TARIFF AUTHORITY FOR MAJOR PORTS

NOTIFICATION

No. TAMP/88/99-TPT

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the appeal filed by the Tamil Nadu Electricity Board (TNEB) against the enhancement of lease rent with effect from 1 July 1997 in respect of lands leased out to them by the Tuticorin Port Trust (TPT), as in the Order appended hereto.

SCHEDULE

Case No. TAMP/88/99-TPT

The Tamil Nadu Electricity Board (TNEB) .... Applicant

V/s

The Tuticorin Port Trust (TPT) .... Respondent

ORDER

(Passed on this 12th day of May 2000)

The Tamil Nadu Electricity Board (TNEB) has filed a representation against enhancement of lease rent with effect from 1 July 97, in respect of lands leased out to them by the Tuticorin Port Trust (TPT).

2. The TNEB has made the following points:

(i). The TPT has leased out 192.54 hectares of land to the TNEB on long-term lease in various spells. Initially the TPT charged 10 and 11 paisa sq. mtr. per annum as lease rent for a period of five years. After the expiry of 5 years period, the lease has been renewed on a revised basis. As the land was given to the TPT free of cost by the Government of Tamil Nadu, no lease agreement was executed.

(ii). The rates were revised by the TPT once in 5 years at its own whims and fancies without furnishing any details as to how it was fixed.

(iii). On the objections raised by the TNEB, the TPT classified the land as developed, partially developed and under developed land. The
said classification was dispensed with after 31 December 1996 and the rent was sought to be fixed on utility basis. The land leased to the TNEB was brought under “service and Residential” category. In January 1998, the lease rent was fixed at Rs.14.00 per sq. mtr. per annum with retrospective effect from 1 July 97.

(iv). The present rent at Rs.14/- per sq. mtr. per annum was fixed based on the recommendations of a Committee constituted under the chairmanship of the Chairman TPT.

(v). No road of any kind was ever developed by the TPT for the convenience of the TNEB. All the roads in the lease rent area were developed and maintained by the TNEB itself. A part of the external road which is for common use cannot be termed as an amenity provided by the Port Trust. Annual return on development charge as above at 18% on Rs.18.93 per sq. mtr. working out to Rs.3.40 per sq. mtr. per annum as rent is not tenable.

(vi). The Thermal Station itself generating electricity and all the areas under lease rent have been electrified by the TNEB itself. The TPT has not either installed any power lines / equipments or consumed power for the cause of power station. Annual maintenance of electrical installation is done by TNEB itself at its own cost. Hence the claim of lease rent at Rs.3.56 per sq. mtr. per annum on electricity development for the land with a return value of Rs.4.45 is not reasonable. Unreasonable claim Rs.5.00 lakhs per annum per 15 acres or Rs.8.23 per sq. mtr per annum for Rs.1.48 per sq. mtr. per annum (rent) is not lawful.

(vii). The Tuticorin Thermal Power Station (TTPS) is getting water from Tamil Nadu Water Supply and Drainage Board. For all its station needs, the TTPS gets raw and drinking water from Tamil Nadu Water Supply and Drainage Board against payment of charges. The TPT has not made any arrangement for supply of drinking water to the leased area. The TTPS is also paying water cost to Tamil Nadu Pollution Control Board for sea water drawn by it for cooling units. The TPT is already collecting the lease rent for the land used for conveyance of cooling water charges. Further claim of Rs.1.48 per sq. mtr. per annum as development charges is not reasonable.

(viii). The sewage disposal is totally done by the TTPS both of its power plant area and colony area. The TTPS has installed modern sewage disposal plants on the instruction of Tamil Nadu Pollution Control Board. The TPT has made neither any investment nor incur recurring
expenditure for maintenance on the sewage system. Hence claim of sewage disposal charges is not reasonable.

(ix). The land originally leased out to the TNEB was basically an under-developed land, whereas the TPT was charging various rates in three categories namely developed, partially-developed and under-developed.

(x). No opportunity of hearing was given by the TPT before enhancement of rate, which is violation of principles of Natural Justice. The Govt. of Tamil Nadu’s land given to the TPT is free of cost and hence being a statutory body under the State Government, whatever benefits the TPT has derived must be passed on to the TNEB also. The TNEB is not a profit-making organisation but is solely used by the public and industries at subsidised prices. The TNEB cannot be equated with other independent entrepreneurs.

(xi). When the TAMP have been constituted, the TPT cannot seek to enforce the recommendations of the Committee constituted by them.

(xii). The TPT failed to note that guidelines have been issued by the TAMP on letting out properties and not in respect of Development/amenities. Even on the beginning of fixation of rent as per the Rent control Act, the present increase is untenable and unjustifiable.

3. In accordance with the procedure followed, the representation filed by the TNEB was sent to the TPT and the Tuticorin Chamber of Commerce and Industry (TCCI) seeking their comments.

4. Comments received from the TPT and TCCI are summarised below:

The Tuticorin Port Trust

(i). The TPT has allotted 192.54 hectares of land to the TNEB for the construction of the TTPS, residential camp and construction of Guest house at different stages since 1973. The initial rent was Rs.0.11 per sqr. mtr. per annum, which was increased later on as development work was carried out by the TPT. The TNEB remitted the lease rent as fixed thus by the Port Trust from time to time upto December 1996 i.e. at Rs.8/- per sq. mtr. per annum plus escalation for developed land.
(ii). TNEB’s statement that as the land of Govt. of Tamil Nadu was given free of cost, no lease agreement was signed is not correct. The Government of Tamil Nadu allotted an area of 1459.70 acres of land to the Tuticorin Harbour Project free of cost as per the agreement reached between the Centre and the State Governments. Subsequently, a portion of land has been allotted by the Government of India to the TNEB for setting up the TTPS, subject to payment of lease rent as prevailing from time to time.

(iii). For further revision, the TPT constituted a Committee comprising Chairman, TPT, Director (Port Development) of the Ministry of Surface Transport, Additional District Collector, Secretary, Financial Adviser and Chief Accounts Officer, and Chief Engineer of the TPT. The Committee after taking all relevant aspects into consideration (like market value of lands in and around Tuticorin Port Area, cost of general development, etc.,) worked out the lease rent. The Committee decided to adopt the classification (revised) as being followed in other sister ports with regard to leasing of port land. Accordingly, the port land has been classified as (i) commercial purpose; (ii) industrial purpose; and, (iii) residential and service purpose and the rates have been fixed accordingly.

(iv). The TAMP by its order notified in the official Gazette dated 1 July 97 has approved the lease rent as recommended by the Committee with effect from 1 July 97. Considering the TNEB as a service unit, the rate applicable to “Residential and Service Purpose”, i.e., Rs.14/- per sq. mtr. per annum, which is the minimum rated category, has been levied. The position has been clarified by the TPT to the TNEB. However, the TNEB continues to pay the rent at the old rate.

(v). The TNEB has stated that the appeal is against the Order dated 28 January 1997 passed by the TPT. However, no such order has been passed by the TPT in regard to the increased / revised lease rent. The rate of Rs.14/- is the minimum rate, which is in itself a concession to the TNEB. The rates are made effective from 1 July 1998 i.e., date of Gazette Notification. Hence no retrospective effect is given to the rates.

(vi). The TPT has not constructed road inside the premises of the power station of the TNEB, its residential camp and Guest house. The cost which is included in the revised rent is in regard to the main roads leading to the utility areas. Through these roads day to day affairs are being carried out by the lessee. The development and maintenance of these road are being done by the TPT.
(vii). The TPT has provided general lighting arrangements on all the roads and other utility areas which are being used by the lessees. The TNEB is enjoying the general lighting arrangements over a stretch of more than 3 kms. from their residential campus upto the entrance gate of power station. After having enjoyed such facilities it is not just on their part to object the element included in the lease rent towards general lighting.

(viii). The Port has laid pipelines to all the areas, where lands are allotted for different purposes and water points are provided at all required points. The lessees used these water points for supply of water to meet their requirements. The Port has invested a huge amount in this facility. However, Port has taken Rs.5.00 lakhs only as token amount for the land area of 15 acres earmarked for “service and Residential” purpose and 18% of this is being charged in lease rent. After taking into account all common factors, the general revision of rates has been made. Hence it is not possible to have separate rate for the TTPS.

(ix). Sewage includes sewerage and open drainage in the area. The Port has provided a number of culverts on the roads, open drainage etc., to drain off the storm waters in the area allotted to various lessees. These culverts have been provided near to the residential area of TTPS and therefore, inclusion of a small amount for this facility is reasonable.

(x). The classification of developed, partially developed, under developed has been dispensed with. Now the lease rent is fixed according to the purpose for which the land is used. The amount has been fixed taking into account all the developments carried out. The area of the TNEB is now developed. Hence the TNEB cannot refer to the condition of land prevailed at the time of allotment.

(xi). The lease rent has been revised on the policy guidelines by the Central Govt. and by constituting a Committee with the representation from Port, MOST, District Revenue Department. The recommendations of Committee have been approved by the Port Trust Board and subsequently by the TAMP and published in official Gazette of India. The revision is being made as routine process as required under the provisions of lease agreement. There is no need to discuss with all the lessees of the Port.

The land was allotted to the Tuticorin Harbour Project by the State Government for the development of a major port. The TNEB has no right to claim on this issue at this stage. The MOST has already
written in this regard to the State Government and the TNEB has to pay the lease charges to the TPT.

(xii). The revised lease rent has been fixed after following the procedure laid down under the regulations. The recommendations of the Committee were placed before the Port Trust Board, by which these were approved and sent to the MOST for approval. Before the approval could have been granted by the MOST, the TAMP came into existence. The rates were examined by the TAMP and notified in official Gazette dated 1 July 97. The TPT has implemented the revised rates based on the Gazette Notification of the TAMP and not simply on the recommendations of the Committee.

The Chief Engineer (TTPS) is also a trustee in the Port Trust Board and he could have raised his objections when the Board considered the lease rent revision. But the proposal was approved by the Board without objection of any kind.

Lease rates for each purpose of lease has been worked out based on approved principles, adopting common parameters for all the leases and also expecting returns of 12% on capital cost of land and 18% on the development cost as per normal financial principles. The same has been approved by the competent authority and notified in the Government Gazette.

The Tuticorin Chamber of Commerce and Industry

(i). The lands were acquired and given by the State Government to the TPT. The TNEB is an autonomous body constituted by the State Government. The Port functions largely on the TTPS coal handling and the revenue derived out of it. Any increase in charges for TTPS will be ultimately passed on to the consumer. Already the Electricity Board is running at a huge loss.

(ii). The TCCI strongly opposes an increase in Ground Rent for TTPS as any increase will violate the solemn undertaking given at the time of acquisition of lands by the State Government.

5. Comments received from the TPT and the TCCI were sent to the TNEB by way of feedback information. Further comments of the TNEB in this regard are summarised below:

(i). The lands were transferred free of cost to the TPT by Government of Tamil Nadu and the TNEB is a statutory body under the control of State Government. The TNEB has a right to object the exorbitant
charges of lease rent. Moreover the TNEB is a service oriented public utility concern and not like other commercial organisation. As there is no specific agreement between the TNEB and the TPT, TNEB is not bound by any policy guidelines of Central Government on fixing the lease rent as stated by the TPT. Constitution of Committee under the Chairmanship of the Chairman TPT is only for the betterment of port organisation and does not pertain to TNEB. As TNEB has not executed any agreement with TPT, the TNEB has approached the TAMP on exorbitant rise in lease rent.

(ii). All facilities like water, roads, electricity, sewage system are maintained by the TNEB only hence no development charges can be imposed by the TPT. The TNEB has right to use the public way. A “right of way” access to leased out land is a part and parcel of lease on land and cannot be claimed as amenities. The facility of general lighting is being installed by the TPT outside the TTPS, hence no charges can be levied by the TPT on the TNEB. The TNEB has its own treatment plant in the power station and residential camp. There are no open drains and sewer drains available for disposal of sewage form the camps and powerhouse of TTPS.

(iii). Only after the commissioning of TTPS, other industrial development has occurred giving the Major Port status to the TPT. On account of import of coal by the TTPS, the TPT has achieved the statues of Major Port in handling the highest quantum of cargo. The TNEB is paying for all charges claimed by the TPT for handling the coal and no specific consideration / concession is given by the TPT for this purpose and increased inward coal cargo has enabled TPT to achieve balancing of inward and outward cargo.

6. A joint hearing in this case was held the TPT. During the joint hearing the following arguments were made:

**The Tamil Nadu Electricity Board (TNEB)**

(i). We are a Port sector undertaking. Treat us differently.

(ii). Our Government gave land free of cost to the TPT. Why should the TPT earn on that without doing any improvement?

(iii). There is a move to take back the lands i.e., 450 acres occupied by us.
(iv). We accept a 5% increase per annum provided it is on the original rent of 11 paise per sq. mtr.

**The Tuticorin Port Trust**

(i). Cost on roads, cost on drainage, etc., are ‘common service facilities’ and, therefore, we spread the cost pro rata on all the (users) lessees.

(ii). We are giving the cheapest of the three rates to the TNEB treating them as a ‘Service Organisation’.

(iii). The rates are fixed in accordance to the guidelines and also recommended by Committee.

7. With reference to the totality of information collected during the processing of this case, and based on a collective application of mind, the following position emerges:

(i). The TNEB has repeatedly stressed that the land to the TPT was allotted originally by the Government of Tamil Nadu at free of cost. It is further argued that being a Government of Tamil Nadu Undertaking, it shall be given a concessional treatment while fixing the lease rent.

The land was allotted by the Govt. of Tamil Nadu for the Tuticorin Harbour Project free of cost as per the agreement reached between the Central and State Governments. Such transfer was apparently in the larger interest of the nation. The TNEB cannot resort to an argument that since its parent government had given the land free of cost, as a State Undertaking, it must get concessional benefits. It is to be recognised that income from estate rentals for any major port supplements the total revenue from port operations; and, the Major Ports are self-financing organisations.

(ii). It is surprising that no lease deed has so far been signed between the TNEB and the TPT regarding the lease of land in question. Be that as it may, in the event, the lease rents will be governed by the approved rate notified in the Scale of Rates for lease of lands of the TPT.

(iii). For revision of the Scale of Rates for its land with effect from 1 July 1997, the TPT has stated that the laid down procedure has been adopted. A duly constituted Committee, comprising representatives from the TPT, the State Government, and the Central Government, has reportedly examined all relevant aspects like market value of land
in and around Tuticorin Port area, cost of general development, etc., before recommending the revised lease rent. The Committee had reportedly followed the classification of lands that is followed in all the Major Ports. Based on such information, this Authority had also approved the revised rates and notified revised lease rents to be charged with effect from 1 July 1997.

(iv). In the revised Schedule of Rate of lease of lands, the port land has been classified as (a) commercial purpose; (b) industrial purpose and (c) residential and service purpose. Considering the TNEB as a service unit, the TPT has classified the land allotted to the TNEB under the ‘residential and service’ purpose. The land under residential and service purpose attracts the minimum lease rate amongst the three categories of port lands. By doing this classification, in a way, the Port Trust has extended a concession to the TNEB.

(v). The TNEB has maintained that no road, electrification, supply of water, etc., are provided by the TPT in the area under the occupation of the TTPS; but, the cost of development of such facilities has been considered by the TPT while working out the lease rent. The TPT has pointed out that the cost of development of such facilities considered in the calculation of lease rent is not for providing the facilities in the TNEB area but for the facilities already provided in the common utility areas which are also being used by the TNEB. Also, in respect of drainage, etc., the TPT has incurred substantial expenditure on creating major outlets which helps the minor outlets, within the TNEB area, to function effectively as a part of the total network. Since a Port Trust is not expected to carry out the municipal function by providing civic facilities in the common area without charging the lessees, the approach of the TPT to recover the cost of facilities provided in this common area through the lease rent is in order.

8. In the result, and for the reasons given above, the representation of the TNEB is rejected.

S.SATHYAM, Chairman

[Advt./III/IV/Exty./143/2000]