In exercise of the powers conferred under Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the representation made by the Central Warehousing Corporation (CWC) against increase in lease rent by the Cochin Port Trust for land allotted for operating its warehouse, as in the Order appended hereto.

(S. Sathyam)

Chairman

Case No. TAMP/4/99-COPT

The Central Warehousing Corporation (CWC) … Applicant
Vs.
The Cochin Port Trust (COPT) … Non-Applicant

ORDER

(Passed on this 31st day of August 2000)

This case relates to a representation submitted by the Central Warehousing Corporation (CWC) against increase of lease rent by the Cochin Port Trust (COPT) for land allotted on lease for operating a Warehouse in Cochin.

2. The CWC has been operating a Warehouse in Cochin after taking land from the COPT as per the details given below:

   (i). 137.7 cents of land on 27 years lease with effect from 26.4.80 to 25.4.2007 with the provision of increase of rent after every five years with effect from 26.4.1983.

   (ii). 401.77 cents of land on 30 years lease from 10.6.61 with a provision for increase of rent after every ten years by an amount not exceeding 100% of the existing rent. (35 cents and 7.40 cents of land were handed back to the COPT on 10.6.91 and 1.1.96 respectively.)

3. In its representation, the CWC has given following points:-

   (a). With reference to 2 (i) above

   (i). Even though the terms of the lease agreement stipulated that the rent could be increased only after every 5 years with effect from 26.4.83, the COPT unilaterally revised the rates as per details given below:
(a) 1st Revision  From Rs.27,677.70 p.a. to Rs.48,435.97 p.a. @ 75% with effect from 26.4.83 (After only 3 years)
(b) 2nd Revision  From Rs.48,435.97 p.a. to Rs.75,560/- p.a. @ 56% with effect from 26.4.93.
(c) 3rd Revision  From Rs.75,560/- to Rs.1,51,194.60 p.a. @ more than 100% with effect from 1.1.96. (After only 3 years)

(ii). The COPT has now proposed to increase the rent at a uniform rate of 5% per annum with an option to re-fix the same after 5 years, which is in violation of the agreement.

(b). With reference to 2 (ii) above

(i). When the initial lease period of 30 years was over, the COPT unilaterally revised the lease rent as given below:

(a). From Rs.21,126/- (for 401.77 cents of land) to Rs.2,01,258 per annum (for 366.77 cents of land) with effect from 10.6.91 @ 85.6%. (35 cents of land was handed back on 10.6.91)

(b). From Rs.2,01,258 (for 366.77 cents of land) to Rs.3,94,588.26 per annum (for 359.37 cents of land) with effect from 1.1.96 @ 96%. (7.40 cents of land was handed back on 1.1.96)

(ii). As per clause 7 of the agreement, the increase of lease rental can be effected only after every period of 10 years from 10.6.61 by an amount not exceeding 100% of the existing lease rent.

(iii). In addition, the COPT imposed 5% annual increase for the year 1997-98 as per its revised lease pro forma made effective from 1.1.96 and introduced in mid-1997.

4. The CWC has reportedly made several representations to the COPT for a moderate increase. It has also been stated that the COPT did not accept the request of the CWC; and, the CWC deposited the differential amount under protest.

5.1. The representation received from the CWC was referred to the COPT for comments. In its reply, the COPT has made the following points:

(i). There is no provision in the lease conditions for bilateral discussions in the matter of revision and fixation of lease rent.

(ii). According to the prevailing practice, the Port Trust first discusses the proposals for revision of lease rent with the Lease Holders Association, a registered body created for the purpose of protecting the interests of lease holders. Thereafter, the proposal is placed before the Board for approval.

(iii). In respect of the last revision of lease rent, which is disputed by the CWC, the Port Trust held detailed discussions on two occasions with the representatives of the Lease Holders Association.

(iv). Under the agreement arrived between the COPT and the Lease Holders Association, revision of lease rent in respect of existing lessees will not exceed 100%.

(v). The last revision of the lease rent was with effect from 1 January 96. The revision was in accordance with the guidelines issued by the Ministry of Surface Transport.

For the purpose of determining the extent of increase, the Port Trust obtained information on the value of land in Cochin from the last land auction which was conducted by the Greater Cochin Development Authority and made appropriate corrections for the locations at
Willingdon Island. The rates were then discussed with the Lease Holders Association, and placed in the meeting of the Board of Trustees who recommended its approval to the Ministry of Surface Transport.

(vi). While communicating the Government approval to the proposed revision of lease rent, it has been directed that all fresh leases in future will be subjected to a 5% annual increase with the revision of the lease once in every five years.

(vii). It is neither practical nor feasible for the Port Trust to separately negotiate with hundreds of Lease Holders. In fact, some of the leaseholders are already represented in the Board of Trustees in some other capacity. Besides, the Port has held discussions with the Lease Holders Association.

(viii). Aggrieved by the revision in lease rent, some of the lessees have already approached the Hon’ble High Court of Kerala, and the matter is now pending before the High Court. A hearing at this stage (by the TAMP) with one of the leaseholders is not appropriate in view of the pendency of the cases in the High Court.

5.2. The Port has specifically stated that the CWC is being charged the same lease rent as applicable to other leaseholders and no special dispensation can be given to them.

6. The CWC has stated that, in accordance with clause 9 of the Agreement, lease rent can be increased only after every 5 years and it shall not exceed 100% of the existing rent. But, in the case of land mentioned at paragraph 2(i) above, the Port increased the basic / original rate of rent by 75%, 173%, and 447% respectively during the 1st, 2nd, and 3rd revisions. In respect of land mentioned at paragraph 2(ii) above, the COPT revised the lease rent after expiry of the initial lease period of 30 years by about 852.6% with effect from 10.6.91. Another increase amounting to 96% on the immediately preceding rate of lease rent was made effective from 1.1.96. This amounts to an increase of 1768% on the basic rate being charged at the time of expiry of the previous lease agreement. The CWC has pointed out that clause 7 of the lease agreement empowers an increase after every 10 years by not more than 100% of the existing rent subject to certain conditions. The CWC has proposed that annual increase shall on an average not work out to be more than 5%; and, the increased rent thus calculated payable only at definite intervals specified in the Agreement of the two lands. This proposal has been made by the CWC in response to our request to specifically indicate what the CWC means by “moderate increase” and “definite interval”.

7.1. In response to the invitation to attend the joint hearing to be held on 18 November 1999, the COPT vide its letter dated 2.11.99 reiterated its earlier submissions and stated hearing at this stage by the TAMP might not be appropriate in view of the pendency of the case in the High Court, since the decision of the Hon’ble High Court in any case would be binding on all the lease holders of the Port Trust.

7.2. A joint hearing was held on 18 November 99. The COPT was not present. Arguments of the CWC were heard on the maintainability of the proceeding in the face of the case pending in the Court of Law and the merit of the case. It was made clear that the Authority would consider these issues sequentially; and, proceed to decide the case on merits if it is decided to get ahead with the proceedings notwithstanding the pendency of some (related) cases in the High Court.

7.3. The following submissions were made by the CWC during the joint hearing:

(i). Pendency of the case in the Court has no bearing on our case; and, it cannot be a bar to this case.

(ii). The case in the Court is filed by the Lease Holders Association. We are not a member of the Association. We are not a party to the case.

(iii). There is no order of the court restraining TAMP from entertaining such cases. In fact, the Lease Holders Association also should have first come here. That is why we have come here first.
(iv). The CWC operates one warehouse in 2 pieces of lands. There are two separate lease deeds with different conditions.

(v). Leases are in existence; lease deeds are valid and they are binding on both parties. Neither can violate the terms and conditions.

(vi). Clause-9 of Lease Deed allows revision once in 5 years with effect from 26 April 83 and upto 100%. But, COPT revised it repeatedly ahead of this 5 years cycle and by more than 100% (marginally) in the third revision effected from 1.1.96.

(vii). Even the 2nd revision was more than 100% which they revised after 10 years. That the revision took place after 10 years cannot entitle them to increase by 200%. If they did not exercise the 5 year option, it is their decision. They cannot ‘accumulate the opportunity’.

(viii). “Existing Rate” must mean the original rate. It cannot mean the revised rate. There can be no question of distinguishing between ‘existing rate’ and ‘base rate’. If there was such a distinction, the Lease Agreement should have explicitly stated it. In the absence of it, if there is any doubt, the benefit of the doubt should go to CWC.

(ix). The Lease Agreement in clause 1(a) specifically cites the lease rate. There is no other rate mentioned. Therefore, that becomes the ‘existing rate’.

(x). Please rectify the error and order COPT to ‘adjust’ the excess amount in future rents. The ‘Adjustment’ suggested is not ‘refund’. Even if the Authority has no power to order ‘refund’, it can easily order ‘adjustment’. Excess recovery will amount to payment of ‘advance rent’. Therefore, there can be no objection to ‘adjustment’ (of ‘advance rent’). This Authority can give a decision on the excess recovery. And, say ‘this may be adjusted in future rents’. That will give us the option to go for immediate recovery or for adjustment.

(xi). (a). From 1.1.96 (apparently with reference to some Government Guidelines) the COPT has started 5% annual escalation and a 5 year cycle for change of ‘base rate’. This is violative of our lease deed. We are paying under protest. Please strike this down.

(b). The very fact of this change shows that there was no concept of change of ‘base rate’ earlier.

(xii). The Lease Holders Association has gone to the High Court. The High Court has stayed the revision; and, asked the petitioners to pay 40% of the increase pending a final decision. We have not taken advantage of that order.

(xiii). There is a separate Lease Deed for the second piece of land, which expired on 1991. This was extended to 1995 and further extended to 2000.

(xiv). Lease Deed remained the same. Lease condition was not altered except for one. In the original Deed, we had an option to take an extension. This “option” has been removed. All other condition remains the same. Now, only the COPT has the ‘option’ to offer renewal.

(xv). They have renewed and changed the lease rent, introduced annual escalation, and introduced even a 5 yearly change of base rate. All these are violative of the Lease Agreement. There was no discussion and there was no “mutual agreement”. The changes were unilateral and arbitrary.

(xvi). Lease rent has to stand the test of reasonableness. They cannot arbitrarily decide.

(xvii). (a). We agree to a 5% annual escalation.
(b). We only object to a 5 yearly change of base rate.

(c). We want TAMP to fix a “moderate increase” which can stand the test of reasonableness.

(d). We will give copies of our “under protest” letters.

(e). We will check our records to see whether we exercised our “option” for a renewal.

7.4. The CWC wanted time to check on further facts and produce some documents before completing its arguments. They were given 6 weeks time to submit the following documents / information:


(ii). Copies of CWC’s “acceptance under protest” letters.

(iii). Check their local (i.e. Cochin) office records to report on whether or not they exercised their ‘option’ for a renewal of the lease.

8. The COPT vide its letter dated 10 January 2000 has stated that since the revision of lease rent made applicable uniformly to all lessees within the Willingdon Island with the approval of the Port Trust Board and the MOST, one lease holder viz the CWC cannot be an exception. As the matter is subjudice with the Hon’ble High Court of Kerala, the COPT has reiterated that a hearing at this stage with one of the leaseholders may not be appropriate.

9.1. Another joint hearing was held in this case on 7 April 2000. The CWC as well as the COPT were participated. The following submissions were made at the joint hearing:

**The Central Warehousing Corporation**

(i). We will file copies of the COPT letters regarding ‘extension’ and our ‘under protest’ letters within a week.

(ii). According to Clause 1 (i) of the Lease Deed the CWC had the option to renew.

(iii). The CWC had verbally informed the COPT about exercising the option. The Lease Deed does not specify modalities etc., of exercising the option.

(iv). There were verbal negotiation between January and June 1990. During the negotiation the COPT pointed out that there was a form for application for renewal.

(v). CWC wrote in October 1990 to renew and to issue the application form. No reply has been received from the COPT. Thereafter, we wrote again requesting specifically for renewal.

(vi). Referring to our request for ‘renewal’, in May 1991, the COPT asked for surrender of a portion of the land (6.5 cents). This shows the COPT was well aware of our interest in and request for ‘renewal’. We could not apply in the form because form was not issued.


(viii). The COPT’s letter of July 1991 expresses its inability to renew the lease in the absence of surrender of a small plot of land. We were never advised of the terms and conditions of renewal.

(ix). We proceed to surrender 6.5 cents of land in July 1991. The COPT writes in January 1992, stating that renewal can be only for 4 years and after a substantial hike in rate at that.
(x). Terms and conditions were unilaterally settled. Lease Deed requires it to be ‘mutually settled’.

(xi). While asking for surrender of 6.5 cents, no other conditions were indicated. How do the changes in terms / conditions suddenly arise?

(xii). We accepted the changes ‘under protest’.

(xiii). COPT letter of June 1997, indicated renewal for 9 years i.e., upto 2009. Government approval was also cited. How can they now say, they want the lands for their own use?

(xiv). COPT says we accepted the revise terms and conditions. Please see our telex message of February 1991. We had indicated our choice of terms and conditions.

(xv). In response to that, they indicate only surrender of 6.5 cents of land. Nothing else was stated. What is the reasonable inference on this?

(xvi). How is discussion with lease Holders Association relevant? We are not a member of that Association.

(xvii). Our Lease Deed says, terms and conditions to be settled by ‘mutual’ discussions. Where is the mutual discussion?

(xviii). Reference to Government Guideline is not relevant. Our Lease Deed is a specific written contract. How can that be overridden? Even Government is not above law. It cannot unilaterally override on existing contract.

(xix). Reference to market rate is irrelevant. We have to pay according to our Lease Deed and not any market rate.

(xx). CWC is not asking for any concession. What others are paying is not relevant. COPT must abide by the separate and specific Lease Deed executed in our case.

(xxi). In its letter dated 16 February 1996, the COPT itself says that we have not accepted its terms and conditions.

(xxii). The COPT reference is to Government order, Board decision market rate, etc. There is no reference to mutual consultation at all. Therefore, their entire action has been unilateral.

The Cochin Port Trust


(ii). In 1996, CWC wrote a letter accepting the ‘new terms and conditions’. We will produce a copy.

(iii). There was no arbitrary action. All our decisions were according to Government Guidelines.

(iv). They are not able to produce any documents relating to negotiations.

(v). There have been extensive consultations with Lease Holders Association.

(vi). These revisions were as advised by the MOST.
(vii). Even now the C & AG says, rates are low. How then can our rates be called arbitrary or exorbitant.

(viii). CWC talks of its commercial interests. The COPT has also to reckon with its commercial interests.

(ix). As advised by the MOST, rates have been decided with reference to market rates, in consultation with the Revenue Authorities of the Districts.

(x). CWC 'under protest' letter is only about the rent. They accepted the terms and conditions. But, they have still not executed the lease Deed.

(xi). Our arguments are common to both the pieces of land taken by the CWC.

9.2. During the joint hearing the COPT has requested for time to file a written submission. It was given six weeks time to file it. The CWC was given four weeks time, after receipt of the copy of COPT’s written submission, to file its replies. The CWC agreed to file alongwith its reply the two sets of documents required under para 7.4. above which were not filed by it earlier.

10. As agreed in the joint hearing, the COPT has submitted a written submission on 29 April 2000. In its written submission, the COPT has reiterated its earlier arguments. In addition, following points were made:-

(i). A series of correspondence relating to revision of lease rent from the CWC was received over the period of tenure of lease and the COPT has appropriately responded to these representations.

(ii). The CWC has stated that between January and June 1990, in accordance with the Clause 1 (i) of the Lease Deed executed on 24 May 1963, they have verbally exercised their option for renewal of lease and also held negotiation with the COPT. As per our records there has been no negotiation with the CWC with regard to the exercising of the option for renewal of lease. There are no records showing any of our officers having had any verbal intimation / communication from the CWC in this connection. We also do not have any written communiqué from the CWC during the period January-June 1990 in this connection. Notwithstanding the fact that the CWC did not exercise the option of renewal within the time frame as stipulated in the lease agreement, for the fresh lease period, the terms and conditions as in force at the time of renewal of the lease, shall only apply.

(iii). The COPT had intimated to all the lessees in January 1986, about the modifications proposed in the lease agreement. It was conveyed that the lessees shall have the option of renewing the lease for such further period on terms and conditions as applicable to fresh lease and on payment of lease rent as applicable to fresh lease as per the Port’s Scale of Rates on the date of renewal. The CWC had never expressed its disagreement to the said circular at any point of time.

(iv). After protracted correspondence, CWC finally communicated their acceptance of the terms and condition as applicable to fresh lease in respect of 359.37 cents, vide their letter dated 11 April 1996 and 16 April 1996.

(v). With reference to the land of 137 cents, there appears no room or reason for any dispute, since Clauses 1 (c) and 9 of the terms and conditions of the lease agreement which has been executed by the CWC for this piece of land, explicitly provides for lease rent revision.

(vi). Even the rate of lease rent currently in force, has attracted serious audit objection by the Accountant General (Audit) of India. During the revision in 1996, the lease rent for lease of land for commercial purpose was fixed as Rs.3,40,000/- per acre per annum. However, being an existing lessee, CWC was only charged @ Rs.1,09,800/- per acre per annum for the land.
leased to them, which is very low as compared to the revised lease rent for land used for commercial purpose.

(vii). A comparative table showing the revisions implemented by the COPT in accordance with the provisions of the lease agreement in respect of the plot measuring 401.77 cents and the rent paid by the CWC during the tenure of lease and thereafter during the renewal of lease (i.e., 10.6.1991 to 20.6.2000) is given below:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Date of revision</th>
<th>Rent per acre per annum (Rs.)</th>
<th>Date of revision</th>
<th>Rent per acre per annum (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Other lease (lessees)</td>
<td></td>
<td>CWC</td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>01.07.1960</td>
<td>2880/-</td>
<td>10.06.1961</td>
<td>2880/-</td>
</tr>
<tr>
<td>2.</td>
<td>01.07.1962</td>
<td>3600/-</td>
<td>10.06.1971</td>
<td>* 2880/-</td>
</tr>
<tr>
<td>3.</td>
<td>14.02.1967</td>
<td>5400/-</td>
<td>10.06.1981</td>
<td>5670/-</td>
</tr>
<tr>
<td>4.</td>
<td>23.03.1971</td>
<td>6700/-</td>
<td>10.06.1991</td>
<td>54873/-</td>
</tr>
<tr>
<td>5.</td>
<td>01.07.1975</td>
<td>20100/-</td>
<td>01.01.1996</td>
<td>109800/-</td>
</tr>
<tr>
<td>7.</td>
<td>01.03.1989</td>
<td>54873/-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>01.01.1996</td>
<td>109800/-</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(100 cents = 1 acre)

(viii). For the ease of reference, tabulation of revision in lease rent in respect of the plot of land measuring 137.7 cents effected in case of CWC is given below:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Date of revision</th>
<th>Rent per acre per annum (Rs.)</th>
<th>Date of revision</th>
<th>Rent per acre per annum (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Other lease (lessees)</td>
<td></td>
<td>CWC</td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>01.07.1975</td>
<td>20100/-</td>
<td>20.04.1977</td>
<td>20100/-</td>
</tr>
<tr>
<td>2.</td>
<td>16.07.1982</td>
<td>35175/-</td>
<td>26.04.1983</td>
<td>35175/-</td>
</tr>
<tr>
<td>3.</td>
<td>01.03.1989</td>
<td>54873/-</td>
<td>26.04.1993</td>
<td>54873/-</td>
</tr>
<tr>
<td>4.</td>
<td>01.01.1996</td>
<td>109800/-</td>
<td>01.01.1996</td>
<td>109800/-</td>
</tr>
</tbody>
</table>

(100 cents = 1 acre)

11.1. In its submission the CWC has reiterated its earlier arguments and pleaded for the following directions:

(i). To execute a fresh lease deed for a period of thirty years with effect from 10 June 1991 to 9 June 2021 on the same terms and conditions as contained in the lease deed dated 24 May 1963.

(ii). To make an increase of lease rent with effect from 10 June 1991 and a further increase for every period of ten years or from the date of the Gazette Notification, whichever is later and to a maximum amount of Rs.11,57,98 or the rate mentioned in the Gazette Notification, whichever is less.

(iii). The refund the excess lease rent received by respondent or in the alternative to treat the same as advance rent received.

11.2. The CWC has been directed in the joint hearings to submit copies of COPT’s letters relating to extension of lease, CWC’s acceptance “under protest” letter and report whether or not exercised their ‘option’ for a renewal of the lease (as given in paragraph 10 above). The CWC has submitted copies of COPT’s letters relating to extension of lease and also copy of their acceptance “under protest” letter. However, the CWC has not given any information about their ‘option’ for a renewal. The COPT
in its written submission has enclosed copies of the CWC (Cochin Office) two letters agreeing to renew the lease of the land as per COPT’s terms and conditions.

12. Based on the records available and the totality of information collected during the proceedings of the case, the following positions emerge:

(i). The representation of the CWC is against arbitrary and unreasonable increase of lease rent in respect of the two plots of land under its occupation. The CWC is for moderate increase after definite intervals as per lease agreement.

(ii). The COPT raised a preliminary objection to this Authority’s intervention in this case, in view of an ongoing litigation relating to the rate revision effected by the COPT w.e.f. 1 Jan 96. The case pending before the Kerala High Court is filed by the Cochin Port Lease Holders’ Association; and, the question raised is the reasonableness of the revised lease rent being levied by the COPT. The High Court has passed an interim order staying the rate revision effected by the COPT w.e.f. 1 Jan,96 provided 40% of the enhanced rates are paid by the petitioners.

During the joint hearing, the CWC has mentioned that it is not a member of the Lease Holders’ Association and hence, not a party to the case before the High Court. Further it has confirmed that advantage of the interim order of the Court is not enjoyed by it.

As pointed out by the CWC, there is no order of the court restraining this Authority from entertaining specific representation like the one made by the CWC. The representation of the CWC is with reference to the land occupied by it and the lease deeds executed in this connection. Entertaining this representation will in no way affect the litigating party (before the Kerala High Court) who is aggrieved by the general revision of lease rent. That being so, the mere pendency of a case in a court of law, may not put any fetter in proceeding with the representation before this Authority. Accordingly, the arguments of the COPT about maintainability of the proceedings are dismissed and it has been decided by this Authority to proceed to examine the case on merits.

(iii). In case of both the plots of land, the CWC executed specific lease deeds. While the lease deed in respect of the plot measuring 137.7 cents is still in force, the lease deed relating to the plot measuring 401.77 cents (subsequently reduced to 359.37 cents) has expired in June 91 and not yet renewed.

(iv). During the joint hearing, the CWC pleaded that ‘Existing rate’ mentioned in the lease deeds should be taken to mean ‘the original rate’ prevailing on the date of commencement of lease periods. Its argument is to apply the percentage increases on the original rate; and, during the tenure of lease such increases should not exceed 100% of the original rate. This argument is somewhat misplaced. In the absence of anything on the contrary to define the words ‘existing rate’, such expression should be construed to mean the rate prevailing at the material time of revision. Once revised, the revised rate will become the existing rate at the time of next revision. In other words, existing rate will be the rate immediately proceeding the revision.

(v). The COPT argument that there is no provision in the lease deed for bilateral discussions in the matter of revision and fixation of lease rent is not tenable. There is a definite clause in the lease deed for mutual discussion and settlement of renewal of lease. Even though it may not be necessary for the COPT to accept the terms and conditions desired by the CWC at the time of renewal of lease, it is incumbent on part of both COPT and CWC to hold discussions to arrive at mutually agreeable terms and conditions of renewal of lease.

(vi). The January 1996 circular of the COPT relating to revision of lease rents, interalia, contains the following stipulations:

(a). The revision is applicable to the existing lessees whose period of lease is expiring after 31.12.95 and require to be renewed.

(b). The revision of lease rent and other charges relating to lease of land will be applicable from the date of implementation of the revision irrespective of the date of commencing the lease, to all the existing lessees also.

(vii). The note dated 24 July 95 submitted by the Chairman (COPT) to the Board of Trustees for the port of Cochin contains the proposals for revision of lease rent. The note has clearly mentioned that the revised rates
proposed are fixed after consulting the State Revenue Authority and Greater Cochin Development Authority; and, based on the value of comparable land in the vicinity. This procedure is followed by all the Port Trusts for fixing lease rents of their lands, as per the guidelines of the Government of India. The proposed revised rates are said to have been discussed with the Lease Holders’ Association. The revised lease rent has been approved by the Port Trusts Board and subsequently by the Govt. of India. While the methodology adopted for fixing the revised lease rent w.e.f. 1 January 1996 appears to be logical, this Authority is not in a position to ascertain the reasonableness of the revised rates without re-examining the entire revised proposal. In other words, the reasonableness of the revised rates should be examined with reference to the entire port estate and such scrutiny cannot be confined only with reference to a small plot of land occupied by the CWC. Since the reasonableness of the revised rates is under judicial scrutiny, the outcome of the litigation will be applicable to all plot holders of the COPT irrespective of whether a plot holder is a party to the litigation or not. That being so, this Authority shall not go into the question of reasonableness of the revised lease rent implemented by the COPT w.e.f. 1 January 1996.

It is to be recognised that the COPT has limited this increase at 100% in the case of existing lessees considering the provision in the lease agreement to limit such increase at that level.

(viii). The COPT has decided to make suitable modification in the lease agreement to make applicable the revision of rate of lease rent and other charges relating to lease of rent from the date of implementation of the revision, irrespective of date of taking over of the land. This in effect means that the provision of the existing lease agreement will be superseded and that too unilaterally. Likewise, the Port Trust has decided to make a provision in the existing leases also to apply an annual increase of 5% in the lease rent with an option to re-fix the base rate after every 5 years. This again is a unilateral decision disregard of the existing lease agreement.

(ix). Notwithstanding the decision of not questioning the reasonableness of the revised rates, it becomes necessary to examine further the periodicity of revision carried out in the case of CWC in view of the decisions of the COPT mentioned at para (viii) above.

(x). Position in respect of plot of land measuring 137.7 cents.

(a). Clause 9 of the concerned lease deed stipulates that the lessor has a right to increase the rent after every period of 4 years from 26 April 77 and 5 years from 26 April 1983 by an amount not exceeding 100% of the existing rent.

(b). The first revision of lease rent took place on 26 April 83. The effective date of revision is in terms of the lease deed. The extent of revision was also 75% only, as against the ceiling of 100% mentioned in the lease agreement. The CWC’s observation that revision on 26 April 1983 was within 3 years is not correct. The lease deed permits a revision after 4 years from 26 April 1977. In fact, the COPT has effected the first revision after 6 years instead of 4 years.

(c). The second revision of lease rent took place on 26 April 1993 and the extent of revision was well within the ceiling of 100%.

(d). The last revision relating to this plot of land was made w.e.f. 26 April 93. In terms of lease agreement, the revision is due only on expiry of a period of 5 years from the date of last revision. Accordingly, the next revision has fallen due on 26 April 98. However, the COPT has revised the rent for this plot w.e.f. 1 January 1996 along with the general revision of lease rent. The COPT has relied on clause 1(c) of the lease deed which stipulates that the lessee should pay and discharge all rates, taxes, charges and assessments of every description subsisting or which may be imposed during the tenure of the lease.

This clause appears to be more relevant in the case of requiring a lessee to reimburse the municipal tax, property tax and any other statutory dues. With a specific condition on revision of lease rent existing under clause 9 of the lease agreement, this clause is not relevant for the purpose of lease rent revision.

(e). Since the lease deed specifically provides for revision of rent at an interval of 5 years. The condition prescribed by the COPT relating to an annual automatic increase of lease rent by 5% is not applicable in this case.
Likewise, in view of the specific stipulation in the lease deed, the COPT could not revise the lease rent w.e.f. 1.1.1996. Such revision could only take place on or after 26.4.1998.

The CWC has also pointed out that the revised rate is more than 100%. By a strict arithmetics, the revised rate is more than 100%; it exceeds this ceiling by Rs. 54 per acre per annum. This may be a result of rounding off of figures at different stages. For a variation of such an insignificant amount, it can not be held that the quantum of revision is not in terms of lease deed. The objection of the CWC in this regard is misplaced.

(a) The CWC objected to the “accumulation of opportunity” by the COPT and revision the lease rates by more than the ceiling prescribed in the lease deed. The COPT has pointed out that the 10 yearly revision fell due on 10 June 1971 was not effected on some legal advice. But in the next revision effected on 10 June 1981, the COPT has increased the (then) existing rate by only 100% and not by 200% to account for the opportunity missed in 1971. That being so, the argument of the CWC about accumulation of opportunity is baseless.

(b) The original lease agreement expired on 9.6.91.

(c) The original lease agreement contained a clause that the lessee shall have the option of renewing the lease for such further period and on such terms and conditions as may be mutually agreed upon during the first six months of the year 1990. The COPT and the CWC have difference of opinion on whether such option for renewal of lease has been exercised. There appears to be a casual approach on both sides in settling the renewed lease agreement. However, the COPT has mentioned that the CWC vide its letters dated 11 April 96 and 16 April 96 has communicated its concurrence to the terms and conditions set by the COPT. But, the fact remains that a lease deed has not yet been executed, even after nine years since the original agreement lapsed. There was definitely an option for renewal of lease available to the CWC, which it had not exercised conclusively. The correspondence cited by both the parties shows only the inclination towards renewal of lease but it cannot be taken as an alternative to exercise of option.

Be that as it may, in the absence of any specific lease agreement in force after June 1991, it is obvious that the general Scale of Rates of COPT for its lands still govern the occupation of land by the CWC.

Even if a lease is renewed by executing a formal lease agreement, it is appropriate for the COPT to prescribe the rate prevailing in its Scale of Rates on the date of renewal. It can not be with reference to the rate governed by the expired lease deed.

It is noteworthy that the revised terms and conditions for leases prescribed after 1991 (evolved based on Government of India guidelines) removes the option available to the Lessees for automatic renewal of leases on expiry of the agreed period. Renewal will be at the discretion of the Lessor i.e. the COPT.

(d) The COPT has mentioned that it had intimated all the lessees in January 1986 itself that in case of renewal of lease, lease rent will be fixed as per the port’s Scale of Rates on the date of renewal. The COPT has also pointed out that the CWC had never expressed its disagreement to this communication at any point of time. That being so, it is reasonable to presume that the CWC was aware that on expiry of the original lease agreement in June 1991, the lease rent during the renewed period will be fixed with reference to the port’s Scale of Rates prevailing on the date of renewal. In any case, the CWC’s argument that the revised rent at the time of renewal should be fixed with reference to the original rate of rent fixed in 1961 merits no consideration.

(e) In the absence of a specific lease agreement, the COPT have applied the lease rent as per its Scale of Rates w.e.f. 10.6.1991. This rate was revised w.e.f. 1.1.1996. Even during 1996, there was no lease agreement relating to this plot of land in force. So, the revision effected w.e.f. 1.1.1996 has also been automatically applied to the CWC. It appears that the action of the COPT is in order.

13. In the result, and for the reasons given above and based on a collective application of mind, this Authority decides the case as follows:
(i). The condition introduced by the COPT towards an automatic annual increase of lease rent 5% shall not apply in the case of the plot of land measuring 137.7 cents, since the lease deed specifically provides for revision of rent at an interval of 5 years.

(ii). Likewise, in view of the specific stipulation in the lease deed, the COPT could not revise the lease rent w.e.f. 1 January 1996 in respect of the plot of land measuring 137.7 cents. Since the previous revision was on 26 April 1993, the next revision could only have taken place on or after 26 April 1998. That being so, the action taken by the COPT in this respect will need to be corrected retrospectively.

(iii). The action of the COPT in respect of the plot of land measuring 401.77 cents (subsequently reduced to 359.37 cents) is in order. The representation of the CWC in respect of this plot of land is rejected.

( S. Sathyam )

Chairman