

Major Port Trusts (Amendment) Act, 1974

CONTENTS

1. Short Title And Commencement
2. Amendment Of Section 1
3. Amendment Of Section 2
4. Amendment Of Section 3
5. Amendment Of Section 4
6. Amendment Of Section 6
7. Amendment Of Section 8
8. Amendment Of Section 19
9. Amendment Of Section 23
10. Amendment Of Section 24
11. Amendment Of Section 25
12. Substitution Of New Section For Section 27
13. Amendment Of Section 32
14. Amendment Of Section 35
15. Insertion Of New Section 35A
16. Power With Respect To Landing Places And Bathing Ghats
17. Amendment Of Section 36
18. Amendment Of Section 42
19. Amendment Of Section 43
20. Amendment Of Section 46
21. Amendment Of Section 59
22. Amendment Of Section 61
23. Amendment Of Section 62
24. Amendment Of Section 63
25. Substitution Of New Section For Section 65
26. Insertion Of New Sections 74A And 74B
27. Amendment Of Section 75
28. Amendment Of Section 78
29. Amendment Of Section 82
30. Amendment Of Section 88
31. Amendment Of Section 102
32. Amendment Of Section 116
33. Insertion Of New Section 117A
34. Amendment Of Section 118
35. Amendment Of Section 122
36. Amendment Of Section 123
37. Amendment Of Section 124
38. Amendment Of Section 133
39. Amendment Of Section 134
40. Transitional Provisions

Major Port Trusts (Amendment) Act, 1974

An Act to amend the Major Port Trusts Act, 1963. BE it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:-

1. Short Title And Commencement :-

(1) This Act may be called the Major Port Trusts (Amendment) Act, 1974. (2) It shall come into force on such date [1] as the Central Government may, by notification in the Official Gazette, appoint. Footnotes: 1. 15-1-75

2. Amendment Of Section 1 :-

In section 1 of the Major Port Trusts Act, 1963 (38 of 1963) (hereinafter referred to as the principal Act), in sub-section (3), the brackets and words "(not being the major port of Bombay, Calcutta or Madras)" shall be omitted.

3. Amendment Of Section 2 :-

In section 2 of the principal Act,- (a) after clause (i), the following clause shall be inserted, namely:- (ia) "immovable property" includes wharfage-rights and all other rights exercisable on, over, or in respect of, any land, wharf, dock or pier;; (b) for clause (z), the following clause shall be substituted, namely:- (z) "vessel" includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson;.

4. Amendment Of Section 3 :-

In section 3 of the principal Act,- (a) in sub-section (1), for clause (c) and (d), the following clause shall be substituted, namely:- "(c) not more than nineteen persons in the case of each of the ports of Bombay, Calcutta and Madras and not more than seventeen persons in the case of any other port who shall consist of- (i) such number of persons, as the Central Government may, from time to time, by notification in the Official Gazette, specify, to be appointed by that Government from amongst persons who are in its opinion capable of representing any one or more of such of the following interests as may be specified in the notification, namely:- (1) labour employed in the port; (2) the Mercantile Marine Department; (3) the Customs Department; (4) the Government of the State in which the port is situated; (5) the Defence Services; (6) the Indian Railways; and (7) such other interests as, in the opinion of the Central Government, ought to be represented on the Board: Provided that before appointing any person to represent the

labour employed in the port, the Central Government shall obtain the opinion of the trade unions, if any, composed of persons employed in the port and registered under the Trade Unions Act, 1926, (16 of 1926) and that the number of persons so appointed shall not be less than two; (ii) such number of persons, as the Central Government may, from time to time, by notification in the Official Gazette, specify, to be elected by such bodies and representing any one or more of such of the following interests as may be specified in the notification from among themselves, namely:- (1) ship owners; (2) owners of sailing vessels; (3) shippers; and (4) such other interests as, in the opinion of the Central Government, ought to be represented on the Board: Provided that in a case where any such body is an undertaking owned or controlled by the Government, the person to be elected by such body shall be appointed by the Central Government."; (b) in sub-sections (3) and (4), for the words, brackets, letter and figure "clause (d) of sub-section (1)", the words, brackets, figures and letter "sub-clause (ii) of clause (c) of sub-section (1)" shall be substituted.

5. Amendment Of Section 4 :-

In clause (c) of sub-section (1) of section 4 of the principal Act,- (a) for the words "not exceeding twenty-two", the words "not exceeding seventeen" shall be substituted; (b) in sub-clause (iii), for the words, brackets, figures and letter "in sub-clause (ii), (iii), (v) and (vi) of clause (c)", the words, brackets, figure and letter "in sub-clause (i) of clause (c)" shall be substituted.

6. Amendment Of Section 6 :-

In clause (c) of section 6 of the principal Act, for the proviso, the following proviso shall be substituted, namely:- "Provided that this disqualification shall not apply to the Chairman, Deputy Chairman or a Trustee who has been appointed to represent the labour employed in the port or appointed by virtue of office as officer or member of an association formed for the purpose of promoting the interests or welfare of any class of employees of the Board;".

7. Amendment Of Section 8 :-

In sub-section (1) of section 8 of the principal Act, after clause (a), the following clause shall be inserted, namely:- "(aa) has, in the opinion of the Central Government, ceased to represent the interest by virtue of which he was appointed or elected; or".

8. Amendment Of Section 19 :-

In section 19 of the principal Act,- (i) after the words "the Government", the words "or an undertaking owned or controlled by the Government" shall be inserted; (ii) for the words and figures "the Indian Trade Unions Act, 1926", the words and figures "the Trade Unions Act, 1926, (16 of 1926) or other than as officer or member of an association formed for the purpose of promoting the interests or welfare of any class of employees of the Board" shall be substituted.

9. Amendment Of Section 23 :-

To section 23 of the principal Act, the following proviso shall be added, namely:- "Provided that the previous sanction of the Central Government shall be obtained for the inclusion in the said Schedule of those designations and grades of employees and the salaries, fees and allowances payable to them which the Central Government may, by order, specify, and where no such order is made, of such posts (including the salaries and allowances attached thereto) which are required to be created by the Central Government, or for the creation of which the previous sanction of the Central Government is required, under this Act."

10. Amendment Of Section 24 :-

In sub-section (1) of section 24 of the principal Act,- (i) for clause (a), the following clause shall be substituted, namely:- "(a) in the case of a post- (i) the incumbent of which is to be regarded as the Head of a department; or (ii) to which such incumbent is to be appointed; or (iii) the maximum of the pay-scale of which (exclusive of allowances) exceeds two thousand rupees, be exercisable by the Central Government after consultation with the Chairman;"; (ii) for clauses (b) and (c), the following clause shall be substituted, namely:- "(b) in the case of any other post, be exercisable by the Chairman or by such authority as may be prescribed by regulations:".

11. Amendment Of Section 25 :-

In section 25 of the principal Act,- (i) in sub-section (1),- (1) in the opening paragraph, the word "promoting", shall be omitted; (2) for clauses (a) and (b), the following clauses shall be substituted, namely:- "(a) in the case of an employee holding a post referred to in clause (a) of sub-section (1) of section 24, by the Chairman; (b) in any other case, by the Chairman or by such authority as may be prescribed by regulations;"; (3) in the proviso, for the words "a Head of a department", the words, brackets and letter "an

employee referred to in clause (a)" shall be substituted; (ii) in sub-section (2),- (1) in the opening paragraph, the brackets and words "(not being a Head of a department)" shall be omitted; (2) for clauses (a), (b) and (c), the following clauses shall be substituted, namely:- "(a) to the Central Government, where such order is passed by the Chairman; (b) to the Chairman, where such order is passed by any such authority as is prescribed by regulations under clause (b) of sub-section (1):"; (3) in the proviso, for the words "the Board", in both the places where they occur, the words the Central Government" shall be substituted.

12. Substitution Of New Section For Section 27 :-

For section 27 of the principal Act, the following section shall be substituted, namely:- "27.Power to create posts.- Notwithstanding anything contained in section 23, the power to create any post, whether temporary or permanent, shall,- (a) in the case of a post the holder of which is to be regarded as the Head of a department or in the case of a post the maximum of the pay-scale of which (exclusive of allowances) exceeds two thousand rupees, be exercisable by the Central Government; (b) in the case of a post other than a post referred to in clause (a), the maximum of the pay-scale of which exceeds such amount as the Central Government may, from time to time, by order fix in this behalf, or where no such amount has been fixed, is not less than one thousand rupees, be exercisable by the Board with the previous sanction of the Central Government; (c) in the case of any other post, be exercisable by the Chairman.".(Amendment of section 29)

13. Amendment Of Section 32 :-

In sub-section (1) of section 29 of the principal Act, in clause (a), after the words "and funds", the words "and all rights to levy rates" shall be inserted.

14. Amendment Of Section 35 :-

In section 32 of the principal Act, for the words "Whenever any immovable property which is required for the purposes of the Board cannot be acquired by agreement", the words "When any immovable property is required for the purposes of the Board" shall be substituted.

15. Insertion Of New Section 35A :-

In sub-section (2) of section 35 of the principal Act, after clause (j), the following clauses shall be inserted, namely:- "(k) construction of models and plans for carrying out hydraulic studies; (l) dry

docks, slipways, boat basins and workshops to carry out repairs or overhauling of vessels, tugs, boats, machinery or other appliances."

16. Power With Respect To Landing Places And Bathing Ghats :-

After section 35 of the principal Act, the following section shall be inserted, namely:- "35A. Without prejudice to the powers exercisable under section 35, the Board of Trustees for the port of Calcutta may, if it considers it necessary so to do for the purposes of this Act,- (i) provide for sufficient number of public landing places from and upon which the public shall be permitted to embark and to land free of charge; (ii) occupy any bathing ghat, or remove any landing place, within the port and thereafter prohibit the public from resorting to or using the same: Provided that the Board shall not exercise any power under this section unless it reserves, sets out, makes and provides for the use of the public, such number of bathing ghats within the port as the Central Government may direct."

17. Amendment Of Section 36 :-

Section 36 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:- "(2) A Board may, if it considers it necessary or expedient in the public interest so to do, lend any of its vessels or appliances or the services of any of its employees to any person for such period not exceeding three months and on such terms and conditions as may be agreed upon between the Board and the person concerned."

18. Amendment Of Section 42 :-

In sub-section (1) of section 42 of the principal Act,- (i) in clause (c), the word "and" occurring at the end shall be omitted; (ii) in clause (d), the word "and" shall be inserted at the end and after the clause as so amended, the following clause shall be inserted, namely:- "(e) piloting, hauling, mooring, remooring, hooking, or measuring of vessels or any other service in respect of vessels."

19. Amendment Of Section 43 :-

In section 43 of the principal Act,- (i) in sub-section (1), for the proviso, the following proviso shall be substituted, namely:- "Provided that no responsibility under this section shall attach to the Board- (a) until a receipt mentioned in sub-section (2) of section 42 is given by the Board; and (b) after the expiry of such

period as may be prescribed by regulations from the date of taking charge of such goods by the Board."; (ii) in sub-section (2), for the words "from the date of the receipt given for the goods", the words "from the date of taking charge of such goods by the Board" shall be substituted.

20. Amendment Of Section 46 :-

In section 46 of the principal Act,- (i) in sub-section (1), after the word "mooring", the words "or undertake any reclamation of foreshore within the said limits" shall be inserted; (ii) in sub-section (2), after the word "mooring", the words "or undertakes any reclamation of foreshore" shall be inserted.

21. Amendment Of Section 59 :-

In sub-section (2) of section 59 of the principal Act, for the words "under any law for the time being in force", the words "under any law for the time being in force relating to customs, other than by way of penalty or fine" shall be substituted.

22. Amendment Of Section 61 :-

In section 61 of the principal Act,- (i) in sub-section (1), after the words "sell by public auction", the words "or in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing, sell by tender, private agreement or in any other manner" shall be inserted; (ii) in sub-section (2), for the words "the Official Gazette", the words "the Port Gazette, or where there is no Port Gazette, in the Official Gazette" shall be substituted.

23. Amendment Of Section 62 :-

In section 62 of the principal Act,- (i) in sub-section (1),- (a) for the words "the Official Gazette", the words "the Port Gazette or where there is no Port Gazette, in the Official Gazette" shall be substituted; (b) after the words "by public auction", the words "or by tender, private agreement or in any other manner" shall be inserted; (ii) in sub-section (3), after the words "by public auction", the words "or in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing sell by tender, private agreement or in any other manner" shall be inserted.

24. Amendment Of Section 63 :-

In section 63 of the principal Act,- (i) in sub-section (1),- (a) in clause (c), after the words "in respect thereof", the words and brackets ", including demurrage (other than penal demurrage) payable in respect of such goods for a period of four months from

the date of landing" shall be inserted; (b) after clause (c), the following clauses shall be inserted, namely:- "(d) in payment of any penalty or fine due to the Central Government under any law for the time being in force relating to customs; (e) in payment of any other sum due to the Board."; (ii) for sub-section (2), the following sub-sections shall be substituted, namely:- "(2) The surplus, if any, shall be paid to the importer, owner or consignee of the goods or to his agent, on an application made by him in this behalf within six months from the date of the sale of the goods. (3) Where no application has been made under sub-section (2), the surplus shall be applied by the Board for the purposes of this Act."

25. Substitution Of New Section For Section 65 :-

For section 65 of the principal Act, the following section shall be substituted, namely:- "65. Grant of port-clearance after payment of rates and realisation of damages etc.- If a Board gives to the officer of the Central Government whose duty it is to grant the port-clearance to any vessel at the port, a notice stating,- (i) that an amount specified therein is due in respect of rates, fines, penalties or expenses chargeable under this Act or under any regulations or orders made in pursuance thereof, against such vessel, or by the owner or master of such vessel in respect thereof, or against or in respect of any goods on board such vessel; or (ii) that an amount specified therein is due in respect of any damage referred to in section 116 and such amount together with the cost of the proceedings for the recovery thereof before a Magistrate under that section has not been realised, such officer shall not grant such port-clearance until the amount so chargeable or due has been paid or, as the case may be, the damage and cost have been realised."

26. Insertion Of New Sections 74A And 74B :-

After section 74 of the principal Act, the following sections shall be inserted, namely:- "74A. Recognition as holder of Port Trust securities in certain cases.- The person to whom a duplicate security has been issued under section 73 or a new security or securities has or have been issued under section 74 shall be deemed for the purposes of section 74B to have been recognised by the Board as the holder of the security or securities; and a duplicate security or a new security or securities so issued to any person shall be deemed to constitute a new contract between the Board and such person and all persons deriving title thereafter through him. 74B. Legal effect of recognition by the Board under

section 74A No recognition by the Board of a person as the holder of a Port Trust security or securities shall be called in question by any court so far as such recognition affects the relations of the Board with the person recognised by it as the holder of a Port Trust security or securities or with any person claiming an interest in such security or securities; and any such recognition by the Board of any person shall operate to confer on that person a title to the security or securities subject only to a personal liability to the rightful owner of the security or securities for money had and received on his account."

27. Amendment Of Section 75 :-

In section 75 of the principal Act, for the words and figures "the Indian Limitation Act, 1908, (9 of 1908) the words and figures "the Limitation Act, 1963" (36 of 1963) shall be substituted.

28. Amendment Of Section 78 :-

In clause (c) of section 78 of the principal Act, for the words "other than any sum set apart by the Board as the sinking fund for the purpose of paying off any loan; and", the following shall be substituted, namely:- "other than- (i) any sum set apart by the Board- (1) as the sinking fund for the purpose of paying off any loan; or (2) for the payment of pension to its employees; or (ii) the provident or pension fund established by the Board; and".

29. Amendment Of Section 82 :-

In sub-section (1) of section 82 of the principal Act, for the words "by two Trustees, one being the Board and the other a person appointed by the Central Government", the words "by the Board" shall be substituted.

30. Amendment Of Section 88 :-

In sub-section (1) of section 88 of the principal Act,- (i) for clause (g), the following clause shall be substituted, namely:- "(g) such sums as may, from time to time, be agreed upon by the Board and a State Government or the Central Government or any other authority, as a reasonable contribution payable by the Board towards the expenses in connection with the watch and ward functions of the police force or the Central Industrial Security Force or any other force which the State Government or the Central Government or the other authority, as the case may be, may establish and maintain for the protection of the port and the docks, warehouses and other property of the Board;"; (ii) in clause (l), after the words "application of the Board", the words "or otherwise"

shall be inserted.

31. Amendment Of Section 102 :-

In section 102 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:- "(2) The accounts of the Board shall be audited- (i) once in every year; and (ii) if so required by the Comptroller and Auditor-General of India, concurrently with the compilation of such accounts, by the Comptroller and Auditor-General of India or such other persons as may be appointed by him in this behalf and any amount payable to him by the Board in respect of such audit shall be debitable to the general account of the Board."

32. Amendment Of Section 116 :-

In section 116 of the principal Act, after the words "any Board", the words "or any movable property belonging to any Board", shall be inserted.

33. Insertion Of New Section 117A :-

After section 117 of the principal Act, the following section shall be inserted, namely:- "117A. Person interested in contracts, etc., with the Board to be deemed to have committed an offence under-section 168 of the Indian Penal Code.- Any person who, being a Trustee or an employee of the Board, acquires, directly or indirectly, any share or interest in any contract or employment with, by or on behalf of, any Board, shall be deemed to have committed an offence under section 168 of the Indian Penal Code: (45 of 1860) Provided that nothing in this section shall apply to a person who is deemed not to have a share or interest in any contract or employment under the proviso to clause (d) of section 6."

34. Amendment Of Section 118 :-

In section 118 of the principal Act, for the words "magistrate of the first class", the words "Metropolitan Magistrate or Judicial Magistrate of the first class" shall be substituted.

35. Amendment Of Section 122 :-

In sub-section (3) of section 122 of the principal Act, for the words "in which it is so laid", the words "immediately following the session" shall be substituted.

36. Amendment Of Section 123 :-

In section 123 of the principal Act, for clause (f), the following clause shall be substituted, namely:- "(f) for the safe, efficient and

convenient use, management and control of the docks, wharves, quays, jetties, railways, tramways, buildings and other works constructed or acquired by, or vested in, the Board, or of any land or foreshore acquired by, or vested in, the Board under this Act;".

37. Amendment Of Section 124 :-

In sub-section (1) of section 124 of the principal Act, after the words "under this Act", the words, brackets and figures ", other than a regulation made under sub-section (2) of section 17", shall be inserted.

38. Amendment Of Section 133 :-

In section 133 of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely:- "(2A) On the application of this Act to the port of Bombay, the Bombay Port Trust Act, 1879, (Bombay Act 6 of 1879) except the provisions thereof relating to municipal assessment of the properties of the port of Bombay and matters connected therewith, shall cease to have force in relation to that port. (2B) On the application of this Act to the port of Calcutta, the Calcutta Port Act, 1890, (Bengal Act 3 of 1890) except the provisions thereof relating to municipal assessment of the properties of the port of Calcutta and matters connected therewith, shall cease to have force in relation to that port. (2C) On the application of this Act to the port of Madras, the Madras Port Trust Act, 1905, (Madras Act 2 of 1905) shall cease to have force in relation to that port. (2D) Notwithstanding anything contained in sub-sections (2A), (2B) and (2C),- (a) every Trustee of the Board of Trustees of the port of Bombay or Madras holding office as such immediately before the application of this Act to the port of Bombay or Madras, as the case may be, shall be deemed to have been appointed or elected as such under this Act and shall continue to hold such office after such application until a Board of Trustees in respect of that port is constituted under the provisions of this Act; (b) every Commissioner of the port of Calcutta holding office as such immediately before the application of this Act to that port shall be deemed to have been appointed or elected as a Trustee under the provisions of this Act and shall continue to hold such office after such application until a Board of Trustees in respect of that port is constituted under the provisions of this Act; (c) anything done or any action taken or purported to have been done or taken (including any rule, regulation, bye-law, notification, order or notice made or issued or any resolution passed or any appointment or declaration made or any licence, permission or

exemption granted or any rates, charges or duties levied or any penalty or fine imposed) under the Acts referred to in sub-sections (2A), (2B) and (2C) shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act. (2E) Upon the cesser of operation of the provisions of the Acts referred to in sub-section (2A), (2B) and (2C), the provisions of section 6 of the General Clauses Act, 1897, (10 of 1897) shall apply as if the provisions first-mentioned were provisions contained in a Central Act and such cesser of operation were a repeal; and the mention of particular matters in sub-section (2D) shall not be held to prejudice or affect the general application of the said section 6 with regard to the effect of repeals."

39. Amendment Of Section 134 :-

To section 134 of the principal Act, the following proviso shall be added, namely:- "Provided that no such order shall be made in respect of a port after the expiry of a period of two years from the appointed day."

40. Transitional Provisions :-

Every member of the Board of Trustees constituted under section 3 of the principal Act in respect of any major port and holding office as such immediately before the commencement of this Act, shall continue to hold such office after such commencement until the reconstitution of the Board in accordance with the provisions of the principal Act, as amended by this Act.