK in July 2007 and request (April 2010) of KSEBL to transfer the land back was turned down by GoK.

The matter was reported (December 2015) to Government; their reply is awaited (December 2015).

[Audit Paragraph 3.9 contained in the Report of the Comptroller and Auditor General of India for the year ended 31st March 2015]

(The Notes furnished by the Government on the audit paragraphs are given in Appendix II)

Discussion and Findings of the Committee

The Committee sought explanation for avoidable expenditure of ₹68.31 lakh due to delay in surrendering railway siding.

4. ₹13.85 lakh in 2010-11, ₹11.79 lakh in 2011-12, ₹19.23 lakh in 2012-13, ₹21.68 lakh in 2013-14 and ₹1.76 lakh in 2014-15.

The witness informed that due to a huge Power Shortage faced during that period, KSEBL decided to construct 1026MW Natural Gas Based Combined Cycle Power Plant at Brahmapuram and had the opinion that the railway siding would be helpful for the proposed project. Later KSEBL abandoned the project observing that it was not feasible. Board also decided to consider the possibility of using alternate fuel. Meanwhile proposals of LNG project at Puthuvaipin and Petcoke Power Plant at Ambalamugal in Kochi were also under active consideration of the Board. KSEBL decided to retain the railway siding hoping that it would be helpful to those projects. But by 2013, all the above projects were found to be uneconomical and hence were abandoned. Railway siding was retained only for delivering infrastructural facilities for proposed power plants such as CCPP (Combined Cycle Power Plant) which were under active consideration at that time. Moreover, it would be practically impossible to obtain railway siding once it was surrendered. Ignoring all these factors, KSEBL could not have taken a final decision to surrender railway siding.

The AG pointed out that there was only one project under consideration when KSEBL took the decision to retain the railway siding and it was stated in the Board's order. For this, the witness explained that it was a collective decision on the part of KSEBL and at that time many projects mentioned above were under active consideration and all these matters that led to the decision could not be included in Board's order. Instead the main project only was mentioned in the Board order citing as the reason for continuing the railway siding and KSEBL had taken decisions considering all the above facts.

The Committee accepted the reply. Hence, no Comments.

Audit Para 3.10

Avoidable expenditure

Avoidable expenditure due to delay in payment of excise duty- ₹64.82 lakh

As per Rule 9 of Central Excise Rules, 2002, every manufacturer of dutiable goods is required to obtain Central Excise registration from Central Excise authorities for payment of excise duty. Central Excise Authorities would issue the Registration Certificate in a couple of working days after submission of online registration form.

Following the introduction (February 2011) of Finance Bill 2011, excise duty became payable with effect from March 2011 on galvanisation of line material since the galvanisation was categorised under “manufacturing” in the Finance Bill 2011. Mechanical Fabrication Units (MF Units), Angamaly and Kolathara of KSEBL, responsible for the job of galvanisation works in KSEBL were, therefore, to pay excise duty on value of material galvanised with effect from March 2011 after registration with Central Excise Authorities.

MF Units, Angamaly and Kolathara obtained Central Excise registration only in February 2012 and March 2012 respectively and paid excise duty in March 2012. While paying excise duty in March 2012, MF Unit, Kolathara did not pay arrears of excise duty from March 2011 to February 2012. The arrears of excise duty was paid in November 2014 only, on being pointed out by the Central Excise Authorities. Due to delay in payment of excise duty on galvanised material from March 2011 onwards, KSEBL had to pay avoidable interest of ₹49.80 lakh and penalty of ₹15.02 lakh on galvanised material cleared from March 2011 to February 2012.

Although registration with Central Excise authorities could have been obtained immediately and was mandatory for payment of excise duty with effect from March 2011, the Member (Generation Projects) brought the matter to the notice of Full Time Members only in November 2011. KSEBL issued order to obtain Central Excise Registration in January 2012 after a delay of 11 months from the date of promulgation (February 2011) of Finance Act 2011.

Thus, delay on the part of KSEBL to issue orders for central excise registration coupled with delay in payment of excise duty arrears resulted in avoidable payment of interest and penalty of ₹64.82 lakh.

The Company confirmed the facts of the case in its reply (January 2016).

[Audit Paragraph 3.10 contained in the Report of the Comptroller and Auditor General of India for the year ended 31st March 2015]

(The Notes furnished by the Government on the audit paragraphs are given in Appendix II)

Discussion and Findings of the Committee

The Committee enquired about the delay on the part of KSEBL to issue order for Central Excise registration coupled with delay in payment of the excise duty arrears which resulted in avoidable payment of interest and penalty of ₹64.82 lakh.

The witness informed that the Central Mechanical Division, Pallom and the Mechanical Fabrication units at Angamaly and Kolathara (Kozhikode) were entrusted with fabricating Mild Steel line materials for KSEBL. These units have supplied quality line material which met the targets for Distribution and Transmission wings. The Excise department raided these units in 1992 and imposed excise duty, against which KSEBL approached the Customs Excise Service Tax Appellate Tribunal (CESTAT), and attained a favourable order in which it was stipulated that those goods were not within the purview of Excise duty.

Later Finance Act, 2011 defined galvanisation as a manufacturing activity and hence galvanisation works in KSEBL were bound to pay excise duty and Mechanical Fabrication units of KSEBL were liable to take Central Excise registration. Consequently, KSEBL accorded sanction on January 2012 to obtain Excise Duty Registration for mechanical facilities at Angamaly (February 2012) and Kolathara (March 2012). The witness informed that there was a delay of six to seven months for the above procedure, due to the confusion in the applicability of the new provision. Subsequently after taking legal opinion the Board accorded sanction to remit excise duty and due to the resultant delay KSEBL had to pay interest and penalty. The witness informed that at first the Accounting Division had doubts whether galvanisation was a manufacturing activity and had been advised that it does not come under the provision of this act and hence was not liable to pay excise duty which led to a short delay in remitting duty. When the Kozhikode unit approached the Excise Department to pay the amount, it was informed that the

back assessment duty could be ascertained only after internal audit. It was due to this delay, the penalty and interest raised to such an amount. The witness added that after getting intimation from excise department, the amount was paid without delay.

The witness admitted the audit observations. He added that KSEBL has been keeping a close watch on excise duty and taxation and has now rectified everything that the Accountant General pointed out. He also said that KSEBL had taken all the audit observations of the Accountant General very seriously and expressed the view that it had been helpful for the smooth functioning of the Board.

The Committee opined that the loss incurred by KSEBL stands unresolved and as Accountant General pointed out, such incidents should not be repeated and to be more vigilant to the changes occurring in the Act. The Committee strongly recommended to take necessary action to avoid the recurrence of such lapses in future.

The Committee noticed that KSEBL would not be able to survive if cost of production of electricity and other costs are not kept to minimum level possible. The Committee observed that low cost power supply is imminent in near future and hence the existence of KSEBL would become a problem. The Committee recommended that timely actions should be taken by the Board to foresee the avoidable expenditure, in future.

Conclusions/Recommendations of the Committee

2. While considering the audit observation about avoidable expenditure due to delay in payment of excise duty of ₹64.82 lakh, the Committee is of the opinion that the loss incurred by KSEBL stands unresolved and the reply put forward by the witness is not justifiable. The Board shall be more vigilant about the changes in the Acts that directly affects the Board's expenditure and revenue. The Committee recommends to avoid such lapses in future.

3. The Committee notices that KSEBL would not be able to survive if cost of production of electricity and other costs are not kept to minimum level possible. The Committee also observes that low cost power supply is imminent in near future and hence the very existence of KSEBL will be in danger. Therefore the Committee recommends that timely actions should be taken by the Board to avoid extra expenditure, in future. The Committee wants the KSEBL to adopt latest technologies to lower the cost of production of electricity and to make the Company more profitable. The steps taken in the matter should be intimated to the Committee.

Thiruvananthapuram,
25th June, 2024.

E. CHANDRASEKHARAN,
Chairperson,
Committee on Public Undertakings.

APPENDIX – I			
SUMMARY OF MAIN CONCLUSIONS/RECOMMENDATIONS			
Sl. No.	Para. No.	Department Concerned	Conclusions/Recommendations
1	1	Power	The Committee opines that a formal agreement has to be executed in time in order to avoid such litigation in future. The Committee insists KSEBL to avoid such lapses and strictly adhere to the norms.
2	2	Power	While considering the audit observation about avoidable expenditure due to delay in payment of excise duty of ₹.64.82 lakh, the Committee is of the opinion that the loss incurred by KSEBL stands unresolved and the reply put forward by the witness is not justifiable. The Board shall be more vigilant about the changes in the Acts that directly affects the Board's expenditure and revenue. The Committee recommends to avoid such lapses in future.
3	3	Power	The Committee notices that KSEBL would not be able to survive if cost of production of electricity and other costs are not kept to minimum level possible. The Committee also observes that low cost power supply is imminent in near future and hence the very existence of KSEBL will be in danger. Therefore the Committee recommends that timely actions should be taken by the Board to avoid extra expenditure, in future. The Committee wants the KSEBL to adopt latest technologies to lower the cost of production of electricity and to make the Company more profitable. The steps taken in the matter should be intimated to the Committee.

APPENDIX - II

GOVERNMENT OF KERALA

POWER (C) DEPARTMENT IN P.P.A. No 3.5

STATEMENT OF ACTION TAKEN REPORT ON THE RECOMMENDATIONS CONTAINED IN THE 48th REPORT OF THE COMMITTEE ON FINANCIAL MISMANAGEMENT (2011-12) RELATING TO KERALA STATE ELECTRICITY BOARD PREPARED BASED ON THE REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA FOR THE YEAR ENDED 31 MARCH 2015 (COMMERCIAL)

Sl No.	Para No.	<i>Audit Para</i>	<i>Remedial Measures Taken</i>
1	3.8	<p>LOSS DUE TO UNDU FAVOUR TO CABLE TV OPERATORS</p> <p>Failure of KSEBL to execute agreement with Asianet and other cable TV operators resulted in loss of ₹14.70 crore and short collection of service tax of ₹1.75 crore.</p> <p>3.8 As per Rule 181 of Kerala Financial Code, no work which is to be executed under a contract should be started until the contractor has signed a formal written agreement. If no formal agreement is executed, there should at least be a written understanding, specifying terms and conditions of the contract including prices and rates, etc. All cable TV operators including Asianet Satellite Communications Limited (Asianet) have been using electric poles of Kerala State Electricity Board Limited (KSEBL) for their cable TV operations on payment of annual pole rental of ₹108/- for urban areas and ₹54/- for rural areas fixed in 2002 based on cost of erection of poles plus margin. Pole rental was subject to annual increase of 12.5 per cent. The existing agreement with Asianet for 10 years, upon its expiry in March 2011, was extended (July 2011) up to September 2011. Extension was given subject to the condition that rates would be revised with effect from April 2011 based on the report of an Expert Committee constituted to revise pole rentals.</p> <p>Based on the report (December 2011) of the Expert Committee,</p>	<p>Audit observed that, Kerala State Electricity Board Limited had taken the appropriate decision to uphold rate enhancement after considering the representations of Cable TV Operators as directed by the Hon'ble High Court and therefore the subsequent downward revision in the Lok Adalath has resulted in loss. Further it is alleged that in the absence of agreement the pole rentals paid by Asianet were at a reduced rate of ₹250/- and ₹125/- instead of ₹311/- and ₹155.50. The said findings are not true to facts for the following reasons.</p> <p>It was during 1990s that KSEB decided to permit Cable TV Operators to draw their CTV lines through the low tension (LT) poles of KSEB. Accordingly, many Cable TV Operators entered into agreements with KSEB and Asianet Satellite Communications was not an exception for the same. They had made a formal agreement with KSEB on 20.11.1992 for a period of ten years agreeing to pay ₹1/- per pole per year. During 1999, the same was increased to ₹17/-.</p> <p>Later i.e., on 16.10.2002 the Board again revised the annual pole rent to ₹108/- and ₹54/- for urban and rural areas respectively with an annual increase at 12.5% for 10 years with effect from</p>

KSEBL increased (February 2012) the annual pole rent to ₹311/- in urban/semi-urban areas and ₹155.50 in rural areas with annual increase of five per cent from April 2011 for all cable TV operators. KSEBL did not execute fresh agreement with Asianet reckoning pole rentals suggested by Expert Committee. Asianet and other cable TV operators, however, continued to use the electric poles of KSEBL.

The Asianet and other cable TV operators challenged the enhanced rate before the Hon'ble High Court of Kerala. The Court directed (November 2012) KSEBL to charge pole rental at ₹250/- in urban/semi urban areas and at ₹125/- in rural areas, as an interim arrangement, subject to "a final appropriate decision to be taken by KSEBL after considering the representation of cable TV operators". KSEBL considered the representations and decided (January 2014) to uphold the enhancement of pole rentals i.e. ₹311/- in urban and ₹155.50 in rural areas as done in February 2012. Meanwhile, Asianet filed a petition before District Legal Services Authority (DLSA), Thiruvananthapuram against the decision of KSEBL. In the Lok Adalat held (August 2014) by DLSA, as part of a mutual settlement between Asianet and other cable TV operators and KSEBL at the instance of Minister for Power and Transport and other political leaders/representatives, pole rental was finally fixed at ₹250/- in urban/semi-urban areas and ₹125/- in rural areas with an annual increment of five per cent for the period from 2011-12 to 2020-21. KSEBL had also decided (September 2014) to apply the same pole rental to all cable TV operators using electric poles of KSEBL in the state. Reduction of pole rental to ₹250/- for urban/semi-urban areas and ₹125/- for rural areas a part of a mutual settlement before Lok Adalat was unjustified. Reduction of pole rental as part of a mutual settlement before Lok Adalat resulted in loss of pole rental amounting to ₹14.70 crore and short collection of service tax of ₹1.75 crore during 2011-12 to 2014-2015.

It was observed by Audit as under :

20.11.2002. The said increase had resulted in many numbers of challenges and ultimately the Hon'ble High Court by way of common judgement in OP No.32310/2002 and connected cases declined to entertain the said challenges. But the Hon'ble Division Bench observed that Asianet stands on a different pedestal than other Cable TV Operators and therefore found merit in the contention of Asianet that they are entitled to get privileged treatment in the matter of pole rentals. Since there was no positive response, from the Board, Asianet filed another Writ Petition i.e., W.P (C) No.35538/2005. While the said matter was pending consideration, Asianet also made representation to the Board and accordingly vide B.O (FB) No.1213/2006 dated 12.04.2006 KSEBL reduced the annual increase in pole rent to 5 % w.e f. 1/4/2006 till 31/3/2011, keeping firm rate of Rs 108/pole p.a. and Rs 54 /per pole p.a. respectively for urban and rural areas for the period from 20/11/2002 to 31/3/2006 as detailed below:

Period	Urban Area	Rural Area
01.04.2006 - 31.03.2007	₹108/-	₹54/-
01.04.2007 - 31.03.2008	₹113.40	₹56.70
01.04.2008 - 31.03.2009	₹119.20	₹59.60
01.04.2009 - 31.03.2011	₹125.20	₹62.60
01.04.2011 - 31.03.2012	₹131.40	₹65.70

Consequently based on the above B.O. Bipartite Agreements were executed by M/s Asianet and KSEBL with respect to various Electrical Divisions. Though certain other Cable TV Operators filed

- The revised rates of ₹250/- and 125 for urban and rural areas respectively were not only lower than the rates fixed by Expert Committee but even lower than the pre-April 2011 rates of ₹277.06 (urban area) and ₹138.53 (rural area) as shown in Table below:-

**Table 3.12: Details of pole rentals charged by KSEBL
(Amount in ₹)**

Urban/Semi urban areas			Rural areas		
Pole rental as per existing agreement up to April 2011	Rate revised from April 2011 for all cable TV operators	Rate finally agreed from April 2011 for all cable TV operators	Pole rental as per existing agreement up to April 2011	Rate revised from April 2011 for all cable TV operators	Rate finally agreed for all cable TV operators
277.06	311.00	250.00	138.53	155.50	125.00

- KSEBL's settlement of rent by downward revision "as a matter of goodwill and to put to rest prolonged litigation" was against the commercial interest of the Company, which was also upheld by the High Court.
- Asianet had been using poles of KSEBL from November 1992 onwards. Valid agreements were also in force up to September 2011. Therefore, KSEBL did not have to go in for out of court settlement and petitions of Asianet challenging rate enhancement of pole rentals in 1999 and 2005 were dismissed by Hon'ble High Court.

KSEBL replied (September 2015) that it had upheld the revised rate on the Hon'ble High Court's interim order and the decision for downward revision, to a meagre extent, was taken after considering representations of various political parties, people's representatives and associations of cable TV operators and to

petitions before the Hon'ble High Court of Kerala claiming the said rate to them, none was allowed.

While things remaining so, the Accountant General raised objections in the matter by way of 'draft para' alleging that the said benefit to Asianet was conferred by Board without justifiable ground and the same had resulted in undue benefits to Asianet. In view of the objection raised by Audit only KSEBL decided to issue an order on 14.10.2009 withdrawing the benefits granted to Asianet by revising/ raising the rates applicable to them for the remaining contract period from 14.10.2009 to 31.03.2011 as follows :

Period	Urban Areas (₹)	Rural Areas (₹)
14/10/2009-31/3/2010	246.28	123.14
1/4/2010 - 31/3/2011	277.06	138.53

This increase in rates resulted in the filing of W.P (C) No.31014/2009 before the Hon'ble High Court by Asianet. The Hon'ble High Court, after elaborately considering all the issues involved, ordered to dispose the said Writ Petition on 31.08.2016 holding that the Board is not entitled to review its earlier order after the same has culminated in a concluded contract as the privileges and obligations of the parties to the contract can not be altered unilaterally. The Hon'ble High Court also observed that the objection noted by the Accountant General cannot be taken as a ground for revoking any earlier decision based on which the petitioner company (Asianet) had acted upon and executed Agreements.

KSEBL vide B.O (FTD) No.1501/2017 (LA.11/3610/2017). Dated 12.06.2017 decided to

	<p>avoid litigation. It was further replied (December 2015) that Asianet was remitting revised pole rental charges, in spite of disputes regarding the number of poles and rate, even though there was no existing formal agreement.</p> <p>The reply was not acceptable since reduction of rate was due to absence of a conclusive agreement. Besides, KSEBL had taken the appropriate decision to uphold rate enhancement after considering the representations of cable operators as directed by Hon'ble High Court. Subsequent downward revision in the Lok Adalat at the instance of Minister for Power and Transport, Government of Kerala and other political representatives as admitted by the KSEBL resulted in loss of pole rental of ₹14.70 crore to KSEBL. In the absence of agreement, pole rentals paid by Asianet was at the reduced rate (₹250/- for urban and ₹125/- for rural areas) and not at an enhanced rate (₹311/- for urban and ₹155.50 for rural areas).</p>	<p>comply with the judgment dt: 31.08.2016 of the Hon'ble High Court in WP (C) No.31014/2009.</p> <p>In this circumstance, the contention of AG (that the rate accepted by KSEBL in Lok Adalat was low than what it was getting earlier) will not sustain. The Hon'ble Court has set aside the increased rate unilaterally imposed by KSEBL, which was never accepted or paid by Asianet.</p> <p>It may also be noted that the annual increase of 12.5% imposed vide BO dated 16/10/2002 for a period of 10 years was never accepted by M. Asianet. The subsequent revision/ increase unilaterally ordered by KSEBL based on audit was also challenged by Asianet. Hence the judgement of the Hon. High Court in WP (C) No.31014/2009 has the effect of restoring the earlier lower rates vide BO dated 12/4/2006. As such, the rates prevailed for the period ending 31/3/2011 was ₹131.40/pole pa. and ₹65.70/pole pa. respectively in Urban and Rural areas and not the rates as stated by Audit.</p>
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In view of the above facts, it is requested that the para may kindly be got dropped.

De. Anurag

**GOVERNMENT OF KERALA
POWER (C) DEPARTMENT**

**STATEMENT OF ACTION TAKEN ON THE RECOMMENDATIONS CONTAINED IN THE AUDIT REPORT No 3 OF
C & AG FOR THE YEAR ENDED ON 31 MARCH 2015 (PSUs).**

Sl. No.	Para No.	Recommendations	Action Taken by Government.
1.	3.9	<p><u>Avoidable expenditure of Rs.68.31 lakh due to delay in surrendering railway siding.</u></p> <p>K.S.E.B Limited owned a railway siding under its Building and Stores Division at Angamaly for transportation of bulk quantity of departmental material like steel, cement, high quality structural steel and special machineries, etc., required for implementation of various projects of K.S.E.B Limited. The railway siding was beneficial to K.S.E.B Limited as transportation of material through rail was cheaper compared to the freight charges by road. As per agreement with Southern Railway, K.S.E.B Limited was to pay annual maintenance charges for the railway siding. In June 2007, K.S.E.B Limited changed conditions of tenders for implementation of projects. According to new conditions, cement and steel supplied departmentally hitherto became the responsibility of contractors. Thereafter, supply of departmental material to contractors was</p>	<p>K.S.E.Board Limited vide Board order (B O (FM) No 3100 2010 (GPC4(C)/19/2000) dated 20.11.2010 had accorded sanction to continue the railway siding facility at Angamaly till the 1026MW LNG based Combined Cycle Power Plant (CCPP) at Brahmapuram is commissioned. Subsequently as per orders of the Government, 100 acres of land was transferred to Government of Kerala for Smart City Project. Hence the proposal to construct the 1026 MW LNG based CCPP had to be discarded and a smaller project of 400 MW Combined Cycle Power Plant at balance available land at Brahmapuram was proposed. Moreover, Board have decommissioned the two faulty Diesel Generating units of Brahmapuram Diesel Power Project and has decided to replace this with two gas based generator of about 20 MW capacity each. Further a proposal to construct an LNG project at Puthuvaipin area was also under active consideration of the Board. A 500 MW capacity power plant was also proposed to be set up at Ambalamugal in Kochi using Petcoke in the land to be made available from FACT. Detailed feasibility reports for these projects have been prepared and various studies and preliminary works are in progress. It may be noted that railway siding is an important infrastructural asset to any organization, which is not easily sanctioned and built</p>

	<p>limited in respect of transmission wing only. Hence, the railway siding ceased to be in use and no material was transported by the K.S.E.B Limited using railway siding since 2010.</p> <p>As annual maintenance charges paid to the Railways increased in line with the salary and allowances of Railways' staff, despite there being no usage of railway siding, Financial Adviser of K.S.E.B Limited recommended (June 2010) the Board to discontinue operation of railway siding. The Board, however, decided (November 2010) to continue the railway siding since a proposal for installation of 1026 MW Liquefied Natural Gas based Combined Cycle Power Plant at Brahmapuram (LNG project) was in the pipeline and it was expected that the railway siding would be needed to handle the equipment for the proposed plant. The LNG project was subsequently abandoned (February 2011) as the land earmarked for the LNG project was handed over to Government of Kerala (GoK) for Smart City Project. Thereafter, K.S.E.B Limited decided (November 2013) to surrender the railway siding.</p> <p>Due to delay in surrender of railway siding, K.S.E.B Limited had to incur avoidable expenditure of '68.31 lakh during November 2010 to November 2013 towards annual maintenance charges.</p> <p>K.S.E.B Limited replied (January 2016) that</p>	<p>by Railways. Hence when many such large projects like CCPP were in active consideration a final decision on surrendering the railway siding was not made as it would be practically impossible to obtain railway siding once it was surrendered. But later it was learned that the transportation of Generator required for the CCPP project and machineries for BDPP etc is proposed to sail to Kochi and then transported to Brahmapuram and also since the supply of steel and cement to generation and transmission projects was made the responsibility of the contractor, maintaining the service of Railway siding by incurring annual maintenance charges was found not necessary in future. Accordingly Board vide B O(FM)No 2556/2013(GPC4(C)/ANGLYSIDING/19/2008) dated 30.11.2013 had accorded sanction to surrender the Railway siding. From the above it is clear that there are no purposeful lapses from any of the officers of KSE Board Ltd in surrendering the Railway siding.</p>
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decision to surrender the railway siding was not taken until November 2013 as large projects like installation of 400 MW Combined Cycle Power Plant at Brahmapuram and replacement of faulty Diesel Generating Units of Brahmapuram Diesel Power Project with gas based generators were under active consideration.

Brahmapuram

**GOVERNMENT OF KERALA
POWER (C) DEPARTMENT**

**STATEMENT OF ACTION TAKEN ON THE RECOMMENDATIONS CONTAINED IN THE AUDIT REPORT No 3 OF
C & AG FOR THE YEAR ENDED ON 31 MARCH 2015 (PSUs).**

Sl. No.	Para No.	Recommendations	Action Taken by Government.
1.	3.10	<p>3.10 - Avoidable expenditure due to delay in payment of excise duty of Rs.64.82 lakh</p> <p>As per Rule 9 of Central Excise Rules, 2002, every manufacturer of dutiable goods is required to obtain Central Excise registration from Central Excise authorities for payment of Excise Duty. Central Excise Authorities would issue the Registration Certificate in a couple of working days after submission of online registration form.</p> <p>Following the introduction (February 2011) of Finance Bill 2011, excise duty</p>	<p>The Central Mechanical Division, Palom and the Mechanical Fabrication Units at Angamaly and Koliathara (Kozhikode) are entrusted with the job of fabricating Mild Steel line materials for KSEB Ltd. These units have supplied quality line material meeting the targets for Distribution and Transmission wings. The process of manufacturing consists of buying Indian Standard Mild Steel sections from Public Sector Steel producers and converting these MS Sections into line materials in KSEB Ltd.'s workshops using own machinery and contract labour. All materials except A poles are galvanized by sending the same to the galvanizing unit of the contractor and receiving it back after galvanization. Only manufacturing activity attracts Excise duty under various classified chapter headings in the Excise Act. The Central</p>

	<p>became payable with effect from March 2011 on galvanisation of line material since the galvanisation was categorised under "manufacturing" in the Finance Bill 2011. Mechanical Fabrication Units (MF Units), Angamaly and Kolathara of Kerala State Electricity Board Limited (K.S.E.B Limited), responsible for the job of galvanisation works in the K.S.E.Board Ltd; were, therefore, to pay excise duty on value of material galvanised with effect from March 2011 after registration with Central Excise Authorities.</p> <p>MF Units, Angamaly and Kolathara obtained Central Excise registration only in February 2012 and March 2012 respectively and paid excise duty in March 2012. While paying excise duty in March 2012. MF Unit, Koathara did not</p>	<p>Mechanical Division (CM Division) was engaged in the above activity for many years when it was raided by the excise department in 1992 and duty and fine were imposed As a result, CM Division took registration with the Excise Department and began to remit duty availing input material credit (CENVAT)</p> <p>Later based on an appeal by KSEBL, Customs Excise Service Tax Appellate Tribunal (CESTAT) vide its order No.686 to 688/2001 dated 22.3 2001 held that most of the line materials fabricated, are processed out of the duty paid MS Steel Materials received from SAIL or distributors and that the process of conversion made at Central Mechanical Division was not amounting to manufacture of identifiable goods and hence was not excisable. In the light of the said order CM Division stopped remitting Excise Duty. Later on, in spite of the said order, the Central Excise Commissioner, Cochin served show cause notices 41/2009, 49/2009, 33/2010, 35/2011, on CM Division assessing duty, cess, penalty and interest. Against these assessments, KSEB Ltd. had filed appeal petitions at CESTAT, Bangalore. KSEB Ltd. had taken the stand in appeals that no substantial changes were</p>
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	<p>pay arrears of excise duty from March 2011 to February 2012. The arrears of excise duty was paid in November 2014 only, on being pointed out by the Central Excise Authorities. Due to delay in payment of excise duty on galvanised material from March 2011 onwards, KSEBL had to pay avoidable interest of Rs.49.80 lakh and penalty of Rs.15.02 lakh on galvanised material cleared from March 2011 to February 2012.</p> <p>Although registration with Central Excise authorities could have been obtained immediately and was mandatory for payment of excise duty with effect from March 2011. The Member (Generation Projects) brought the matter to the notice of Full Time Members only in November 2011 and K.S.E.B Limited</p>	<p>brought on MS Sections and the materials retained the earlier identity although the same have been bent, cut and punched for holes KSEB Limited maintained that no marketable commodity was made and no sale was effected and the product was internally consumed by KSEBL itself MF unit 1 Angamaly and MF unit II Kolathara started functioning from the year 2005. These units had not taken Excise Duty registration in the light of the CESTAT order No. 686 to 688/2001 dated 22.3.2001 and no Excise Duty has been paid on account of fabrication of material</p> <p>As per the finance bill 2011, a note has been added to chapter 72 that articles under this chapter, if galvanized, will be subject to excise duty. The implication of the note is that the materials whether classified under chapter 72 or 73 will attract Excise Duty for the full value of the product, if it is galvanized. Hence galvanized line materials have become dutiable. Considering the huge financial commitment involved in the matter and also the possible adverse effect of the same on the case under consideration of the Hon CESTAT in the case of Central Mechanical Facility (CMF) etc., a detailed study and expert legal opinion on the matter</p>
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	<p>issued order to obtain Central Excise Registration in January 2012 after a delay of 11 months from the date of promulgation (February 2011) of Finance Act 2011.</p> <p>Thus, delay on the part of KSEBL to issue orders for central excise registration coupled with delay in payment of excise duty arrears resulted in avoidable payment of interest and penalty of Rs.64.82 lakh.</p>	<p>were essential before taking a decision. Opinion of the Board's excise duty consultant was obtained and a detailed note was furnished to the Board by the Chief Engineer (Civil Construction- South) on 27-07-2011 and KSEB Ltd vide B O dated 12.01.2012 accorded sanction to obtain Excise Duty Registration for Mechanical facilities at Angamaly and Kolathara. There after Excise Duty registration was obtained by MF1 unit Angamaly on 6.2.2012 and MF II unit Kolathara on 13-03-2012. Accordingly, filing of Excise Duty Returns (ER 1) commenced from the month of 02/2012 and 03/2012 onwards by these two units. While filing first ER 1 Return for 02/2012, MF I unit Angamaly approached the Excise Department for the calculation sheet of arrear duty from March 2011 and based on which duty and interest thereon payable for the period 1.3.2011 to 31.01.2012, amounting to Rs. 11, 89,426/- were remitted on 03.3.2012. Since the interest was remitted suo-moto, no penalty was imposed on account of delayed registration.</p> <p>In the case of MF2 Kolathara, the arrear amount for the period from 03/2011 to 02/2012 was remitted on 29.11.2014 upon getting the intimation and detailed split up of demand in</p>
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			<p>11/2014 from the audit party of Central Excise in their first audit of the unit. As far as the period prior to 3/2012 is concerned, when Mechanical Facility (MF2), Kolathara took Central Excise Registration as per the direction contained in the Board Order vide B O(FM) No 90/2012 (GPC3/10 / Galvanising/04) dated 12 01.2012 , it was not certain as to what period the arrears to be paid i.e., from 01 03.2011 onwards or from the starting of this unit. According to the Range Superintendent, Kozhikode under whose jurisdiction this unit comes, arrears had to be remitted from the initial period onwards. The Superintendent of Kozhikode Range opined that the arrears could only be arrived and settled in their routine Internal Audit and hence they did not demand any statement on the valuation for the previous period. Moreover, the valuation of line materials had to be done in accordance with Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000, as it is meant for own consumption. This is a complicated process and was not possible without the guidance and assistance of Central Excise Authorities or an expert consultant. Considering all these aspects a suo moto assessment of</p>
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			<p>arrears was not made by this unit at that time. However, it took more than 2 years for the audit wing of Central Excise department to conduct the audit of this unit (11/2014), and the arrear for the period from 03/2011 to 02/2012 was demanded by them only after the completion of audit. It is due to this delay that the penalty and interest raised to such an amount. There had neither been any intentional lag in paying the arrears on the part of K.S.E.B Limited, nor had there been any suspected motives in this act. Also no financial benefit has been made by any individual or group on this case and this may please be viewed as a remittance made to the State in a federal system.</p>
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