Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Sections 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby amends its earlier Order dated 29 October 99 about the rate structure of Gandhidham township land of the Kandla Port Trust as in the Order appended hereto.

(S. Sathyam)
Chairman

ORDER

(Passed on this 21st day of March 2002)

This Authority had passed an Order on 29 October 1999 approving a revision of the Rate structure of the Gandhidham Township lands as proposed by the Kandla Port Trust (KPT).

1.2. Subsequently, a corrigendum was notified on 31 December 1999 stating that the provision as regards levy of transfer charge @ 50% of the unearned increase was not approved as it was not within the mandate of this Authority.

2.1. In pursuance of the Order passed by this Authority on 29 October 1999, a number of representations were received from various user organisations for a review of the increase in rates approved. In particular, the Kandla Port Karamchari Sangh (KPKS) had sent a representation requesting to exempt from the purview of the Order the plots allotted to the employees under a Special Scheme sanctioned by the Government of India. The KPKS has made the following main points in its representation:

(i). The existing rates applicable for lands allotted to employees under Special Scheme came up for revision in 1993; and, after detailed consultations with the employees Union, a revised rate of Rs. 36/- was proposed which is still pending for approval with the Government.

(ii). Revision of the rate structure for the lands allotted to the employees cannot be included in the general revision because of the fact that such allotment has been made under the Special Scheme approved by the Board as well as the Central Govt. The Rate Revision Committee has also opined that hike in revision shall not be imposed for such allotments.

2.2. In the light of the request of the KPKS it was decided to review the earlier Order passed; and, to register the request as a review case.

3.1. A joint hearing in the review case was held on 8 March 2000 at the KPT premises in Kandla. At the joint hearing, the KPKS had filed another
petition against the revision of the land-rate structure in respect of Sector Nos. N.U. 3, 4 and 10-B at Gandhidham. In its petition, the KPKS had put forth the following arguments:

(i). Allotments of the plots to the KPT employees in Sector Nos. N.U.3, 4 and 10-B were made under the Special Scheme approved by the Board of Trustees of the KPT and the Ministry of Surface Transport.

(ii). Fixation of development charges for the residential plots in the above mentioned sectors has to be based on criteria fixed by the administration taking into consideration the actual amount spent for the development of these Sectors.

(iii). The development charges for the land allotted in the first phase in the year 1976 in Sector No. N.U. 10-B (Shakti nagar) was provisionally fixed at Rs.5.50 per sq. mtr; and, the development charges for the second phase of the land allotted in Sector No. N.U.3. (Apananagar) was fixed at Rs.11/- per sq. mtr. Subsequently, the provisional development charges fixed for these two Sectors were made as the final rate on the ground that the allottees of residential plots should get some sort of subsidy in the rate. The shortfall was covered from the commercial plots in the surrounding area.

(iv). The development charge fixed for the plots allotted to employees in Sector No. N.U.4 is Rs.22/- per sq. mtr. which appears to be unreasonable as compared to the development charges applicable in the Sector No. N.U.3, and Sector No. N.U.10-B.

(v). The development charges fixed for Block ‘A’ of Sector N.U.4 (Jagjivanram Society / Bhatnager Society) is a meagre sum of Rs.5.39 per sq. mtr whereas the development charges in respect of plots allotted to port employees in the remaining areas of the same Sector in Block ‘B’ to ‘E’ has been provisionally fixed at Rs.22/- per sq. mtr.

(vi). The development charge is around Rs. 5/- per sq. mtr. in Sector Nos. 2, 3 and 4 in Gandhidham area which are considered as posh localities. In light of this, the development charge of Rs.22/- per sq. mtr. levied in Sector No. 10-B appears to be on a higher side.

(vii). It is not correct to conclude that the plots have been allotted by the KPT at a lower rate since various expenses have to be incurred by the allottees life-long due to their distance from the main city. The port has not developed any basic facilities like shopping centre, schools, etc. Moreover, the plots allotted in the above Sectors cannot be sold by the allottees for a specific period.

(viii). Taking into consideration all the above facts, the Rate Revision Committee appointed by the KPT for revision of land rates, decided that the revision proposed by the KPT should not be made applicable to the plots allotted to employees under the Special Scheme sanctioned by the Government.

(ix). The development charge levied for Sector N.U. 4 is Rs. 22/- per sq. mtr., Rs. 9.25 to-Rs 22/- per sq. mtr in Sector N.U. 3 and Rs.5/- to Rs. 8.40 per sq. mtr. in Sector N.U.10. These rates have been uniformly increased to Rs. 400/- per sq. mtr. which appears to be unrealistic.

(x). In view of the foregoing facts it is clear that the formula to be applied in fixing development charge for Sector Nos. N.U.3, 4 and 10-B have to be the same. The provisional development charges for Sector N.U.4 may, therefore, be reduced from Rs.22/- per sq. mtr to Rs. 5.50 per sq. mtr.

3.2. During the course of the joint hearing, a point came up about staying this Authority’s Order dated 29 October 1999 in respect of the representation of the KPKS. The KPT, however, felt that it would be appropriate to stay the entire Order until disposal of the review case. Accordingly, this Authority stayed the implementation of the entire Order until disposal of the review case. At the joint
hearing, the KPT assured that the issue relating to revision of rates would be discussed again in the next meeting of its Board of Trustees whereafter it would make a further written submission.

4.1. The KPT did not furnish its written submission despite several reminders. The port continued to affirm that the matter would soon be discussed by its Board of Trustees. Reconstitution of the Board, earthquake in the Kutch region, etc. were shown as reasons for the delay. At last, in April 2001, the KPT conveyed the decision of its Board of Trustees to request this Authority to continue with the stay in this matter in view of the heavy damage to economy and civil structures in the Adipur-Gandhidham-Kandla complex area due to the unprecedented earthquake of 26 January 2001.

4.2. Accordingly, this Authority passed an Order on 16 May 2001 to extend the stay for a further period of six months from the date of publication of the Order in the Gazette of India; and, also directed the KPT to adhere to the extended time period for furnishing its written submission.

5.1. Subsequently, the KPT has submitted its revised proposal on 8 November 2001 for revision of the rates structure of the Gandhidham Township land. In its revised proposal, the KPT has made following points:

(i). The ground rent, development charges, transfer fees and any other charges in respect of plots allotted prior to 1 January 1999 are proposed to be charged as per the rates prescribed in the existing Scale of Rates.

(ii). The development charges, annual ground rent and transfer fees in respect of plots allotted subsequent to 1 January 1999 are proposed to be levied based on the revision as proposed vide Board resolution no. 131 dated 25 January 1999.

(iii). In respect of (i) above, it has proposed to review the position after 31 December 2003.

5.2. The above proposal was approved by the KPT Board in its meeting held on 17 October 2001 vide resolution No. 196.

6. In accordance with the procedure prescribed, a copy of the KPT proposal was forwarded to the various port users / representative bodies of port users for their comments. The comments received from them are summarised below:

Transport & Dock Worker's Union (TDWU)

(i). The KPT's proposal to levy existing rates as regards development charges, annual ground rent and transfer fees in respect of plots allotted prior to 1 January 1999 are acceptable in toto.

(ii). The revised rates proposed by the KPT in respect of plots allotted subsequent to 1 January 1999 are also acceptable.

(iii). The proposal to review the rates after 31 December 2003 in respect of plots allotted prior to 1 January 1999 is not appropriate. Instead the provision must be to review the rates proposed by the KPT in respect of plots allotted subsequent to 1 January 1999.

Kandla Port Karmachari Sangh (KPKS)

(i). The existing rates and the rates proposed by the KPT are very high. These rates may be brought down to a realistic level in light of the fact that there is lack of various facilities, amenities, etc. The revision of rates shall be based on the expenditure incurred by the Port Trust for various developments, facilities and amenities and not merely by way of a periodic revision.
(ii). If the rates need to be revised on or after 31 December 2003, it shall be made applicable for the lands allotted in future and not for the existing allotted land.

(iii). The people of Gandhidham-Kandla complex have sustained huge losses and damages due to super cyclone in 1998 and earthquake in the year 2001. In the light of this no revision in the rates structure shall be allowed for the next ten years. Further, any revision proposed shall be prescribed for the future allotments and not on the existing allotted land.

(iv). Concession may be offered by way of fixing ground rent and development charges on lower side in the case of lands allotted to Kandla Port Trust Employees under the Special Scheme of building own house.

**The Sindhu Resettlement Corporation Limited (SRCL)**

(i). The land admeasuring 2600 acres has leased by the Government of India since 1955 which is meant for further sub-leasing to its share holders on the terms and conditions as contained in Government of India’s lease deed.

(ii). Its rate structure is being revised periodically (generally every 5 years); and, does not match with that of the KPT’s revision, primarily because the concept and area of operations are different.

(iii). The proposal of the KPT appears to be applicable for all new allotments pertaining to the land owned by the KPT land; and, hence are not applicable to the land held by it.

**The Gandhidham Chamber of Commerce and Industry (GCCI)**

It has requested to maintain status quo upto 31 December 2003; and, to review the matter in its entirety thereafter.

7. A copy of the comments received from various port users were forwarded to the KPT as feedback information / comments. In response to the comments received from the various users, the KPT has confirmed that stands by its proposal made.

8. Since the processing of the revised proposal of the KPT was likely to take some more time; and, the stay granted earlier was to expire on 30 November 2001, another Order was passed extending the stay for a further period from 1 December 2001 till disposal of the revised proposal of the KPT.

9.1. A joint hearing in this case was held an 7 March 2002 at the KPT premises in Kandla. At the joint hearing, the following submissions were made:

**Kandla Port Trust (KPT)**

(i). Entire Municipal Administration-roads, water supply, electricity supply, and drainage was with us. Between 1975 and 1985 the administration of roads, water supply and electricity supply were given up. The administration of drainage even now is with us.

(ii). In the same vein, we have also been allotting lands.

(iii). We collect lease rent and ground rent to establish our title; and, to recover our Developmental Charges.

(iv). District Revenue authority is collecting much higher rates with respect to the current market values. We are not on that track. We have not to take into account stamp duty, etc. We only go by our Development Charges.

(v). There are three components of rates applicable on land:
(a). Development Charges as a one time payment.

(b). Ground Rent is collected annually @ 2½% of Development Charges.

(c). Transfer Fee.

(vi). 1 January 1999 is the cut-off period. Old rates shall apply to old leases even for transfer. That is our Board’s proposal.

**The Gandhidham Chamber of Commerce and Industry (GCCI)**

(i). There is no logic in the rates proposed earlier. The increase proposed are abnormal.

(ii). The earlier Board Resolution and the TAMP Order must be rescinded. The new proposal is okay.

**Kandla Port Karamchari Sangh (KPKS)**

A very nominal rate is applied on leases to employees. But development charge is being levied on par with all others. We must be protected.

**The Gandhidham Property Dealers Association (GPDA)**

(i). We are also residents of Kandla. We help the public to transact their property dealings. That is our interest in this case.

(ii). Let the KPT charges ‘Process Fee’ and not ‘Transfer Fee’. The formula can be different and need not be tied to development charges.

(iii). Land is likely to be returned to Gujarat Government. Why then meddle with the rates now?

**Transport and Dock Workers Union**

(i). If the TAMP accepts the new proposal there will be no problem.

(ii). Employees were allotted lands under a Special Scheme. They must, therefore, be exempted from this increase.

(iii). Employees Special Scheme is a unique scheme in the KPT. Any proposal to apply general rates in cases of employees will militate against the concept of the Special Scheme.

9.2. At the joint hearing, the GCCI and the GPDA have filed further written submissions which are summarised as follows:

**Gandhidham Chamber of Commerce and Industry (GCCI)**

(i). The Authority in its Order dated 4 February 2000 for common adoption at all the major ports has ordered that in the absence of a specific provision in the Major Port Trust Act, there can be no levy of fee for permitting transfer/mortgage of leasehold rights; and, this Authority does not have the jurisdiction to accord approval for levy of any such fees.

(ii). Without prejudice to the above, it is stated that the KPT has already allotted the entire developed land to the public long back. The KPT has not made any further developments on these land thereafter.
The allottees have fully paid the prescribed development charges. Now, only the yearly ground rent at the rate of 2.5% of the development charges has to be paid as prescribed in the lease agreement.

The KPT has earned a huge amount by way of the development charges, ground rent and transfer fees which is kept as reserve fund. The KPT is earning interest thereon which is not utilised for development of the allotted Sectors. The KPT has failed to develop facilities like gardens, schools, hospitals, etc., in all the allotted Sectors though it was envisaged in the master plan of the Township.

Since the KPT has already transferred the civic functions viz. maintenance of roads, water supply lines, drainage and sewerage lines, sanitation works, etc., to the local authorities, it does not have to incur any expenditure on these activities.

The KPT and the TAMP have not applied mind or any rational or scientific formula; and, have not followed the prevailing precedent in revising the rates. The KPT has neglected the principle of natural justice and has proposed to enhance the existing rates to the tune of 842% to 3333%.

There is multiplicity of recovery of transfer fees on the false interpretation of definition of unearned increase. In fact, there is no such unearned increase as interpreted by the KPT. The approach adopted by the port is totally unauthorised, illegal, unrealistic, unethical; and, hence invalid.

In view of the above facts there appears to be no good reason to approve the revision of rates proposed by the KPT.

The KPT is not vested with any powers to revise the rates for development charges, ground rent, transfer fees, etc., relating to township land under Section 29 of the Major Port Trust Act, 1963.

The Gandhidham Property Dealers Association (GPDA)

It unanimously supports the decision of the KPT Board of Trustees of not revising the rates of Gandhidham Township Land till the year 2003.

The proposal for handling over the Kandla Complex Land to the State Government is under process. The reasons for proposing the revision of rates is, therefore, not understood.

It has requested to keep in mind the Order passed by the Authority as regards levy of fees for permitting transfer / mortgage of lease hold rights.

The KPT has also furnished formats of the Ninety Nine Years Lease Deed (Old format) and Thirty year's Lease Deed (New format) at the joint hearing alongwith a background note on its proposal.

With reference to the totality of information collected during the processing of this case, the following position emerges for consideration:

At the outset, it is to be clearly understood that this review proceeding has been admitted by this Authority not for revising the rates already approved by it in October 99; but, only for reconsidering the applicability of the revised rates in leases granted with reference a cut-off time frame.

The lease rates for lands have already been decided after hearing all concerned. The methodology adopted by the KPT in proposing the revised rates was also in line with the Guidelines (issued by the Government) on the subject. That being so, there is no case to consider again the arguments of the GCCI made now about increase in
rates. If anyone is aggrieved at the increase in rates already allowed, then he has to agitate the issue before a higher judicial forum or the Government. If he still wants this Authority to review the rates, then he has to file a petition pointing out the errors apparent on the face of the records warranting a review of the earlier Order.

(ii). The GCCI has raised a preliminary objection relating to the statutory competence of this Authority to revise development charges, ground rent, transfer fee, etc., relating to township lands of a Port Trust.

The position regarding transfer fee has already been settled; and, this Authority, through a Gazette Notification, has made it known to all that it does not have the jurisdiction to approve such fees. This position has also been clearly brought out in the corrigendum issued to the Order relating to revision of rates of the Gandhidham lands of the KPT.

This Authority vide its Order dated 15 March 2000 has clarified the correct legal position in respect of its power to prescribe rates for use of Port properties. In that Order, a detailed analysis of various legal provisions has been made to arrive at the conclusion that this Authority has jurisdiction over all the properties and assets, wherever located, of a Major Port Trust for the purpose of framing Scale of Rates and Statement of conditions. The Gandhidham township lands are properties of the KPT; and, development charges and ground rent are levied for use of such properties. That being so, there can be no doubt about this Authority’s statutory power over prescribing such rates.

It is noteworthy that the GCCI participated in the proceeding relating to fixation of rates for Gandhidham land in the year 1999 without expressing any reservation over this Authority’s jurisdiction. The stand now taken by the GCCI contradicts its submission earlier to the jurisdiction of this Authority and gives rise to an opinion that it has perhaps been made as an after thought to divert the proceeding from the real issue at consideration. It is to be recognised that the owners of the properties i.e. the KPT, have taken the correct action by approaching this Authority to approve its proposal in recognition of the unambiguous distinction made in the Statute about the role of the owner/operator and the Regulator.

(iii) As has already been mentioned, the issue of the jurisdiction of this Authority to prescribe ‘transfer fee’ / ‘mortgage fee’ has already been settled. It has also been clarified that the intention of this Authority was not to declare ‘transfer fee’ / ‘mortgage fee’ as illegal. The legal position is that this Authority does not have the jurisdiction to approve such levies in the absence of a specific provision therefor in the Major Port Trust Act. This Authority has not asked the Port Trusts to stop recovering such fees. The Port Trusts can, at their discretion and responsibility, take their own decisions on the subject without involving this Authority.

Even though the position explained above has already been communicated to all the major ports and the Government, this Authority likes to reiterate its earlier decision in this case since it transpires that the KPT levies a transfer fee on its lands at the Gandhidham township.

(iv). The proposal of the KPT has been endorsed by almost all users. That being so, this Authority is inclined to approve the proposal in partial supersession of its earlier Order dated 29 Oct 99.

(v). The primary issue which has given rise to this review is the applicability of revised lease rent on lands allotted to employees of the KPT under a Special Scheme. Since such lands have been allotted well before 1999, the proposal of the KPT automatically excludes them from the preview of revised rates. It is noteworthy that the major trade unions of the KPT have unanimously endorsed the proposal of the KPT.
While requesting to exempt the lands allotted prior to 1 Jan 99 from the preview of revised rates, the KPT has proposed to review this position after 31 Dec 2003. There have been some objections from the users’ side to this proposal. It is to be recognised that a review of the existing rates does not necessarily result in an upward revision of rates. Such periodic reviews are necessary not only to adjust tariffs but also to remove irrelevancies, if any, due to changes in various inputs and environmental factors.

Even though this Authority has prescribed a tariff cycle of two years, considering the fact that the rates fixed in this case relate only to lands in the township, a review at the end of the five year period seems reasonable.

The KPT has proposed such a review only in respect of lands allotted prior to Jan 99. But, it will be reasonable to review after 5 years, i.e., by January 2004, the entire rate structure without distinguishing between leases by tenure.

There have been some complaints from the user side about certain basic amenities not provided in the township. It is to be recognised that the core area of competence of a Port Trust is managing cargo and vessel operations and not municipal administration. This Authority observed in its earlier Order that the KPT should not be wasting time on township development and management. In this backdrop, it was suggested that the KPT should consider selling lands in the Gandhidham Township to the public following a competitive bidding process. This Authority reiterates its views on this issue and suggests that the KPT may initiate necessary action, with the approval of the Government, in this direction.

Till formulation of its own guidelines, this Authority has adopted the guidelines issued by the Government from time to time governing lease / licence of Port Trust lands. The KPT has confirmed that it follows the Government guidelines in cases of new leases; and, those leases granted prior to issue of such guidelines are governed by the provisions in the respective lease agreements. This is a reasonable arrangement since the guidelines issued / changes made after execution of a lease agreement cannot be seen to alter it unless the lease agreement is seen to be violative of any provision in the statute and / or the basic principles adopted by this Authority in tariff setting.

In the result, and or the reasons given above, and based on collective application of mind, this Authority approves the following:

(i). The interim stay of operation of the Order dated 29 Oct 99 is vacated.

(ii). The revised rates approved vide Order dated 29 Oct 99 will not apply in respect of plots allotted prior to 1 Jan 99; the pre-revised rates will continue to apply in these cases.

(iii). The revised rates approved vide Order dated 29 Oct 99 will apply in respect of plots allotted on or after 1 Jan 99.

(iv). The entire rate structure will be reviewed in January 2004.

(S. Sathyam )
Chairman

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