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Effect of Legal Issues in Infrastructure Development:

The Case of Container Terminal Bids in

Jawaharlal Nehru Port Trust

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Abstract

The Jawaharlal Nehru Port Trust (JNPT) is the largest container port in India, handling about 40% of India's container traffic in 2014-15. JNPT has five container terminals (CT) out of which three have already been operationalised, a standalone CT of 330 metres (m) is partially operationalised and a fourth CT is under construction. While the first CT, Jawaharlal Nehru Port Container Terminal, is operated by JNPT, the second and third CTs are being operated by DP World and an APM Terminals-CONCOR consortium respectively. The standalone CT too is operated by DP World while the fourth CT was awarded to PSA International and is under construction. The development of the CTs is a case study to understand how various conflicts have been addressed or accentuated by policy makers, legal and regulatory authorities, and the mechanisms used to resolve them. Following a case-based analytical approach, case studies, court judgements, published and unpublished papers, media reports, primary data from discussions, and secondary data have been examined to construct a chronological story of the bids for the five CTs during the twenty five years since the commissioning of the port in 1989. The concessioning of each CT to a private stakeholder involved contentious issues which prompted the authorities to revise policy guidelines periodically to address them. Consequent and prolonged litigation resulted in time and cost overruns. Various issues, like policy formulation, contractual rights versus policy guidelines, strategic risks, monopoly prevention versus scale economies, market risks, effect of elections, leadership changes, security clearances, mutuality and clarity in documentation, that emerged during the bidding processes, have been crystallised as lessons learnt.

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1. Introduction

The Jawaharlal Nehru Port is the largest container port in India. Having reached its peak market share of 58% in container traffic in 2003-04, it handled 4.47 million (m) twenty foot equivalent units (TEU) of container traffic in 2014-15, with a market share of under 40%. It was ranked 30 among the world's container ports in 2014. It is located in a total area of 2987 hectares (ha) in the south of Maharashtra on the Arabian Sea, on the mainland just across Mumbai. The port is run by the Jawaharlal Nehru Port Trust (JNPT), an autonomous body constituted under the Major Port Trusts Act (MPTA), 1963 (Salhotra, 2007). Containers constituted 89.24% of the total cargo handled by JNPT in tonnage during 2014-15.

JNPT has five CTs out of which three have already been operationalised, one is partially operationalised and one is under construction. The first CT called Jawaharlal Nehru Port Container Terminal (JNPCT) was commissioned on May 26, 1989 and run by JNPT. JNPT, apart from its self-operated JNPCT, developed and commissioned its Shallow Draught Berth (SDB) in September 2002. The SDB handles feeder container vessels, dry bulk cargo vessels and other general cargo vessels. The second CT, Nhava Sheva International Container Terminal (NSICT), awarded to P&O Ports Australia Private Limited in February 1997, was operationalised in April 1999. P&O was later purchased by DP World in 2006. The third CT called Gateway Terminals of India Private Limited (GTIPL), awarded to the APM Terminals-Container Corporation of India (CONCOR) consortium in August 2004, has been operating since March 2006. A standalone project of a 330 metres (m) CT was awarded to DP World in July 2013 and was partially operationalised in April 2015. The fourth CT was awarded to PSA in February 2014. Appendix A gives brief details of the various CTs and a schematic layout.

This paper analyses the various legal issues that JNPT has faced over the twenty five years since its commissioning in the context of its CTs. Using a case-based approach, we have examined case studies, court judgements, published and unpublished papers, media reports, primary data from discussions, and secondary data.

2. Conception of JNPT

JNPT was initially conceptualised as a 'satellite port' to decongest the Mumbai Port, from where evacuation through the city of Mumbai was increasingly a problem. It was also expected that with a modern CT and reasonable draught, container traffic would come calling directly, rather than through feeder vessels before/after transshipment in neighbouring country ports like Colombo, Singapore and Dubai. In a related matter, "the then Prime Minister Indira Gandhi had directed that the Mumbai Port Trust's (MbPT) land be opened up for public amenities as a pre-condition" (Bharucha, 2011) for setting up JNPT. This, however, never materialised.

Land from two villages called Nhava and Sheva in Navi Mumbai were used for the construction of the JNPT. The port was notified in the official gazette on May 28, 1982 under the MPTA, 1963 and called Nhava Sheva Port (Jawaharlal Nehru Port Trust, 2013). It was constructed as an all-weather tidal port in the mid-1980s (Ministry of

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