

No. 248

New Delhi, the 19 September, 2001

Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the representation of the Mumbai and Nhava-Sheva Ship Agents' Association about a levy imposed by the Bombay Stevedores Association Limited on vessels berthed at the Mumbai Port and approves the Consensus-proposal about the MBPT charging a 'special rate' to meet the liability towards payment of arrears of salary and wages to supervisory staff and allied workers as in the Order appended hereto.

(**S. Sathyam**)

Chairman

Case No.TAMP/26/2001-MBPT

**Mumbai and Nhava-Sheva Ship Agents' Association, (MANSAA) -----
Applicant**

Vs.

**Mumbai Port Trust -----
Respondent**

O R D E R

(Passed on this 30th day of August 2001)

This case relates to a representation filed by the Mumbai and Nhava-Sheva Ship Agents' Association (MANSA) about some action of the MBPT to introduce a levy which is payable by the Shipping Lines to the Bombay Stevedores Association Ltd. (BSA) to discharge the wage arrear liability of the licensed stevedores.

- 2.1. In its representation, the MANSA has made out the following points:
- (i). The MBPT has issued a circular dated 15 March 2001 advising that a levy is payable by Shipping Lines for all vessels docking after 15 March 2001 failing which no services will be provided to the vessels / stevedores.
 - (ii). The levy is being collected to pay the wage arrears of supervisory staff for the period from 1 January 1998 to 31 July 2000.

- (iii). These supervisory staff are the MBPT employees and were on deputation to the Stevedores since 1994. They were repatriated to the MBPT in July 2000 as per agreement arrived at between the MBPT, Bombay Stevedores Association Ltd., and Bombay Dock Workers' Union.
- (iv). As per the terms of the agreement, the liability towards payment of arrears of salary and wages of these supervisory staff is that of the Stevedores.

2.2. In this backdrop, the MANSAs has advanced the following arguments:

- (i). The wage hike is the liability of the Stevedores and must not be recovered through a levy.
- (ii). The matter is between each individual Stevedore and Shipping Lines and the terms of stevedoring contract, whether it includes escalation cost or not.
- (iii). Some of the Stevedores have discontinued operation and their liability in this regard is in the region of almost Rs. 5.0 crores. The MBPT pursue the matter legally against these Stevedores and recover the wage arrears from them.

2.3. The MANSAs has sought this Authority's intervention in the matter arguing that the Port has no authority to stop services to vessels and enforce recovery of a levy to enable the Stevedores to discharge their liability. The MANSAs has also mentioned that the TAMP has jurisdiction on such a levy, which is for an activity carried out within a major port.

3. The MANSAs has further stated that labour gangs have not been supplied to their stevedores for non-payment of levy to the BSA Limited. The load / discharge operations did not commence, resulting in loss to their members / principals. The MBPT is coercing the shipping lines and agents to pay the levy. All the concerned have accepted the fact that the wage arrears of supervisory staff is the liability of the stevedores. The MBPT must recover the wage arrears from stevedores and not from shipping lines / agents.

4. In this backdrop, the matter was considered by this Authority in its meeting held on 28 March 2001 and the following decision were taken:

- (i). The representation of the MANSAs would be registered as a regular 'tariff case'.
- (ii). In line with its stated position of not ordinarily interfering with any Port Trust's Orders in an interlocutory manner, in this case also this Authority would not like to issue a stay order. Nevertheless, this Authority would advise the MBPT to exercise restraint and not to precipitate the matter by denying services to vessels for non-payment

to the BSA of the levy in reference till the matter was finally disposed of by this Authority.

5. A copy of the representation was forwarded to the MBPT for its immediate comments. The comments of the MBPT with regard to the representation of the MANSA are summarised as follows:

- (i). The surcharge levied by the BSA on the Vessel Agents / Stevedores is meant for disbursement of the wage arrears due to the ex. BDLB / MBPT employees on deputation to the stevedores during the period 1 January 1998 to 31 July 2000.
- (ii). The MBPT merely concurred with the decision which emerged during the course of discussion and acted as a facilitator to implement the decision.
- (iii). Services to the vessels have not been denied for non-payment of surcharge to the BSA. In fact, the Stevedores and the Agents are making remittances of the surcharge.
- (iv). The MBPT has given the following sequence of events based on which the circular was issued to all Stevedores / Shipping Agents to implement recovery of the levy:
 - (a). Till 1994, the Bombay Dock Labour Board (BDLB) used to supply labour required by the Stevedores for on-board work and collect the on-board labour charges alongwith applicable levy.
 - (b). By a Notification dated 25 Feb. 1994, the Central Govt. revoked all Schemes framed under the Dock Workers' (Regulation of Employment) Act, 1948, which were in operation at the Mumbai Port governing the deployment of dock workers and the erstwhile BDLB was superseded by the Chairman, MBPT.
 - (c). Since actual merger did not take place, the accounts of the erstwhile Dock Labour Board were kept separately in the name of Chairman (MBPT). There is no separate Scale of Charges for on-board services framed on taking over of the ex-Dock Labour Board employees. The rates for supply of Dock Labour Board labour are fixed with the approval of the Chairman (MBPT).
 - (d). Pursuant to the directions of the Central Government, the supervisory staff and allied workers were deemed to be deputed to the various licensed stevedores. However, with fall in the container traffic, some of the stevedoring companies had closed down their operations. As a result, the staff deputed to them were reallocated to the remaining stevedores. Stevedores objected to reallocation and resorted to litigation. Based on the directives of the High Court, the MBPT and the BSA after protracted negotiations decided to repatriate these employees

with effect from 1 August 2000. The MBPT created a common pool of such supervisory staff and allied workers subject to the stevedores undertaking to bear the entire expenses and other benefits of worker thus formed in a pool.

- (e). A wage settlement was signed on 2 August 2000 revising the wages of Port and Dock workers with retrospective effect from 1 January 1998.
- (f). The liability towards arrears of salary and wages for the period from 1 January 1998 to 31 July 2000 in respect of supervisory staff and allied workers was estimated at Rs.17.5 crores. This liability is for the period when these employees were on deputation with the Stevedores; and, hence, it is to be borne by the Stevedores who were the employers at the material point of time.
- (g). The Stevedores have expressed their inability to pay the wage revision arrears unless it is collected from their clients viz., Vessel Agents / Lines. Since no positive response was received from their clients the Stevedores have pleaded to the MBPT that this amount shall be recovered from the Shipping Agents prospectively as the charges already recovered from the Shipping Agents did not include the wage arrears.
- (h). The MANSA and the CSLA contended that there is adequate cushion in the charges for the stevedores to discharge this liability of arrears.
- (i). Despite repeated requests by the port that the Vessel Agents and Stevedores should sit together and firm up solution, no consensus emerged resulting in workers threatening stoppage of work unless the port intervenes in the matter immediately. Facing an industrial unrest, the MBPT has paid the arrears of salary and wage to these employees.
- (j). The general cargo vessel agents and some of the container operators, however, agreed to pay the surcharge as determined by the BSA with the concurrence of the MBPT.
- (k). In one of the meetings the BSA pointed out that even in the past the levy was increased by the BDLB to meet the liability of the arrears salary and wages from the Stevedores who in turn used to recover from the respective Shipping Agents/Lines.
- (l). Since the Stevedores Supervisory staff and allied workers have been taken over by the MBPT with effect from 1 August 2000, the MBPT has a role to play to ensure that the amount of arrears of wages are recovered and disbursed by the Stevedores to the respective employees.

- (m). During the meeting held on 8 March 2001, the Shipping Lines indicated that in case the MBPT circulated the decision taken they would obtain concurrence of their respective principals for making payment in the form of surcharge as suggested by the BSA. Accordingly, the MBPT accepted the suggestions of the BSA and approved a surcharge on cargo / containers as indicated below:

Type of cargo	Estimated traffic during 2001-02	Proposed rate of surcharges (special rate) Rs.	Estimated collection for the arrears Rs.
TEUs	3,75,000 Boxes	Rs.200.00 Per Box	7,50,00,000
Break-bulk	11,00,000 Tons	Rs.25.00 Per M. Ton	2,75,00,000
Bulk	10,00,000 Tons	Rs.12.5 Per M. Ton	1,25,00,000
Iron & Steel	25,00,000 Tons	Rs.20 Per M. Ton	5,00,00,000
Bagged cargo	10,00,000 Tons	Rs.10 Per M. Ton	1,00,00,000
Total			17,50,00,000

The surcharges mentioned above are to be paid by the Ship Agents to the Bombay Stevedores Association Ltd., who will maintain a separate account for this purpose and reimburse therefrom the wage-arrear-expenditure incurred by the MBPT.

- (n). The MBPT has not initiated any action to precipitate the matter by denying services to the vessels for non-payment to the BSA of the surcharge in reference.

6. A copy of the representation was circulated to concerned representative bodies of port users for their comments. The comments received from them are summarised as follows:

The Bombay Stevedores Association Limited (BSA)

- (i). They have explained the background of the case as briefly given below:
- (a). The erstwhile Bombay Dock Labour Board (BDLB) had four broad groups of "Dock Workers" under its four different Schemes. In the first scheme, relating to stevedoring, there were two sets of dock workers viz., (i) "Reserve Pool" of registered dock workers who were supplied to stevedores on shift basis as per indent; (ii) "Monthly worker" who were supplied on a monthly basis.
- (b). The wages and service benefits to both these set of workers were collected by the stevedore employers from the Shipping Agents /

Owners / Cargo interest. The wage arrears arising out of wage settlement were also recovered by way of levy from future cargo interests. The same system has been followed in the present case also.

- (c). In 1991, on account of bad financial situation of the BDLB, the workers covered under this Schemes could not be paid their wages, whereupon the Transport and Dock Workers Union and others filed petition in the High Court. On the directions of the High Court, a meeting was held at the MBPT with all concerned parties and a Memorandum of Agreement (MOA) was arrived at between all the parties.
- (d). The MOA included a clause prescribing collection of wages as per the Wage Settlement at the national level from the cargo interests and payment of the same to the eligible dock workers including supervisory staff and allied workers. VRS scheme was also offered to the BDLB workers and the staff.
- (e). As per the term of the MOA the MBPT was to absorb the registered workers and the employees of the BDLB with effect from 1 March 1994 in the employment of the MBPT. In view of this, the Central Government revoked all Schemes framed under the Dock Workers (Regulation of Employment) Act, 1948, which were in operation at the MBPT by a Notification dated 25 February 1994.
- (f). By a separate Notification dated 25 February 1994, the Central Government superseded the BDLB for a period of one year and vested in the Chairman (MBPT) all powers and functions exercised or performed by erstwhile Board. The period of such supersession is being extended from time to time and presently it is in force till 31 December 2001.
- (g). Pursuant to the Central Government notification dated 25 February 1994, the monthly rated supervisory staff were deemed to have been allotted to licensed stevedore employers on deputation basis. This arrangement was found more suitable to the MBPT and the Stevedores, else such supervisory staff and allied workers would have to be transferred to the MBPT and allotted to the stevedores on day-to-day basis against the indent.
- (h). With continuous fall in traffic in the port during the last two years, many stevedores closed down their operations in the port resulting to non-payment of salary to their deputed staff. The reallocation of these supervisory staff and allied workers to the remaining stevedores was also strongly agitated and writ petition was filed.
- (i). Once again, on the intervention of the High Court, joint meetings were convened by the MBPT with the BSA Limited, Stevedores and Union. It was agreed that all supervisory staff and allied workers who were on

deputation to the Stevedoring Members shall be repatriated to the MBPT in a separate pool under the management of the MBPT with effect from 1 August 2000.

- (ii). The BSA has given the following main points in support of recovery of the levy in reference :
 - (a). The wage settlement was signed on 2 August 2000 revising the wages of port and dock employees with retrospective effect from 1 January 1998. Accordingly, arrears of wages and other allowance had to be paid for the past 31 months (January 1998 to July 2000) to all the port and dock workers including supervisory staff and allied workers. The arrears relating to supervisory staff and allied workers had to be borne by the Stevedores as they were on deputation with the Stevedores for the said period.
 - (b). As per the earlier practice the Stevedore members approached the Shipping Lines / Agents for recovery of the retrospective wage revision arrears. The Shipping Lines / Agents refused to accept any retrospective liability mainly because of the following two reasons:
 - (ba). In the past stevedoring charges were paid out of freight earning and were in fact remitted to India through Reserve Bank of India. Since the last few years these charges are paid from the THC recovered from exporter / importers. The Shipping Lines / Agents have expressed their inability to recover the money from THC retrospectively.
 - (bb). It is not possible to recover retrospective liability as many of the Shipping Lines / Agents have shifted from the MBPT to the JNPT.
 - (c). The Trade Unions threatened to go on strike due to non-payment of arrears. In order to ensure uninterrupted cargo operations in the port, a joint meeting was convened with all the concerned members. The MANSA strongly objected to pay the wage arrears retrospectively. They agreed to consider to accept the liability on a prospective basis.
 - (d). The BSA once again submitted their inability to pay the wage arrears unless they are able to recover the same from their customers prospectively. They proposed collection of levy either by the MBPT or the Trade Unions or the MANSA for recovery of wage arrears and remit to the Port or directly to the Unions or its members.
 - (e). The MBPT held a series of joint meetings with vessel agents including container vessel agents. Although representative of the MANSA, Karmahom Conference and the CSLA have been opposing the BSA's proposal, the other cargo interests such as break-bulk, dry bulk and Iron and steel were in favour of the BSA's proposal purely in the interest of uninterrupted cargo operations in the port. Accordingly, the MBPT issued a circular stating that the amounts

by way of surcharge were to be recovered from the respective vessel agents by the BSA from 15 March 2001 and deposited in a separate account to be administered by the BSA itself. This amount shall be used for payment of wage arrears; and the surcharge shall be stopped once the wage arrears are fully recovered.

- (f). The MBPT has merely cleared the proposal of the BSA as the powers and functions of the BDLB are presently vested in the Port Authorities. The proposed surcharge is, therefore, not a part of the MBPT tariff.
- (g). The stevedoring rates are normally charged by the Stevedores to their principals under their individual contract and as such stevedoring rates has not been brought under scrutiny of the TAMP.
- (h). The Karmahom Conference has revised the Mumbai THC levels on the basis of recovery of surcharge. This proves that their argument on the Stevedores having a “cushion” in their rates for loading / discharges containers is false.
- (i). The collection of surcharge is not a new thing. Even if the BDLB existed, it would have introduced a levy to meet this liability of wage revision arrears.
- (j). With the introduction of recovery of “Surcharge” the indefinite strike proposed by the Union is withdrawn. The TAMP is requested to dismiss this representation in the interest of uninterrupted cargo operations in the port and to avert the indefinite strike.

Mumbai and Nhava-Sheva Shipl Agents’ Association (MANSA)

- (i). The MBPT has not acted on the advise of the TAMP to hold the above levy in abeyance. (It is relevant to mention here that this Authority did not advise the MBPT to hold the levy in abeyance. The MBPT was only advised not to deny services to vessels for non-payment of the levy).
- (ii). We have no option but to pay the levy and carry on the work, in order to minimise losses / inconvenience to all concerned.

The Bombay Custom House Agents’ Association (BCHAA)

- (i). The levy and recovery of surcharge by the MBPT from the Shipping Lines, who in turn, recover the same from the trade is most uncalled for and unjustifiable.
- (ii). Over the past two and half decades, the Shipping Lines have recovered huge sums as THC justifying that they were paying huge amount towards port labour. It now appears that that shipping companies have deprived the MBPT labour of their dues.

- (iii). As the Lines enter into individual contracts with the Stevedores, they are liable to pay for any shortfall in labour charges which have not been paid by their Stevedores.
- (iv). Recently the Lines had signed an agreement with the MBPT through their Stevedores undertaking to pay the dues, which are payable. Now they have back tracked on their assurance and are burdening the Trade with their liability.
- (v). The Lines and their Stevedores must be made to pay the port labour dues and the same shall not be burdened on the Trade.

Container Shipping Lines Association (CSLA)

- (i). We support the MANSA's position on this matter
- (ii). The Stevedores are liable to pay the increased wages to the supervisory staff (who were on deputation with them since 1994) for the period 1 January 1998 to July 2000 in accordance with the wage settlement agreement.
- (iii). Negotiations for wage increase had been held for a long period of time between the MBPT and the Union and were widely known. The Stevedores cannot claim to have no knowledge of the impending wage increase.
- (iv). The Stevedores cannot by way of automatic right demand the recovery of increased labour costs from the customers / shipping lines. There is no such clause in their contract though there may be a bilateral rate negotiations between the Stevedores and the Shipping Lines.
- (v). The Stevedores and the Port have reiterated that the liability of this wage arrears revision is that of the Stevedores.
- (vi). The MBPT instead of insisting the Stevedores to discharge their liability has approved recovery of the levy from future business of the port. It has further reinforced that no labour will be provided if the levy is not paid to the BSA Limited.
- (vii). The Stevedores shall settle the issue of payment of wage arrears with their labour.

Indian Merchant Chamber (IMC)

It has endorsed the views of the BSA .

7.1. A copies of the comments received from the representative bodies of port users were forwarded to the MBPT and MANSA as feedback information.

7.2. The comments made by the MBPT in response to the BCHAA's views are as follows:

- (i). The BCHAA's contention that the levy and recovery of surcharge is done by the MBPT is not correct. The MBPT recovers charges for supply of on-board labour and supervisory staff at predetermined rates. The surcharge is being recovered by the BSA from the Shipping Lines.
- (ii). The BCHAA contention with regard to collection of huge amount as THC by the Shipping Lines; and non-payment of wage revision arrears to the supervisory staff and allied workers on deputation to Stevedores shall have to be taken up with the respective shipping lines. It appears that the BCHAA has referred to the THC collected by the Shipping Lines from the trade.
- (iii). As per the terms of the agreement signed by the Stevedores with the MBPT, liability towards the entire cost, terminal benefits and cost of other facilities to these supervisory staff was to be borne by and to be recovered by the stevedores. The Stevedores were aware of the burden of wage revision arrears; and, therefore, had informed the Shipping Lines about the impending wage revision. It appears that the rates prescribed by the Stevedores were after considering the impact of impending wage revision.
- (iv). The Shipping Lines instead of resolving the issue with the Stevedores have decided to recover the same from the consignees. Neither the Stevedores nor the Shipping Lines have initiated action for disbursement of wage revision arrears leading to unrest in the port.

8. A joint hearing in this case was held on 22 June 2001 at the MBPT. At the joint hearing, the following submissions were made:

Mumbai and Nhava-Sheva Ship-Intermodal Agents' Association (MANSA)

- (i). The "levy" has become almost mandatory. The BSA demand appears to have been endorsed by the MBPT.
- (ii). We protested against the MBPT's action to stop services to vessels. The MBPT changed to stopping services to Stevedores. This will indirectly amount to denying services to ships.
- (iii). How can the MBPT so categorically state that levy must be recovered from the Shipping Agents?
- (iv). Historically, such claims were settled through negotiations between each Stevedore and each line.

- (v). Wage revision is an agreement between Ports and Unions, we were not a party. We are not even aware. How can we be held responsible for the dues?
- (vi). It was a contractual arrangement between the MBPT and Stevedores alone.
- (vii). Stevedores said they had no funds to pay. During labour agitation, the MBPT called a meeting. Consensus has been reported. How can this be so? How can MANSA or CSLA commit on behalf of Lines on an issue governed by separate contracts.
- (viii). Minutes of the joint meeting dated 30 October 2000 clearly indicates that some of the Stevedores themselves admitted their liability.
- (ix). If there is no escalation Clause in our Agreement with the Stevedores, there is no question of our liability to pay anything extra.
- (x). If the MBPT had taken a tough stand and threatened stoppage of services to the Stevedores, they would have paid. Unfortunately, port adopted a weak-kneed approach, which made the Stevedores pass on the liability to Lines.
- (xi). How can Agents agree as reported? There are Agents who are also Stevedores. So they have found it convenient to so agree.
- (xii). The MBPT says that it has acted as a “facilitator”. It is facilitator to whom and, facilitating what. How can the port intervene between Lines and Stevedores?
- (xiii). Where is the question of ‘consensus’? We were never interested even in attending these meetings called by the Port, which were of interest only to the Stevedores.
- (xiv). The BSA refuses to take levy from the Stevedores. They want only from Agents. Labour Unions are also monitoring payments by Lines. This is open arm-twisting.
- (xv). Individual Stevedores negotiating with individual Lines is one thing and quite another for a port to do this collectively for all unilaterally.
- (xvi). In the past, we had paid on the basis for ‘arrears’. But, THC was raised only prospectively. If stevedoring rates went up, quite naturally THC will also increase.
- (xvii). The MBPT may have informed the TAMP about not precipitating the matter by not denying services. But, they continue to go by their 15 March 2001 letter. We dispute the MBPT statement to the TAMP.

- (xviii). The MBPT can surely blacklist defaulting Stevedores. The Lines can not object to that. But, when all the Stevedores are defaulters, what happens?
- (xix). The MBPT should have cancelled licenses and registered new Stevedores.
- (xx). From 1 January 1998 to date Stevedores have done business worth more than Rs.400 crores. Can they not meet a liability of 16 or 17 crores.
- (xxi). There is no retroactive payment supported by the MANSAs. This is not the practice.
- (xxii). TAMP should not (can not) go into costing of operations by individual Agents or Stevedores. That will be impractical; uncalled for.

Container Shipping Lines Association (CSLA)

- (i). It is all a matter of simple contracts between Stevedores and Lines. How can the MBPT issue a circular putting the burden on Ship Agents?
- (ii). More Stevedores should have been licensed. A major port like MBPT handling 32 Million Tonnes of traffic cannot have only 14 Stevedores (now, reduced to 12). The MBPT never allowed competition to come in.
- (iii). Lines could not change Stevedores at will. They operate in a 'closed shop' manner.
- (iv). Ours is not an 'administered price' mechanism. We cannot at random accept 'arrear' liabilities.
- (v). This has been a 'license mechanism' fully controlled by the MBPT.
- (vi). Once a contract is entered between Lines / Agents and the Stevedores, payment of arrears, escalations, etc., are all matters between them. Port has no role to play.
- (vii). If this is allowed here, it will have implications in other ports. It will create a wrong precedent.

Bombay Stevedores Association Limited (BSA)

The BSA pleaded for another joint hearing in the case, when their legal counsel could be present to argue the case on their behalf.

The Mumbai Port Trust (MBPT)

- (i). The MBPT supplies labour and recovers a charge for that. But, the case of Supervisory Staff is different. They were on 'deputation' with the Stevedores who paid their wages, etc. The MBPT had nothing to do. Therefore, it was not a tariff matter.
- (ii). The MANSAs can take the stand 'we are not interested' in resolving the stalemate. But, we can not do so. Had we done so, the port would have come to a halt.
- (iii). We had to 'facilitate'. Some of the prominent shippers (like Dharumsy Morarjee, Ornate, etc.) realised the complexity of the situation and, agreed to make the payment. That was how the 'consensus' developed.
- (iv). It was not the MBPT's decision to license only 14 (10 +4) stevedores. This was decided by the Supreme Court.
- (v). It is not factually correct that Shipping Agents / Lines can not change stevedores midway. There is no 'closed shop' situation. There is no obstruction from the BSA.
- (vi). After 15 March 2001, we had sent another letter clarifying the position. This letter is in conformity with what we have stated to the TAMP on 17 April.
- (vii). Even if we said something else, the labour union will not provide the service unless the arrears are paid.
- (viii). Please refer the minutes of the meeting held on 24 July 2000 minutes. Please also see the 1991 Agreement. There are enough provisions to re-deploy staff between Stevedores, to recover arrears, etc.

This is the only practical approach available. Even the court had recognised this position.

- (ix). This is not a case of non-recovered dues. This is a case of emergence of arrears due to retrospective revision of wages.
- (x). Other ports have the DLB 'levy' route to anticipate and realise 'extra' in anticipation. But, MBPT does not have DLB labour.

Bombay Custom House Agents' Association (BCHAA)

- (i). We also had labour with us. We were liable. We paid. Likewise, the BSA should do.
- (ii). The MBPT while licensing should have taken bank guarantees, etc., to force Stevedores to comply with commitments. They have been lax.

- (iii). The MANSAs says, Lines / Agents pay on a per tonne basis. What have Stevedores been paying to the Port? Why did the port allow such a default to accumulate? TAMP must scrutinise details.
- (iv). The MBPT must take legal action to attach properties of Stevedores to recover their liability.

9. At the joint hearing the BSA has submitted a representation to give another opportunity to present their case. The request of the BSA was allowed and it was decided to hold another joint hearing in July 2001. The MANSAs also submitted two written submissions at the joint hearing and another written submission on 27 June 2001.

10.1. As decided in the joint hearing held on 22 June 2001, another joint hearing was held on 13 July 2001 at the MBPT. At the joint hearing, the following submissions were made:

The Bombay Stevedores Association Limited (BSA) (through its legal adviser)

- (i). This is not a matter of legality. It has to be sorted out in a spirit of cooperation.
- (ii). Ultimately the consignee bears the burden of BDLB levy, irrespective of whoever collects it.
- (iii). When DLB cannot pay wages, the Port Trust shall pay. This was agitated in a writ petition in the Bombay High Court. The High Court did not want adjudication and recommended conciliation through discussion by all concerned. It was then discussed by all concerned and decided to get all DLB workers absorbed as port labour.
- (iv). Supervisory staff were on deputation with Stevedores from the DLB. This was antecedent to 'merger'. They also became employees of the port on merger of BDLB with the MBPT.
- (v). If any Stevedores closed shop, their deputationists were absorbed proportionately (as deputationists) by the other Stevedores. This shows a spirit of amity / amicability pervaded the entire history of this matter.
- (vi). Wage revisions were always delayed and, therefore, there were always 'arrears' payment.
- (vii). So long as the DLB was there, they paid the arrears. DLB increase the levy not only for the prospective burden but also for arrears.
- (viii). When there is no DLB who pays the arrears? This is undoubtedly a matter between the Stevedores and the Lines.

- (ix). But the problem was created by Port's delay in revising wages. Can it now say, Stevedore is liable; pay up; or, we cancel the licence? Is this how business done?
- (x). If the Stevedores decide to close down, unions will demand arrear wages from the ports. The port will ultimately have to pay.
- (xi). The BSA will certify that no 'provisional' increase in stevedoring rates was made to cover the liability to accrue.
- (xii). If the TAMP had prescribed a rate for such services, we would have applied for a special increase in that on account of wage arrears liability. Unfortunately, the TAMP had not prescribed any rates. There was no option available.
- (xiii). Someone had to pay as the strike threat by the union was looming large. We paid 50% from our funds. We have not required 50% so far from Lines. We are shocked that Lines are being so intransigent.
- (xiv). The MANSA says let Stevedores talk to each Line. But, what about the Stevedores who have packed up and gone? Who will bear their liability?
- (xv). Interest of Port Trust, Unions, Lines and Stevedores have to be reckoned with. We have to look at the health of the Shipping Industry as a whole.

Indian Merchant Chamber (IMC)

If a decision is taken by 'consensus' of Stevedores and Lines, Trade will be burdened as usual. We must also be there.

Mumbai Port Trust (MBPT)

Our earlier decision was based on consensus of all Shipping Agents and Stevedores who attended the meetings convened by us. If other did not attend, what can be done about it?

10.2. At the joint hearing the BSA requested for time till 10 August 2001 to further discuss with the MBPT, the MANSA, the IMC and others concerned to workout a consensus proposal. Since this proposal of the BSA was not opposed by anyone, the time sought was granted accordingly.

10.3. The BSA and the MANSA made further written submissions at the joint hearing.

11.1 The case was again taken up for a further hearing on 13 August 2001 at the MBPT. At the joint hearing, the BSA filed a 'draft' of a statement jointly prepared by all concerned parties. After discussion the following decisions were taken:

- (i). As requested by the IMC, the 'draft' will be amended by the BSA to incorporate only an enabling provision about Lines charging a 'special rate' so that general cargo traffic, which is reportedly not being subjected to any extra charge does not compulsorily get affected by the provision of the 'draft'.
- (ii). The CSLA will need to clear the 'draft' with its members before signing the statement.
- (iii). A clause will be added to incorporate the MANSAs affirmation that they have not made any change in the THC to recover 'the additional cost' from the consignees.
- (iv). Affidavits will be filed to the effect that the Stevedores have not collected any 'extra charges' in anticipation of the wage increases. Only, instead of the BSA filing a common affidavit, each Stevedore will file an individual affidavit. This will be done in three days.
- (v). The joint statement, so amended, will be signed by all before being formally filed.
- (vi). The MBPT has stated that it can not submit a proposal for a 'special rate' to recover this amount prospectively. But, the MBPT will not have any objection to operating such a tariff, if so required by this Authority.
- (vii). This Authority's decision will be taken by 31 August 2001. In the meanwhile, recovery of the 'amount' by the BSA will be halted till 1 September 2001.

11.2. The 'draft' filed by the BSA indicates that the following consensus proposal was formulated after a discussion between all concerned on 9 August 2001:

- (i). That a special levy be permitted to be imposed by the Port Trust on all cargo, with effect from 15th March 2001, as follows:

<u>S/No.</u>	<u>Type of Cargo</u>	<u>Rate of Special Levy</u>	
(a).	Containers	Rs.200.00	Per Box
(b).	Break-Bulk	Rs.25.00	Per M/Ton
(c).	Bulk	Rs.12.50	Per M/Ton
(d).	Iron & Steel	Rs.20.00	Per M/Ton
(e).	Bagged Cargo	Rs.10.00	Per M/Ton

- (ii). This levy will be imposed by the Mumbai Port trust only till such time that a sum of Rs.17.50 crores is recovered, towards payment of arrears of increased wages and other allowances, on account of the bipartite

wage settlement dated 2 August 2000, and will cease to be effective on receipt of Rs.17.50 crores.

- (iii). The directive of the Mumbai Port Trust dated 12 March 2001, in regard to the imposition and recovery of levy by the BSA, will be withdrawn and the amount collected by the BSA under the said notification will be appropriated towards Rs.17.50 crores.
- (iv). A separate account will be maintained in regard to this amount, including for the amount already collected by the BSA, and this amount will be utilized only for the payment of the said arrears.
- (v). The accounts for collection and payments will be maintained jointly between the MBPT and the BSA, and to the extent that advance payments have been made or likely to be made in future by the members of the Association to the Supervisory Staff and Allied workers, the amounts collected will be utilised to reimburse such member – through the BSA.
- (vi). It is made clear that the concurrence of the Lines, for this arrangement to resolve an unprecedented situation that has arisen, should not be construed as their concession to permit interference in the contractual relation between Lines and agents and their operating contractors or sub-contractors.
- (vii). It is agreed by all parties that this was an unprecedented situation, due to the absence of a pool, and that the present arrangement, amicably arrived at among all parties concerned, shall not be quoted, stated or relied upon by any of the parties as a precedent at any time in future.
- (viii). Lines may recover an amount not exceeding the levy from the cargo.

12. The BCHAA has submitted another representation enclosing copies of Trade Notices issued by the MANSA and the Karmoham Conference. The BCHAA has stated that the Shipping Lines have repeatedly revised the Terminal Handling Charges (THC) despite the same not being the actual cost of the amount incurred and have recovered additional dues which are not justifiable. They have also enclosed copies of the various other charges which have been unilaterally imposed and revised by the Steamer Agents, from time to time, without taking the trade into confidence.

13. The CSLA has intimated that this issue was discussed by its members in a meeting held on 14 August 2001 and it was decided to accept the proposal put forwarded by the BSA. The CSLA, however, made the following points in this regard:

- (i). It must be clear that the solution proposed is specific to the situation arising at the MBPT alone and shall not be cited or treated as creating a general precedent.

- (ii). The charge to be imposed by the MBPT will be entirely separate from the Terminal Handling Charge.
- (iii). The prohibition that the MBPT have sought to place upon Lines recovering this charge from the trade must be removed, and it shall be open to the Lines to recover the same from the trade.
- (iv). This is without prejudice to the Lines general position that TAMP is not empowered to adjudicate upon THCs.
- (v). The Lines are also concerned that an effort has been made to impose retrospective wage increases on to customers, namely the Lines, and ultimately importers and exporters.

14. As decided in the joint hearing held on 13 August 2001, 11 Stevedores who are members of the BSA have submitted affidavits. All these affidavits are identical except for the figures of payment made by the respective Stevedores towards arrears of salary and wages and the amount recovered by them so far from the levy/surcharge in reference. In their affidavits the Stevedores given the following assurances:

- (i). While specifying the rates they had not taken into consideration any increase in wages or other remunerations to the supervisory Staff and Allied Workers on deputation to them.
- (ii). They have not entered into any rate commitment to include the increase in arrears of wages and or for payment of arrears of wages for the period from 01.01.1998 to 31.07.2000, arising out of the Wage Negotiation Agreement dated 2 August 2000.
- (iii). They have not provided any cushion for any such increase.

15. 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). This is a dispute relating to payment of arrears of wages to the supervisory staff and workers who were on deputation from the MBPT with the Stevedores. Strictly speaking, this is a matter for contractual settlement between the Shipping Lines and the Stevedores concerned. Our involvement in this case has been on overall considerations of avoiding on this account any disruption in port operations.
- (ii). There is no dispute about the staff/workers concerned being the employees of the MBPT; about their being on deputation with the Stevedores concerned; and, about the liability of the Stevedores to bear the burden of the wage-arrears in reference.

- (iii). 9 of the 20 Stevedores have since wound up their activities. In the event, realisation of the arrears from them can only be through tortuous civil proceedings. Even the other 11 Stevedores who continue to be in business have taken the stand that they cannot make this payment since, in the absence of any advance intimation from the MBPT, they have not recovered any additional charges (towards the arrears) from the Lines concerned.

In the meanwhile, the affected employees started agitating for early payment of the arrears. Faced with a threat of disruption in the smooth operation of the port, the MBPT, after elaborate discussions with all concerned, approved of an arrangement under which the Bombay Stevedores' Association (BSA) would start levying a 'special charge' on the Lines to raise funds for discharging their liability towards the MBPT.

Implied in this arrangement was the understanding that unless the BSA started so raising the funds they would not get labour from the MBPT; and, unless, the Lines paid the additional charge so levied they would not get stevedoring services.

- (iv). The MANSAs have represented against the MBPT circular relating to this arrangement. Their contention is that payment of wage arrears is a liability of the Stevedores which cannot be shifted to the Lines through a special levy; and, it is not appropriate for the MBPT to compel the Lines to make a payment which it must legally recover from the Stevedores. The MANSAs petition in effect is that this is a typical case of 'robbing Peter to pay Paul'.
- (v). The MBPT will be justified in taking action against the Stevedores to recover their dues. Towards this end, they can refuse to supply labour to the Stevedores or even consider action for suspension / cancellation of their licenses. This Authority could not have intervened to halt any such action. The MANSAs petition was, therefore, entertained only to the extent of requiring the port not to precipitate a situation by denying services to vessels. It goes to the credit of the MBPT that this Authority was promptly assured of vessels not being denied services by the Port.
- (vi). Information collected during the processing of this case and the arguments advanced at the joint hearing on 22 June 2001 clearly showed that the Stevedores had not collected from the Shipping Lines any charges towards payment of wage arrears. The MBPT had also verified their documents to certify this position. And, the labour discontent over non-payment of arrears was becoming a discordant feature the Port had to seriously reckon with. In this backdrop, our intervention took the shape more of providing a forum for conciliation than for adjudication.

- (vii). On a point of fact, as alleged by the MANSA, this will be a case of 'robbing Peter to pay Paul'. But, it has to be recognised that, in any normal operation of a port, it is inevitable for such situations to emerge. This Authority had itself recognised this prospect when it authorised the Calcutta Port Trust (CPT) to charge a 'special rate' to raise credits to an escrow fund set up for discharging a similar wage-arrear liability and when it authorised the Tuticorin Port Trust (TPT) to charge a 'special rate' for raising credits to an escrow fund set up for defraying the cost of rock dredging. That being so, and bearing in mind the fact that any such arrangement in this case will not in any way result in unjust enrichment of the Stevedores, the attempt has been to evolve an amicable arrangement of collecting Rs.17.50 crores towards settlement of the wage-arrear claim.
- (viii). The MANSA'S objection is not to payments *per se* towards settlement of the wage-arrear claims. Its objection is only to levy of a 'special charge' for this purpose by the BSA as it is not likely to be accepted by its Principals for unquestioned reimbursements. The MANSA has no objection to a formally authorised levy by the MBPT of such a 'special charge' for the purpose since incidence of such a formal levy can easily be shifted to the Shippers.
- (ix). The CSLA has also taken the same position subject, however, to the definite understanding that the solution proposed is specific to this case at the MBPT, the special charge will be entirely separate from the Terminal Handling Charges, and it shall be open to the Lines to recover this special charge from the Trade.
- (x). The BCHAA, expressing agreement with the overall approach adopted towards resolution of the conflict in this case, has still submitted copies of Trade Notices issued by the MANSA and the Karmoham Conference about repeated and arbitrary revision of charges to insinuate that the Shipping/Steamer Agents and the Lines may already have realised from the Trade payments towards the wage-arrear liability. It has to be recognised here that this is only an apprehension of the BCHAA and expressed only through an insinuation at that. In the face of a firm denial on oath by the Stevedores that no such recoveries have already been made by them, which position has also been certified after verification by the MBPT, it will not be possible for this Authority to attach any credence to such insinuations. Significantly, there is no specific rebuttal of the Stevedores' affidavits in substantiation of the insinuations.

It is also noteworthy in this context that the MANSA has categorically affirmed that it has not made any change in the Terminal Handling Charges to recover the 'additional cost' from the consignees. It has in fact required a clause to this effect to be incorporated in the joint statement to be signed by it.

(xi). In line with the position earlier stated of this Authority providing a forum for conciliation to resolve this messy tangle, all the parties concerned were advised to evolve a consensus proposal and file a joint statement accordingly to enable this Authority to formally prescribe it as such. It must however, be pointed out here that, as was agreed at the joint hearing on 13 August 2001, three amendments were to be made in the joint statement [please see paragraphs 11.1(i)-(iii) above] before the joint statement signed by all concerned was formally filed with us. This case has been taken up for final consideration today, even though the joint statement signed by all concerned has not yet been formally filed with us. But, bearing in mind the urgency of the matter and the sensitivities involved, we have taken up the case for final consideration, subject to the understanding that this Order would be notified only after receipt of such a joint statement. It is relevant here to mention that the emphasis on the joint statement is for binding all the concerned parties to the consensus proposal and to eliminate any possibility of avoidable litigation. We have proceeded to pass this order on the (reasonable) assumption that the 'draft' of the consensus-proposal earlier presented will be duly amended as agreed upon and a final document will formally be filed with us accordingly.

(xii). At the joint hearing on 13 August 2001, it was agreed that the BSA would halt recovery of the 'special charge' till 1 September 2001 when this Authority's decision on the consensus-proposal would be available. Since the 'special rate' is now to be charged by the MBPT, the process of recovery by the BSA will be stopped altogether.

The MBPT has been reluctant to submit a proposal from its side for a 'special rate' to be charged in this context prospectively. But, it has unhesitatingly expressed no objection to operating such a tariff if so required by this Authority. And, from this Authority's side, such a decision will be more in the nature of a conciliation arrangement, flowing from a consensus-proposal, and based on overall considerations of interests of the industry.

(xiii). The process of recovery by the BSA started on 15 March 2001. Since the consensus proposal approved is for such a special rate to be charged by the MBPT (and not the BSA), the amount so far recovered by the BSA will be credited to the 'special fund' to be set up for this purpose.

(xiv). In addition to the amounts realised from the Lines, the Stevedores themselves have also made payments from their own funds towards partial settlement of the liability. As envisaged in the consensus-proposal, since a 'special rate' is to be charged by the MBPT, the advance payments made by the Stevedores will have to be refunded to them from out of the realisations made by the MBPT. This Authority requires the MBPT, by way of abundant caution, to verify again before making the refunds, the accounts of the Stevedores to

ensure that they had not taken into consideration the wage arrears while specifying rates to the Lines.

16. In the result, and for the reasons given above, this Authority approves the consensus proposal as detailed hereunder:

- (i). The Mumbai Port Trust (MBPT) will charge a 'special rate' on vessels berthed on or after 1 September 2001 as follows:

S. No	Type of Cargo	The Special Rate	
(a).	Containers	Rs.200.00	Per Box
(b).	Break-Bulk	Rs.25.00	Per M/T
(c).	Bulk	Rs.12.50	Per M/T
(d).	Iron & Steel	Rs.20.00	Per M/T
(e).	Bagged Cargo	Rs.10.00	Per M/T

- (ii). A separate account will be maintained in regard to this Fund, including the amount already collected by the BSA; and, this amount will be utilised only for payment of the said arrears.
- (iii). The levy of special rate will continue only till such time that a sum of Rs.17.50 crores is recovered towards payment of arrears of increased wages and other allowances on account of the bipartite wage settlement dated 2 August 2000; it will cease to be effective thereafter.
- (iv). The directive of the Mumbai Port Trust dated 12 March 2001, in regard to imposition and recovery of a levy by the BSA, will be withdrawn; and, the amount collected by the BSA under the said notification will be appropriated towards the Special Fund.
- (v). The accounts for collection and payments will be maintained jointly by the MBPT and the BSA; and, to the extent that advance payments have been made or likely to be made in future by the members of the Association to the Supervisory Staff and Allied workers, the amounts collected will be utilised to reimburse such members – through the BSA.
- (vi). Lines may recover an amount not exceeding the 'special rate' from the consignees. This will, however, be seen only to be an enabling provision in the sense that, if Lines had been exempting some categories of cargo (e.g. break-bulk cargo) from payment of the 'levy' charged by the BSA, they will not be required to alter their approach because of this decision.

(S. Sathyam)

Chairman

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