Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Sections 48, 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the representation of the Indian Bargeowners’ Association for amendment to the Section I and II of the Mumbai Port Trust Scale of Rates charged at the Bunders as in the Order appended hereto.

(S. Sathyam)
Chairman

The Indian Bargeowners’ Association (IBA) - - - Applicant
Vs
The Mumbai Port Trust (MBPT) - - - Respondent

ORDER

(Passed on this 11th day of March 2002)

This Authority had passed an Order on 19 July 2000 amending Section I and II of the Mumbai Port Trust (MBPT) Scale of Rates charged at the Bunders. While approving the proposed rates, this Authority also advised the MBPT to improve the overall facilities provided at the Bunders.

2.1. With reference to the Order of this Authority, the Indian Bargeowners’ Association (IBA) has submitted a representation for staying the increase in charges till the MBPT presents a true picture of the Bunders and also to give an opportunity to the IBA to present its case.

2.2. In its representation, the IBA has made the following points:

(i). The major portion of the capital expenditure is incurred by the MBPT towards providing amenities for the fishing industry at Sassoon docks and adjoining bunders, which are not available or utilised by the Barge-owners. Many of the bunders have been converted or occupied as follows:

<table>
<thead>
<tr>
<th>No.</th>
<th>Bunder</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Mallet Bunder</td>
<td>Fishing only</td>
</tr>
<tr>
<td>2.</td>
<td>Frere basin</td>
<td>Container stuffing/de-stuffing</td>
</tr>
<tr>
<td>3.</td>
<td>Reti Bunder</td>
<td>Ship Scrapping</td>
</tr>
<tr>
<td>4.</td>
<td>Lakri Bunder</td>
<td>Sand &amp; Timber North Jetty, totally occupied by squatters</td>
</tr>
<tr>
<td>5.</td>
<td>Coal Bunder</td>
<td>South Portion – part hard and part occupied by squatters North &amp; West - occupied by squatters</td>
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</table>
There is no merit in the contention of the MBPT that it has incurred an expenditure of Rs.11 crore on bunders, which in fact represents the money spent only on Sassoon docks for fishing.

The MBPT has suffered loss of revenue because of ships avoiding MBPT due to the higher port charges levied by the MBPT, which are based on historical calculations and not commercial considerations.

The only vessels operating currently are the bulk liquid tanker barges. The dry cargo lighterage trade is almost extinct.

In view of the drop in throughputs, the current increase in tariffs will completely wipe out the viability of operations of the Barge-owners.

In this backdrop, the IBA has requested the following:

(i). Implementation of the increase allowed in the Bunder charges be stayed till the MBPT presents the true picture and the IBA is given an opportunity of being heard; and,

(ii). to collect a licence fee on pro-rata basis, rather than on a monthly hire basis. This will help alleviate the sufferings of the barge owners, who currently have to pay charges for the entire month, even if the bunder is used merely for few hours.

In pursuance of this Authority’s Order dated 19 July 2000, the MBPT was requested to intimate the present position with reference to the overall improvements made at the Bunders; and, to inform about the present position on the following specific points made in the Order of this Authority:

(i). Availability of drinking water facility at the fish harbour.

(ii). The facilities provided at the Bunders.

(iii). The improvement of facilities at the Hay Bunder to decongest it in view of allocation of Haji Bunder for hazardous cargo.

(iv). Steps for providing more facilities to decongest the Bunders in view of registration by the MBPT of 1800 boats as against the capacity of 700 boats.

The IBA has submitted another representation stating that the licence fees may be collected on a pro-rata basis.

In accordance with the procedure prescribed, a copy of the representation of the IBA dated 30 September 2000 was circulated to the MBPT and all the concerned users / representative bodies of Port users for comments. The comments received are summarised below:-

**Mumbai Port Trust (MBPT)**
With reference to the overall improvement made in the Bunders, the MBPT has furnished the following comments:

(i). The MBPT is pursuing with the Municipal Corporation of Greater Mumbai (MCGM) for laying of water pipelines to overhead water tanks in the Sassoon fish harbour to be executed by MCGM, which is waiting for clearance from its Traffic Department. The matter has been taken up with the Senior Officers of MCGM for immediate commencement of the work and it is hoped that the work will be completed soon.

(ii). The proposal for an upward revision of the Bunder Scale of Rates was made for reducing the operational loss suffered by MBPT. The facilities provided at bunders have also improved.

(a). At the Boat Hards at Coal bunders, about 300 unauthorised encroachments from the wharf and hard areas have been removed. The cleaning operation has now made area available for repairing of about 100 crafts as against the earlier availability of space for only 10 crafts.

(b). Regular dredging has been carried out in the areas like Gateway of India, Sassoon Dock, New Ferry Wharf, Mallet Bunder, Hay Bunder and Haji Bunder.

(c). It is proposed to put a sufficient number of light poles for better illumination of the boat hard and the wharf. The process of procurement in this connection has already started.

(d). The process of re-construction of the quay of Hay Bunder berth No.3 and 4, which was damaged in the Monsoon of 1997-99, has already started. Reconstruction of Phase-I of wall portion admeasuring 200m will be completed by August 2002 and the remaining damaged portion is likely to be completed by June 2003 at a total cost of about Rs. 5.70 crores. In the meanwhile, areas at the Haji Bunder wharf and the sheds are permitted to be used by sailing crafts of the Hay Bunders.

(e). Against the capacity of 700 boats at the Sassoon Dock the Port has registered about 1800 users. Because of a slump in the fishing trade in the last 2 to 3 years, only 1000 boats are presently operative at the Sassoon Dock. The Ministry of Agriculture may consider creation of additional capacities in the fishing harbour in view of the construction of New Sassoon fish harbour. However, for the present the crafts are adequately and satisfactorily serviced at the existing facilities.

(iii). With reference to the representation of the IBA, the MBPT has furnished the following comments:

(a). Out of 8 bunders, Frere Basin was not utilised by the Bunder traffic for over one and a half decades, which has now become the dock area. Facilities for operations are determined by the volume of such type of users. The barge traffic has over the years shrunk and is mainly located at the New Ferry Wharf berth No.1 and 2, the South Wharf of the Mallet Bunder, and the Hay Bunder. The barge traffic mainly caters to bunkering, water supply and edible oil or liquid / fatty acids and hazardous cargo to a certain extent. The bunders specified above have adequate surplus capacity to berth and operate.

(b). Even without the investment of Rs.11 crores, it was necessary to revise the charges which had been accepted by the Authority. In the year 1999-2000, the MBPT spent 2.36 crores on repairs and maintenance, rates & taxes, other miscellaneous expenses at the bunder areas which was considered for working out the remunerativeness of the service ‘General cargo handled at the Bunders’. Of this
only 19% has been spent on the areas catering to the services rendered to the fishing trade. Similarly in the year 2000-01, the amount spent was Rs.2.21 crores out of which approximately 20% was incurred in respect of the fishing trade. In addition, the port has to spend a substantial amount on the administration and manning of the bunders, which indicates that a major portion of expenditure is incurred in respect of areas used by boats, barges and crafts engaged in conveyance of cargo other than fish at the Bunders.

(c). The declining traffic at the Port cannot be attributed to the higher port charges as the Port element in the cost of cargo handling is only 5%. Charges levied by other agencies is also a reason for high cost at the Mumbai Port on which the MBPT has no control. One of the issues in this connection is the High Terminal Handling Charges (THC) levied by the vessel owners on the cargo discharged and shipped onboard the vessel at the MBPT Docks for which the proposed charges have been submitted to the TAMP for seeking its approval. The MBPT is providing the services to cover its cost and not to earn a profit therefrom. In view of considerable investment made by the MBPT to provide additional facilities to the Trade, it is very logical that the charges have to be increased. The rates are revised nearly after a decade; and, a reasonable increase was proposed so that there would be no adverse impact on the Trade.

(d). There is a perceptible shift in the trade as earlier vessels used to wait for the berths and thus the lighterage was taking place during the waiting period. For the last 4 to 5 years, the vessels are getting berths on arrival. In such a situation, lighterage is not required and hence the dry cargo lighterage trade has become almost extinct.

(e). The increase is effected with the approval of the TAMP; and, the IBA was given an opportunity to put up their case in the hearing fixed by the TAMP. Further, this increase shall recover the cost of services only partially; additional resources have to be brought in by the MBPT from other sources.

(f). The system of charging on a pro-rata basis for the period of stay of barge at the Bunder was in existence prior to 1991, which used to be very cumbersome and led to disputes by the users on various grounds. The Bunders, unlike docks, are vast open areas, with no control on berthing / un-berthing of boats, barges and vessels which are in very large numbers.

(iv). The revision in Section I and II of the Scale of Rates charged at the Bunders, already sanctioned by the TAMP, needs to be continued.

**Mumbai Bunder Launch Malak Mahasangh (MBLMM)**

(i). The MBPT had incurred considerable expenditure in updating the facilities at the Sassoon Dock for fishing and totally neglected other Bunder areas. The launches plying from the Ferry Wharf and the Gateway of India are mainly for passengers whereas the launches using the Ballard Pier are exclusively for transportation of ship's stores / workshops.

(ii). The MBPT has kept the charges for launches starting from the Gateway of India and the Ferry Wharf unchanged at Rs.10/- per month per GRT; but, increased the rate charged for the launches starting from the Ballard pier from Rs.10/- per month per GRT to Rs. 50/- per month per GRT where the MBPT does not provide the services like lights, repair garage, portable water, monsoon shelter and dredging of boat hard basin.

(iii). With the declining port traffic, the launch service providers are burdened with a high operating cost on the one hand and loss of revenue on the other. Hence, it is neither wise nor prudent to pass on this additional burden on the shipping lines which will
have an adverse effect on the otherwise declining port traffic. With the up-coming of several modern ports, substantial port traffic is getting diverted.

(iv). The staggering increase of 500% in the licence fee is not justified and is certainly not a mature decision as the MBPT is not providing any additional facility or service to the launch operators at the Ballard Pier. Also, it will forbid shipping lines to call at the MBPT due to high overheads.

Maharashtra Sagari Matsyavayasaik Sangh (MSMS)

(i). The capital expenditure incurred on the construction of the new Sassoon Dock fishing harbour was actually provided by the Union Agriculture Ministry. About 50% of the land was acquired for a Botanical Garden on which an expenditure of about 2.63 crores was incurred from out of the grant of the Union Agriculture Ministry. Thus the fisherman and their cooperatives were deprived of from availing use of 50% of the land, which disabled them to get the required facilities as are made available at the fishing harbours in other states.

(ii). An amount of Rs.1.50 crores has been given to the MBPT as a grant for laying pipelines by the Mumbai Municipal Corporation at the Sassoon Dock for supplying drinking water which is in progress.

(iii). Basic amenities like drinking water, dispensary, canteen and rest halls are yet to be made available by the MBPT and on the oral assurance given by the MBPT, the fisheries cooperatives and their fishing boat owners have already obtained the requisite licenses with reference to the revised Scale of Rates.

(iv). The Barge-owners activity and the fishery activity are altogether different from each other and can not be compared with each other.

Karanja Machhimar V.K.S. Society Ltd. (Karanja-Uran)

(i). We endorse the remarks made by the Maharashtra Sagari Matsyavayasaik Sangh.

Indian Merchant Chamber (IMC)

(i). We have gone through the representation of the IBA and we have no comments to offer on it.

4.2. The comments received were sent to the MBPT and the IBA as feed back information.

5. The MBPT has furnished the following further comments:

(i). The issue relating to the increase in the payment of the licence fee for water conveyance for launches plying from the Ballard Pier has already been settled by the TAMP vide its Order dated 14 February 2001 rejecting the representation of Mumbai Ship to Shore Launch Owners’ Association. Accordingly, a circular was issued stating that only licence fee for water conveyance will be levied on these launches and licence fee charged under Section I of the Scale of Rates at the Bunders will not be recoverable as and when they call at the Bunders.

(ii). The Ballard Pier is a prime location for the launches engaged for transportation of ship’s stores/workshop crews and material from Mumbai Port to the vessels anchored in the inner anchorages at the Mumbai Harbour and is located at a developed area of the Docks with proper illumination, portable cabins available on nominal rent and required depth is maintained at this location. The licence fee is charged only once a month inspite of plying of launches to and from the Ballard Pier several times a day.
(iii). The Gross Registered Tonnage of the launches plying between the Ballard Pier and the ships anchored in the stream ranges from 10 to 50 with the charges payable ranging between Rs.500/- to Rs.2500/- per month. The amount charged for the services provided by the MBPT to these launches cannot be considered high. The statement made by the launch owners that only 30% of the tankers are calling at the MOT Pir Pau is not correct in view of the statistics which reveals that in the year 2000-01 the number of tanker vessels calling at the MOT and Pir Pau had reduced just by 10% as compared to the previous year.

(iv). It is not true that the fishermen and their co-operatives were deprived of 50% of the area in the New Sassoon Fish Harbour as due to bitter opposition to the NSFH from the residents in the area, it was decided to use 50% of the area for environmental and ecological up-gradation as a bargain; and, the Union Agriculture Ministry decided to develop a Botanical Garden. As regards providing basic amenities like drinking water, dispensary etc., the MBPT is pursuing the matter with the MCGB. The work is to be executed by the MCGB who is not able to take up the work on account of non-clearance by its Traffic Department. The matter has been taken up with the higher authorities of the MCGB for immediate commencement of the work. Arrangements have also been made for maintaining cleanliness of the wharves.

(v). With regard to providing rest hall and dispensary, the space has been earmarked but, the MBPT will not be able to implement any other work pending transfer of the land in its name. The MBPT is pursuing the matter with the Ministry of Agriculture for transfer of title of the land. In respect of the registered Fishermen's Co-operative Society, the recovery of licence fee on the auxiliary services provided at the fishery jetties has been fixed at 50% of the levy; and, hence, the MBPT has granted sufficient concessions to the fishermen.

6.1. A joint hearing in this case was held at the MBPT premises on 22 June 2001. At the joint hearing the following points were made:

**Indian Bargeowners Association (IBA)**

(i). We are giving a written submission today. Please consider that.

(ii). The port has to provide not just a jetty, but also several other services. If the Port concerned is not able to do that adequately, it engages others to do that. We do it for them. Please treat us like agents of the Ports.

(iii). We were paying only Monthly Licence fee (MLF) earlier. Water Conveyance charge was introduced about 3 years ago. This was introduced to cover barges going through the MBPT without any operation. Such a charge should not apply to regular barges. We should be charged for only either one of the two – MLF or Water Conveyance.

(iv). We should be charged on a pro-rata basis. The MBPT feels that it is cumbersome; but, it is not. They collect and keep all the relevant details.

(v). The lighterage operations have dwindled. If rates are not lowered, it will stop altogether.

(vi). Because of drop in traffic, as argued by the MBPT, vessels can go directly without any need of lighterage. But, draft is declining and this forces vessels to go in for lighterage.

(vii). The MBPT claims various improvements. Nothing of this has happened. The conditions remains the same.
(viii). The MBPT talks of operational losses. The Port must increase efficiency and productivity and not just increase the rates.

(ix). Rates were increased six months ago. Have revenue earnings gone up? No. The MBPT must take note of this.

**Mumbai Bunder Launch Malak Mahasangh (MBLMM)**

(i). The number of vessels has gone down (because of the JNPT). Vessels have also started restricting use of launches (because of high cost).

(ii). Ferry Wharf – only Rs.10/-; for Ballard Pier – Rs.50/-. Actually they do more activities. How can we be charged so much?

6.2. It was decided in the joint hearing that there would be a visit to the Bunders. As decided, the Chairman visited the Bunders on 31 October 2001 accompanied by the representatives of the MBPT. Although intimated in advance, the representatives of the IBA could not join during this visit due to a possible communication gap. They, however, met the Chairman on 9 November 2001 and presented their views.

7. The IBA has submitted a representation on 31 October 2001. In its representation, the IBA has sought the following relief:

(i). To recover only boat hard fees when the barges are at the boat hard for repairs.

(ii). To identify and demarcate the boat hard repairs area.

(iii). To recover bunder licence fees on a per day basis.

(iv). To retain the earlier rate of licence fees of @ Rs. 10/- per GRT.

(v). To recover only one of the charges i.e. either water conveyance or licence fees and not both.

(vi). To exempt from port dues and pilotage, like passenger launches.

8. The MBPT has given the following further comments on the issue relating to levy of boat hard fees:

(i). Monthly licence Fees (MLF) are payable by the Barges, Crafts and the Boats registered; and, using Bunders. The charges prescribed under Section I of the Bunder Scale of Rates (BSR) are recovered on a monthly basis for use of the Bunder Wharf, Bunder Basins and other facilities provided therein.

(ii). Prior to 1991, different charges for different services rendered at the Bunders were recovered mostly on per day basis. No separate recovery is made in respect of cargo handled by the barges except at Hay Bunder, Haji Bunder, Malet Bunder and New Ferry wharf.

(iii). There is no system to recover the MLF on a per day basis. A rebate of four month’s licence fees is being granted to the users if they opt for payment of charges on annual basis.

(iv). The charges prescribed under Section III (II) of the BSRs are for rendering different services for which separate charges are levied. These charges are levied for occupation of the MBPT hard by the craft for carrying out repairs and
maintenance. The boat hard charges are payable on ‘per GRT per day’ basis from the date of occupation of the hard for the purpose of construction/ repairing.

(v) The contention of the IBA that the MBPT collecting two kinds of charges at the same time for a single service is not correct. Bargeowners are liable to pay both the MLF under Section I of the BSR for the craft utilising the services at the Bunder Basins and Hard charges under Section III of the BSR when the boats and the barges are occupying the hards. These are two separate activities.

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

(i) The BSR of the MBPT was revised by this Authority in July 2000 after a lapse of nearly 10 years since the previous revision / rationalisation of rates was done. While approving the BSR in July 2000, it was found that the increase in rates allowed would only reduce the operating loss suffered by the Port and might not adequately cover the total operating cost and the desired return on capital employed.

(ii) The representation made by the IBA primarily seeks relief from the increase in rates ordered in July 2000. In support of its representation, the IBA has argued that a major portion of the expenditure incurred by the MBPT relates to the fish harbour and that the MBPT has not done anything to improve the facilities provided at the Bunders.

(iii) The MBPT has clearly brought out that only 20% of the total expenditure incurred are on services provided to the fishing trade; and, the major portion of the expenditure relates to the areas used by boats / barges engaged in conveyance of cargo other than fish. In addition, the MBPT has also listed out the various measures taken to improve facilities provided at the Bunders. They include removal of encroachment from the Bunder area, regular dredging, provision of lighting, etc. The MBPT has also indicated that it has already embarked on a project cost of Rs. 5.7 crores towards reconstruction of the quay wall of the Hay Bunder.

(iv) There can be an expectation that the MBPT shall provide all required facilities at the Bunders and maintain them in a perfect condition. Perhaps, the MBPT would have also done that if the activities at the Bunders had proved to be a remunerative service. As has already been mentioned, and brought out by the MBPT now, providing services at the Bunders has been an unremunerative service to the MBPT. In such a condition, it can only provide certain minimum facilities. It may also not be reasonable to expect any major capital investment by the MBPT to improve the facilities at the Bunders on considerations of financial viability.

Since the barge-owners require certain standard of facilities and the MBPT is not in a position to meet such a requirement, it may be useful if an earmarked Bunder area is licensed to the Barge Owners’ Association, which can undertake to maintain them and levy appropriate charges from its members. Eventhough licensing of port facilities do not fall within the jurisdiction of this Authority, in the interest of providing better facilities to the Trade, even a suggestion in this regard was made informally to the IBA when its representatives met the Chairman (TAMP) to present their views. This suggestion did not evoke any positive response from the side of the IBA. If the Port Trust maintains the Bunders, it has to recover the expenditure thereon through tariffs. If that were to be so, then, the question of revising and reducing the tariffs fixed leaving a cost deficit does not arise at all.

(v) Another issue raised by the IBA relates to payment of licence fee for water conveyance (under Pilotage, Towage, etc., Order) and a licence fee under the BSR. This Authority had already passed an Order on 14 February 2001 disposing of a representation submitted by the Mumbai Ship to Shore Launch
Owners’ Association on this issue. In that case, this Authority had already amended the respective SORs of the MBPT to prescribe that vessels paying licence fee under one SOR of the MBPT would not be required to pay licence fee under the other SOR. With reference to a request to clarify some of the associated issues, it has already been conveyed to the MBPT that the monthly licence fee as per BSR is payable by the vessels registered with the Bunders. This registration is to be regulated by the MBPT rules in this regard. The ‘other’ vessels will pay licence fee for water conveyance as per the Pilotage, Towage etc., Order. Charges are to be recovered based on the category of registration of vessels with the MBPT. In view of this position, barges cannot be required to pay both the licence fee under the BSR and the water conveyance charge. The levy of licence fee will be regulated based on the category of registration of the barges with the MBPT.

(vi). The licence fee payable under the BSR is levied once a month. The request is to reduce the frequency of levy so that the barges may be exempted from paying such fee when they do not use the facilities at the Bunders. The MBPT has brought out the problems faced by it in monitoring the movement of barges in the Bunders and the related accounting for the purpose of billing. It is noteworthy that the Bunders are an open area and it will be difficult to monitor the movement of vessel traffic. It is relevant here to mention that the issue of monitoring of vessel movement at the fish harbour was also raised by the VPT when the case relating to fixation of charges leviable at its fish harbour was considered. Provision of service at the Bunders is already an unremunerative service for the MBPT; and, if a monitoring system which is not easily enforceable is prescribed, there will be a further drain in its revenue. The existing frequency of licence fee at the Bunders is, therefore, allowed to continue. Nevertheless, the MBPT may further examine the possibility of reducing the frequency at the time of formulating its proposal for the next revision of the BSR.

(vii). The IBA has also raised an issue relating to levy of monthly licence fee for use of the Bunders as well as the boat hard fee when vessels use the repair yards at the Bunders. This issue has been raised by the IBA after the joint hearing in this case was over. Nevertheless, its representation in this connection was referred to the MBPT for its comments. The comments furnished by the MBPT clearly indicate that levy of licence fees and boat hard fees are for two different facilities. Even though the boat hard may be situated within the bunder area, boats are admitted there for a special purpose. While the licence fee is to be seen as an entry fee for using the bunders, the boat hard fee assumes the nature of a charge for use of a specialised facility. That being so, the request of the IBA for not levying licence fee when boats are placed for repairs in the hard cannot be said to be reasonable and, therefore, cannot be accepted.

(viii). Like the issue of boat hard fees, the IBA has also raised the issues relating to payment of Pilotage and Port Dues after the joint hearing in this case was over. Levy of Pilotage is governed by the MBPT Pilotage, Towage, etc., Order, and not under the BSR. The MBPT has already intimated that it has taken up an exercise to revise the Pilotage, Towage etc., Order. The issue agitated by the IBA will be considered while deciding the proposal (to be received) for revision of Pilotage, Towage, etc., Order.

10.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority rejects the representation of the IBA for staying the Order passed on 19 July 2000 amending the BSR of the MBPT.

10.2. The MBPT is directed to levy either the licence fee for water conveyance under Pilotage, Towage etc., Order or monthly licence fee under the BSR based on the category of registration of the barges with the MBPT, as per the amendments to the respective Scale of Rates prescribed vide the Order of this Authority dated 14 February 2001.

(S. Sathyam)
Chairman

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