

CHAPTER XIX : MINISTRY OF SHIPPING

Mumbai Port Trust

19.1 Loss of revenue due to failure to revise parking charges

Failure of Mumbai Port Trust to revise parking charges resulted in loss of revenue of ₹ 23.10 crore over the past six years on night parking charges alone.

Mumbai Port Trust (MbPT) collects night parking charges at Cotton Depot within the Port area. These charges, fixed under the MbPT General Bye-Laws, have not been revised since April 1989, when it was fixed at ₹ 20 per vehicle per night. MbPT, however, does not levy such charges on day parking within the entire port area or night parking in other areas (other than Cotton Depot) within the Port.

In March 2002, MbPT sent a proposal to Ministry of Shipping (MoS) to amend the Bye-Law to earmark parking places for vehicles and to charge accordingly. After protracted correspondence, MoS informed (June 2010) that the Major Port Trusts Act, 1963 did not permit amendment to Bye-Laws and directed MbPT to replace the existing Bye-Laws with fresh regulations urgently. MbPT, however, has not drafted the new regulations so far (December 2016). Consequently, night parking charges continue to be charged at Cotton Depot at the rate fixed in April 1989, and no day parking charges within the Port or night parking charges in other areas of the Port are levied.

Audit observed that Municipal Corporation of Greater Mumbai (MCGM) collects higher parking charges in similar localities and also revises the rates periodically¹. Therefore, taking the MCGM parking rates as basis, MbPT suffered a revenue loss of ₹ 23.10 crore between 2010-11 and 2015-16 towards night parking charges at Cotton Depot alone.

MbPT stated (October 2016) that comparison with MCGM is not in order as MCGM has earmarked designated areas to 'Pay and Park' and the charges are applicable on hourly and daily basis, whereas, the charges being recovered at Cotton Depot are towards unauthorised night parking of vehicles. MbPT

¹ ₹ 140 per vehicle per day (2010-11), revised to ₹ 145 per vehicle per day (2012-13), further revised to ₹ 150 per vehicle per day (2014-15).

further stated that attempts were being made to replace the Bye-Laws with regulations, but this was a huge exercise.

Ministry of Shipping stated (January 2017) that the Board of Trustees of MbPT have not altered the night parking charges to be recovered at Cotton Depot till date and that MbPT is in the process of framing MbPT (General Management of Port) regulations, where sufficient provision for levy of parking charges is made. Pending finalisation of the same, MbPT continued with the existing rate and that conclusion of revenue loss is hypothetical.

The reply is not acceptable as MbPT had themselves proposed (March 2002) to earmark parking places for vehicles and to charge accordingly. Ministry of Shipping has admitted in its reply that MbPT is in the process of framing MbPT Regulations, where sufficient provision for recovery of parking charges is made. Also, attempts to replace Bye-Laws with regulations should not normally take more than six years.

Thus, failure to revise night parking charges since 1989 resulted in loss of revenue of ₹ 23.10 crore as compared to parking charges levied by MCGM in a similar locality.

Kolkata Port Trust

19.2 Under recovery of guaranteed on-board cum wharfage charges from a private party

Decision of the management to grant credit for the cargo imported by a private party under strategic plan against another agreement relating to lease of land resulted in under-recovery of guaranteed on-board cum wharfage charges to the tune of ₹ 13.36 crore.

The Haldia Dock Complex (HDC) of Kolkata Port Trust (KoPT) entered (February 2006) into a lease agreement with Hooghly Met Coke and Power Company Limited (HMC) for allocation of land admeasuring 6.88 lakh sq. mtrs. to HMC w.e.f. 28 October 2005 on lease for 99 years for setting up of a Coke Oven Plant with the approval (July 2005) of Ministry of Shipping, Government of India. The lease rent payable by HMC included an upfront premium of ₹ 77,170 per 100 sq. mtrs. and a token rent of ₹ 1 per annum for the entire quantum of land. As per the approval of Ministry of Shipping and terms of the lease, HMC was to ensure handling of minimum one million tonne of cargo per annum through HDC for operating their project on the concerned land. It had to furnish a performance guarantee of ₹ 8.5 crore equivalent to annual on-board cum

wharfage charges for handling of one million tonne of cargo and the same was to be encashed by KoPT in the event of short realisation of annual on-board cum wharfage charges. The stipulation of minimum cargo handling and recovery of shortfall had to be effective from 28 October 2010 i.e. after completion of five years from the date of commencement of lease.

Meanwhile, in August 2007, KoPT framed a strategic plan for increasing throughput of the major steel manufacturing industries by granting ousting priority to their coking coal, limestone and coke vessels at Berth No. 2 and 8 of HDC subject to the condition that each party would provide minimum guaranteed throughput (MGT) of 1.5 million tonnes of cargo per annum. Tata Steel Limited (TSL) was one of the Companies which availed this facility from 15 March 2008 for one year with subsequent extensions from time to time.

In March 2010, HMC amalgamated with TSL whereby all liabilities and responsibilities of HMC got vested to TSL. Hence, TSL became responsible for fulfillment of performance guarantee in respect of the land leased to HMC in addition to the performance guarantee under the strategic plan.

It was observed in audit that though there were two separate obligations of MGT on the part of TSL, the Board of Trustees of KoPT, subject to the approval of Central Government, decided to grant (November 2014) credit for the cargo imported by TSL under strategic plan and subsequently dispatched by rail to the Coke Oven Plant of erstwhile HMC towards leasehold land related MGT, although such cargo imported by TSL, had already been accounted for towards MGT against priority berthing of their ships. Thus, instead of claiming an amount of ₹ 34 crore² towards MGT relating to leasehold land for the period from 28 October 2010 to 27 October 2014, an amount of only ₹ 20.64 crore was claimed (May 2014 and January 2015) and realised from TSL. The approval of the Central Government was sought later in April 2015 which was yet to be received (March 2016). Thus, an undue benefit of ₹ 13.36 crore was granted to TSL compromising with the financial interest of KoPT.

Management stated (December 2015) that there was no specific mention in the lease deed or in the strategic plan disallowing the cargo brought

² ₹ 8.5 crore X 4 years = ₹ 34 crore

under strategic plan for Haldia plant of TSL from crediting the same towards land related MGT. Accordingly they allowed credit of the cargo brought by TSL under strategic plan and subsequently dispatched to their Coke Oven Plant towards fulfillment of obligation under land related performance guarantee for the past period. It was also stated that credit towards land related MGT was given as per legal provisions of the lease and KoPT was legally bound to give credit of the cargo dispatched to the Coke Oven Plant of TSL for fulfillment of MGT.

Reply of the management needs to be viewed in the light of the fact that the land was allotted to erstwhile HMC in October 2005, while facilities under strategic plan were given to TSL from March 2008. Thus, these were two separate obligations based on agreements with two distinct legal entities which got amalgamated only in March 2010. Hence management's contention for specific mention of such disallowance in the agreements entered before the amalgamation was not justified. Management's assertion that they were legally bound was also not acceptable since the legal advisor of KoPT opined (May 2013) that the MGT associated with land should be considered as independent of other MGT such as benefits of strategic plan. In spite of such opinion of the legal advisor, the management acted to the contrary compromising with the financial interest of KoPT.

Thus, the decision of the management resulted in under recovery of guaranteed on-board cum wharfage charges to the tune of ₹ 13.36 crore³.

The matter was reported to the Ministry in April 2016; their reply was awaited as of January 2017.

Director General of Shipping, Mumbai

19.3 Non achievement of intended benefits and blockage of funds

Lapses in implementation of e-governance project has resulted in non-achievement of intended benefits, after incurring an expenditure of ₹ 5.10 crore and blockage of funds amounting to ₹ 3.85 crore for nine years.

The Director General of Shipping, Mumbai (DGS) undertook “e-Samudra” project (Project) to integrate the information systems across various departments to provide a single point of contact for electronic delivery of services. The first phase of work was awarded (February 2005) to National

³ Amount to be claimed less amount actually claimed = ₹ 34 crore - ₹ 20.64 crore

Ship Design and Research Centre (NSDRC) Visakhapatnam (now known as Indian Maritime University Visakhapatnam, (IMU (V)) on turnkey basis. It was expected to be completed within 15 months at an estimated cost of ₹ 5 crore. As per the agreement, DGS was to make payments against completion of milestones by IMU (V).

Audit observed that:

- DGS made a payment of ₹ 4.49 crore (89 per cent of Phase-I cost) to IMU (V) between April 2004 to April 2006, before completion of all modules/milestones by IMU (V).
- Only 14 out of 36 modules planned to be completed in Phase I could be made operational in 2009. DGS, however, informed Ministry (September 2006) that the first phase of the project was successful and had been completed on time and requested final approval for Phase II of the project. An amount of ₹ 4.96 crore was sanctioned (December 2006) by DGS for Phase II. The agreement for Phase II work was signed between DGS and IMU (V) in March 2007 and an amount of ₹ 4.40 crores was paid to IMU (V) in April 2007. This amount was kept in a term deposit by IMU (V) (June 2008).
- IMU (V) had incurred expenditure of ₹ 5.10 crore under Phase-I (including ₹ 0.56 crore out of Phase II, incurred for annual maintenance contract). Funds sanctioned for Phase II in 2007 were lying unutilised with IMU (V), in term deposits. The amount lying in term deposit (March 2016) was ₹ 7.98 crore including interest of ₹ 4.13 crore. Thus, there was blockage of funds of ₹ 3.85 crore for over nine years. DGS in reply (August/October 2016) admitted that only 14 modules had been developed and made operational since 2009. It was also stated that, due to various reasons including some technical issues with hardware and software, these modules were neither fully utilised by the stakeholders nor by DGS, GoI. As a result, many functions of DGS, GoI were being carried out on part manual and part electronic platform.

DGS also stated that since the last one and half years, newer modules had been developed and that the existing e-governance system was now being used extensively. DGS further informed that Merchant Shipping Act was being revamped due to which development of certain modules got delayed and that all modules incorporated in Phase-I & II would be implemented under a new e-governance project. The new e-governance project, to be developed in 4

phases, would be implemented in 2017. Existing e-governance system was to be replaced by a completely new, updated, state of the art e-governance project. Further, the existing e-governance system, being more than 10 years old, had become obsolete and needed to be revamped.

The reply of DGS needs to be viewed in light of the following:

- Empowered Technical Advisory Committee of DGS had opined as early as August 2007 that it may not be prudent to incur the expenditure in Phase II of the project until the problems and issues of the Phase I including scalability and performance testing were resolved. This substantiates the audit contention that funds for phase II ought not to have been released.
- The project was taken up over a decade earlier (2005). The contention that the delay was on account of revamping of Merchant Shipping Act is not tenable considering the long period involved.

The project taken up under Phase-I in February 2005 to provide end to end solution for a single point of contact for citizens for delivery of services electronically had not achieved the intended objective even after a lapse of 11 years and after incurring an expenditure of ₹ 5.10 crore. The few modules that were developed already need a revamp. The Phase-II of the project sanctioned in March 2007 has not even commenced after 9 years despite release of ₹ 4.41 crore in April 2007.

Thus, lapses in implementation of e-governance project resulted in non-achievement of intended benefits after incurring an expenditure of ₹ 5.10 crore and blockage of funds amounting to ₹ 3.85 crore for nine years (December 2016).

The matter was reported to the Ministry in August 2016; their reply was awaited as of January 2017.

Visakhapatnam Port Trust

19.4 Non realisation of outstanding claims

Visakhapatnam Port Trust failed to recover ₹ 4.64 crore from Indian Railways due to absence of provision in agreement.

In terms of standing formal agreements between the Visakhapatnam Port Trust (VPT) and the Indian Railways, inward and outward freight transporting

wagons are exchanged at the Receipt and Dispatch (R&D) Yard, with the VPT or the Railways, as the case may be, responsible for further onward transportation. From the year 2010 onwards, and without formal agreement, the VPT and Railways implemented a new procedure, whereby, instead of using the R&D Yard, the wagons are directly dispatched to the loading and unloading points at the VPT and the Railway Yard, Vizag. The VPT and the Railways periodically raise claims against each other for such transportation.

Audit observed (December 2015) that for the period July 2010 to April 2015, there was a net claim of ₹ 4.64 crore outstanding against the Railways. VPT stated (December 2015) that the outstanding claims could not be realised due to the absence of provision in the agreements; however, suitable provisions would be included in the ensuing agreement of 2016. The Ministry endorsed (April 2016) the reply of the Management.

The reply is not tenable as procedures with significant financial implications should not be introduced without formal agreement. Consequently, recovery of ₹ 4.64 crore was doubtful.

19.5 Irregular reimbursement of tuition fees

Visakhapatnam Port Trust overpaid/irregularly paid ₹ 1.47 crore towards tuition fees for college courses contrary to provisions of wage settlement.

The Visakhapatnam Port Trust (VPT) Employees (Educational Assistance) Regulations, 1990, stipulate that an employee is eligible to draw children education allowance when he is compelled to send his child to a school away from the station at which he is posted/and or resides owing to the absence of a school of the requisite standard at that station. The Regulations further prescribe that an employee shall be eligible for reimbursement of tuition fee provided that no children's educational allowance is admissible. Such reimbursement of tuition fee is admissible within limits for education from Class I to Intermediate, Pre-University and for technical, medical, polytechnic or correspondence college courses.

Ministry of Shipping Road Transport and Highways constituted (25 January 2007) a Bipartite Wage Negotiation Committee (BWNC) which included, *inter-alia*, representatives of major federations of Group C and Group D employees⁴ and workers of Ports and Docks. In terms of the settlement

⁴ Also known as class III and class IV employees

(19 January 2010)⁵, the children education allowance and the reimbursement of tuition fee were merged as the 'Children Education Allowance Scheme'. Such reimbursement was admissible for education from classes nursery to twelfth. VPT implemented the wage agreement and wrote to the Ministry (November 2012) for comprehensive amendments to the Regulations in terms of the wage agreement. The amendments specifically proposed deletion of references to reimbursement of tuition fee for the said college courses. The Ministry, however, is yet to approve the amendment (August 2016).

In the meanwhile, VPT continued to reimburse tuition fees for technical, medical, polytechnic and correspondence college courses to its employees. On this being objected to in audit (November 2015), VPT stopped payment with effect from 29 December 2015. However, the recovery of ₹ 1.47 crore⁶ (as on August 2016) of payment of inadmissible tuition fees is pending.

VPT replied (28 December 2015) that the issue of reimbursement of tuition fees would be taken up with the Indian Ports Association and Unions after ascertaining the position in other ports. The reply is not tenable in view of the fact that the children education allowance scheme introduced consequent to the wage agreement is far more liberal⁷ than the earlier schemes, except in respect of college education. In terms of the wage agreement, the employees are covered under the new scheme and the question of their picking and choosing the uncovered benefits available under the earlier scheme does not arise. In light of this, the VPT is required to recover ₹ 1.47 crore overpaid/irregularly paid to its employees under children education allowance.

The matter was reported to the Ministry in January 2016; their reply was awaited as of January 2017.

⁵ Effective 1 January 2007

⁶ Overpayment (from 1 January 2010 to 28 December 2015)

⁷ The new scheme contains the following additional provisions not contained in the earlier scheme: (i) It is uniformly applicable to all employees irrespective of the place of study of the children; (ii) It includes education in nursery class; (iii) It has a higher monthly ceiling of ₹ 1,000 per child (₹ 2,000 for children with disabilities) compared to the earlier ceiling ranging from ₹ 40 per month to ₹ 105 per month plus science fee as applicable ranging from ₹ 10 to ₹ 15 per month; (iv) It provides for periodic increases in monthly ceiling; (v) It contains ten categories eligible for reimbursement including five categories specifically excluded under the earlier scheme; (vi) It provides for reimbursement of text books, note books, uniforms and school shoes.

Cochin Port Trust

19.6 Loss of revenue due to lack of due diligence in drafting of lease deed

Cochin Port Trust incurred loss of revenue of ₹ 1.98 crore due to incorporation of contradictory clauses in a lease deed for allotment of land.

Cochin Port Trust (CoPT) allotted (March 2001) land measuring 10,000 sq. metres to M/s Larsen & Toubro Limited for construction of cement handling facility, for a period of 30 years. The terms of allotment provided for a Minimum Guaranteed Throughput (MGT) of 3 lakh tonnes per annum from the date of taking over the land by the allottee. The allotment was terminated in April 2008 due to non-construction and non-fulfillment of the condition regarding MGT as per allotment letter but was restored again in February 2009 when the allottee filed (May 2008) a writ petition with Hon'ble High Court of Kerala. The lease deed was signed by CoPT with M/s Ultra Tech Cement Limited (demerged entity of M/s Larsen & Toubro Limited), in November 2010. In terms of clause 7 (g) of the lease agreement, the lessee was liable to pay shortfall in the wharfage and berth hire charges, if the lessee failed to achieve MGT beginning from the date of commissioning of the project. After restoration of the land, it was agreed (March 2010) by CoPT that the construction of the cement handling facility would be completed by the lessee by February 2011. CoPT again extended (December 2011) the construction period from February 2011 to February 2013 subject to payment of MGT w.e.f. 1 October 2011. Consequently, since the lessee was able to ensure the first shipment only in April 2013, CoPT served (May 2013) notice to the lessee for MGT payment of ₹ 2.21 crore (including service tax of ₹ 0.24 crore) for the period from October 2011 to March 2013. The lessee however, refused (June 2013) to make the payment citing clause 7 (i) of the lease deed which stipulated that MGT was not applicable to the lessee. Consequently, due to inclusion of contradictory clauses in the lease deed, the recovery could not be enforced, even though the lessee did not achieve MGT till March 2014. Thereafter the lease deed was amended (24 February 2016) deleting clause 7 (i), and making the payment of MGT applicable from 1 October 2014. Thus, failure of CoPT to ensure due diligence in the drafting of lease agreement resulted in loss of revenue of ₹ 1.98 crore (excluding service tax) for the period from October 2011 to March 2014. CoPT accepted the facts.

The matter was reported to the Ministry in September 2016; their reply was awaited as of January 2017.