Tariff Authority for Major Ports

NOTIFICATION

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 proposal of the Jawaharlal Nehru Port Trust (JNPT) for fixation of minimum reserve price for allotment of open space in the Hawkers Zone in the JNPT premises as in the Order appended hereto.

(S. Sathyam)
Chairman

Case No. TAMP/ 33/2002 - JNPT

The Jawaharlal Nehru Port Trust

Applicant

ORDER

(Passed on this 8th day of April 2002)

This case relates to a proposal from the Jawaharlal Nehru Port Trust (JNPT) for fixation of minimum reserve price for allotment of open space in the Hawkers Zone in the JNPT premises.

2. The JNPT has made the following points in its proposal:

   (i). The JNPT has decided to develop a Hawkers Zone in the JNPT and allot 200 nos. of plots to Project Affected Persons (PAPs) on licence basis for a period of 10 years.

   (ii). The port will give necessary infrastructure for water supply, drainage and electricity and also develop the plot including land filling, soling, pitching, etc.

   (iii). A Committee consisting of Port Officers was set up for fixing the Minimum Reserve Price (MRP). It was also decided by the Board of Trustees that the allotment would be made to Project Affected Persons (PAPs) in view of the commitment of the Port towards the PAPs, at 40% of the MRP so arrived at by the Committee.

   (iv). The Committee has examined the issues of fixation of MRP for the plots by taking into account 3 scenario available, i.e., land cost as per
JNPT notified tariff, CIDCO Rate, and Government of Maharashtra rate. The elements of civil and electrical capital and maintenance costs have been added to the land cost and the final MRP has been arrived at on the basis of the average of the rates of the three scenarios. The Committee has recommended the MRP as –

(a) Rs.15,000/- for a plot of 4.5 sq. mtr.; and,

(b) Rs.32,500/- for a plot of 10 sq. mtr.

These recommendations are after taking into account 40% of the rate arrived at.

(v). The proposal to fix MRP at the rates recommended by the Committee were placed before the Board of Trustees in its meeting held on 22 February 2002 and the Board approved the proposal.

3. In accordance with the procedure prescribed, a copy of the proposal of the JNPT was forwarded to the Bombay Chamber of Commerce and Industry and the Indian Merchant Chamber for comments by 12 April 2002. The JNPT was also requested to furnish name and address of the concerned representative body of land users. On behalf of this Authority, the JNPT invited representatives of the PAPs to the joint hearing.

4. A joint hearing in this case was held on 5 April 2002 at JNPT Office in Mumbai. At the joint hearing, the following submissions were made:

**The Jawaharlal Nehru Port Trust (JNPT)**

(i). We are not charging for development costs. Even on the other costs, a 60% concession is proposed.

(ii). It will be difficult to identify ‘poor PAPs’. Allotment will be with reference to ‘tenders’ received.

(iii). It will be difficult for us to identify ‘benami’ cases.

**Representatives of the PAPs**

(i). This is a good proposal. The Labour Trustee has spoken about and endorsed this in the Board Meeting.

(ii). Allotment must be given only to poor PAPs.

(iii). The rate is high; may be reduced.

(iv). (a). Lands occupied by non-PAPs must be reclaimed.

(b). In this case also, ‘benami’ deals must be prevented.
There are PAPs who have no certificates. They will not be entitled. What will happen to them?

There shall not be provision for sub-letting or transfer. Fresh tenders may be invited.

[The JNPT says ‘transfer is possible only to PAPs; and, with prior approval of the JNPT’]

First regularise cases of those who are occupying plots since 1985. (91 such cases are there.)

Reduce the rate from Rs.15,000/- to Rs.10,000/- and Rs.32,500/- to Rs.20,000/-.

Lease rent should be a nominal Re.1/- per shop per month.

Landless PAPs – how will they get certificates now? They must also be entitled.

The JNPT must construct the shops. If allottees themselves have to construct, then reduce the rates as requested by us.

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

(i). The proposal is for an arrangement to benefit some project-affected persons (PAPs). This is in line with the policy adopted by the JNPT right from its inception to give preference to PAPs in providing employment, facilities, etc.

(ii). Based on guidelines developed on the subject, several PAPs were identified for purposes of employment in the JNPT. There can, therefore, be an argument that how can the problems of PAPs continue to be reckoned with indefinitely. It has to be recognised in this context that rehabilitation of PAPs is a difficult, highly complicated, and long-drawn out matter. The time factor cannot, therefore, be of much consequence here. In any case, as it happens, the problem of the hawkers has been a live one for over 10 years now.

(iii). The basic proposal is to allot on lease plots of fully developed land to PAPs for setting up shops/bunks. For this purpose, the JNPT has identified land in a particular zone keeping in mind the relevant locational factors.

(iv). As can be seen from the details given in paragraph 2 above, the proposal has been formulated after detailed consultations with all concerned. The Board of Trustees has also given its approval. And, the JNPT has certified that it has gone strictly by the Government Guidelines relating to lease of port properties. It
has, however, to be recognised in this context that the JNPT has slightly veered away from the Government Guidelines in the computation of the rate for payment of upfront land premium. The Government Guidelines refer in this context to the rate obtained from the Government of Maharashtra whereas the JNPT has gone on the basis of an average of the rates of the JNPT, CIDCO, and the Government of Maharashtra. The effect of this deviation is that the rate finally computed by the JNPT is about 60% of the rate in the JNPT Scale of Rates and about 80% of the Maharashtra Government rate. Even on this lower rate, a further concession of 60% has been proposed; and, for fully developed lands at that. Since the beneficiaries are going to be the PAPs, this Authority is inclined to adopt a liberal view in this case.

It is relevant here to point out that, at the joint hearing, the representatives of the PAPs had pleaded for a reduction even of the rates proposed by the JNPT. In view of the fact that, as explained above, the JNPT has already built in several concessions in the computation, notwithstanding the fact that (unlike claimed by the JNPT at the joint hearing) development costs have been included in the computation of the rate, it is not necessary to give further consideration in this regard.

(v). At the joint hearing, various issues like identification of PAPs, issue of certificates to them, choice of appropriate beneficiaries, preference to ‘poor PAPs’, etc., came up. In this context, it is to be noted that this Authority has only to consider the proposal for determination of rates for allotment of these plots; it is not relevant for it to involve in other administrative and procedural issues. On this understanding, the representations on these issues are ignored. This Authority is satisfied with the assurance given by the JNPT that plots will be allotted only to PAPs; and, that final choice of beneficiaries of equally placed PAPs will be made on the basis of lots to be drawn by their own representatives.

(vi). Another related issue that came up at the joint hearing was about sub-letting and transfers. Everyone is agreed that there shall be no sub-letting at all. This recommendation is accepted for prescription as a conditionality. This Authority itself has been stipulating this condition while dealing with lease matters in other major ports.

As regards transfers, the JNPT is of the view that transfers shall be permissible between PAPs and with prior approval of the port trust. This Authority is of the view that except in cases of inheritance, it does not appear necessary (or, even, desirable) to provide for transfers. A better option is to prescribe that, if a lessee is not interested in continuing with the lease, the plot concerned shall revert to the common pool for re-allotment on the basis of fresh applications.

(vii). At the joint hearing, a demand was voiced that the 91 PAPs who have for many years been hawking on these lands should be given
preference and allotted plots without entering into any selection process. As stated earlier, it is not advisable for this Authority at this stage to get into such contentious issues disregarding the specific selection process formulated by the JNPT in consultation with all concerned.

Significantly, sometime ago, the JNPT itself had worked on such a proposition only to meet with stiff resistance from various groups opposed to one another. After detailed deliberations it was then decided that the better course would be to subject all interested PAPs to a common selection process. It is on this premise that the present proposal has been formulated.

(viii). At the joint hearing, some apprehensions were voiced about ‘benami’ transactions. The JNPT has contended that it will be difficult at this stage to comprehend such eventualities and provide safeguards to prevent such occurrences. The JNPT has advised the PAP groups themselves to be vigilant on this score to prevent such exploitative tendencies. This Authority also accepts this position and leaves the problem to be addressed separately if and when it emerges in a major way. Incidentally, this can also be classed as an administrative issue to be tackled by the JNPT itself.

(ix). Another demand voiced was about construction of the shops/bunks. The PAP representatives have asked for the port trust to construct the structures if the rate is fixed at the level(s) proposed; or, if the allottees themselves have to construct the structures, then, the rate(s) shall be reduced. The JNPT has maintained that the rate proposed is already highly concessional leaving no scope for further reductions; and, as regards construction, the port trust will only provide a common blue-print for the allottees to adopt while putting up the structures themselves. There is no reason why this Authority cannot accept this stand of the port trust. In any case, the proposal for consideration is only about fixation of rates for allotment of plots on lease.

(x). The Government Guidelines on the subject, even as they provide for a one-time upfront land premium payment, also refer to an annual lease rental of Re.1/- per sq. mtr. Such repetitive annual payments will be necessary to re-assert title to the property. This Authority, therefore, advises the JNPT to add such a provision.

(xi). It is noteworthy that the Government Guidelines in reference were issued in February 2000 when this Authority was very much in existence. For whatever reason, the Government did not consult this Authority before issuing them. Strictly speaking, therefore, this Authority is not bound to accept it. But, its general approach has been to recognise such Government Guidelines until it has had time to formulate its own detailed Guidelines. In line with this
approach, here, again, this Authority adopts a similar approach towards the February 2000 Guidelines issued by the Government.

6. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the JNPT proposal and prescribes the following rates for allotment of open space to the PAPs in the Hawkers’ Zone in the JNPT premises:

(A). **UPFRONT LEASE PREMIUM PAYMENT:**

(a). Rs.15,000/- for a plot of 4.5 sq. mtrs.

(b). Rs.32,500/- for a plot of 10 sq. mtrs.

(B). **ANNUAL LEASE RENT**

Re.1/- per sq. mtr. per annum subject to a 30% escalation in the rent after every five years.

(S. Sathyam)

Chairman

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