In the Court of the Principal District Judge,Thoothukudi

Present : Tmt.S.Subadevi, B.A., B.L., M.B.A.,
Principal District Judge, Thoothukudi.

Tuesday, the 18th day of August 2026

Ar.O.P No.302/2019

[CNR No. TNTT01-007927-2019]

AND

Ar.O.P No.24/2022

[CNR No.TNTT01-000020-2020]

Ar.O.P No. 302/2019 :

V.O.Chidambaranar Port Trust,
Rep. By its Chairman,
Harbour Estate,
Thoothukudi – 628 004. ... Petitioner / Respondent

// versus //

M/s. SEPC Private Limited,
Rep. By its Vice President,
"MEIL House", 395 Anna Salai,
Teynampet, Chennai – 600 018.

... Respondent / Claimant

Ar.O.P No. 24/2022 :

SEPC Private Limited,
Rep. By its Vice President,

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"MEIL House", 395 Anna Salai,

Teynampet, Chennai – 600 018.

... Petitioner

// versus //

V.O.Chidambaranar Port Trust,

Rep. By its Chairman,

Harbour Estate, Thoothukudi – 628 004.

... Respondent

The above two petitions have come up before this court on 15.07.2026 for final hearing in the presence of Tmt.V.Neelaveni, Advocate for the petitioner in Ar.OP No.302/2019 and the respondent in Ar.OP No.24/2022, Thiru.S.Senthil Nathan, Advocate for the respondent in Ar.OP. No.302/2019 and petitioner in Ar.OP No.24/2022, on hearing both side arguments, upon perusing the written notes of arguments filed by the counsel for the petitioner in Ar.OP No.24/2022 and having stood over for consideration till this day, this court delivers the following:

COMMON ORDER

Ar.OP. No.302/2019

This petition has been filed by the petitioner u/s. 34 of The Arbitration and Conciliation Act, 1996 to set aside the Award passed by the Sole Arbitrator's Award dated 31.08.2019 with petitioner / respondent's costs.

2) **The averment of the petition in Ar.OP. No.302/2019 are as follows :-**

The award of the learned Arbitral Tribunal in so far as it is adverse to the petitioner is against law, weight of evidence and probabilities of the case. The Hon’ble Arbitrator has failed to note that the Arbitration clause in the agreement can be invoked only based on the dispute doubt or question in the agreement arises, arbitration could be invoked, but not on the crux clause of the agreement, that is the rate, cannot be the subject for arbitration, which depicts that, the claimant is acting in contra to the Agreement. The Hon’ble Arbitrator has erred in stating that the issue raised by the claimant comes within the construction, meaning for effect of the agreement to invoke Arbitration clause. The petitioner/Respondent had issued allotment order to the respondent/Claimant in the year of 1999. Subsequently it was cancelled by the V.O.C. port, as the M/s. SEPC did not proceed with the project as per the agreement. Hence, M/s. SEPC approached the Hon’ble High Court and in the presence of Arbitrator the Hon’ble Justice K.P.Subramanian, the issue was amicably settled between the parties as the M/s. SEPC has to continue the project. Since, the V.O.C. Port Trust has allotted the land to some other user, it opted for alternate allotment which was also accepted by M/s. SEPC. As a continuation of the previous agreement with an alternate allotment of land a fresh agreement was entered into on 28.12.2016. Prior entering into the agreement it was clearly conveyed to SEPC that only as on industrial category they are allotted the land for their project. Admitting the same SEPC entered into an agreement with the VOC Port. The letter dated 24.07.2014 that in the matter of treating SEPC under ‘service category’ instead on ‘Industrial category’ “Based on the explanation offered by

SEPC and further discussion on the same, port would take up the said issue separately without any commitment of the outcome, SEPC was advised to furnish supporting documents/write up for the issue including support letter from TANGEDCO if any. Without delaying any further, it was informed that the LLA Should be executed by SEPC early with existing "Industrial" category and changes could be made at a later date depending upon outcome of the issue involved". From the above facts it is clearly revealed that SEPC Knowingly, wholeheartedly has entered into the Agreement, submitting itself to 'Industrial Category. Contra to the above facts the claimant intentionally at the back door wants to evade the lease rent payable to the Lessor VOCPT an has sought Arbitration. The lessor and the lessee i.e the petitioner and the claimant/Respondent have not entered into the subject agreement with the condition that the rent for the said land will be changed subject to the change of category. There is no clause/covenant in the agreement in respect of treating the lessee as "service category" instead of "Industrial Category". Hence, it is not attracted under any dispute, doubt or question within the ambit of Arbitration clause to refer the matter to Arbitrator. The Hon'ble Arbitrator has wrongly interpreted the land use plans stated in the policy guidelines for land managed by major ports 2014. The Categorization of allotments and effective rates to various allotments are based on the nature and status of the parties and not based on the purpose of its use. If it is to be compared than other conditionalties governing its operation like statutory authorities of operational expenditure, fixed cost governing laws etc., needs to be compared. Moreover, Government departments are governed by Government orders – Notification on its day to day operation, whereas in the Claimant's case, management shall be the owner of the company whereas Government, managed by person on behalf of Government. The Hon'ble Arbitrator has failed to note that" The NTPL is purely a Govt. of India undertaking and the allotment of land under Service Category as per the committee report dated 18.12.1996. The claimant cannot compare the allotment made to NTPL who is the Thermal Power Station of TNEB. Whereas the Claimant (SEPC) is purely private limited which is very well clear from the share holding pattern. The Hon'ble Arbitrator has failed to note that the committee report wherein, it is clearly mentioned that industrial purposes - means private port related industries like TAC, SPIC, SEPC and the decision which is applied by port is all the lease rental from 1996 could not be changed, considered for claimant. The service category is fixed to NTPL & TANGEDCO Since, it is government undertaking as per the committee report only, because LPG does not exist at the time of allotment to NTPL & TANGEDCO (Thermal Power Station). The categorization is clearly mentioned in the committee report, which is crystal clear. The Hon'ble Arbitrator has not considered the R.W.1 deposition, "To my knowledge we are fixing the Land Lease Rent depending upon the status of the Organization. At the time of fixing the rent, according to us. The criteria are not use of land and its location" Hence, The Hon'ble Arbitrator ought to have held that the status of the party is the criteria for the fixing of the rent. The Hon'ble Arbitrator has not considered the Question No.8, put to R.W.1. The R.W.1 has clearly stated that TTPS & NTPL are the public sector undertaking who are eligible for concession in lease rental tariff. The Hon'ble Arbitrator based on the committee report and the evidence of the petitioner/Respondent ought to have allowed the Issue No.3, in favour of petitioner/Respondent and should have held that NTPL & TTPS are the Government undertakings who are classified under " Service Category". The Hon'ble Arbitrator has failed to note that the Concept of Land use plan was emerged in 2014 only and approved in 2015 with respect to the respondent Port, but the allotment of the Claimant and rate for the said allotment was fixed during 1996, where during that period the concept of land use plan and rate fixation based on the purpose of usage was not there. The Hon'ble Arbitrator has failed to consider that Ministry of shipping vide its letter dated 01.09.2016 had conveyed the approval of the competent authority for fixing the rate as per the decision of the Respondent Board and directed the Respondent to enter into agreement with the Claimant under the industrial category and accepting to the same the claimant had entered agreement with the respondent. On perusal of the letter from MoS it would be clear that the decision of the Respondent Board requires the approval of the Ministry and it is incorrect on the part of the claimant to state that the categorization of land rests with the Respondent alone. The Claimant did not object to the applicability of the industrial rate during the time of the signing of agreement and not given any communication stating that the acceptance of the industrial categorization is subject to dispute. The Hon'ble Arbitrator has failed to note that the Claimant based on the minutes of meeting held on 18.12.1996 that the Claimant is classified under "Industrial category" and the Tuticorin Thermal Power Station of TNEB (Presently TANGEDCO) is Categorized under the service category is base on committee report the fixation of rent under the industrial category was fixed by the committee since the claimant being an established private sector. The industrial rate applied to the claimant itself is a concession rate on comparing to the commercial rate, which has been applied to other private and Government institutions doing commercial business with Port. The Hon'ble Arbitrator has failed to note that the Categorization based an LPG is not applicable to the claimant because LPG not Speaks about any categorization but only allow concession on the Categorization rate applicable that to only for Government/CPSC/SPSC. The Ministry of shipping vide letter dated 25.11.2009, accorded approval allot alternate land to the claimant @ rate of Rs.40.01 per Sqm /annum which comes under industrial category as per the Notified rate for VOCPT by TAMP. The Hon'ble Arbitrator erred to hold that the petitioner/respondent is charging the lease rent for the land utilized by them for the purpose of power generation under "Service Category" based on the Land policy Guidelines. The Hon'ble Arbitrator has failed to note that as per the Land policy Guidelines there is no Categorization as "Industrial Category", "Service Category" and "Commercial Category". It is the Classification suggested by the committee during the minutes on 18.12.1996 for the classification of Port Lands for lease rental collection. Land policy Guidelines is applicable for the fixation and revision of scale of rates and other land utilities for port users. The Hon'ble Arbitrator has failed to note that Land use plan for proper utilization of Land as per Land policy Guidelines means the Port has to prepare Land use plan as per the port's requirement and not as per lessee's requirement. Claimant suppressing the factual point of non existence of Land Use Plan during 1996, making a claim by misleading the arbitration proceeding shows their malafide intention on their part. The Hon'ble Arbitrator has erred to hold that the claimant has agitated the classification of them as 'Industrial Category" from the year 1997 onwards. In fact, the claimant has accorded to the Industrial Category" and has been paying Rent as the classification. The Hon'ble Arbitrator has failed to consider that the Ministry of Shipping vide letter dated 25.11.2009, accorded approval allot alternate land to the claimant @ rate of Rs.40.01 per Sq m/annum which is comes under industrial category as per the Notified rate for VOCPT by TAMP. It is the fact that during the Joint meeting held on 23.07.2014 it was decided as stated by the claimant "without delaying any further, it was informed that the LLA Should be executed by SEPC early with existing 'Industrial' category and changes could be made at a later date depending upon outcome of the issue involved". The Hon'ble Arbitrator without considering the fact that Ministry of Shipping vide its letter dated 30.12.2015 directed the respondent to make allotment under Service Category but the same was withdrawn by the ministry vide letter dated 01.09.2016, where Ministry has directed the respondent to execute the Agreement with the claimant under the Industrial Category. Hence, the claim of the Claimant that the issue on the Industrial category could be revised subsequently after entering the Agreement is not correct. The issue of the categorization has been finalized as stated in the Joint meeting dated 23.07.2014, which was not disputed by the claimant at the time of the agreement signing and until 2018, has blindly accepted the claimant's version that as per the agreement the issue on the Industrial category could be revised subsequently. The Hon'ble Arbitrator has failed to appreciate the agreement entered into between the petitioner and the respondent on 28.12.2016. The Hon'ble Arbitrator erred to hold that "In the light of said cancellation, all the contractual rights and liabilities got terminated. Therefore parties herein have to entered into an afresh agreement i.e Exhibit C-2 on 28.12.2016 and the claimant was permitted to enter upon the land vide letter of the respondent dated 14.07.2011 (Exhibit C-26)" and has held issue No.5, in favour of the claimants which is arbitrarily wrong. The Hon'ble Arbitrator ought to have decided issue No.VIII, in favour of the petitioner/respondent as the allotment order dated 01.06.1999, itself explains the allotment made to claimant is under 'Industrial Category' and moreover, the Claimant had remitted the land lease, as per the allotment order at 'industrial rate'. Further, the categorization of leased land is based on the decision of the Respondent's Board of Trustees which was approved by the Ministry of Shipping. As per the Land Policy Guidelines, 2014, the

Major ports have to prepare the land use plan for proper utilization of land and thus Land use plan does not have any role in allotment of Lands under various categories. As mentioned above, Tariff Authority for Major Ports (TAMP) is the tariff fixing authority, under Major Port Trusts Act, 1963. Hence, there is no role for Tariff Authority for Major Port (TAMP) in fixing the categorization of land lease. The classification of Categorization of land is beyond the jurisdiction of Tariff Authority for Major Ports (TAMP). Under Section 49 of Major Port Trusts Act, 1963. Tariff Authority for Major Ports (TAMP) is a tariff fixing authority, fixing the scale of rates, applicable to the 'Users of the Port' and in the order dated 19.05.2014 passed by Tariff Authority for Major Ports (TAMP), it had stated that it is for the concerned Port Trust to apply the Scale of Rates approved by this authority following the land policy guidelines and that the change in the categorization of land is beyond its beyond its jurisdiction. The Committee consisting of Chairman, VOCPT (erstwhile TPT). Director (PD), MOST, Additional Collector, FA & CAO, TPT, Chief Engineer, TPT, Secretary, TPT for finalized the Lease Rent for the Port Lands for the 7 years from 01.01.1997 to 31.12.2003 and recorded its minutes on 18.12.1996. The said committee perused the present lease rent, based on the existing classification of lands and the committee classified the Port lands for working out the lease rent as (I) Commerced (ii) Industrial purposes (iii) Service and Residential purposes. Further, in the committee's minutes, it has been decided that the Claimant had to be considered under the industrial category, since it is a private port related industry. Only based on the said, decision, the Respondent had fixed the rate as per the suggestions made by the said committee. Further, Tariff Authority for Major Ports (TAMP) had stated to consider as per the land policy guidelines. As per land policy guidelines, the claimant being an Industry, Industrial rate was fixed under the Industrial Category as being done in case of original allotment. During the joint meeting held on 23.07.2014, the Claimant was directed to execute the Land Lease Agreement under the "Industrial Category". During the meeting held on 19.06.2016 also regarding the change in categorization as service category, the respondent port reiterated that it shall be "industrial" category as per earlier decisions & allotment orders. During the meeting held on 23.07.2014 it was directed by the petitioner/respondent to execute the Land Lease Agreement under "Industrial Category" and subsequently it was clarified by the respondent and the Ministry of Shipping that the Claimant cannot be categorized under " Service category". The Hon'ble Arbitrator without considering the above facts has decided the issue No.8 infavour of the Respondent/Claimant, is against the statute. The Hon'ble Arbitrator has failed to note that the direction of the Secretary, MOS in the Meeting held on 05.01.2018, Minutes was received by the petitioner/respondent port on 30.01.2018 directing the petitioner/respondent to examine the issue. In the Action taken report it was communicated to ministry by the port that "With regard to contention of SEPC i.e., categorizing the land category on par with NPTL & TTPS." The Hon'ble Arbitrator ought to have considered that in the committee report it is clearly mentioned that industrial purposes – means private Port related industries like TAC, SPIC, SEPC and the decision which is applied by Port is all the lease rental from 1996 could not be changed, considered for claimant. It is absolutely false to state that the Ministry of Shipping issued an order for “ Service” category by its letter dated 30.12.2015. The same was withdrawn and the LLA was executed based on the above said letter. The Hon’ble Arbitrator has failed to note that the petitioner/ respondent Port is doing Trade facilitation and land based business, which would in turn develop the nation. The Claimants claim on the service category had been resolved by the Respondent on confirmation with the Ministry of Shipping and based on which L.A. was entered amount the Respondent and claimant. Moreover during the occasion of L.A. or after that till 2018, have not questioned categorization and paid all the lease rentals due under the Industrial category, without claiming the right of refusal for the payment under Industrial category. It is unfair on the part of the claimant to go back on the accepted term of the categorization under Industrial for lease rentals. Since the claimant come under the category of Industrial category they have to pay the rent as per the rates fixed by the TAMP for Industrial Category, Hence Arbitrator deciding the Issue No.iv, vi and vii as the Claimant has to be treated at par with TTPS and NTPL and the Tribunal granting the relief and fixing the claimant under Service Category with effect from 28.12.2016, further directing the petitioner/respondent to return the excess amount paid by the claimant is erroneous, without any basis and unsustainable. The

Hon'ble Arbitrator ought to have dismissed the claim petition with cost. Hence, the Award passed by the Sole Arbitrator's award dated 31.08.2019 is to be set aside.

3) **The averments of the counter in Ar.OP No.302/2019 are as follows :-**

The Respondent, M/s. SEPC Private Limited, is a company registered under the Companies Act. The Petitioner is represented by its Vice-President, Mr. P. Sathyakumar, son of Late Mr V.C. Ponnurangam, aged about 55 years and having office at 'MEIL House', No.395, Anna Salai, Teynampet, Chennai-600 018. The petitioner is V.O. Chidambaranar Port Trust, represented by its Chairman, having office at Harbour Estate, Thoothukudi-628 004. The petitioner has approached this Hon'ble Court by way of the present petition, seeking to set aside the Arbitral Award dated 31.08.2019 ("The Award") passed by Hon'ble Mr. Justice A.Arumugaswamy, Sole Arbitrator. For that Section 34(2)(b) of the Arbitration and Conciliation Act, 1996 provides that recourse to a Court against an arbitral award is available where the arbitral award is in conflict with the public policy of India and other specific grounds. In this regard, reliance is place on the decision of the Hon'ble Supreme Court in Associate Builders v Delhi Development Authority, reported in (2015) 3 SCC 49. The ground concerning Public Policy has been further clarified by the Hon'ble Supreme Court of India, that ' Fundamental Policy of Indian Law' includes – (a) Judicial approach, (b) Principles of Natural Justice and, (c) adherence to the wednesbury's Principle of unreasonableness. The petitioner has not raised any substantial or permissible grounds of challenge to the Award and the present petition is an abuse of the process of law, besides being an attempt to scuttle the execution of the Award, by the respondent. The petitioner has failed to demonstrate how the Award deserves to be set-aside under Section 34(2) of the Arbitration and Conciliation Act, 1996 (the "Act"), in as much as the scope of interference under Section 34 is restricted to the grounds specified therein and cannot be equated with a normal appellate jurisdiction. That being so, the petitioner cannot seek an interference of the Award merely on the ground that there exists an alternative view on facts and interpretation of contract. The Award is a reasoned order that has been rendered, upon a detailed analysis into the rival contentions of the parties and on due appreciation of the evidence. The grounds and contentions of the petitioner, do not disclose any impropriety or perversity in the reasoning of the Arbitral Tribunal that require interference by this Court. The petitioner has merely re-agitated the merits of the issues in dispute between the parties, which amounts to re-appreciation of the evidence and materials already placed before the Hon'ble Tribunal and as such has not met the test under Section 34(2) for setting aside of the Award, as set out above.

The learned Arbitrator has passed on Award dated 31.08.2019 allowing service category to Respondent on par with other similar lessees like TTPS and NTPL from 28.12.2026 (the date of lease agreement) instead of from 14.7.2011 (The date from which lease amount is payable) as prayed for by the respondent (Claimant in the Arbitration). The petitioner thereafter aggrieved by the Award of the Sole Arbitrator Hon'ble Mr Justice (Retd) A.Arumughaswamy passed on 31.8.2019 preferred this appeal Ar.OP No.302/2019. It is evident from a reading of the regime considering the purpose and constitution of the V.O.C. Port Trust, its statutory obligations, the constitution of TAMP and the land policy of major ports that the VOC Port, in view of its monopoly position as also the fact that it is a statutorily constituted body, is to act in a just, fair and reasonable manner. It is the object of the V.O.C. Port Trust to facilitate trade and commerce, and to act in a manner that is most beneficial, and comply with Article 39(b) of the Constitution of India. Article 19(6)(2) of the Constitution would also equally apply as the V.O.C. Port Trust is deemed to be a monopoly. Further, the land policy is clearly binding on the Port. There is also no basis in the Land Policy to differentiate between private entities and government entities since for the Port all entities are only users. Thus there is no basis or ground to challenge the well reasoned Award which has corrected the attempt by the petitioner to act contrary to law. The contents in ground No.2 and 3 are denied in toto. The respondent submits that after taking into account the relevant facts and appreciating the evidence, the Ld. Tribunal has rightly concluded that the present disputes fall within the subject matter of the arbitration clause, whose existence and execution has been admitted by both parties. The Petitioner in the meeting held on 23.7.2014 stated that the LLA (the Land Lease Agreement) should be executed by SEPC (the respondent herein) early with existing industrial category and changes could be made at a later date depending upon the outcome of the issues involved. The issues were therefore within the contemplation of the parties. The Parties in Clause 10 of the Agreement agreed that:

"This Lessor and Lessee hereby expressly agree that this Lease shall be governed in accordance with Land Policy for Major Ports 2014, issued by Government of India (the 'Land Policy') and Laws of India for the time being in force, Notwithstanding anything contained in this Lease." It is very clear from the above, the Lease shall be as per Land Policy notwithstanding anything contained in the Lease. Therefore, if any provision of the agreement is in contravention of the Land Policy, then that would also be aligned with the Land Policy. Therefore, the Lease (which also includes the lease amount) shall be governed as per Land Policy and since it is not in accordance with Land Policy, it shall also be aligned with Land policy. Further, in the meeting held on 5.1.2018, the Secretary / Shipping Government of India, ordered for the issue to be taken up and addressed by Chairman of petitioner Port which in itself is accepting the fact that there was anomaly in fixing lease rent to respondent. Since there was a dispute in fixation of lease rent in accordance with land policy, the respondent vide letter dated 7.3.2018 sought for invoking arbitration.

The contents in Grounds 4 to 6 paras are denied and the same are false and misleading. In any event, the contents are in the nature of re-asserting facts and calling for re-appreciation of facts, which cannot be done by this Hon'ble Court in exercise of its jurisdiction under Section 34 of the Act. The respondent vehemently deny that prior to entering into the Agreement, it was clearly conveyed to the respondent that land would be allotted only as an "industrial" category and/ or that the respondent has knowingly and whole-hardheartedly entered into the Agreement on that the basis that the allotment was for "industrial" category. On the contrary and as per the petitioner's own admission in paragraph 5, it is evident that the agreement was entered into only because at the meeting held on 23.07.2014, it was agreed that while the land would be allotted on 'industrial' category basis, changes could be made at a later date depending on the outcome of the issue involved. The Learned Tribunal has relied upon the same fact sought to be placed by the petitioner and rightly concluded that there has been no voluntary acceptance of allotment on industrial basis.

The contents of para 7 are entirely baseless and without merit. The classification and category would definitely be a dispute that has arisen between the parties. This is especially so since the petitioner Port is a Major Port whose land Policies are statutorily controlled. It cannot therefore take an Arbitrary stand. If it does so, the same being a dispute is referable to Arbitration. The stand of there being a difference between Government Departments /Public Sector Undertakings and Private Parties is entirely without bases in law or fact. The Learned Arbitrator has reached a considered decision on this issue.

The contents in ground Nos. 8 and 9 are denied wholly. As per Clause 10 of the Agreement, the Lease shall be in accordance with the Land Policy guidelines

2014. Land policy guidelines prescribes that the land shall be leased in accordance with land use and land location. In the instant case, land is located at the place where other power plant lessees (same location and same land use) are located. Therefore, levy of land lease to respondent different from land lease levied to other lessees with same location and use is a clear violation of land policy guidelines. The petitioner have, in the proof affidavit accepted this aberration / anomaly and went to state that distinction was due to the fact that other lessees are public sector. The petitioner also admitted its manifest arbitrariness by stating that there is no such preferential treatment on land lease prescribed in policy guidelines for public sector. The policy guidelines demarcates Government Departments and State Central Public Sector Undertakings (SPSU) / Central Public Sector Undertakings (CPSU) as two different entities. At best, as per the Land Policy Guidelines, concession shall be granted to "Government Departments" such as telephones, customs etc that to for small pieces of land (for their telephone exchange, offices etc) and such concessions have not been extended to SPSU / CPSU. TTPS and NTPL are not Government Departments and the petitioner is deliberately twisting the terms of the policy guidelines in a manner favorable to it. Therefore, it is correct to state that the Committee report of 1996 is not applicable and not valid in the instant case and that NTPL is a CPSU as per the Policy. In arriving at the conclusion that the respondent must be treated on par with TTPS and NTPL, the Ld. Sole Arbitrator has taken into account all the relevant facts and appreciated the evidence in accordance with law and the respondent has neither pleaded nor proved otherwise, apart from making out a case for interference with the Impugned Award under Section 34 of the Act. The respondent denies the contents in ground No.10 and as per Clause 10 of the Agreement, the lease to be governed in accordance with Land Policy guidelines of 2014. In view of cancellation of earlier allotment / indenture and considering alternate land, the Committee report of 1996 is not applicable as the alternate land commences from 14.7.2011. Further, the Committee report cannot be inconsistent with Policy Guideline (or) over-ride the policy guideline. It is not correct to state in Ground 11 & 12 that the Ld. Sole Arbitrator has not considered the RW1 deposition. From the evidence of R.W.1., it is very clear that the status of the party is no criteria. At the time of fixing lease rent, the land policy guidelines has to be followed and as per the land policy guidelines, similar person utilizing the land for the similar purpose, the land has to be categorized "service" category, which has been mentioned by the respondent. Therefore, according to the respondent, utilization of the land alone is one of the main criteria to fix land lease rent". Thus, the petitioner on its own submission has deposed that the Fixing of rent depends on utilization of the land and that the land should be leased in accordance with land use plan and that these facts are also brought out by the Ld. Sole Arbitrator in the award. It is not correct to state in ground No.13that NTPL & TTPS are "Government Undertakings" as the correct terminology as used in the policy guidelines are "Public Sector Undertakings" and

"Government Departments" and there is no such entity / terminology such as "Government Undertakings" as used in this para by the petitioner. The averments of the petitioner in the para is contrary to its own submissions and depositions. As far as the ground No.14 is concerned, even assuming, by petitioner's own submission, the Land Policy guidelines 2010 is to be applied, as per clause 6 (Exhibit No C-3, page 56 to 68 and subject clause 6 found on page 58) "land should be allotted either on license basis or lease basis as per the approved land use plan / zoning". Thus, even in the said Land Policy Guidelines as quoted by petitioner, the Policy remains the same. The contents in ground No.15 are denied in toto. As per the Ministry letter's dated 1.9.2016, even though the Ministry's earlier letter dated 30.12.2015 was to be treated as withdrawn, the petitioner was directed to act as per the applicable rules. Therefore, the petitioner was required to act in accordance with the policy guidelines and cannot be heard to state that the respondent had simply followed the letter dated 1.9.2016 and executed the Agreement. Further, an administrative order of the ministry cannot over-ride the provisions of policy guidelines issued. The contents of ground No.16 of para 12 are denied. The stand of the petitioner that the Hon'ble Arbitrator has failed to note the minutes of meeting held on 18.12.1996 is incorrect. The reasons why the Learned Arbitrator has arrived at the petitioner decision has been fully set out with reasons in the Award and no proper ground under S.34. The Learned Arbitrator has correctly applied the law relating to the binding effect of the Land Policy. Grounds 17 to 19 are concerned, none of the contents herein form the basis for a valid challenge under Section 34 of the Act. Some of the contents are in the nature of reasserting facts and does not make out a case for interference with the Impugned Award. Be that as it may, it is wrong to state that Land Policy Guidelines does not speak about categorization and only speaks about concession. The Learned Tribunal has correctly placed reliance on Land policy guidelines and rightly interpreted it to mean to include Land lease and that "land shall be leased as per land use and location". The stand of the petitioner of alleged suppression with respect to land use, plan is vehemently denied. There is no question of misleading the Learned Arbitrator when he has, in fact, considered all the issues including the effect of the Policy and arrived at a decision. As far as the Ground 20 is concerned, it is not correct to state that the Claimant has agitated the Classification of them as "Industrial Category" from the year 1997 and on the contrary, the Claimant has agitated the matter only from 14.7.2011 which is the date on which "enter upon permission was granted" and "date of commencement of lease was reckoned" both as per land lease agreement executed on 28.12.2016. Furthermore, this reckoning date of 14.7.2011 is specifically reckoned by the Ld. Sole Arbitrator in Clause 114 (Page 48) and more specifically in Clause 114 (viii) (Page 50). The contents of Grounds 21 & 22 is concerned, the said paragraph have been sufficiently dealt with hereinabove. The respondent reiterates that as per the meeting held on 23.07.2014, while the allotment was on an industrial basis, it was expressly agreed between the parties that changes could be made subsequently. Therefore, there is no question of 'finalization of the issue regarding categorization' as contended by the petitioner. The contents of Ground 23 is concerned, the said paragraph are a verbatim reproduction of Clauses of the Agreement and the petitioner has failed to explain how there has been any failure on the part of the Ld. Tribunal to appreciate these clauses. Accordingly, the respondent is unable to meaningfully respond to the same. Ground 25 & 26 are concerned, as already stated the earlier allotment stood cancelled as on 5.5.2003 and furthermore, if the petitioner are indirectly agreeing to Service for earlier also. Further, the respondent never stated that "TAMP is the authority to fix the categorization for the lessees". The contents of Grounds 30 & 32 is against these decisions that the respondent invoked Arbitration which was duly accepted by petitioner and thereafter proceeded to appoint the Sole Arbitrator as per terms of agreement. The respondent has been agitating the matter by payment of lease in order not to delay the project which is also in the interest of the nations power capacity building. Further, the Learned Sole Arbitrator in Clause 115 of the award (Pages 50) has specifically allowed this issue of agitating the subject matter now by considering the terms of agreement dated 28.12.2016 and letter dated 23.7.2014. Grounds 33 to 41 are also a matter of a record and do not merit any other specific and further response. Hence, this petition is to be dismissed with exemplary costs.

Ar.OP No.24/2022 :-

4) This petition has been filed by the petitioner u/s. 34 of The Arbitration and

Conciliation Act to set aside the Award in so are as it restricts the relief only till 28.12.2016 and consequently direct that the classification under Service category being one that is applicable from the inception of Lease, all rentals commencing from 14.07.2011 shall be calculated on that basis and the excess sums collected be directed to be refunded forthwith with interest at 18% per annum from the dates such excess sums were paid until the date of repayment/refund.

5) **The averments of Ar.OP No.24/2022 are as follows :-**

The petitioner is V. O.Chidambaranar Port Trust, represented by its Chairman, having office at Harbour Estate, Thoothukudi-628 004.The petitioner is approaching this Court by way of the present petition, seeking to set aside the Arbitral Award dated 31.08.2019 ("The Award") passed by the Hon'ble Mr. Justice A. Arumugaswamy, Sole Arbitrator, inter alia on the ground that the relief has been granted from 28.12.2016 instead of from 14.07.2011 prayed for by the petitioner. Even otherwise, the Award is in conflict with the public policy of India in as much as the Award is patently illegal, unreasonable and deserves to be set aside.

The Grounds for the Ar.OP No.24/2022 are as follows :-

The Impugned Award is patently erroneous, contrary to the terms of the contract between the parties and in ignorance of the records of the case and hence liable to be set aside to the extent sought for in the present petition in as much as it fails to give the complete reliefs which ought to have been given after the issues have been decided in favour of the petitioner. The Impugned Award is contrary to, in manifest disregard and in derogation of the binding terms of the agreement between the parties and in complete error of the substantive law governing the parties, rendering it as much assailable and liable to be set aside u/s. 34(2)(a)(v) as also u/s. 34(2)(b)(ii) of the Arbitration Act, as an award which is patently wrong and palpably contrary to the contracted terms and substantive law. The impugned Award has been partly passed in flagrant disregard of the contractual provisions which renders the said Award as being in conflict with the public policy in India. Therefore, the said Award is illegal and also for the reason that the same has been passed in negation of the facts and evidence on record and is liable to be set aside in terms of the Hon'ble Supreme Court's decision in Associate Builders v. Delhi Development Authority, 2014 (4) Arb LR 307(SC). The impugned Award passed by the learned Arbitrator is contrary to public policy and the laws of India in as much as after having determined that the land allotted by the respondent to the petitioner would fall under service category on par with similar allottees such as TTPS and ONTPL, the learned Arbitrator ought to have granted relief for the entire period viz., from 14.07.2011 when the payment of lease commenced rather than from an artificial determined date of 28.12.2016. The learned Arbitrator has failed to note that the Arbitrator is bound by the terms of the contract and the legal regime and in as much as the respondent is a statutorily constituted Trust, it ought to act in a just, fair and reasonable manner even in the contractual sphere and therefore could not have been discriminated between the petitioner and other generators since the petitioner is identically situate and has been established to supply power to TANGEDCO under applicable tariff regulations as determined by the Hon'ble TNERC and the other power generators under the service category also supply power under the tariff regulations under the Electricity Act, 2003. The learned Arbitrator has failed to note that the relief sought for by the petitioner is essentially declaratory in nature and having succeeded on the issue of being declared a lessee which would fall within service category, naturally the legal consequence of such determination is that the lease rentals right from the inception of the lease ought to be determined under the service category and there could not be a different categorisation for a particular period of time prior to 28.12.2016 since any declaratory relief would enure to the benefit of the petitioner from inception. The learned Arbitrator has failed to note that being an Arbitrator, the relief to be granted has to be strictly in accordance with the law and unless both the parties specifically agree to be bound by the principles of justice and equity for the purposes of the Award, equitable relief or moulding of relief cannot be granted and upon determination of an issue in favour of a particular party, the relief sought for ought to be granted in its entirety. Therefore, having determined that there is a refund of amount of due which have been collected in excess, the only relief that could be granted is for refund of such entire collection and the learned Arbitrator ought not to have directed and allow for an option to adjust such excess amount with future lease rents payable. The learned Arbitrator has committed an error in law by failing to exercise his power in allowing interest at the rate of 18% per annum which ought to have been specifically provided for the Award in as much as the default rate of interest prescribed under the Arbitration and Conciliation Act, 1996 for any sum due is 18% per annum. The learned Arbitrator ought to have examined the relief sought for and directed refund of all sums collected in contravention of the Award forthwith together accumulated interest within the prescribed time which he has failed to do. The impugned Award be set aside in so far as it restricts the relief only till 28.12.2016 and consequently direct that the classification under Service category being one that is applicable from the inception of Lease, all rentals commencing from 14.07.2011 shall be calculated on that basis and the excess sums collected be directed to be refunded forthwith with interest at 18% per annum from the dates such excess sums were paid until the date of repayment/refund.

6) **The averments of the counter filed in Ar.OP. No.24/2022 are as follows :-**

This petition is not maintainable under law and facts. The petitioner has filed this appeal as an abuse of process of law. The Appellant/petitioner purposely to deprive the right to this respondent has filed appeal as an afterthought, without any basis after a very long delay. The relief sought by the Petitioner is not in contravention of fundamental principles and Public Policy of India to attract the provision of Sec.34 of Arbitration Act. The respondent has challenged the entire award in its Appeal No.302/2019 pending on the file of the Principal District Court, Tuticorin. The petitioner's appeal is already subjudiced before the Legal System.

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Hence, the appeal filed by the petitioner is unwanted and has to be dismissed in limine. The petitioner ought not to have filed this appeal without remitting the rent to the respondent. Default in paying the rent has caused much financial loss to the respondent. The petitioner has taken the law in his own hands and failed to pay the rent to the respondent. The petitioner is bound to pay the arrears of rent as a lessee to the respondent. Whereas failure on the part of the petitioner has made it listed as an unauthorised occupant of this respondent. The Respondent SEPC knowingly, wholeheartedly has entered into the Agreement, submitting itself to "Industrial Category". Contrary to the above facts the petitioner intentionally at the back door wants to evade the Lease Rent payable to the Lessor VOCPT and has sought remedy against the Arbitration Award which is against Public Policy. The Hon'ble Arbitrator has failed to note that the NTPL is purely a Government of India undertaking and the allotment of land under Service Category as per the Committee Report dated 18.12.1996. The petitioner cannot compare the allotment made to NTPL who is the Thermal Power Station of TNEB. Whereas the petitioner (SEPC) is purely Private Limited Company which is under share holding pattern. The Hon'ble Arbitrator has failed to note that the Concept of Land use plan was emerged only in 2014 and was approved in 2015 with respect to the respondent Port. But the allotment of the petitioner and rate for the said allotment was fixed during 1996. During that period the concept of land use plan and rate fixation based on the purpose of usage was not there. The petitioner based on the minutes of meeting held on 18.12.96 that the petitioner is classified under “Industrial Category” and the Tuticorin Thermal Power Station of TNEB (Presently TANGEDCO) is Categorized under the service category is base on committee report the fixation of rent under the industrial category was fixed by the committee since the petitioner being an established private sector. The industrial rate applied to the petitioner itself is a concession rate on comparing to the commercial rate, which has been applied to other Private and Government institutions doing commercial business with Port. The award passed by the Arbitrator is violating the provisions of Major Port Trust Act, 2021. Hence it is not sustainable under law. The prayer sought by the petitioner is in contravention of interest of the Society of large. Hence, this petition is to be dismissed.

7) Since, the petitions in Ar.O.P. No.302/2019 and Ar.OP No.24/2022 arose out of the same Award and the prayer in one petition is interlinked with the prayer in another petition and therefore, for the purpose of clarity and proper appreciation, the reliefs sought for are jointly determined in a single issue framed hereunder :

8) **<u>The common point for consideration is :-</u>**

1) Whether the Award passed by Hon’ble Arbitrator is liable to set aside in the Ar.OP No.302/2019?
2) Whether the impugned Award be set aside in the relief only till 28.12.2016, all rentals commencing from 14.07.2011 shall be calculated on that basis and the excess

sums collected be directed to be refunded with interest at 18% per annum from the dates such excess sums were paid until the date of repayment/refund?

Determination on point 1 and 2:

9) For the sake and convenience of the parties, the original ranking in the Arbitral Award mentioned the parties as such in the present petitions.

10) The petitioner has stated in his written argument that the claim petition filed by him before the Arbitral Tribunal the Award passed on 31.08.2019 in the effect of granting relief to the claimant partly was challenged by the VOC Port. The petitioner also filed a petition challenging the Award in so far as the portion of claim not granted as well as the rejection of interest. The respondent filed a petition invoking Section 34 of the Act, but they treated as an appeal filed u/s. 41 of CPC. In fact in the stay petition the exaction CPC provision itself has been mentioned. Respondent Port heavily placed reliance on the Ex.R5 and argued that the withdrawal or letter dated 01.09.2016 in the nature of accepting the industrial category is bad and unsustainable for the reasons that the second lease agreement dated 28.12.2016 was emerged on the basis of the undertaking that the issue of conversion of rent category will be seen subsequently and reserving such right recorded on 24.07.2014 itself vide Ex.C32.) Thus withdrawal of service category admitted in the letter dated 30.12.2015 vide Ex.R5 has no bearing. The Hon'ble

Supreme court has held that the scope of the interference of the award under section 34 of the arbitration act is limited to provision and grounds contained therein. The said decision rendered in the matters of Punjab State Civil supplies Corporation Ltd *vs* Sanman Rice Mills & others in SLP 9 (Civil) No 27699/2018 dated 27.09.2024 is relevant especially at paragraph No.12 and 21 are relevant. The Claimant has questioned the partial sustainment of the claims in the award and pressing for full grant on the ground that equity and good conscience and applicable law in India. The arbitral tribunal failed to grant benefit to the claimant since from the original lease agreement dated 14.07.2011 on the ground that the government of India would be put to difficulties and loss as observed at page No.66 paragraph No.122 (ii & iii) is perverse and contrary to section 34 (b) (ii) of Arbitration Act. The claim of revised rental category was not pleaded as observed in page No. 69 at paragraph No.122 (xiii) is error apparent as the claimant has already pleaded at paragraph No.42 and 49 of the claim petition. In the commercial transactions payment of interest is acting as compensation of loss and the same is not punitive award. The tribunal found that the claimant is entitle for the relief is suffice to grant interest on the money decree relief granted. The rejection of payment of interest of before filing of claim, during the currency of proceedings and post award interest is bad and supreme court has granted 18% PA in case tribunal failed to grant in reported decision in case of M/s. Hyder Consulting (UK) Ltd /Vs/ Govt of Orissa (AIR 2015 SC 856). The claimant is therefore entitle of interest on principal, interest pendentelite, and post award interest and the same may kindly be ordered.

11) The respondent has argued that the land on lease, on three categories Commercial, Industrial and Service. The rent has been fixed by TAN. Ex.C26 dated 14.07.2011 the permission was granted in the year 2011. The lease was carried on not in a commercial and on 28.12.2020, service conversation of transfer writing letter joint meeting lease conversation of tariff. on 28.`12.16 a fresh agreement for allotment of land was entered by the claimant prior entering the agreement it is clear that the land allotted for the project is only for industrial category and the same was agreed and entered in the agreement. There is no clause / covenant in the agreement in respect of treating the lessee as service category instead of industrial category. The Arbitrator wrongly interpreted the land use plants stated in the policy guidelines for land managed by major ports 2014. The RW1 has deposed that “to my knowledge we are fixing the land lease rent depending upon the status of the administration”. The R.W.1 has clearly stated that the other two are the public sectors undertaking and they are eligible for concession in the lease rental tariff. Based on the minutes of the meeting the petitioner is classified the industrial category and the Thermal Power station of TNEB is categorized under service category. The Arbitration has failed to appreciate the agreement entered between the petitioner and the respondent. The issue No.5 has decided by the Arbitrator wrongly. So, the respondent claims that the Arbitration Award may be set aside.

12) A careful perusal of the records and the arguments put forth by the counsels and the written arguments. The respondent claimed that the claimant is under the category of industrial and they have to pay the rent as fixed by the TAMP for industrial category, the tribunal granting the relief and fixing the claimant under service category from 28.12.2016, further directing the petitioner to return the excess amount paid by the petitioner is erroneous. The claimant seeking to set aside the Arbitration Award it restrict the relief only till 28.12.2016 and consequential directed the classification under Service category being one that is applicable from the inspection of lease all rentals commencing from 14.07.2011 shall be calculated on that basis and the excess sums collected be directed to be refunded with interest at 18% per annum from the dates such excess sums were paid until the date of repayment/refund.

13) The Arbitration Tribunal eloborately discussed about the category of claimant in the Award page No.58 to 65. The Arbitration Tribunal has categorically mentioned in 19th para that the claimant is also a company generating power like that TTPS and NTPL public sector undertakings and supplied to the TANGEDCO as per the rate fixed by the Electricity Regulatory Commission. The yet another point raised by the petitioner that issue No.6. In the arbitral Award it has clearly stated that the fixation of the lease rent allotted to the claimant under service category cannot be construction from 2011 onwards.

14) Further, originally, the allottement granted vide Exhibit C-4 dated

17.05.1999 was cancelled as early as 15.10.2003 (Exhibit C17). In the light of the said cancellation, all the contractual rights and liabilities got terminated. Thereafter parties herein have afresh entered into an agreement Exhibit C2 on 28.12.2016 and the Claimant was permitted to enter upon the land vide letter of the respondent dated 14.07.2011 (Exhibit C28. The claimant was granted possession of the alternate site and therefore such contractual rights alone prevail. In the Arbitration Award the doctrine of equity discussed and also decided that the claimant in the Arbitration Award has not entitled for refund for the earlier period.

15) The Arbitraral Tribunal has discussed the service category and the adjustment of amount from 2016. The claimant as well as the respondent seeking set aside the Arbitral award erroneous and not considered the plea of the claimant. The scope and the power of interference with the Award is to be appreciated and for the same, the relevant provision which vested the power upon the District Judge the circumstances under which could interfere with the findings of the Arbitrator.

> 34. **Application for setting aside arbitral award.**—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
> (2) An arbitral award may be set aside by the Court only if -
> (a) the party making the application establishes on the basis of the record of the arbitral tribunal that
> (i) a party was under some incapacity, or
> (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, -

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.

It is correct that the claimant and respondent have preferred to file a petition u/s.34 of Arbitration and Conciliation Act 1996 and not mentioning any specific provision under which, they seek setting aside of Arbitral Award.

16) From the pleadings and the grounds raised by the petitioner in Ar.OP.

No.302/2019 and Ar.OP. NO.24/2022, it is clear that the prayer of the petition is not fall under the provision of section 34(2)(b)(ii) and Sec34 (2A) of Arbitration and Conciliation Act. In such circumstances this Court has no power to interfere the Arbitral Award. Hence this petition is liable to be dismissed and the parties do bear their costs. The point Nos. 1 and 2 are answered accordingly.

In the result, Ar.OP. No.302/2019 and Ar.OP No.24/2022 are dismissed.

Dictated by me to the steno typist directly typed by her into computer and corrected and pronounced by me, in the Open Court, on this the 18th day of August 2026.

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Date: 2026.08.18 19:20:14 +0530

Principal District Judge,
Thoothukudi.

Principal District Court, Thoothukudi

Ar.O.P No. 302/2019

and

Ar.O.P No. 24/2022

Draft / Fair Order,

Dated : 18.08.2026.