

BENGAL AERIAL ROPEWAYS ACT, 1923

7 of 1923

[29th August, 1923]

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In accordance with the original decision that there should preferably be an All India Act for the Government control of ropeways a Bill was drafted by the Railway Board. In view of the transfer to Local Governments of the control of ropeways the Government of India were of opinion that the necessary legislation on the subject should be undertaken by the individual local governments interested. In accordance with these views a copy of the bill drafted by the Railway Board was asked for and the instructions of the Railway Board regarding modifications in their draft Bill are incorporated in the Bengal Aerial Ropeways Bill now before the Council" (See speech of the Government Member introducing the Bill in the Legislative Council: Bengal Legislative Council Debates.) This bill had to be withdrawn after the Select Committee had reported, the reason being the decision of the Select Committee that the Bill then framed was not comprehensive,

inasmuch as it contained no provision for government supervision or control over privately owned ropeways. The Bill was revised and enlarged in accordance with the foregoing recommendations. It indicated the procedure to be adopted by a promoter before an undertaking can be sanctioned. It authorized Government to scrutinize the type and nature of construction, to appoint an Inspector to examine the construction, maintenance and working of the line, and provided for all measures necessary to ensure the efficient and safe carriage of passengers, animals and goods, and the protection of the rights of the public. An Act to authorise, facilitate, and regulate the construction and working of aerial ropeways in Bengal. Preamble. WHEREAS it is expedient to authorise, facilitate and regulate the construction and working of aerial ropeways in Bengal; AND WHEREAS the previous sanction of the Governor General has been obtained under section 80A, sub-section (3), of the Government of India Act, to the passing of this Act; It is hereby enacted as follows

CHAPTER 1

Preliminary

1. Short title, local extent and commencement :-

(1) This Act may be called the Bengal Aerial Ropeways Act, 1923.

(2) It extends to the whole of ¹[West Bengali, I* * * *; and

(3) It shall come into force on such date as the ²[State Government] may, by notification in the ³[Official Gazette], direct: Provided that it shall come into operation in the Darjeeling district only on such date and subject to such exceptions and modifications as the ²[State Government] may, by notification in the ³ [Official Gazette], direct.

1. Words subst. and words omitted by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

2. Words subst. by the Government of India (Adaptation of Indian Laws) Order. 1937 and the Adaptation of Laws Order, 1950, respectively.

3. Words subst. by the Government of India (Adaptation of Indian Laws) Order. 1937.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context

(1) "aerial ropeway" means an aerial ropeway (or any portion

thereof) for the carriage of passengers, animals or goods, and includes all posts, ropes, carriers, stations, offices, warehouses, workshops, machinery and other works used for the purposes of, or in connection with, and all land appurtenant to such aerial ropeway;

(2) "carrier" means any vehicle or receptacle hung or suspended from, or hauled by, a rope and used for the carriage of passengers, animals or goods or for any other purpose in connection with the working of an aerial ropeway;

(3) "Collector" means the chief officer in charge of the land-revenue administration of a district, and includes any officer specially appointed by the ¹[State Government] to discharge the functions of a Collector under this Act;

(4) "Inspector" means an Inspector of aerial ropeways appointed under this Act

;

(5) "local authority" means a Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund, and also includes a Local Board;

(6) "order" means an order authorising the construction of an aerial ropeway under this Act;

(7) "post" means a post, trestle, standard, strut, stay or other contrivance or part of a contrivance for carrying, suspending or supporting a rope;

(8) "prescribed" means prescribed by rules made by the ¹[State Government] under section 42;

(9) "promoter" means

(i) the ¹ [State Government],

(ii) a local authority,

(iii) any person,

(iv) any company incorporated under the Indian Companies Act, 1913, or

(v) any railway company as defined in the Indian Railways Act,

1890

(10) "rate" includes any fare, charge or other payment for the carriage of passengers, animals or goods on aerial ropeway; and

(11) "rope" includes any cable, wire, rail or way, whether flexible or rigid, for suspending, carrying or hauling a carrier, if any part of such cable, wire, rail or way is carried overhead and is suspended from, or supported on posts.

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

CHAPTER 2

Aerial Ropeways for Public Traffic Procedure and Preliminary Investigations

3. Application for concession :-

Every application by an intending promoter other than the [State Government] for permission to undertake the necessary preliminary investigations in regard to a proposed aerial ropeway for the public carriage of passengers, animals or goods shall be submitted to the [State Government].

4. Contents of application :-

Every such application shall include

(a) a description of the undertaking and of the route to be followed by the proposed aerial ropeway;

(b) a description of the system of construction and management and of the advantages to the community to be expected from the ropeway;

(c) an estimate of the cost of construction thereof;

(d) a statement of the estimated working expenses and profits in respect thereof;

(e) a statement of the maximum and minimum rates which it is proposed to charge;

(f) such maps, plans, sections and drawings in connection therewith as the [State Government] may require in order to form an idea of the proposal.

5. Preliminary investigations :-

Subject to the provisions of this Act, and of section 4 of the Land Acquisition Act, 1894, the [State Government] may, at [its]

discretion, accord sanction to the intending promoter to make such surveys as may be necessary, and require him to submit such detailed estimates, plans, sections and specifications and such further information as [it] may deem necessary for the full consideration of the proposal. The intending promoter shall not be entitled to claim any compensation [from the Government] for any expenses incurred under this section in the event of his application being ultimately refused. Orders authorising the Construction of Aerial Ropeways for Public Traffic

6. Order authorising construction and contents of such order :-

(1) The [State Government] may, on application made by any intending promoter, and after due consideration of the details supplied in accordance with section 5, publish in the [Official Gazette] a draft of the proposed order authorising the construction by, or on behalf of, such promoter, subject to such restrictions and conditions as the [State Government] may think proper, of an aerial ropeway within any specified area or along any specified route

(a) for the public carriage of passengers;

(b) for the public carriage of passengers, animals and goods; or

(c) for the public carriage of animals and goods.

(2) A notice shall be published with the draft order stating that any objection or suggestion which any person may desire to make with respect to the proposed order, if submitted to the [State Government] within such period, not being less than two months from the date of such publication, as may be specified in the notice, will be received and considered.

(3) The [State Government] shall also cause public notice of the intention to make the order to be given at convenient places within the said area or along the said route, and shall, so far as may be conveniently possible, cause a like notice to be served on every owner or occupier of land over which such route lies, and shall consider any objection or suggestion, with respect to the proposed order, which may be received from any person within the date specified in such notice and decide thereon.

(4) The draft of the proposed order may specify

- (i) a time within which the capital required for the construction of the aerial ropeway shall be raised;
- (ii) a time within which the construction shall be commenced;
- (iv) the conditions under which a concession, guarantee or financial assistance may be given by the [State Government] or a local authority to the promoter;
- (v) the right of purchase by the [State Government] or by a local authority;
- (vi) the conditions relating to the structural design, quality of materials, factors of safety, method of computing stresses, and other such technical details as may be considered necessary;
- (vii) the conditions relating to the construction of the ropeway over mining properties in accordance with rules made under section 42 and over roads and other public ways of communication [except railways and tramways not wholly within a municipal area, and with the previous sanction of * * * * the Central Government, over such railways and tramways];
- (viii) the conditions under which the promoter may sell or transfer his rights to the [State Government] or to a local authority, company or person;
- (ix) the conditions under which the ropeway may be taken over by the [State Government] to be worked by itself or by a local authority or by a company or person other than the promoter;
- (x) the motive power to be used. on the ropeway and the conditions (if any) on which such power may be used;
- (xi) the minimum headway to be maintained under different parts of the rope;
- (xii) the points under the rope at which bridges or guards shall be constructed and maintained;
- (xiii) the amount of security (if any.) to be deposited by the promoter in the event of his application being granted;
- (xiv) the traffic which may be carried on the ropeway, the traffic which the promoter shall be bound to carry, and the traffic which he may refuse to carry;
- (xv) the maximum and minimum rates that may be charged by the

promoter and the circumstances in which and the manner in which these rates may be revised by the [State Government]; and

(xvi) such other matters as the [State Government] may deem necessary.

7. Final order :-

(1) If, after considering any objections or suggestions which may have been made in respect to the draft on or before the specified date, the 10[State Government] [is] of opinion that the application should be granted with or without modifications, or subject or not to any restrictions or conditions, [it] shall make an order accordingly.

(2) Every order authorising the construction of an aerial ropeway for the public carriage of passengers, animals or goods shall be published in the [Official Gazette], and such publication shall be conclusive proof that the order has been made as required by this section.

8. Cessation of powers given by an order :-

If a promoter authorised by an order to construct an aerial ropeway for the public carriage of passengers, animals or goods does not, within the time specified in the order,

(a) succeed in raising the full amount of capital required for the completion of the ropeway, or

(b) substantially commence the construction of the ropeway, or

(c) complete the construction thereof, the powers given to the promoter by such order shall, unless the [State Government] prolongs the time so specified, cease to be exercised.

9. Opening of Aerial Ropeway to passenger traffic :-

When the construction of an aerial ropeway has been authorised under this Act, for the public carriage of animals and goods only, the [State Government] may, on application made by the promoter, sanction the opening of such ropeway for the public carriage of passengers also. Inspection of Aerial Ropeways for the Public Traffic

10. Inspection of Aerial Ropeway before opening :-

(1) No aerial ropeway intended for the public carriage of passengers, animals or goods shall be opened for any kind of traffic

until the [State Government] or an Inspector empowered by the [State Government] in this behalf has, by an order, sanctioned the opening thereof for that purpose. The sanction of the [State Government] under this section shall not be given until an Inspector has, after inspection of the ropeway, reported in writing to the [State Government]

(a) that he has made a careful inspection of the ropeway and appurtenances;

(b) that the moving and fixed dimensions and other conditions prescribed under sub-section (4) of section 6 and sub-section (1) of section 7 have been complied with;

(c) that the ropeway is sufficiently equipped for the traffic for which it is intended ;

(d) that the by by-laws and rules prescribed by sections 27 and 42 have been duly made, approved and published ; and

(e) that the ropeway is, in his opinion, fit for public traffic and can be used without danger either to the persons, animals or goods carried thereon, or to the persons employed thereon, or to the general public.

(2) The provisions of sub-section (1) shall extend to the opening of additional sections of the ropeway, and to deviation lines and any alteration or reconstruction materially affecting the structural character or any work to which the provisions of sub-section (1) apply or are extended by this sub-section.

11. Appointment and duties of Inspectors :-

(1) The [State Government] may appoint such persons as [it deems] fit to be Inspectors of aerial ropeways for the public carriage of passengers, animals or goods, and may fix the fees to be charged to promoters for the performance by Inspectors of their duties under this Act.

(2) It shall be the duty of any such Inspector from time to time to inspect such ropeways, and to determine whether they are maintained in a fit condition and worked with due regard to the convenience and safety of the persons using them and of the general public, and consistently with the provisions of this Act.

12. Powers of Inspectors :-

An Inspector shall, for the purpose of any of the duties which he is authorised or required to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and shall, for that purpose, have such powers as may be prescribed.

13. Facilities to be afforded to Inspectors :-

The promoter, and his servants and agents, shall afford to an Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act, or by rules made thereunder.

14. Authority of promoter to execute all necessary works :-

(1) Subject to the provisions of, and to the rules made under, this Act, and, in the case of immovable property not belonging to the promoter, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, a promoter of an aerial ropeway for public traffic may

- (a) make such survey as he thinks necessary;
- (b) place and maintain posts in or upon any immovable property;
- (c) suspend and maintain a rope over, along and across any immovable property;
- (d) make such bridges, culverts, drains, embankments and roads as may be necessary;
- (e) erect and construct such machinery, offices, stations, warehouses and other buildings, works and conveniences as may be necessary; and
- (f) do all other acts necessary for constructing, maintaining, altering, repairing and using the aerial ropeway:

Provided that a promoter may take any action under [clause (a),] clause (6) or clause (c) of this sub-section, notwithstanding the objection of the owner or occupier of the property affected thereby if the Collector, after giving such owner and occupier by notice in writing an opportunity of being heard, by an order in writing, permits such action.

(2) When making an order under the proviso to sub-section (1), the Collector shall fix the amount of compensation or of annual rent or of both which should, in his opinion, be paid by the promoter to the owner of the property affected thereby, or, in the case of

immovable property, to the owner or occupier thereof.

15. Temporary entry upon land for repairing or preventing accident :-

(1) Subject to the rules made under this Act a promoter may, at any time, for the purpose of examining, repairing or altering an aerial ropeway for public traffic or of preventing any accident, enter upon any immovable property adjoining such ropeway, and may do all such works as may be necessary for such purpose.

(2) In the exercise of the powers conferred by sub-section (1), the promoter shall cause as little damage as possible, and compensation shall be paid by him for any damage so caused; and, in a case of dispute as to the amount of such compensation, or the person to whom it shall be paid, the matter shall be referred to the decision of the Collector.

16. Removal of trees, structures, etc :-

(1) Where any tree standing or lying near an aerial ropeway for public traffic, or where any structure or other object which has been placed or has fallen near any such ropeway subsequently to the issue of an order under section 7 in regard to such ropeway, interrupts or interferes with, or is likely to interrupt or interfere with, the construction, maintenance, alteration or use of the ropeway, the Collector may, on the application of the promoter, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit.

(2) When disposing of an application under sub-section (1), the Collector shall, in the case of any tree in existence before the construction of the aerial ropeway, award to the person interested in the tree such compensation, if any, as he thinks reasonable, and the Collector may recover the same from the promoter in the same manner as an arrear of land revenue.

Explanation. For the purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle-growth or other plant.

17. Orders of Collector subject to revision by State Government :-

No suit shall lie, in respect of any matter referred to in the proviso to sub-section (1) of section 14, sub-section (2) of section 14,

section 15 or sub-section (1) of section 16, but every order made by a Collector under any of those sections, and every award made by him under sub-section (2) of section 16, shall be subject to revision by the [State Government] except in the case of an award of compensation made by the Collector on account of action taken under clause (c) of sub-section (1) of section 14, which award shall be subject to revision by the District Judge.

18. Promoter may fix rates :-

The promoter of an aerial ropeway for public traffic shall, for the purposes of working an aerial ropeway, and subject to such maximum and minimum rates as may be prescribed, have power from time to time to fix the rate for the carriage of passengers, animals or goods on the aerial ropeway.

19. Duty of promoter to work Aerial Ropeway without partiality :-

No promoter shall, for the purposes of working an aerial ropeway for public traffic, make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or any particular description of traffic in any respect whatsoever, or subject any particular person or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

20. . Reporting of accidents :-

When any of the following accidents occur in the course of working an aerial ropeway for public traffic, namely:

(a) any accident attended with loss of human life or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property;

(b) any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid or with serious injury to property;

(c) any accident of any other description which the [State Government] may specify in this behalf in the rules made under this Act; the promoter shall, without unnecessary delay, send notice of the accident to the [State Government] and to the Inspector of the aerial ropeway; and the promoter's servant in charge of the station on the aerial ropeway nearest to the place at which the accident occurred or, where there is no station, the promoter's servant in charge of the section of the aerial ropeway on

which the accident occurred shall, with the least possible delay, give notice of the accident to the Magistrate of the district in which the accident occurred and to the officer in charge of the police-station within the local limits of which it occurred, or to such other Magistrate and police-officer as the [State Government] may appoint in this behalf.

21. Power to close and re-open Aerial Ropeway :-

(1) If after inspecting any aerial ropeway opened to public traffic, an Inspector is of opinion that the ropeway or any specified part thereof cannot be used without danger to the public, or is no longer in a fit state for the carriage of any specified class of traffic, he shall state that opinion, together with the grounds therefor, to the [State Government]; and the [State Government], after such further inquiry, if any, as [it] may think fit, may thereupon order that, for reasons to be set forth in the order, the aerial ropeway, or the part thereof so specified, be closed to all traffic or to any specified class of traffic:

Provided that, in any case of extreme urgency, the Inspector may order the suspension of the working of the ropeway or any part thereof which he considers necessary, pending the orders of the [State Government] on the case.

(2) When, under sub-section (1), an aerial ropeway or any part thereof has been closed to any traffic, it shall not be re-opened to such traffic until it has been inspected, and its re-opening sanctioned, in the prescribed manner.

22. Cessation of powers of promoter on discontinuance of Aerial Ropeway :-

If, at any time after the opening of an aerial ropeway for public traffic, it is proved to the satisfaction of the [State Government] that the promoter has, for three months, discontinued the working of the ropeway or of any part thereof without a reason sufficient, in the opinion of the [State Government], to warrant such discontinuance, the [State Government], if [it thinks] fit, may declare that the powers of the promoter in respect of such aerial ropeway or part thereof shall be at an end; and thereupon the said powers shall cease and determine.

23. Power of removal of Aerial Ropeway on cessation of promoters powers :-

(1) When a declaration has been made under section 22, in respect of any aerial ropeway or of any part thereof, an officer appointed in that behalf by the [State Government] may, at any time after the expiration of two months from the date determined as aforesaid, remove such aerial ropeway or part thereof, as the case may be; and the promoter shall pay to the officer so appointed such costs of removal as shall be certified by that officer to have been incurred by him.

(2) If the promoter fails to pay the amount of costs so certified within one month after the delivery to him of the certificate or of a copy thereof, such officer may, without any previous notice to the promoter and without prejudice to any other remedy which he may have for the recovery of the said amount, sell and dispose of the materials of the aerial ropeway or part thereof so removed; and may, out of the proceeds of the sale, pay and reimburse himself the amount of costs certified as aforesaid and of the costs of the sale; and shall pay over the residue (if any) of such proceeds to the promoter. Purchase of Aerial Ropeways for Public Traffic

24. Power of State Government and local authorities to purchase Aerial Ropeways for public traffic :-

(1) When an order under section 7 has been made in favour of a promoter of an aerial ropeway for public traffic, not being the [State Government], or a local authority, the [State Government], or a local authority specified in the order published under section 7, shall, on the expiration of such period, not exceeding fifty years, and of every such subsequent period, not exceeding twenty years, as shall be specified in such order, have the option of purchasing the undertaking, and if the [State Government], or the local authority with the previous sanction of the [State Government], [elects] to purchase, the promoter shall sell the undertaking to the [State Government] or to the local authority, as the case may be, on payment of the value of all lands, buildings, works, materials, plant and apparatus of the promoter, suitable to, and used by him for the purposes of, the undertaking, such value to be in case of difference or dispute determined by arbitration:

Provided that the value of such lands, buildings, works, materials, plant and apparatus shall be deemed to be their fair market value at the time of purchase, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials, plant and apparatus, and to the state of repair thereof

and to the circumstance that they are in such a position as to be ready for immediate working, and to the suitability of the same for the purposes of the undertaking:

Provided also that there shall be added to such value, as aforesaid, such percentage, if any, not exceeding twenty per cent, of that value, as may be specified in the order passed under section 7, on account of compulsory purchase.

(2) Where a purchase has been effected under sub-section (1)

(a) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the promoter or attaching to the undertaking:

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking; and

(b) save as aforesaid, the order published under section 7, shall remain in full force, and the purchaser shall be deemed to be the promoter:

Provided that where the ¹[State Government] elects to purchase, the order under section 6 shall, after purchase, in so far as the ¹[State Government] is concerned, cease to have any further operation.

(3) Not less than two years' notice in writing of any election to purchase under this section shall be served upon the promoter by the ¹[State Government] or the local authority, as the case may be.

(4) Notwithstanding anything hereinbefore contained, a local authority may, with the previous sanction of the ¹ [State Government], waive its option to purchase, and enter into an agreement with the promoter for the working by him of the undertaking until the expiration of the next subsequent period referred to in sub-section (1) upon such terms and conditions as may be stated in the agreement.

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order. 1937 and the Adpatatlon of Laws Order. 1950. respectively.

25. Power to promoter to sell when option to purchase not

exercised and order revoked by consent :-

Where, on the expiration of any of the periods referred to in section 24, neither the ¹ [State Government] nor a local authority purchases the undertaking, and the order published under section 7 is, on the application or with the consent of the promoter, revoked, the promoter shall have the option of disposing of all lands, buildings works, materials, plant and apparatus belonging to the undertaking in such manner as he may think fit.

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order. 1937 and the Adpatatlon of Laws Order. 1950. respectively.

26. Proceedings in case of inability or insolvency of promoter :-

(1) If, at any time after the opening of an aerial ropeway for public traffic, it appears to the ¹[State Government] that the promoter is insolvent or is unable to maintain the ropeway, or to work the same with advantage to the public, or at all, the ¹[State Government] may declare that the powers of the promoter, in respect of such aerial ropeway, shall, at the expiration of six months from the date of such declaration, be at an end; and thereupon the said powers shall, at the expiration of that period, cease and determine.

(2) At any time after the expiration of the said six months, an officer appointed by the ¹ [State Government] in that behalf, may, notwithstanding anything contained in the Provincial Insolvency Act, 1920, remove the aerial ropeway in the same manner and subject to the same provisions as to the payment of costs and to the same remedy for the recovery thereof, in every respect, as in cases of removal under section 23.

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order. 1937 and the Adpatatlon of Laws Order. 1950. respectively.

27. Power to promoter to make bye-laws :-

(1) A promoter of an aerial ropeway for public traffic shall, subject to the provisions of subsection (3), make bye-laws

(a) for regulating the rate of speed at which carriers are to be moved or propelled;

(b) for declaring what shall be deemed to be dangerous or offensive goods, and for regulating the carriage of such goods;

- (c) for regulating the maximum number of passengers and animals, and the maximum weight of goods, to be carried in each carrier;
- (d) for regulating the use of steam-power, or any other mechanical power or electrical power, on the aerial ropeway;
- (e) for regulating the conduct of the promoter's servants;
- (f) for regulating the terms and conditions on which the promoter will warehouse or retain goods at any station on behalf of the consignee or owner of such goods; and
- (g) generally for regulating the travelling upon, and the use, working and management of, the aerial ropeway.

(2) Such bye-laws may provide that any person who contravenes the provisions of any of them shall be liable to fine which may extend to any sum not exceeding fifty rupees, and that, in the case of a breach of a bye-law made under clause (e) of sub-section (1), the promoter's servant responsible for the same shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the promoter from his pay.

(3) A bye-law made under this section shall not take effect until it has been confirmed by the ¹[State Government] and published in the ² [Official Gazette]:

Provided that no such bye-law shall be so confirmed until it has been previously published by the promoter in such manner as may be prescribed.

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950. respectively.

2. Words subst. by the Government of India (Adaptation of Indian Laws) Order, 1937.

CHAPTER 3

Private Aerial Ropeways for certain purposes

28. Application for acquisition of land in case of certain private Aerial Ropeways :-

(1) Where the [State Government] [is] satisfied that the construction, extension, working or management of an aerial ropeway for private traffic is likely to prove useful to the public by reason of its facilitating the transport of commodities in general use

or is required for the conservation or service of undertakings supplying those commodities, and where the intending promoter of such aerial ropeway is desirous of obtaining any land for the purpose of such construction, extension, working or management, the [State Government] may, on the application of such promoter, acquire on his behalf such land under the provisions of Part VII of the Land Acquisition Act, 1894, or procure the temporary occupation of the same under the provisions of Part VI of that Act, whether the said intending promoter is or is not a company as defined in that Act.

(2) The [State Government] shall by notification in the [Official Gazette] declare the commodities which shall be deemed to be commodities in general use for the purposes of sub-section (1).

29. Agreement :-

(1) No order shall be made by the [State Government] under sub-section (1) of section 28 until an enquiry has been held as hereinafter provided and the intending promoter has entered into an agreement with [the State Government] in respect of the matters mentioned in sub-section (4).

(2) Such inquiry shall be held by such officer and at such time and place as the [State Government] shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure [, 1908] in the case of a Civil Court.

(4) Such officer shall report to the [State Government] the result of the inquiry, and if the [State Government] [is] satisfied that the ropeway is or is likely to be useful to the public, [it] shall, subject to any rules made under section 42, require the intending promoter to enter into an agreement with [the State Government], providing to the satisfaction of the [State Government] for the following matters, namely:

(a) the terms on which the ropeway shall be held by the promoter;

(b) the time within which, and the conditions on which, the ropeway shall be constructed, maintained and used.

(5) Every such agreement shall, as soon as may be after its execution, be published in the [Official Gazette].

30. Temporary occupation of land in case of private Aerial Ropeway :-

If land is to be occupied temporarily in accordance with the provisions of sub-section (1) of section 28 on behalf of the promoter of an aerial ropeway for private traffic, and if the ¹[State Government] on the application of the promoter so ²[directs], then the provisions of Part VI of the Land Acquisition Act, 1894, shall apply to such occupation, subject to the provisions that, notwithstanding anything contained in section 35 of the Land Acquisition Act, 1894, the occupation and use by the promoter of the land occupied shall continue for such period, not exceeding ten years, as the ¹ [State Government] may fix, and that the compensation payable to the persons interested in such land shall be fixed with due regard to any additional loss or inconvenience caused to them by reason of such period of occupation, including loss caused by the interruption of the getting of minerals by reason of such occupation.

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950. respectively.

2. Words subst. by the Government of India (Adaptation of Indian Laws) Order, 1937.

CHAPTER 4

Offences, Penalties and Arrest

31. Failure of promoter to comply with Act :-

If a promoter of an aerial ropeway for public traffic

(a) constructs or maintains an aerial ropeway otherwise than in accordance with the terms of an order made under section 7, or

(b) opens an aerial ropeway or permits it to be opened in contravention of any of the provisions of section 10, or

(c) fails to comply with the provisions of section 13, or

(d) fails to pay within a reasonable time any compensation awarded by the Collector or by the [State Government] under sections 14, 15, 16 or 17, or

(e) contravenes any of the provisions of section 19, or

(f) fails to send notice of any accident as required by section 20, or

(g) fails to close an aerial ropeway in accordance with an order

passed under sub-section (1) of section 21, or re-opens any aerial ropeway in contravention of sub-section (2) of that section, or

(h) continues to exercise the powers of a promoter in respect of any aerial ropeway, in contravention of the provisions of section 22 or section 26, or

(i) fails to comply with the provisions of section 27 or section 30, or

(j) contravenes any of the provisions of section 37, or

(k) contravenes the provisions of any rule made under section 42, he shall (without prejudice to the enforcement of specific performance of the requirements of this Act, or of any other remedy which may be obtained against him) be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, to a further fine which may extend in the case of an offence specified in subclauses (d), (e), (f), (i), (j) or (k) to fifty rupees, and in the case of an offence specified in sub-clauses (a), (6), (c), (g) or (h) to one thousand rupees for every day after the first during which the offence continues to be committed.

32. Unlawfully obstructing promoter in exercise of his powers :-

If any person without lawful excuse, the burden of proving which shall be upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing, maintaining, altering, repairing or working an aerial ropeway, or injures or destroys any mark made for the purpose of setting out the line or route of such ropeway, he shall be punished with fine which may extend to two hundred rupees.

33. Unlawfully interfering with Aerial Ropeway :-

If any person without lawful excuse, the burden of proving which shall be upon him, wilfully does any of the following things, namely:

(a) interferes with, removes or alters any part of an aerial ropeway or of the works connected therewith,

(b) does anything in such a manner as to obstruct any carrier travelling on an aerial ropeway,

(c) attempts to do, or abets, within the meaning of the Indian Penal Code, the doing of anything mentioned in clause (a) or clause (b),

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punishable with fine which may extend to two hundred rupees.

34. Maliciously doing, abetting or attempting to do, acts endangering safety of persons travelling or being upon Aerial Ropeway :-

If any person does anything mentioned in clauses (a), (6) or (c) of section 33 or does, attempts to do, or abets within the meaning of the Indian Penal Code, the doing of any other act or thing in relation to an aerial ropeway with intent or with knowledge that he is likely to endanger the safety of any person travelling or being upon the aerial ropeway, he shall be punished with imprisonment for a term which may extend to fourteen years.

35. Arrest for offences against certain sections :-

(1) If any person commits any offence under section 32 which obstructs the working of an aerial ropeway for public traffic, or commits any offence punishable with imprisonment under section 34, he may be arrested without warrant or other written authority by any servant of the promoter, or by any police officer or by any other person whom such servant or officer may call to his aid

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(2) A person so arrested shall, with the least possible delay, be taken before a Magistrate having authority to try him or to commit him for trial.

CHAPTER 5

Supplementary Provisions

36. Returns :-

A promoter of an aerial ropeway for public traffic shall, in respect of such ropeway, submit to the [State Government] returns of capital, receipts and traffic at such intervals and in such forms as may be prescribed.

37. Protection of roads, railways, tramways, and waterways :-

No promoter of an aerial ropeway shall, in the course of the construction, repair, working or management of such ropeway, cause any permanent injury to any public road, railway, tramway or waterway, or obstruct or interfere with, otherwise than temporarily, as may be necessary, the traffic on any public road, railway,

tramway or waterway.

38. Acquisition of land by a promoter :-

The [State Government] may, if [it thinks] fit, on the application of any promoter of an aerial ropeway for public traffic desirous of obtaining any land for the purpose of constructing, working or managing such ropeway, direct that he may, subject to the provisions of this Act, acquire such land under the provisions of the Land Acquisition Act, 1894, in the same manner and on the same conditions as it might be acquired if the promoter were a company.

39. Limitation of claims for damage to animals or goods :-

No person shall be entitled to a refund of an overcharge in respect of animals or goods carried by an aerial ropeway for public traffic or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the promoter within six months from the date of the delivery of the animals or goods for carriage by the ropeway.

40. Application of Act to certain private aerial ropeways :-

(1) Sections 1, 2, 11, 12, 13, 14, 15, 16, 20 and 21, clauses (c), (f), (g), (j) and (k) of section 31, sections 34, 35 and 37, and sub-sections (1) and (3) and clauses (6), (c), (d), (e), (g), (h), (m), (o), (p) and (q) of sub-section (2) of section 42 [shall, mutatis mutandis, also apply] to the private aerial ropeways constructed for the purposes referred to in section 28, whether constructed before or after the commencement of this Act:

Provided that, in the application of section 16 to any such aerial ropeway, for the words "the issue of an order under section 7" the words "the opening of the ropeway to traffic or the issue of a notification for the acquisition of, or an order for the temporary occupation of, land in accordance with the provisions of sub-section (1) of section 28, whichever is earlier," shall be deemed to be substituted.

(2) Clauses (a), (c) and (e) of sub-section (1) and sub-section (2) of section 10 shall also apply to all such private aerial ropeways constructed after the commencement of this Act, and clause (6) of section 31 shall apply to such ropeways to the extent that section 10 applies thereto.

(3) The [State Government], on the application of the promoter or

otherwise, may declare that the provisions of section 28 and of sub-section (1) of this section shall apply to any private aerial ropeway or class of private aerial ropeways for private traffic.

41. Power of State Government to constitute an Advisory Board for Aerial Ropeways :-

(1) The [State Government] shall, by notification in the [Official Gazette], constitute an Advisory Board for aerial ropeways.

(2) Such Board shall consist of a Chairman to be appointed by the [State Government] who shall be a Chief Engineer to the [State Government] and two persons to be appointed by the [State Government] as expert members.

(3) When any person is aggrieved by an order of the [State Government] under section 7 or under section 21, such person, on payment of the prescribed fees, may, within thirty days of the said order, apply to the [State Government] for revision of the same, and the [State Government] shall take the advice of the Advisory Board in the prescribed manner and shall consider such advice and pass such orders in the matter as to the [State Government] shall seem just and proper.

(4) With a view to enabling the Board to tender their advice under sub-section (3) the Board, with the consent of the [State Government] and on payment of such further fees as may be prescribed, may make such further inquiry into the matter as the Board may consider to be necessary.

32. Words subst. by W.B. Act 2 of 1965. 33. Words subst. by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order. 1950. respectively. 34. Words subst. by the Government of India (Adaptation of Indian Laws) Order. 1937.

(5) The ¹ [State Government] may, by general or special order,

(a) define the further duties of, and regulate the procedure of, the Advisory Board;

(b) determine the tenure of office of the members of the Board; and

(c) give directions as to the payment of fees to, and the travelling expenses incurred by, any member of such Board in the performance of his duty.

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

42. Power of State Government to make rules :-

(1) The 35 [State Government] may, after previous publication, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may prescribe

(a) the conditions under which licenses for the construction of aerial ropeways over mining properties shall be granted, including conditions as to the assessment and payment of compensation for loss caused by the interruption of the getting of minerals by reason of such construction and conditions as to the removal of any portion of the ropeway to another alignment, to be fixed by arbitration if necessary, if at any time in the opinion of the ¹[State Government] the ropeway interferes with the raising of minerals;

(b) the powers of an Inspector appointed under section 11;

(c) the conditions under which and the manner in which the powers conferred on promoters by sub-section (1) of section 14 and subsection (1) of section 15 may be exercised;

(d) the accidents of which notice shall be given to the 35[State Government] and to the Inspector under clause (c) of section 20;

(e) the duties of the promoter's servants, police-officers, and Magistrates on the occurrence of an accident;

(f) the maximum and minimum rates which a promoter may fix under section 18;

(g) the standard dimensions and specifications with which the aerial ropeway is to conform;

(h) the procedure for the disposal of applications under sub-section (2) of section 21 to re-open an aerial ropeway or part thereof and the conditions under which such ropeway may be re-opened;

(i) the manner of previous publication of bye-laws made under section 27;

(j) the intervals at which a promoter shall submit returns under section 36, and the forms in which such returns shall be submitted;

(k) the preparation, submission and auditing of the accounts of the promoter;

(l) the method of arbitration for the settlement of disputes;

(m) the manner in which notices under this Act shall be served;

(n) the manner in which, and the conditions under which, the through booking of goods may be permitted between an aerial ropeway and a railway, tramway or another aerial ropeway;

(o) the safe and efficient working of aerial ropeways;

(p) the fees to be charged to promoters and other persons in respect of licenses, applications, inquiries, inspection, and services rendered under this Act; and

(q) the procedure for filing, hearing and disposing of applications for revision under this Act, and the procedure for taking the advice of the Advisory Board.

(3) All rules made under this section shall be published in the ² [Official Gazette].

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order. 1950, respectively.

2. Words subst. by the Government of India (Adaptation of Indian Laws) Order. 1937.