

No. 315

NEW DELHI, the 28th November , 2001

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 Cochin Port Trust for fixation of licence fee for port's new bunks as in the Order appended hereto.

(S. Sathyam)

Chairman

Tariff Authority for Major Ports

Case No.TAMP/40/2001-COPT

The Cochin Port Trust

Applicant

ORDER

(Passed on this 5th day of November 2001)

This case relates to a proposal from the Cochin Port Trust (COPT) for fixation of licence fee for Port's new bunks at Indira Gandhi Road, Willingdon Island with retrospective effect from the date of taking over of the bunks by the respective allottees.

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

(i). The decision of the Port to widen its main roads necessitated removal of the existing bunks situated on the sides of the road.

(ii). Since the existing licensees were not ready to vacate the bunks, it was decided to offer new bunks to them at places convenient to the Port as well as to the licensees.

(iii). In pursuance of the above, 28 new bunks (9-T bunks and 19-C bunks) with A.C. Sheet roofing and rolling shutters, were constructed at places between the EDC building and Ernakulam Wharf Gate, Western side of Rubber Board Building and Southern side of Portage Office.

(iv). The new bunks were allotted to the existing licensees on payment of rent at the existing rates subject to payment of difference between the rent paid and the revised rent of the new bunks.

(v). The newly constructed bunks are of two types viz. 3.0m X 1.5m (T-bunks) and 2.5m X 1.5m (C-bunks). The cost statement for fixation of rent as sent by the Port indicates a licence fee of Rs.160/- per month per sq. mtr.

3. In this backdrop, the COPT has requested for approval of the licence fees for T-bunks and C-bunks as given below:

Sl. No.	Type of bunk	Area of the bunk	Licence fee per month (Rupees)
I	T-Bunks	3.0m x 1.5m	720
II	C-Bunks	2.5m x 1.5m	600

Note:

(a). Security deposit shall be 2 months' licence fee at the above rates.

(b). The above rate will be applicable from the date of taking over of the bunks.

4. In accordance with the procedure prescribed, a copy of the proposal was forwarded to the Cochin Chamber of Commerce & Industry, the Cochin Port Lease Holders Association, and the Kerala Vyapari Vyavsayai Ekopana Samithi for comments. The comments received are summarised below:

Kerala Vyapari Vyavsayai Ekopana Samithi (KVVES)

The proposed rent is exorbitant and unreasonable on account of the following reasons:-

(i). The land in question is an (otherwise) unusable strip. Allotment for shop purposes is the only meaningful option available. That being so, the full land value shall not be taken into account for computation of lease rents.

(ii). The shopkeepers who earlier had shops at better locations have all now been pushed to an isolated spot where prospects of business are not at all good.

(iii). The bunks are constructed over a strip of land under which high voltage electricity cables pass. This introduces a risk factor which must be taken into account while deciding the value of the land.

(iv). In the cost statement, 15% and 6% considered towards interest on Capital and return of investment respectively is too much as both are the same. The interest is a return from investment.

(v). The proposal may be examined sympathetically giving due consideration to the fact that vendors are poor people who have no other way to feed their family and

that their sufferings have enhanced during this period of economic stagnation. The following suggestions are given for consideration:

(a). The shops' rooms may be sold to the present occupants at the value shown in the cost study report.

or

(b). A nominal land lease be recovered from them annually; or,
the rent per square meter may be reduced to 50% of the proposed rates.

5. A copy of the comments received from the KVVES was sent to the COPT as feedback information.

6.1. This Authority had passed an order on 4 February 2000 relating to re-fixation of rent for one of the bunks of the COPT admeasuring 3.0m X 2.5m at Rs.827/- per month with retrospective effect from 30 December 1998 in place of Rs.1200/- per month inadvertently given in the Scale of Rates of the COPT.

6.2. The licensee of the bunk, Shri. K. Sakir Hussain has challenged the assessment of the rent in the High Court of Kerala. The Kerala High Court, in its judgment dated 7 August 2000 upheld the fact that the rent for two bunks of the same size, charged by the port are different, discriminating between the licensees. The rent of Rs. 827/- per month fixed for a small bunk constructed at a capital cost of Rs. 16780/- near the EKM wharf is exorbitant; and, at the same time the rent for the similar bunk shop of same size near the hospital is only Rs.375/- per month. Hence directed the port to levy a rent of only Rs. 375/- per month from Sh. Sakir Hussain prospectively.

6.3. The COPT has filed a writ appeal against the above judgment dated 7 August 2001 (presently pending) before the High Court of Kerala on the following grounds:

- (i). The rent in respect of bunk shop occupied by Shri. K. Sakir Hussain was fixed as early as 1989 and he now questioned it as excessive, after a lapse of ten years.
- (ii). The rates and rents are prescribed in accordance with the Scale of Rates framed under the provisions of the MPT Act, 1963 and, therefore, the argument that the rent so fixed is arbitrary and excessive is not correct.
- (iii). Rents of such other bunks cannot form the basis of fixation of a rent for a particular bunk.
- (iv). The bunk allotted to Shri. Abdullah was constructed in 1977 and, therefore, the rent applicable to the bunk constructed in 1977 was

followed. This, however, cannot be followed in the case of bunk constructed in 1987 and allotted to Shri. K. Sakir Hussain.

7.1 A joint hearing in this case was held on 12 September 2001 in Cochin. At the joint hearing the following submissions were made:

Cochin Port Trust (COPT)

(i). The newly constructed bunks are not at all located in an isolated spot. On the contrary, all of them are better located now.

(ii). Contrary to the Agreement with the lessees which stipulate that any shifting will be at the lessee's cost, in this case, the shifting has been at Port's cost.

(iii). The costing is based mainly on cleaning up of the area and on construction of the bunks; it is not based on value of the lands. In any case, the port has taken into account only a nominal value of the lands concerned.

(iv). The bunks were earlier scattered; they have all now been aggregated in one place so that they can avail of common facilities wherever possible.

(v). The 'old rates' were for old and wooden structures. The charges now being proposed are for '*pucca*' structures.

(vi). The 'old rates' were fixed in 1989. That being so, they have been overdue for revision. The rates are, therefore, bound to increase.

7.2. No user was present in the joint hearing in spite of notices issued in this regard.

7.3. At the joint hearing, the COPT was advised to inform this Authority of the latest position in the writ appeal filed by the COPT in the High Court of Kerala as also of the implication for this proposal of any order passed by the High Court in the case relating to the bunk allotted to Shri. Sakir Hussain.

7.4. The COPT has submitted a note stating that the writ appeal is still pending before the High Court. In the meanwhile, the respondent (Shri. Sakir Hussain) in the appeal filed by the COPT has now shifted to the new bunk on payment of rent at the existing rate as it is made applicable to all other licencees. He has not raised any objection to the current fixation of rent nor has he linked this with his old case. The basis of fixation of rent is as per the standard norms present and followed uniformly in all such cases; and also, it is felt that fixation of rent for the old structure (bunks) and the newly constructed permanent structure cannot be linked. The COPT has, therefore, opined that the case pending before the High Court being antecedent to this revision may not affect the proposed revision/fixation of tariff.

8. 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 litigation pending in the High Court of Kerala, relating to Shri. K. Sakir Hussain, is about an old bunk at a different location. The issue agitated therein is about reasonableness of the rent for the old bunk. Such a case cannot reasonably be said to have any bearing on the COPT proposal under consideration. Final consideration of this case by this Authority need not, therefore, be held up on that account.
- (ii). The need for prescription of new rates has arisen because of construction of new bunks at a new location.

The need for construction of the new bunks has arisen because of a decision to widen the roads at the place(s) where the old bunks were located.

- (iii). All the licencees of the old bunks upon dislocation from there have been accommodated at the new site.

Significantly, as has been highlighted by the COPT, all the (old) lessees, who could as per the lease agreements have been required to move at their cost, have actually been shifted at the port's cost.

- (iv). The lessees' contention that they have all been pushed from better locations to an isolated spot has been vehemently denied by the COPT according to whom all of them are better located now. At the time of the visit to the COPT for the joint hearing in this case, the site in reference was seen. It is alongside a main road in a central location of the port area. And, as has been rightly stressed by the COPT, the bunks, which were earlier scattered, have all now been aggregated in one place so that they can avail of common facilities.
- (v). The KVVES' demand that the full land value shall not be taken into account for computation of lease rents has already been conceded by the port. The COPT has confirmed that the costing is based mainly on cleaning up of the area and on construction of the bunks; it is not based on full value of the lands; only a nominal value of the lands has been taken into account.

It is also relevant here to recognise that the 'old rates' were for old and wooden structures whereas the rates now proposed are for '*pucca*' structures (i.e., with A.C. Sheet roofing and rolling shutters). In this context, it is also relevant to recognise the fact that the 'old rates' were fixed in 1989; and, would have been liable to be increased even at the old site and for the old bunks at that.

- (vi). Another noteworthy fact, as has rightly been stressed by the COPT, is that all the lessees have accepted the new allotments at the new site and have peacefully been doing business from there. In this backdrop, the fact that none of the lessees was present at the joint hearing in spite of issue of notices, can be seen to be indicative of their acceptance of the new arrangement.

- (vii). The cost statement furnished by the Port in support of its proposal considers a return of 21% (15% towards interest and 6% towards return on investment) on the capital cost of the bunks. In case of major port trusts, this Authority is presently allowing a maximum rate of return @ 19.5% on capital employed which includes a 3% contribution each towards Replacement Fund and Development Fund. The bunks in reference are built with AC roofing and roller shutters. There is no significant investment in developing this facility, which warrants creation of specific funds to meet future needs of development/replacement. That being so, it is reasonable to reckon with a return of only 13.5% in this case. If this is done, the monthly licence fee stands revised to Rs.116.80 per sq. meter.
- (viii). The modified calculation of licence fee indicates a monthly licence fee of Rs.438/- for C-bunks and Rs.526/- for T-bunks, which are approved.
- (ix). The COPT has allowed the lessees to occupy the new bunks at the old rates subject to the understanding that they will pay the difference when the new rates are notified. That being so, it is necessary for this Authority to give retrospective effect to the new rates from the date of occupation of the new bunks by the respective allottees.

9.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the following with retrospective effect from the date of occupation of the new bunks by the respective allottees:-

Sl. No.	Type of bunk	Area of the bunk	License fee per month (Rupees)
1.	T-Bunks	3.0m x 1.5m	526
2.	C-Bunks	2.5m x 1.5m	438

Note:

- (i). Security deposit shall be 2 months' license fee at the above rates.

9.2. The COPT is directed to amend its Scale of Rates accordingly.

(S. Sathyam)

Chairman

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