



## KERALA STATE ELECTRICITY BOARD LIMITED

(Incorporated under the Companies Act, 1956)

CIN:U40100KL2011SGC027424

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### Abstract

Kakkad Hydro Electric Project – Construction of IC tunnel and power tunnel – Contract with M/s. G. Gopinathan – mode of settlement on award amount-Sanctioned- Orders issued.

### CORPORATE OFFICE (SBU-G/C)

B.O (FTD) 440/2020 NO..DGC/AEE-III/ 3021/90 TVPM Dated 25.06.2020

- Read:-
1. Representation dated 11.02.2020 of Smt. Gopika Suresh, Grand daughter of Late G.Gopinathan before the Deputy Chief Engineer Electrical Circle, Thiruvananthapuram.
  2. Decision on Janakeeya Adalath held on 19.02.2020.
  3. Letter No. LF II/LDI/15799/1981 dated 03.03.2020 of the Senior Law Officer, O/o the Legal Adviser & Disciplinary Enquiry Officer, KSEBL.
  4. Note No.EET.KD.7/51/498 dated 02.06.2020 of the Chief Engineer (CC South).
  5. Note No..DGC/AEE-III/ 3021/90 dated 16.06.2020 of the Director(Gen -Civil) to the Full Time Directors (Agenda item No.36/6/2020).

### ORDER

The contracts for the construction of 7512 m long power tunnel and 3036 m long interconnecting tunnel of Kakkad Hydro Electric Project was initially awarded to Sri G. Gopinathan for an estimated PAC of ₹3,53,05,444/- and ₹1,39,22,245/- respectively in the year 1980 and the time of completion for the contracts for the Inter connecting tunnel and the Power Tunnel work was 45 months and 50 months respectively.As the progress of work was very poor, both the contracts were terminated at the risk and cost of the contractor on 18.06.1981.

The Chief Engineer (CC) South as per note read as 4<sup>th</sup> above has reported that an amount of ₹ 20 lakh (₹ 8 lakh for Inter Connecting Tunnel and ₹12 lakh for Power Tunnel contracts) was paid by erstwhile KSEB to the contractor against Bank Guarantees issued by Canara Bank, Sasthamangalam Branch , towards mobilization advance. Further an amount of ₹19 lakh was also paid to the contractor as advance on machinery purchased and brought to site. Thus, a total advance of ₹39 lakh with interest was outstanding to be recovered from the contractor. He has also been paid about ₹10 lakh, towards the gross value of work done by him, the payment for which was made in 13 CC bills after effecting deductions towards cost of departmental materials issued etc.

The contractor filed suits before the Sub Court, Thiruvananthapuram vide Suit No. 285/81 and 286/81 challenging the validity of the termination orders and praying for

settlement of accounts etc. He has also obtained an injunction order restraining the KSEB from receiving or claiming payment in respect of Bank Guarantees produced by him in lieu of ₹20 lakh paid in advance. The KSEB filed written statement of defence in September 1981 and an additional written statement in November 1981, praying for a decree to recover the amounts including ₹39 lakh of advance paid to the contractor, and to reserve the right for recovery of amount which are to be ascertained after re-arranging balance work.

In the course of the suit, as agreed by both parties and as approved by the Sub Court, Thiruvananthapuram, vide court order dated 03.03.1984 the issues at dispute were referred to Justice M. Madhavan Nair (Retired) District Judge as Arbitrator. The Arbitrator, in the award dated 29.11.1984, had held that the termination of both the contracts was legal and valid. As per the awards, a net amount of about ₹103 lakh plus interest at the rates specified in the award, are due to KSEB from the contractor in the two contracts.

The contractor challenged the awards in the Sub Court, Trivandrum through OP (A) 320/84 and OP (A) 321/84. The Sub Court, Thiruvananthapuram vide its order dated 12.08.1985 set aside the award and removed the Arbitrator. The Sub Court also ordered that the Arbitration agreement filed by the parties in OS 285/81 & OS 286/81 for the two suits and the orders passed thereon and the consequential references are superseded.

The Board then filed 2 MFAs viz. MFA 495/85 & 497/85 in the Hon'ble High Court against the order dated 12.08.1985 of Sub Court, Thiruvananthapuram and the award passed was in favour of KSEB.

Sri. G Gopinathan preferred SLPs (SLP 12243/1990 & SLP 12244/1990) before the Hon'ble Supreme Court. The SLPs filed were dismissed by the Hon'ble Supreme Court and affirmed the award of Hon'ble Sub Court vide its order dated 06.02.1991 and appointed an arbitrator for further action. The Arbitrator filed its award before the Hon'ble Supreme Court on 25.04.1992 which was challenged by Sri. G. Gopinathan but was dismissed on 03.05.1993 and remitted the case back to the Hon'ble Sub Court for decision.

The Hon'ble Sub Court pronounced the judgment on 03.02.1994. In OS 285/1981, KSEBL is allowed to recover ₹11,40,065/-. Out of the same, KSEB is allowed to realize interest @ 18 % per annum on ₹1,97,900/- and for the balance 10% p a from 19.06.1981 till realization. Also, Board is allowed to recover an amount of ₹ 95,47,499/- with interest @ 15% per annum from 25.04.1992 till realization.

In OS 286/1981, KSEBL is allowed to recover ₹31,50,311/-. Out of the same KSEB is allowed to realize interest @ 18 % per annum on ₹14,63,013/-and for the balance ₹16,87,298/- @10% per annum from 19.06.1981 till realization. Also, Board is allowed to recover an amount of ₹1,88,90,631/- with interest @ 15 % per annum from 25.04.1992 till realization. Board is also allowed to recover ₹75,000/- from the plaintiff contractor.

Meanwhile, Sri.G.Gopinathan transferred his property, which was mortgaged with Canara Bank, in the name of his daughters, Smt. Kalpana and Smt. Manju on 26.02.1991. This transfer of property carried out as sale deeds by the plaintiff to his daughters was an illegal transfer which was intended to defraud KSEBL.

Sri. G. Gopinathan expired in 1995 and Sri. Suresh Kumaraswami and Smt. Gopika Suresh (Husband and daughter of Smt. Manju) approached the execution court and filed EA 1499/2004 and EA 1500/2004 with a claim that they have purchased the above property on 29.12.1999 and prayed for lifting the attachment of the property. KSEB took the stand that the sale deeds produced before the Court are sham and fraudulent documents executed by the judgment debtors subsequent to the filing of the execution petitions by KSEB. The claims were dismissed vide order dated 20.11.2007 by the Executing Court. The petitioners then moved to the Hon'ble High Court and filed Exe FA 11/2008 and Exe FA 12/2008 challenging the impugned order of the executing Court and filed a statement that there is a possibility of settlement. The Board has submitted before the Court that there is no possibility of settlement except honoring of the decree debt.

The Chief Engineer (CC- South) further reported that now Smt.Gopika Suresh, Grand daughter of late G. Gopinathan and Sri. Suresh Kumaraswami, Father of Gopika Suresh submitted a representation read as 1<sup>st</sup> above seeking one-time settlement of the long pending litigation in the Vidyuthi Adalath 2020.In the Adalath the Chairman and Managing Director, KSEBL has directed to take up the matter for obtaining legal opinion.

The proposal was placed before the Full Time Directors as per note read as 5<sup>th</sup> paper above after obtaining legal opinion. Having considered the matter in detail,the Full Time Directors in its meeting held on, 18.06.2020 resolved to settle the matter through the Hon'ble Court.

The Chief Engineer(CC- South) shall take further necessary action in this regard.

Orders are issued accordingly.

By order of the Full Time Directors

Sd/-

**LEKHA.G**

**Company Secretary (in charge)**

To:

The Chief Engineer(CC- South) Thiruvananthapuram.

Copy to:-

The Chief Internal Auditor/ Financial Adviser

The RCAO/The RAO

The TA to Chairman&MD

Director (D,IT&HRM)/ Director (T &SO.) /Director(GE&SCM)/Director(GE&SCM)

Director(PLG&S)  
The Company Secretary  
Library/ FC Supt/Stock File

Forwarded/By Order



Assistant Executive Engineer