2025 INSC 971

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10542 OF 2025
(Arising out of S.L.P.(C) No.9751 of 2023)

PARADIP PORT AUTHORITY ...Appellant (s)

VERSUS

PARADEEP PHOSPHATES LTD. ...Respondent(s)

WITH

CIVIL APPEAL NO. 10543 OF 2025
(Arising out of S.L.P.(C) No.9870 of 2023)

BOARD OF TRUSTEES OF PARADIP PORT ... Appellant (s)

VERSUS

PARADEEP PHOSPHATES LTD. AND ANR. ... Respondent(s)

J U D G M E N T

Rajesh Bindal, J.

Table of Contents

1. Leave granted.

2. This order will dispose of two appeals.

3. The issue pertains to fixation of tariff by the Paradip Port Authority[1]. There were two Writ Petitions[2] decided by the High Court by a common order[3]. Both were filed by the appellant herein. Though the period involved is different, the High Court had decided both the writ petitions by a common order. For this reason, both the appeals are being taken up and decided together.

C.A. NO. OF 2025

ARISING OUT OF S.L.P.(C) NO.9751 OF 2023

FACTUAL ASPECTS

4. The present appeal has been filed by the Appellant (formerly Paradip Port Trust) challenging the common order of the High Court dated 11.01.2023 disposing of WP (C) No.11 of 2010.

5. The aforesaid petition was filed against order dated 19.10.2009 passed by the Appellate Authority in appeal[4], which upheld the arbitral award[5] dated 27.12.2002. The Appellant was ordered to refund the additional amount charged till 31.03.1999 along with interest, holding the same to be unilaterally enhanced. As far as refund from 01.04.1999 and interest is concerned, both the parties were directed to file petition before Tariff Authority for Major Ports

1 Earlier Paradip Port Trust
2 WP (C) No.732 of 2012 and WP (C) No.11 of 2010
3 Dated 11.01.2023
4 Appeal No.5/L.S/2003
5 Case No.MA/NCJ/12/2001dated 27.12.2002

(hereinafter referred to as the TAMP). The award and appellate order were subject matter of challenge in the Writ Petition.

6. The High Court dismissed the petition, upholding the impugned award and the appellate order.

7. The appellant is a major port authority, governed by the provisions of the 1963 Act[6], which is now renamed as Paradip Port Authority (PPA) under the 2021 Act[7]. The 1963 Act was replaced by the 2021 Act.

8. The respondent herein was a public sector unit when it entered into a bilateral agreement with the appellant/Authority on 03.08.1985. The idea thereof, as is evident from the agreement, was that the appellant/Authority agreed for construction of berth at Paradip Port, to be known as Fertilizer Berth, to provide berthing facilities exclusively to the respondent. The tariff to be paid by the respondent was prescribed in the Agreement. The rates could be suitably enhanced at such intervals as would be mutually agreed upon by the parties from time to time. It was the responsibility of the respondent to make such construction and install such equipments exclusively at their cost to ensure smooth handling of its cargo. It was

6 Major Port Trusts Act, 1963
7 Major Port Authorities Act, 2021

responsible for its maintenance as well. Clause 19 of the Agreement provided that the respondent shall be subjected to application of all relevant laws, rules and regulations of the Paradip Port Trust, as may be applicable from time to time.

9. In exercise of power conferred under Sections 48 to 52 of the 1963 Act, Traffic Department of Paradip Port Trust issued Notification[8] dated 05.10.1993 for revision of scale of rates for use of various facilities at the Ports. It was conveyed to the respondent. The payments were made by respondent to the Authority at revised rates.

10. Vide letter dated 11.05.2000, the Appellant/authority while rejecting request made by the Respondent for waiver of interest on account of delayed payment of revised port charges, offered the facility of payment thereof in 3-4 installments. This was replied to by the respondent vide its letter dated 18.05.2000 seeking waiver of interest on account of financial condition of the respondent. The appellant/Authority responded to the same vide letter dated 31.05.2000 again requesting for deposit of interest by 30.06.2000, failing which services to respondent's incoming vessels would be stopped. The respondent filed Civil Suit[9] before the Civil Judge (Junior Division) praying for declaration that appellant/Authority had no right

8 Notification No.1344
9 Original Suit No.115 of 2000

to amend terms and conditions of bilateral agreement dated 03.08.1985. Further, the respondent prayed for injunction against appellant from giving effect to the terms and conditions contained in the scale of rates published on 05.10.1993, claiming that the same do not form part of the bilateral agreement.

11. As the respondent on 15.09.2000 was still a public sector unit, the Trial Court on that day directed the respondent to obtain clearance certificate for litigation from the high power committee.

12. The Respondent being a public sector unit as on that date, a supplementary agreement was signed between the parties on 10.08.2001 providing for resolution of dispute by arbitration. From a reading of aforesaid supplementary agreement, it is evident that the same was an informal mechanism for resolution of dispute as the provisions of the Arbitration Act were strictly made inapplicable. It may be relevant to add here that there was already a clause for arbitration in the agreement signed between parties. The same was not invoked.

13. The arbitrator was appointed. During the process of aforesaid proceedings, by way of a share purchase agreement dated 28.02.2002, executed between the President of India and Zuari Maroc

Phosphates Private Limited, 76% shareholding of the Respondent Company was transferred. As a result thereof, from 28.02.2002 onwards, the Respondent Company was a private sector entity.

14. The Arbitrator framed the following issues and answered them:

S. No.	ISSUE	ANSWER
I	What was the scope and ambit of the agreement entered into between the parties?	Clause 19 of the agreement shall be applicable only for the other port charges and cannot provide any help to unilaterally change the terms of the agreement.
II	Whether the tariff as provided in the contract can be revised unilaterally without the consent of the other party?	No
III	Whether the rates revised were reasonable and the respondent in the given circumstances was justified to enhance the rates?	No
IV	Whether the interest claimed by the Port authorities for delayed payment was permissible under the contract or under the statutory rules and regulations, etc.?	Yes
V	Whether the claims and counter claims filed by both the parties are tenable in law	Port Authorities should refund the amount charged by them on the

	and on merit?	basis of unilateral enhancement from the initial dated till 31.03.1999. As far as the refund and interest from 1.04.1999 to till date is concerned, both the parties should make a petition to the TAMP.

Finally, vide award dated 27.12.2002, the Arbitrator held the appellant liable to refund the enhanced amount of port services from October 1993 till 31.03.1999. As the period of dispute for determination for the Arbitrator was from October 1993 till 31.10.2001, for the period from 01.04.1999 till 31.10.2001, the parties were given option to approach the TAMP for resolution of their dispute.

15. As per the procedure agreed upon by the parties, the appellant/Authority preferred an appeal against the aforesaid Award. After filing of the appeal, there was lot of litigation between the parties, which is not relevant for the purpose of the issues raised in the present appeal, except that on 30.05.2009, resolution was passed by the Appellant-Authority to withdraw easementary rights given to the Respondent. A proposal to recover a sum of ₹40.36 Crores from the

Respondent was also approved as arrears towards revision of tariff in line with IFFCO tariff for the period from March 2002 till January 2009.

15.1 On 02.06.2009, the aforesaid resolution was communicated to Respondent invoking clause 21 of the agreement dated 03.08.1985.

15.2 Challenging the aforesaid communication dated 02.06.2009, the Respondent filed Writ Petition[10] in the High Court. Noticing the fact that on the same issue, a Civil Suit No.55/2009 was pending in court of Civil Judge Junior Division Kujang, which the Respondent offered to withdraw, and noticing the fact that proceedings were also pending before TAMP for fixation of tariff for the earlier periods, matter was left open to be decided by TAMP.

15.3 Vide order dated 19.10.2009, the Appellate Authority rejected the appeal filed by the Appellant against the award of Arbitrator dated 27.12.2002.

15.4 Aggrieved against the order passed by the Appellate Authority, the Appellant/Authority preferred Writ Petition[11] before the High Court which was dismissed

10 WP (C) No. 86509 of 2009
11 Writ Petition (C) No.11 of 2010

16. In the Writ Petition filed by Appellant/Authority, the award of the arbitrator and Appellate Authority was upheld. The order of High Court is under challenged in this Appeal.

ARGUMENTS FOR THE APPELLANT

17. Mr. Jaideep Gupta, learned senior counsel appearing for the appellant/Authority, submitted that Clause 1 of the Agreement provides that the captive berth shall be exclusively used by the respondent, subject to payment of tariff as mentioned in the Schedule annexed to the Agreement. The rate was subject to enhancement at such intervals as would be mutually agreed upon by the parties. Clause 19 of the Agreement clearly provides that the respondent shall be subjected to the application of all relevant laws, rules and regulations of the Authority as may be enforced from time to time. In the case in hand, certain tariff was fixed when the Agreement was entered into between the parties on 03.08.1985. That cannot be said to be an Agreement providing for the tariff fixed for all times to come. That is the reason why an enabling provision was provided for revision of tariff. The Agreement clearly envisages application of laws, rules and regulations to the respondent. In case the parties failed to agree to mutually settled terms for revision of tariff, the law will take its own course

17.1 Learned senior counsel also referred to the pleadings by the respondent in the civil suit filed. It is the admitted case of the respondent therein that in the year 1993-94 a proposal was made by the appellant/Authority for revision of tariff, to which the respondent objected vide letter dated 16.03.1993. Still, the appellant/Authority forcibly enhanced the tariff unilaterally from October 1993. The aforesaid admitted fact in the suit filed by the respondent clearly establishes that initially an effort was made for revision of tariff by mutual consent, however, respondent having not agreed to the same, the Appellant/Authority did not have any other option but to proceed in terms of provisions of Sections 48 to 52 of the 1963 Act. A notification was issued on 05.10.1993. After issuance of the aforesaid notification, the respondent continued to pay the revised tariff without any objection till the time the aforesaid civil suit dated 30.06.2000 was filed. The same being cleverly drafted, had only sought the relief of declaration and permanent injunction. The relief being that the appellant/Authority could not amend the terms of the Agreement dated 03.08.1985; the appellant/Authority could not give effect to the revised rates as published in the year 1993 and permanently injuncting the appellant/Authority from giving effect to 1993 Notification. No relief was claimed for any refund of the amount

already deposited by the respondent in terms of rates revised vide Notification dated 05.10.1993.

17.2 It was further submitted that the aforesaid arguments were specifically raised before the Arbitrator, in appeal against the Award and in the Writ Petition before the High Court, however, the same were not considered. The same goes to the root of the case and needs examination by this Court. The arbitration could be in terms of the claim made by the respondent in the civil suit and not beyond that. In fact, from the conduct of the respondent, it did not have right to challenge the revised tariff as notified on 05.10.1993 as without any objection the same was paid till the filing of the suit dated 30.06.2000. Referring to Section 55 of the 1963 Act, it was submitted that though no claim for refund of any amount was made in the civil suit on the basis of which the arbitration proceedings were conducted, any claim of refund could be filed within six months only. In the case in hand, the refund was never claimed by the respondent. It was further argued that there is basic error in the Award of the Arbitrator because refund was claimed for the period from October 1993 till 31.03.1999. The issue for revision of tariff was not considered any further either in appeal or in writ petition. It was held that the provisions of the Act will not apply even if there was failure on the part of the parties to agree

upon for revised tariff. Whereas, for the period from 01.04.1999, the finding given is that TAMP constituted under Section 47A of the 1963 Act will have jurisdiction to determine the tariff. In the Award of the Arbitrator the period so mentioned was from 01.04.1999 to 31.10.2001. In addition to the aforesaid period vide an order passed by the High Court on 08.07.2009 in Writ Petition No.8509 of 2009, a direction was given for consideration of such an issue by TAMP even for the period subsequent thereto.

17.3 Further argument was raised that even otherwise, the claim made by the respondent, even though it may be considered admissible for the argument's sake, shall be time-barred as the suit for raising an issue regarding tariff from October 1993 onwards was filed in June/July 2000.

ARGUMENTS FOR THE RESPONDENT

18. On the other hand, Mr. Shyam Divan, learned senior counsel appearing for the respondents, submitted that the case in hand does not call for any interference by this Court. The issue has already been examined at three different levels, namely, Arbitrator, the Appellate Authority and thereafter in a Writ Petition by the High Court. There are concurrent findings of fact. Hence, the scope of

interference by this Court is minimal unless there is grave error, and the views expressed by the authorities or the court are not plausible.

18.1 The disputed period from the year 1993 to 1999, has been dealt with in the Award of the Arbitrator. There is no issue after 01.04.1999 as TAMP has been constituted. Even otherwise, in the factual matrix, specially which are to be dealt with by the Expert Bodies, the courts adopt a hands-off approach. Referring to the provisions of the Agreement entered between the parties on 03.08.1985, the submission is that Clause I thereof in fact is a primary clause. The tariff rates have been agreed upon. It further provides that the increase, if any, in future can only be with mutual agreement. In case the parties failed to mutually agree upon revision of tariff, the issue may have to be resolved by an independent third party. It can be by way of arbitration or may be by any other remedy. Schedule attached to the agreement was referred to. It was highlighted from there that some of the rates as agreed upon were fixed minimum charges whereas some were variable. Clause II of the Schedule is also relevant in that context which deals with additional charges payable by respondent, namely, tug hire, pilotage and port dues only as per the scale of rates and no other charges like berth hire, warping, mooring or immuring charges are payable.

18.2 Further, reference was made to Clause 20 of the agreement which specifies that if there is any dispute arising out of and in relation to clauses of Agreement or for interpretation of any terms of the Agreement, the matter shall be referred to arbitration. Clause 2 of the Agreement clearly specifies that the entire construction had to be raised by the Respondent. Once rates have clearly been defined in the agreement as agreed upon between the parties, there is no need for invocation of Clause 19 of the Agreement. The rates which have been agreed upon between the parties are not the normal rates which may be applicable for any other importer. In the business world, such types of agreement are entered into which are for mutual benefit with an idea to promote business.

18.3 In response to the arguments raised by Mr. Jaideep Gupta, learned senior counsel appearing for the appellant that the respondents had paid the revised charges from 1993 to 1999 without raising any objection, reference was made to various correspondence between the parties starting from 16.03.1993. It was at the stage when there was proposal for revision of rates as was notified on 05.10.1993. The suit had to be filed in June 2000 when Respondent was requested to deposit the net outstanding interest amounting to ₹38,58,718/- latest by 30.06.2000, failing which Appellant would have stopped

services to the incoming vessels. It was during the pendency of the suit that on agreed terms the matter was referred to arbitration on 10.08.2001. It was during the pendency of the arbitration proceedings that Respondent, which was a public sector unit, was sold off to a private player on 28.02.2002.

18.4 To buttress the argument that the Award of the Arbitrator, which was upheld by the Appellate Authority and thereafter by the High Court, has dealt with all the issue threadbare, it was submitted that firstly, the Arbitrator framed issues with the consent of both the parties. Insofar as the main issue is concerned regarding justification of revision of rates, despite opportunity granted to the respondents no material was placed before the Arbitrator which could justify revision of rates as sought by the Appellant/Authority. As far as the enabling provision in the Agreement regarding revision of the rates by mutual agreement is concerned, the finding recorded by the Arbitrator was not disputed.

18.5 Reference was made to the order passed by the Appellate Authority which again examined the Award of the Arbitrator and has recorded categoric finding that there was no error therein. The issue was thereafter considered by the High Court which also upheld the

same. There are limited grounds on which an award of the Arbitrator can be interfered with.

18.6. He further argued that reliance on the revision of rates by the Wage Board in 1994, could not be the basis for revision of tariff in 1993.

DISCUSSION

19. We have heard learned counsel for the parties and perused the relevant referred record.

20. The facts of the case are not in dispute that an agreement was executed between the parties, namely Paradip Port Trust and Paradeep Phosphates Ltd on 03.08.1985 for use of 'captive berth' in terms of the conditions laid down in the Agreement. At the time when the aforesaid agreement was executed, the respondent/Paradeep Phosphates Ltd. was a public sector unit. Clause 1 and 19 of the Agreement which are relevant for consideration of the issues in question are extracted below:

> "1. That the said Captive berth shall be exclusively provided for use of the Paradeep Phosphates Ltd., subject to payment of the Rate mentioned in the schedule of rates; annexed to the agreement and will become payable one calendar month after the berthing of the Ist vessel at this

berth. The rates now charged can be suitably enhanced at such intervals as would be mutually agreed upon by the parties from time to time.

x x x x

19. That the Paradip Phosphates, shall be subjected to the application of all relevant laws, rules and regulations of the Paradip Port Trust that are for the time being in force and that would be framed and enforced from time to time."

20.1. Along with the Agreement a Schedule was annexed which provided for tariff for different facilities to be used by the respondent. Part of the same were fixed whereas other charges namely tug hire, pilotage and port dues were to be paid as per the scale of rates.

20.2. A perusal of Clause 1 of the Agreement shows that the facilities could be used subject to payment of the rate mentioned in the schedule of rates, and the rates charged can be suitably enhanced at such intervals as would be mutually agreed upon between the parties from time to time.

20.3. Clause 19 provides that the respondent shall be subjected to the application of all relevant laws, rules and regulations of the Paradip Port Trust.

21. Merely because an Agreement was entered into between the parties, the same cannot override the provisions of law. The terms

of the Agreement only provides for creation of facilities and certain tariff to be charged from the respondent, which could be revised from time to time as agreed. In case the parties do not agree with the revision of tariff the same will not remain in abeyance as some authority has to resolve this issue. Even the counsel for the respondent did not dispute this fact. After the aforesaid Agreement was executed, as cost and overheads on many aspects had increased, vide communication dated 08.04.1993, the appellant had written to the respondent mentioning that ever since the agreement was entered into, the port charges had increased by 50% during 1989, whereas no revision of tariff was made for the respondent. Though, as per the proposed rates, the increase in tariff for others may be in the range of 40 to 50%, whereas for the respondent the additional tariff will be only 25%. Option was given to the respondent in case any discussion was required. From the record before this Court there was nothing to show that any reply was given by the respondent to the aforesaid communication.

21.1. Vide Notification dated 05.10.1993, in exercise of power conferred with the competent authority under Sections 48 to 52 of the 1963 Act, new scale of rates were notified for use of port facilities. The aforesaid notification in Clause 3.1.1 provided for separate rates for

the respondent, as compared to the normal rates for other users of the port facilities. The respondent continued paying the revised rates without any objection.

21.2. A communication dated 11.05.2000 from the appellant to the respondent has been referred to, which talks about rejection of the proposal of the respondent for waiver of interest for delayed payment of certain dues from October 1993 to January 1996 and request for payment of the outstanding amount of interest. Opportunity was given to pay the arrears in 3-4 installments. In response to the aforesaid communication, the respondent vide letter dated 18.05.2000, on the subject of waiver of interest for belated payment, submitted that the respondent had been requesting for revision of existing agreement in the present day context. To dispute payment of interest, it was submitted that there was no provision in the Agreement for the purpose. Request for waiver of interest was rejected by the appellant vide communication dated 31.05.2000. Time was granted up to 30.06.2000 for payment of the outstanding interest, failing which the appellant may be constrained to stop the facilities provided for.

22. The respondent filed a civil suit praying for the following reliefs:

> *"a) To declare that the Defendants and their agents have no right to amend the terms and conditions of the bilateral agreement dated 3.8.1985, unilaterally.*
>
> *b) To declare that the defendant and their agents have no right to give effect to the terms and conditions contained in the Scale of Rates published by them in the year 1993 which do not form part of the bilateral agreement dated 3.8.1985.*
>
> *c) To permanently injunct the defendants their agents and officers from giving effect to the terms and conditions contained in the scale of Rates published by the Defendants in the year 1993. To allow any other relief(s) as it may deem proper in the facts and circumstances of the case. And for which act of kindness the Plaintiff shall ever pray as in duty bound."*

23. Interim stay was granted on 30.06.2000. Vide order dated 15.09.2000, the Trial Court in the aforesaid suit directed the respondent/plaintiff in the civil suit to obtain clearance from the High Power Committee as two public sector units were party to the litigation.

24. It may be out of place if not mentioned here that in the Agreement signed between the parties, Clause 20 provided for

reference of any dispute, arising out of or in relation to any of the clause of the agreement, to arbitration. The parties agreed for resolution of disputes by adopting an informal mechanism and an agreement was signed on 10.08.2000 in that regard. It provided for the reference of dispute to the Arbitrator as mentioned in the clause, and in case any of the parties was aggrieved of the award, the remedy of appeal was also provided. The clause specifically mentioned that the Arbitration Act shall not be applicable to the arbitration under this clause. The terms agreed on 10.08.2000 are extracted below:

> *"In the event of any dispute or differences relating to the interpretation and application of the provisions of the contracts, such dispute or difference shall be referred by either party to the Arbitration of one of the Arbitrators in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in charge of the Bureau of Public Enterprises. The Arbitration Act, 1940 shall not be applicable to the arbitration under this clause. The award of the Arbitrator shall be binding upon the parties to the dispute, provided however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special*

Secretary/Additional Secretary when so authorised by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator."

25. We deem it appropriate to deal with the argument raised by the learned senior counsel for the respondent at this stage regarding challenge to the award of the Arbitrator on limited ground as enumerated under Section 34 of the Arbitration and Conciliation Act, 1996[12]. As it was agreed upon between the parties that the Arbitration Act will not be applicable, it was an informal in-house procedure adopted by the parties for resolution of the dispute where public sector units were involved, hence, the principles laid down for the examination of award given under the 1996 Act will not be applicable.

26. On 30.11.2001, a statement of claim was filed before the Arbitrator. While the matter was at the stage of completion of pleadings, vide Agreement dated 28.02.2022, the President of India transferred 74% shares in the respondent company to Zuari Maroc Phosphates Private Limited. As a result of which the respondent became a private entity and was no longer a public sector unit. The

12 Hereinafter referred to as 'the 1996 Act'

Arbitrator passed an award on 27.12.2002 recording certain findings, which were contrary to law and anomalous.

26.1. The Award held that only Clause '1' of the Agreement will apply and not Clause '19'. The aforesaid finding goes against the very basic principle that the entire agreement has to be read as a whole and not different clauses in isolation.

26.2. On the second issue as to whether the tariff provided in the agreement could be revised unilaterally by the appellant without the consent of the respondent, it was opined that the appellant should have sought consent of the respondent. If the consent is not received, the appellant could have terminated the Agreement or referred the matter to an arbitrator to decide the question of such enhancement. The enhancement of rates from October 1993 was quashed. For the period from 01.04.1999 onwards, the parties were given liberty to approach the TAMP. This was done while referring to the instance of M/s Oswal Chemicals and Fertilizers Ltd.

26.3. On the issue of whether the rates revised were reasonable, the claim was rejected. But the issue regarding levy of interest for delayed payments was decided in favour of the appellant by referring

to the regulations framed by the appellant. In that regard, reference was made to Clause 19 of the Agreement.

27. Further, it was argued that since the exercise had already been undertaken, no interference was warranted. It is a little surprising to note that the Arbitrator, Appellate Authority and also the High Court did not find any justification for revision of rates which were fixed way back in the year 1985 till 1999. The fact remains that during the interregnum, periodically the port charges were revised from time to time vide notifications issued in years 2000, 2005, 2007 and 2011. It cannot be disputed that during the interregnum the cost of many inputs and services being provided by the appellant must have increased manifold; even the salaries of the employees and the wages of the workmen. Calculations in such cases cannot be with mathematical precision.

28. A perusal of the order passed by the Appellate Authority shows that the same is totally cryptic. Being the first Appellate Authority, it was incumbent upon it to re-examine the facts in terms of the law applicable. The Appellate Authority had merely re-written some of the findings of the Arbitrator, barely stating that the sole arbitrator had correctly decided the issue. The Appellate Authority

has not considered the factual aspect of the matter regarding revision of rates.

29. The High Court while considering the issue has totally misdirected itself by holding that the Agreement will override the provisions of the 1963 Act. Reliance by Respondent on a judgment in Patiala Central Cooperative Bank Ltd. vs Patiala Central Cooperative Bank Employees' Union[13] under the Industrial Disputes Act, 1948 was totally misplaced. The issues, though required to be dealt with in detail, were not discussed.

30. It is not in dispute that from time to time tariff has been revised by the appellant in terms of the provisions of the 1963 Act. Three different notifications have been issued on 27.04.2000, 12.01.2005, 31.10.2007 and 23.05.2011 as pointed out at the time of hearing.

31. A fact that cannot be lost sight of is that by ignoring the arbitration clause in the Agreement signed between the parties, an informal mechanism was agreed upon, as both parties were public sector units. The idea was to resolve the issue. However, the fact remains that after the informal arbitration process started, with the transfer of 74% shares of the respondent to a private sector company,

13 (1996) 11 SCC 202; 1996 INSC 1056

the dispute had taken the shape of contested litigation, which was required to be adjudged by an expert body and not in the manner it had been dealt with.

32. It is important to note that the 1963 Act was replaced by the 2021 Act. In the 1963 Act, Chapter V-A, consisting of Sections 47-A to 47-H, was added w.e.f. 09.01.1997. It provides for the constitution of a 'Tariff Authority' for fixation of scales of units for using various facilities provided at the port. The authority consisted of a Chairman, from amongst persons who is or who has been a Secretary to the Government of India or has held any equivalent post in the Central Government and two other Members who have expertise in the subject; one Member from amongst economists having experience of not less than fifteen years in the field of transport or foreign trade and another Member from amongst persons having experience of not less than fifteen years in the field of finance with special reference to investment or cost analysis in the Government or in any financial institution or industrial or service sector. Even in the informal arbitration, the Arbitrator, while deciding the dispute for part of the period, namely, October 1993 to 31.03.1999 had referred the parties to invoke the jurisdiction of TAMP for the period subsequent thereto, namely, 01.04.1999 to 31.10.2001. The reason for this was that TAMP

came into existence on 01.04.1999, even though the amendment to the 1963 Act had been made earlier in 1997. The 1963 Act has been replaced by the 2021 Act with effect from 03.11.2021. Section 54 thereof provides for the constitution of an 'Adjudicatory Board' for the purpose of fixation of tariff. Hence, as on today, it should be the board which should have adjudicated this dispute. However, as was pointed out and is evident from the first proviso to Section 54 of the 2021 Act, no adjudicatory board has been constituted under the 2021 Act, hence, it is the TAMP which has jurisdiction to adjudicate the issue.

33. In our view, the issues required to be considered for revision of rates applicable to the respondent for use of various facilities, have not been considered in the manner these were required to be considered. The TAMP being an independent authority consisting of experts, will be the right authority for resolution of dispute between the parties, which is pending for more than two decades.

CONCLUSION

34. For the reasons mentioned above, we set aside the Award of the Arbitrator, the order of the Appellate Authority and also the order passed by the High Court. We remit the matter to TAMP for

adjudication of the dispute regarding revision of tariff applicable to the respondent for the period from October 1993 till 31.03.1999. As we are remitting the matter, we have not dealt with other issues raised in the appeal. Needless to add that all the issues, including limitation, shall be considered by the TAMP.

C.A. NO. OF 2025

ARISING OUT OF S.L.P.(C) NO.9870 OF 2023

FACTUAL ASPECTS

35. In the present appeal, the order dated 11.01.2023 passed by the High Court is under challenge. Before the High Court, an order passed by TAMP on 22.11.2011 was the subject matter of challenge. Vide aforesaid order, tariff proposal for the financial year 1999-2000 to 2009-10 was determined. The claim of appellant for revision of the rates was rejected. It may be out of place, if not mentioned here, that before the TAMP, part of the period of 01.04.1999 till 31.10.2001 was the subject matter before the Arbitrator who had granted liberty to the parties to get the same decided by the TAMP. For the period prior thereto, he had adjudicated the dispute, and from 01.11.2001 onwards, matter was considered by the TAMP in view of the order dated 08.07.2009 passed by the High Court in WP (C) No.8509 of 2009. In the said Writ Petition, the High Court was called upon to adjudicate the

validity of the communication dated 02.06.2009 by which the Appellant raised a demand of ₹40.36 crores from the Respondent, for the period March 2002-January 2009, by computing rates applicable for Oswal Chemicals & Fertilizers and IFFCO. The High Court vide order dated 08.07.2009 left the matter to be decided by TAMP as the parties had already approached TAMP.

ARGUMENTS FOR THE APPELLANT

36. Mr. Jaideep Gupta, Senior Counsel appearing for the Appellant, submitted that TAMP was called upon to decide the tariff firstly for the period 01.04.1999 to 31.10.2001 which was referred to by the Arbitrator. It was for the reason that TAMP had come into existence w.e.f. 01.04.1999. For the period subsequent thereto i.e., from 01.11.2001 till 31.03.2010, determination was in view of a reference made by the High Court vide order dated 08.07.2009 passed in WP (C) No. 8509 of 2009. It is not a matter of dispute that fixation of tariffs is a highly complicated arena which is the job of experts. In fact, TAMP has failed to exercise the jurisdiction vested in it entirely on a wrong premise. Firstly, there was a clear violation of the principle of natural justice in the case in hand. Number of documents, account statements and other details were filed by both the parties. The Appellant had given a Powerpoint Presentation, however, still the

TAMP had the audacity to mention in the order dated 22.11.2011 that no opportunity of hearing was required to be given. Such complicated issues could not be adjudicated merely by reading the documents wherein lot of figures and a past period was involved.

37. Secondly, on a wrong premise, the TAMP wished to enter in the wrong arena of making an effort to find out as to how tariff was agreed upon between the parties vide agreement dated 03.08.1985. That was not the issue to be considered. The only issue before the TAMP was to consider revision of tariff on account of various factors which had evolved during the interregnum. The cost is not to be calculated only pertaining to the area which was to be captively used by Respondent. Rather, there are number of other common facilities created, it is not simply the cost of the appellant which had to be reimbursed, as was evident from the approach of the TAMP.

38. It was further argued that in the matter of revision of tariff for the period October 1993 to 31.03.1999 where also the claim for revision was rejected. One of the arguments is for examination of the issue by the expert body as the arbitrator or appellate authority having not considered the issues in this light, these should have been, and the prayer is for referring the matter back. In case the aforesaid prayer is accepted for the period mentioned above, the matter for the

period in question will have to be remitted back for the reason that in case there is revision of tariff for the previous period, the same will certainly have bearing on period subsequent thereto. It was further argued that the approach of the TAMP could not be appreciated simply for the reason that no case for increase of tariff was made out though the period in question before TAMP was more than a decade. The cost of various inputs and overheads had increased manifold during this period, on account of various services provided by the Appellant to the Respondent. In fact, the TAMP had totally misdirected in its approach.

ARGUMENTS FOR THE RESPONDENT

39. In response, Mr. Shyam Diwan Learned Senior Counsel for Respondent submitted that the expert body namely the TAMP, considered the claim made by Appellant. Thereafter, the High Court has also examined the issue. Once two authorities have already considered the issues threadbare and despite adequate opportunity given to the appellant to place relevant material on record to justify revision of tariff, nothing could be produced, this Court should not enter into an arena of tariff revision which is the job of the expert

bodies. The facts in detail cannot possibly be examined and appreciated.

DISCUSSION

40. We have heard learned counsel for the parties.

41. The issue required to be considered by the TAMP in the case in hand was regarding proposed revision of tariff by the Appellant for facilities provided to Respondent. At the cost of repetition, we need to add that an agreement was executed between Appellant and Respondent on 03.08.1985, fixing a certain tariff for captive use of berth known as 'fertilizer berth'. The tariff initially fixed was revised by the Appellant to which issue was raised by Respondent. As at relevant point of time the Respondent was Public Sector Unit, the matter was referred for informal arbitration to Joint Secretary and Legal Advisor to the Government of India, Ministry of Law, Justice and Company Affairs and even remedy of appeal was provided to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Period involved was October 1993 to 31.10.2001. The arbitrator considered the matter while and rejected the claim for any revision of tariff from October 1993 to 31.03.1999.

TAMP having come into existence w.e.f. 01.04.1999, for the period subsequent thereto, parties were given liberty to approach the TAMP. This is how the matter for revision of tariff for the aforesaid period was before the TAMP. As even for the period subsequent thereto namely 01.11.2001 onwards, there was dispute regarding tariff between the parties, in a Writ Petition[14] filed by Respondent, the High Court vide order dt. 08.07.2009 directed TAMP to expeditiously dispose of the matter already pending before it. This is how the TAMP had considered the matter pertaining to the revision of the tariff from 01.04.1999 to 31.10.2010.

42. It looks a little surprising that TAMP did not find any justification for revision of tariff even for a time gap of more than 10 years. The costs, overheads on many aspects must have increased manifold during the interregnum.

43. Insofar as the opportunity of hearing is concerned, the High Court has also failed to appreciate this aspect of the matter while referring that both the parties underwent a process of mutual agreement, hence it cannot be said to be a case of non-affording of opportunity of hearing. The High Court lost sight of the fact that TAMP was called upon to decide the dispute as the parties had failed to agree to any terms. In that eventuality, on the basis of the material

14 W.P. (C) No.8509 of 2009

placed on record of both parties, an opportunity of hearing was required to be given, where complicated issues of facts were involved, which could be explained by the parties at the time of hearing. It is a clear case of violation of principles of natural justice.

44. One of the reasons assigned was that the basis for fixation of tariff at the time of entering into the initial agreement could not be deciphered. The same, in our opinion, prima facie was not the material fact for consideration for revision of tariff. The tariff was to be revised keeping in view the base point and not the basis for fixation thereof.

45. One of the principles on which we are unable to agree is the reimbursement of the cost principle. Even under the normal tariff fixation regime, the cost-plus return approach is the principle to be followed.

46. Further, once we have set aside the award of the Arbitrator, order of the Appellate Court and also of the High Court pertaining to the revision of the tariff for the period from October 1993 to 31.03.1999, and remitted the matter to be decided by TAMP, in our opinion, even the order pertaining to the period in question also deserves to be set aside as the base for revision of tariff for subsequent periods is yet to be determined.

CONCLUSION

47. For the reasons mentioned above, the impugned order passed by the TAMP and also the High Court are set aside. The matter is remitted to the TAMP for decision afresh along with the matter for the period prior thereto. Needless to add that in the process of adjudication both the parties should be given due opportunity of hearing.

CONSTITUTION OF APPELLATE AUTHORITY

48. During the course of arguments and at the time of examination of issues in detail, it transpired that the process for fixation of tariff presently by the TAMP or the adjudicatory board, as constituted and provided for under the 2021 Act, is the job of experts in the field. Direct appeals have been provided against the order passed by the TAMP or the adjudicatory board to this Court. To take the views of the counsel for the parties, we had again listed the matter on July 30, 2025, for direction. Thereafter, brief notes have been received from the learned counsel for the appellants and respondent.

49. The 1963 Act provided for the constitution of Tariff Authority i.e. TAMP for fixation of tariff applicable for any port. The authority consists of a Chairman, from amongst persons who is or who

has been a Secretary to the Government of India or have held any equivalent post in the Central Government and two other Members who have expertise in the subject, one Member from amongst economists having experience of not less than fifteen years in the field of transport or foreign trade and another Member from amongst persons having experience of not less than fifteen years in the field of finance with special reference to investment or cost analysis in the Government or in any financial institution or industrial or service sector.

50. Under the provisions of the 1963 Act, no statutory remedy was provided against any order passed by the TAMP.

51. As the position stands today, the 1963 Act has been replaced by the 2021 Act with effect from 03.11.2021. In the 2021 Act, an adjudicatory board has been constituted under Section 54 thereof. The function of the board is fixation of tariff. First proviso to Section 54 of the 2021 Act provides that till such time the board is constituted, TAMP as constituted under the 1963 Act will continue to function.

52. Section 60 of the 2021 Act provides for remedy of appeal against the order passed by the adjudicatory board to this Court. Meaning thereby, first appeal against the order passed by the adjudicatory board and at present in its absence the TAMP, would lie

to this Court. The relevant provisions as referred to above are extracted below:

> *"**54. Constitution of Adjudicatory Board**.—*
>
> ***(1)** The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Board to be known as the **Adjudicatory Board to exercise the jurisdiction, powers and authority** conferred on such Adjudicatory Board by or under this Act:*
>
> ***Provided that until the constitution of the Adjudicatory Board, the Tariff Authority for Major Ports constituted under Section 47-A of the Major Port Trusts Act, 1963 (38 of 1963) shall discharge the functions of the Adjudicatory Board** under this Act and shall cease to exist immediately after the constitution of the Adjudicatory Board under this Act:*
>
> x x x x
>
> ***60. Review and appeal**.—*
>
> ***(1)** Any party aggrieved by any decision or order of the Adjudicatory Board under this Act, from which an appeal is allowed under sub-section (2), but from which no appeal has been preferred, may apply for a review of such decision before the Adjudicatory Board, in such form and manner and within such time, as may be prescribed, and the said Board may make such order thereon, as it thinks fit.*
>
> ***(2) Any party aggrieved by any decision or order of the Adjudicatory Board, may file an appeal to the Supreme***

Court ***of India****, within sixty days from the date of communication of such decision or order to him:*

Provided that no appeal shall lie from a decision or order passed by the Adjudicatory Board with the consent of parties:

Provided further that the Supreme Court may, entertain any appeal after the expiry of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal."

53. If we examine the authority vested in the adjudicatory board under the 2021 Act, apart from tariff setting it has various other functions like-

a. functions to be carried out by the erstwhile TAMP arising from the Tariff Guidelines of 2005, 2008, 2013, 2018 and 2019 and tariffs orders issued by the TAMP;

b. receive and adjudicate reference on any dispute or differences or claims;

c. appraise, review the stressed Public Private Partnership projects and suggest measures to revive such projects;

d. look into the complaints received from port users against the services and terms of service rendered by the Major Ports or the private operators and to pass

necessary orders after hearing the parties concerned; and

e. look into any other matter relating to the operations of the Major Port.

54. It cannot be denied that fixation of tariff would involve consideration of various factual aspects, especially figures involved. This Court may not have the expertise to examine the accounts in detail for the purpose of fixation of tariff. While deciding appeal against an order of an expert body, all issues of law and fact are required to be considered. Whether the process providing for the first appeal against the order of the adjudicatory board is reasonable, is an issue.

55. Similar issue with reference to fixation of tariff under the Electricity Regulatory Commissions Act, 1998[15] came up for consideration before this Court in **W.B. Electricity Regulatory Commission v. CESC Ltd**[16]. Under the aforesaid Act, a Central Electricity Regulatory Commission[17] was constituted for discharge of various functions assigned thereof under Section 13 thereto. It was with reference to fixation of tariff. Section 16 of the 1998 Act provided for an appeal to the High Court against an order passed by the

15 Hereinafter referred to as the 1998 Act
16 (2002) 8 SCC 715
17 Hereinafter referred to as the 'CERC'

Central Electricity Regulatory Commission. Section 17 of the aforesaid Act provided for the establishment of the State Electricity Regulatory Commission to discharge functions for the fixation of tariff for intra-State transmission of power. Section 27 of the 1998 Act provided for appeal to the High Court against an order passed by the State Commission.

56. In the aforesaid judgment, the matter came up for consideration before this Court against the judgement of the High Court in an appeal against an order passed by the State Electricity Regulatory Commission. Noticing the fact that the CERC consists of technically qualified persons and is an expert body for determination of tariff which is required to consider lot of factual position, this Court observed that it would be more appropriate and effective if a statutory appeal is provided to a similar expert body so that various questions, which are factual and technical in nature could be considered at the first appellate stage. It was further observed that, neither the High Court nor this Court would in reality be an appropriate forum to deal with this type of factual and technical matters. It was recommended that the appellate jurisdiction, against the order of the State Commission under the 1998 Act, should be conferred either on the CERC or a similar body. Reference was also made to the appellate

tribunal constituted to hear appeals against the order passed by the Telecom Regulatory Authority under the Telecom Regulatory Authority of India Act, 1997. Relevant para 102 thereof is extracted below:

> "***Re: An effective appellate forum***
>
> ***102.*** *We notice that the Commission constituted under Section 17 of the 1998 Act is an expert body and the determination of tariff which has to be made by the Commission involves a very highly technical procedure, requiring working knowledge of law, engineering, finance, commerce, economics and management. A perusal of the report of ASCI as well as that of the Commission abundantly proves this fact.* ***Therefore, we think it would be more appropriate and effective if a statutory appeal is provided to a similar expert body, so that the various questions which are factual and technical that arise in such an appeal, get appropriate consideration in the first appellate stage also.*** *From Section 4 of the 1998 Act, we notice that the Central Electricity Regulatory Commission which has a judicial member as also a number of other members having varied qualifications, is better equipped to appreciate the technical and factual questions involved in the appeals arising from the orders of the Commission. Without meaning any disrespect to the Judges of the High Court, we think neither the High Court nor the Supreme Court would in reality be appropriate appellate forums in dealing with this type of factual and technical matters.*

Therefore, we recommend that the appellate power against an order of the State Commission under the 1998 Act should be conferred either on the Central Electricity Regulatory Commission or on a similar body. We notice that under the Telecom Regulatory Authority of India Act, 1997 in Chapter IV, a similar provision is made for an appeal to a Special Appellate Tribunal and thereafter a further appeal to the Supreme Court on questions of law only. We think a similar appellate provision may be considered to make the relief of appeal more effective."

(emphasis supplied)

57. It is important to emphasise that the workload of Major Ports in India has doubled, registering a 7.5% Compound Annual Growth Rate over 10 years and handled 819.227 million tonnes of cargo in Financial Year 2023-24. When the Major Port Trusts Act, 1963 was first enacted in the year 1964, there were 7 major ports[18] in the country. With the growth in business, 5 more major ports[19] have been created. Recently, in 2024, Union Cabinet approved setting up of another major port at Vadhavan, Maharashtra. Considering the rise in business at the major ports, the importance of the TAMP in resolving the equally rising number of disputes cannot be undermined. Disputes related to such a technical area of importance can be better

18 Namely Vizag, Chennai, Cochin, Mumbai, Vishakapatnam, Mormugao and Kandla
19 Namely Kolkata, Paradip, Tuticorin, New Mangalore, and JNPT

dealt with by a specialised expert body. Appeals therefrom should also be maintainable before specialised appellate body.

58. Besides this, we take note of the fact that there are other similar expert bodies which are headed by technically qualified persons along with persons with knowledge of accounting and economics. Specialised expert appellate body has also been constituted to entertain appeal against orders of such expert bodies. Reference can be made to-

a. **Securities and Exchange Board of India Act, 1992**- Securities Appellate Tribunal has been created to entertain appeals against orders of the Securities Exchange Board of India.

b. **Telecom Regulatory Authority of India Act, 1997**- Telecom Disputes Settlement and Appellate Tribunal was constituted to hear appeals against the orders of the Telecom Regulatory Authority of India. TDSAT has also been conferred powers of the Appellate Tribunal under Section 17 of the Airports Economic Regulatory Authority of India, 2008 with reference to the jurisdiction vested therein.

c. **Competition Commission Act, 2002**- Competition Appellate Tribunal [now merged with National Company Law Appellate Tribunal] was constituted to hear appeals against the orders of Competition Commission of India.

d. **Electricity Act, 2003**- Appellate Tribunal for Electricity (APTEL) constituted to hear appeals against the orders of the adjudicating officer or the Central and State Electricity Regulatory Commissions. APTEL has also been given powers to hear appeals under the Petroleum and Natural Gas Regulatory Board Act, 2006 against the orders passed by Petroleum and Natural Gas Regulatory Board, in the absence of a regular mechanism created under aforesaid Act.

e. **Companies Act, 2013**- National Company Law Appellate Tribunal has been constituted to hear appeals against the orders of National Company Law Tribunal.

59. Reference can also be made to the judgment of this Court in **Rojer Mathew vs. South Indian Bank Limited**[20] where one of the issues considered by this Court was 'as to whether direct statutory

20 (2020) 6 SCC 1 : 2019 INSC 1236

appeals from Tribunals to the Supreme Court ought to be *detoured*'. After examination of the matter, by referring to the various statutes wherein direct appeals have been provided to this Court, the direction as given in para '218' of the judgment, is extract below:

> *"**218.** It is apparent that the legislature has not been provided with desired assistance so that it may rectify the anomalies which arise from provisions of direct appeal to the Supreme Court. Considering that such direct appeals have become serious impediments in the discharge of constitutional functions by this Court and also affects access to justice for citizens, it is high time that the Union of India, in consultation with either the Law Commission or any other expert body, revisit such provisions under various enactments providing for direct appeals to the Supreme Court against orders of tribunals, and instead provide appeals to Division Benches of High Courts, if at all necessary. Doing so would have myriad benefits. In addition to increasing affordability of justice and more effective constitutional adjudication by this Court, it would also provide an avenue for High Court Judges to keep pace with contemporaneous evolutions in law, and hence enrich them with adequate experience before they come to this Court. We direct that the Union undertake such an exercise expeditiously, preferably within a period of six months at the maximum, and place the findings before Parliament for appropriate action as may be deemed fit."*

59.1. It may be out of place if not added here that the 2021 Act is not mentioned in the list of Acts referred to in the aforesaid judgment in para 200 as the same was delivered on 13.11.2019 whereas the 2021 Act came into force thereafter on 03.11.2021.

60. In view of our above observations, we recommend to make the remedy of appeal more effective and meaningful without disrespect to any authority. It would be appropriate if an expert appellate body is constituted to hear appeals against the orders passed by the adjudicatory board/TAMP.

RELIEF

61. **On merits**

C.A. No. of 2025
arising out of S.L.P.(C) No.9751 of 2023

61.1. We set aside the order of the Arbitrator, the order of the Appellate Authority and also the order passed by the High Court. The matter is remitted back to the TAMP for adjudication of the dispute regarding revision of tariff applicable to the respondent for the period from October 1993 till 31.03.1999.

C.A. No. of 2025
arising out of S.L.P.(C) No.9870 of 2023

61.2. Impugned order passed by the TAMP and also the High Court are set aside. The matter is remitted to the TAMP for decision afresh along with the matter for the period prior thereto.

Regarding constitution of Appellate Authority

61.3. In view of our above observations, we recommend to make the remedy of appeal more effective and meaningful without disrespect to any authority. It would be appropriate if an expert appellate body is constituted to hear appeals against the orders passed by the adjudicatory board/TAMP.

62. The Registry of this Court shall forthwith send a copy of this order to the Secretary, Legislative Department, Ministry of Law and Justice, Government of India to examine the issue and take appropriate steps.

.....J.
(M.M. SUNDRESH)

.....J.
(RAJESH BINDAL)

New Delhi
August 12, 2025.