

WEST BENGAL MARITIME BOARD ACT, 2000

30 of 2000

[21st February, 2001]

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WEST BENGAL MARITIME BOARD ACT, 2000

30 of 2000

[21st February, 2001]

An Act to provide for the constitution of a Maritime Board for minor ports in West Bengal and for matters connected therewith or incidental thereto. WHEREAS it is expedient to provide for the constitution of a Maritime Board in West Bengal and for matters connected therewith or incidental thereto; It is hereby enacted as follows

CHAPTER 1

Preliminary

1. Short title, extent, commencement and application :-

(1) This Act may be called the West Bengal Maritime Board Act, 2000.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such date as the State Government may, by notification, appoint.

(4) It shall apply to all minor ports in West Bengal with effect from such date as the State Government may, by notification, appoint, and different dates may be appointed for different minor ports.

2. Definitions :-

In this Act, unless the context otherwise requires,

(1) "appointed day", in relation to a minor port, means the day on which this Act applies to that port;

(2) "Board" means the West Bengal Maritime Board established under section 3;

(3) "Board security" means a bond, debenture or dock certificate issued by the Board in respect of any loan contracted by it in accordance with the provisions of this Act;

(4) "Chairman" means the Chairman of the Board;

(5) "dock" includes a basin, lock, cut, entrance, graving dock or block, inclined plane, slipway, gridiron, mooring, transit shed, warehouse or godown. open plot, or other work or thing appertaining to any dock, and also includes the portion of the sea or river enclosed or protected by the arms or groynes of a harbour;

(6) "foreshore", in relation to a port, means the area between the high watermark and the low watermark relating to that port;

(7) "goods" includes livestock or movable property;

(8) "high watermark", in relation to a port, means a line drawn through the highest points reached by ordinary spring tides at any season of the year at that port;

(9) "immovable property" includes wharfage right, or any other right, exercisable on, over, or in respect of, any land, wharf, dock or pier;

(10) "land" includes bed or sea or river below high watermark, and also includes anything attached to the earth or permanently fastened to anything attached to the earth;

(11) "low watermark", in relation to a port, means a line drawn through the lowest points reached by ordinary spring tides at any season of the year at that port;

(12) "master", in relation to a vessel, or craft, making use of any minor port, means any person having, for the time being, the charge or control of such vessel or craft, as the case may be, except a pilot, harbour-master, dock-master, or berthing master of the port;

(13) "member" means a member of the Board, or a member of a Committee of the Board, as the case may be;

(14) "minor port" means a port, other than a major port declared as such by the Central Government under any law for the time being in force, within such limits as may, from time to time, be defined by the State Government under the Indian Ports Act, 1908;

(15) "notification" means a notification published in the Official Gazette;

(16) "owner",

(a) in relation to goods, includes any consignor, consignee, shipper

or agent for sale, custody, loading or unloading of such goods, and
(b) in relation to any vessel or craft making use of any port, includes any part owner, charterer, consignee or mortgagee in possession thereof;

(17) "pier" includes a stage, stair, landing place, hard jetty, floating barge, or pontoon, and also includes a bridge or other work connected therewith;

(18) "port" means a minor port;

(19) "port approaches", in relation to a port, means such parts of a navigable river or channel as lead to that port;

(20) "prescribed" means prescribed by rules made under this Act;

(21) "public security" means

(a) a promissory note, debenture, stock or other security of the Central Government or of any State Government: Provided that a public security, both the principal and the interest whereof have been fully and unconditionally guaranteed by the Central Government or any State Government, shall, for the purposes of this clause, be deemed to be a security of such Government, or

(b) a debenture or other security for money issued by, or on behalf of", any municipal corporation, Municipality, Improvement Trust, or Port Trust under the authority of any law for the time being in force, and includes a Board security;

(22) "rate" includes a toll, due, rent, fee or charge leviable under this Act;

(23) "regulations" means the regulations made under this Act;

(24) "vessel" includes a conveyance of any kind for the transport, mainly by water, of goods or human beings;

(25) "wharf includes a wall, stage, part of land, or foreshore for use for loading or unloading of goods or for embarkation or disembarkation of passengers, and also includes a wall enclosing or adjoining such stage, part of land or foreshore.

CHAPTER 2

Establishment of West Bengal Maritime Board

3. West Bengal Maritime Board :-

- (1) As soon as may be after the commencement of this Act, the State Government may, by notification in the Official Gazette, establish a Board to be called the West Bengal Maritime Board.
- (2) The Board shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and may, by the said name, sue and be sued.
- (3) The head office of the Board shall be at such place as the State Government may, by notification in the Official Gazette, fix.
- (4) The Board shall consist of not less than twelve and not more than sixteen members, ten of whom shall be appointed by the State Government, in the following manner:
- (a) 3 members shall be appointed by virtue of their office from amongst the officers of the State Government, of whom one shall be a representative of the Department charged with the administration of minor ports in, West Bengal, and two others shall be
 - (i) a representative of the Finance Department, and
 - (ii) a representative of the Commerce and Industries Department,
 - (b) one member shall be appointed from amongst the persons who, in the opinion of the State Government, have experience of, and have shown capacity in, matters relating to ports, shipping, maritime affairs or commerce or industry or finance or in the administration of such matters,
 - (c) one member shall be appointed from amongst the persons who possess academic qualifications in the subject of engineering and have, in the opinion of the State Government, wide experience in matters relating to harbour works, to be appointed by the State Government,
 - (d) one member shall be appointed from amongst the persons who possess academic qualifications in navigation such as First Class Ministry of Transport ticket holder (diesel or steam) and have, in the opinion of the State Government, wide experience of matters relating to marine plants, particularly with reference to dredging, or from amongst the persons who are experienced nautical officers,

(e) one member shall be from amongst the persons who are chartered accountants or who possess high academic qualifications in accountancy and have, in the opinion of the State Government, sufficient experience of matters relating to the accounts pertaining to commerce, industry, ports or shipping,

(f) one member shall be appointed from amongst the persons who, in the opinion of the State Government, are capable of representing the interests of trade, commerce (including export and import), and industry,

(g) one member shall be appointed from amongst the persons who, in the opinion of the State Government, are capable of representing the interests of shipping,

(h) one member shall be from amongst the persons who, in the opinion of the State Government, are capable of representing the interests of the workers of minor ports,

(i) one member to be nominated by the Government of India in the Ministry charged with the administration of ports or surface transport,

(j) one member to be nominated by the Calcutta Port Trust representing the interests of the Calcutta Port,

(k) where one or more ports are established and managed and operated by any person or persons, other than the Board, in pursuance of the provisions of this Act, one member to be nominated by the Board of Management of such port or jointly by the Boards of Management of such ports, as the case may be:

Provided that the State Government may itself nominate such member, if the Boards of Management as aforesaid fail to nominate a member jointly,

(l) one member shall be a person who, in the opinion of the State Government, has wide experience and ability in administration and management under the State Government or the Government of any other State or the Central Government.

(5) The Chief Executive Officer of the Board appointed under subsection (1) of section 17 shall be an ex officio member of the Board and shall also be the Vice- Chairman of the Board.

(6) The Board shall have the power to co-opt associate members,

not exceeding two, representing the interests of minor ports, if there are more than one such port in West Bengal.

(7) The State Government shall appoint one of the members referred to in sub-section (4) to be the Chairman of the Board.

4. Disqualifications of Members :-

A person shall be disqualified for being appointed, or for continuing, as a member of the Board, if he

(a) has been removed or dismissed from the service of Government or of any local authority or of any corporation owned or controlled by Government or of any company in the private or joint sector, or

(b) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude, or

(c) is an un-discharged insolvent, or

(d) has attained the age of seventy years, or

(e) has directly or indirectly any share or interest in any work done by order of the Board or in any work, contract, or employment, with, by or on behalf of the Board:

Provided that no person shall be deemed to have a share or interest in such work, contract or employment by reason only of his

(i) having a share in any company or firm which may contract with, or may be employed by or on behalf of, the Board, or

(ii) having a share or interest in any newspaper in which any advertisement relating to the affairs of the Board may be published, or

(iii) being interested in any loan of money to the Board, or

(iv) having a share or interest in any lease or transfer of immovable property of the Board, or,

(v) having a share or interest in any licence by, or right by agreement or otherwise with, the Board to the sole or perennial use of any premises or property belonging to the Board, or

(vi) having a share or interest in the occasional sale to the Board, in any financial year, of a value, not exceeding ten thousand rupees, of any article in which he trades.

5. Term of office of members :-

(1) The Chairman shall hold office for such period as the State Government may determine.

(2) Subject to the provisions of this Act, a member, other than the members appointed under clause (a) of sub-section (4), the ex officio member referred to in sub-section (5), and the nominated members referred to in sub-section (4), of section 3 shall hold office for such period, not exceeding three years commencing from the date of his appointment, as the State Government may determine.

6. Vacation of office of members :-

(1) The State Government shall remove a member if he

(a) becomes subject to any of the disqualifications referred to in section 4, or,

(b) refuses to act or becomes incapable of acting, or

(c) has, in the opinion of the State Government, become incapable of representing the interest by virtue of which he was appointed, or

(d) is, without the prior permission of the Board, absent from six consecutive meetings of the Board, or

(e) is absent from the meetings of the Board for a period exceeding six consecutive months, or

(f) acts in contravention of any of the provisions of this Act.

(2) The Chairman may resign his office by writing under his hand addressed to the State Government, but the resignation shall not take effect until it is accepted by the State Government.

(3) A member, other than the ex officio member referred to in sub-section (5), and the members appointed under clause (a) of sub-section (4) of section 3 may resign his office by writing under his hand addressed to the Chairman who shall forward the same to the State Government, but the resignation shall not take effect until it is accepted by the State Government.

7. Eligibility for reappointment :-

Any person ceasing to be a member shall, unless disqualified under section 4, be eligible for reappointment.

8. Filling of vacancies :-

(1) A vacancy in the office of the Chairman shall be filled, as soon as may be, in the manner provided in sub-section (7) of section 3.

(2) A vacancy in the office of a member, other than that of an ex officio member referred to in sub-section (5), or of a member appointed under clause (a) of sub-section (4) of section 3 shall be filled as early as possible after the occurrence of such vacancy in the manner provided in sub-section (4) of section 3:

Provided that where any vacancy occurs in the office of any such member within three months preceding the date on which the term of the office of such member expires under section 5, such vacancy shall not be filled.

(3) Any vacancy in the office of a member appointed under clause (a) of subsection(4) of section 3 shall be filled as early as possible after the occurrence of such vacancy by appointment of a member under the said clause.

(4) A member appointed to fill a vacancy referred to in sub-section (2) shall hold office so long only as the member in whose place he has been appointed would have held office if the vacancy had not occurred.

9. Absence of Chairman :-

If the Chairman is, by infirmity or otherwise, rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his appointment, or is sent on deputation outside India for any of the purposes of this Act, the Vice-Chairman, and in the absence of both the Chairman and the Vice-Chairman, such person as the State Government may appoint, shall act as the Chairman: Provided that the Chairman, while on deputation outside India, may, if the State Government, by order, so directs and, subject to such conditions and restrictions as may be specified in the order, exercise such of the powers and perform such of the duties conferred or imposed on the Chairman by or under this Act as he may deem necessary, and the Chairman, while exercising such powers and performing such duties, shall be deemed to be a member of the Board notwithstanding anything to the contrary contained in this Act.

10. Meeting of Board :-

(1) The Board shall hold meetings at such time and places, and shall, subject to the provisions of sub-section (2), sub-section (3) and sub-section (4), follow such procedure in regard to the transaction of business at its meetings as may be provided by regulations.

(2) The Chairman and, in his absence, the Vice-Chairman and, in the absence of both the Chairman and the Vice-Chairman, any person chosen by the members present from amongst themselves shall preside over the meeting of the Board.

(3) All questions at a meeting of the Board shall be decided by a majority of the votes of the members present and voting and, in the case of any equality of votes, the person presiding shall have a second or casting vote.

(4) The number of members necessary to constitute a quorum at a meeting shall be such as may be provided by regulations and no business shall be transacted at any meeting unless the members constituting the quorum are present throughout such meeting.

Explanation. For removal of doubts, it is hereby declared that a member referred to in clause (b) of sub-section (4) of section 3 shall have no voting right in any meeting of the Board.

11. Committees of Board :-

(1) The Board may, from time to time, constitute one or more committees, each committee consisting of such number of members from amongst the members of the Board as the Board may consider necessary, for the purpose of discharging such of its duties and functions as may be delegated to such committee or committees by the Board.

(2) A committee constituted under sub-section (1) shall meet at such time, and at such place, and shall follow such procedure in regard to the transaction of business at its meetings (including the quorum), as may be provided by regulations.

12. Fees and allowances payable to members :-

The members shall be paid by the Board such fees and allowances for attending meetings of the Board or of any committee of the Board and for attending any work of the Board as may be provided by rules:

Provided that

(a) no fees shall be payable to the Chairman or any other member of the Board who is a Member of Parliament or of the State Legislature or an employee of the State Government;

(b) any allowances payable to a member who is a Member of Parliament or of the State Legislature shall not exceed the compensatory allowance as defined in clause (a) of section 2 of the Parliament (Prevention of Disqualification) Act, 1959, or, as the case may be, in any other law for the time being in force providing for such allowance for the members of the State Legislature.

13. Members of Board or of a Committee of Board not to vote in certain cases :-

A member of the Board or of a Committee of the Board who

(i) has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board or a Committee thereof, or

(ii) is interested professionally on behalf of a client or as an agent of any person other than the State Government or an undertaking owned or controlled by the State Government or a local authority or a Trade Union registered under the Trade Unions Act, 1926, or as a member of an association formed for the purpose of promotion of the interests or welfare of any class of officers or employees of the Board, shall, as soon as possible after any of the circumstances as aforesaid has come to his knowledge, disclose the nature of his interest at such meeting and such interest shall be recorded in the minutes of the Board or, as the case may be, the Committee of the Board, and the member shall not take part in any deliberation or decision of the Board or the Committee of the Board with respect to any matter in which he has such interest or is so interested.

14. Defects in appointment not to invalidate acts etc :-

No act or proceeding of the Board or of any Committee of the Board shall be invalid merely by reason of

(a) any vacancy therein or any defect in the constitution thereof; or

(b) any disqualification, or any defect in the appointment, of a person acting as a member thereof; or

(c) any member having acted or taken part in any proceedings in contravention of the provisions of section 13; or

(d) any irregularity in its procedure not affecting the merits of the

case.

15. Delegation of powers :-

The Board may, with the approval of the State Government, direct that

(a) such of the powers and duties conferred or imposed upon the Board by or under this Act as may be specified in such direction may also be exercised or performed by the Chairman, or

(b) such of the powers and duties conferred or imposed on the Chairman by or under this Act as may be specified in such direction may also be exercised or performed by the Vice-Chairman, subject to such conditions and restrictions as may be specified in such direction:

Provided that the Vice-Chairman shall be subject to the supervision and control of the Chairman in the exercise of the powers and performance of the duties specified in the direction.

16. Duties of Chairman :-

(1) It shall be the duty of the Chairman and the Vice-Chairman to attend every meeting of the Board unless prevented by sickness or other reasonable cause.

(2) The Chairman shall, as soon as possible, send to the State Government a copy of the minutes of every meeting of the Board and shall furnish to that Government such reports, returns, documents or other information as it may, from time to time, call for.

(3) The Chairman shall exercise supervision of, and control over, the officers and other employees of the Board in the matter of administration of the Board and in the matters concerning the accounts and records of the Board.

CHAPTER 3

Appointment of the Chief Executive Officer and other officers and employees of Board and the Conservator of Ports

17. Appointment of Chief Executive Officer and other officers and employees of Board :-

(1) The State Government shall appoint such person as, in its opinion, has adequate experience of civil works, operation and administration of ports, or has proven experience and ability in

administration and management in the Government or in the public or private sector or joint sector undertakings, to be the Chief Executive Officer of the Board.

(2) The conditions of service of the Chief Executive Officer shall be such as may be prescribed:

Provided that till such time as the rules are made, the State Government may, by order, fix the terms and conditions of service of the Chief Executive Officer.

(3) The Board may appoint such other officers and employees as, in its opinion, are necessary for the due performance of its duties and functions under this Act:

Provided that no post carrying a monthly salary of rupees two thousand or more shall be created or abolished without the prior approval of the State Government.

(4) The terms and conditions of service of the other officers and employees of the Board shall be such as may be prescribed: Provided that till such time as the rules are made, approval of the State Government to the fixation of the terms and conditions of service of each of the officers and other employees of the Board shall be necessary prior to the appointment of such officer or employee by the Board.

(5) The officers and other employees of the Board shall be under the administrative control of the Chief Executive Officer.

(6) The categories and the number of officers and other employees of the Board shall be such as may be prescribed:

Provided that until such time as the rules are made, the approval of the State Government shall be obtained by the Board before appointment of each category of officer or other employee, and such appointment shall be made under the signature of the Chief Executive Officer.

18. Appointment of Conservator of Ports :-

(1) The State Government may, on such terms and conditions as it may think fit, appoint an officer, or a body of persons, to be the Conservator of Minor Ports (hereinafter referred to in this Act as the Conservator).

(2) Subject to the control of the State Government and the

directions as it may issue from time to time, the powers and functions of the Conservator shall be such as are provided in Chapter III of, and elsewhere in, the Indian Ports Act, 1908:

Provided that the Conservator may be subject to such intermediate authority as the State Government may appoint.

Explanation. For removal of doubts it is hereby declared that notwithstanding anything contained in the foregoing provisions of this section, the State Government shall have the power to appoint the Board to be the Conservator for all or any of the minor ports.

CHAPTER 4

Establishment of minor ports and works and services to be provided at minor ports, and functions of Board

19. Functions of Board :-

(1) Subject to the other provisions of this Act, the functions of the Board shall be to set up, operate, manage and control minor ports in West Bengal.

(2) Subject to the provisions of any other law for the time being in force, the Board may, with the approval of the State Government, develop or establish one or more minor ports at such place or places as it may, on proper survey and study undertaken for the purpose, consider fit and suitable and provide such works and appliances within or without the limits of such port or ports as it may deem necessary and expedient.

(3) The works and appliances as aforesaid may include:

(a) such wharves, quays, docks, stages, jetties, piers, place of anchorage and other works within a port or port approaches or on the foreshore of a port or port approaches in West Bengal, with all such convenient arches, drains, landing places, stairs, fences, roads, bridges, tunnels, and approaches, and buildings required for the residence of the employees of the Board as the Board may consider necessary;

(b) buses, locomotives, rolling stocks, sheds, hotels, warehouses, and other, accommodation for passengers and goods and other appliances for carrying passengers and for conveying, receiving or storing goods landed or to be shipped or otherwise;

(c) moorings and cranes, scales, and all other means and appliances necessary for loading and unloading of vessels;

(d) reclaiming, excavating, enclosing and raising any part of the foreshore of a port or port approaches which may be necessary for the execution of the works under this Act or for the purposes of this Act;

(e) such breakwaters and other works as may be expedient for the protection of a port;

(f) dredgers and other machines for cleaning, widening, deepening and improving any portion of a port or port approaches or of the foreshore of a port or port approaches;

(g) lighthouses, lightships, beacons, buoys, pilot boats and other appliances necessary for the safe navigation of a port and port approaches in so far as they are within the purview of the functions of the State Government;

(h) vessels, tugs, boats, barges, launches, and lighters for the use within, or without, the limits of a port, whether in territorial waters or otherwise, for the purposes of towing or rendering assistance to any vessel, whether entering or leaving a port or bound elsewhere, saving or protecting life or property, and landing, shipping or transshipping passengers or goods;

(i) sinking of tube-wells, and equipment and maintenance and use of boats, barges and other appliances for the purpose of supply of water at a port;

(j) engines and other appliances necessary for extinguishing fires;

(k) lands abutting the sea-coast including creeks and rivers;

(l) ferry-boats and other works and equipments appertaining to the running of ferry-service at or between ports;

(m) construction of models and plans for carrying out hydraulic studies;

(n) dry docks, slipways, boat-basins and workshops to carry out repairs or overhauling of vessels, tugs, boats, machinery or other appliances.

20. Private participation in ports :-

(1) The Board may, with the approval of the State Government, invite private, public or joint sector undertakings to conduct studies and surveys for the purpose of setting up minor ports or to

construct, own, operate and manage minor ports and to perform all or any of the functions of the Board under section 18, on such terms and conditions as it may consider fit and expedient:

Provided that the selection of any such private, public or joint sector undertakings shall be by open and competitive bidding, the evaluation being made either on the basis of such criteria as may be laid down clearly in the tender document or by negotiation as the State Government may think fit and proper and may give its approval in writing, stating the reasons therefor.

Explanation. For the purposes of this sub-section,

(a) the expression "operate and manage" shall include providing security, lighting of the port, port waters and port approaches, dredging of the navigation channel, observing health and environment norms, and keeping the ports fit and ready in all respects for movement of vessels;

(b) the approval of the State Government shall be necessary both before inviting private, public or joint sector undertakings and the acceptance of the competitive or negotiated bid for such participation;

(c) for the removal of doubts, it is hereby declared that

(i) the Board may, with the previous sanction of the State Government, entrust all or any of the works or services to be set up and provided in the port to the selected undertaking, and

(ii) the State Government shall have the power to permit private investment in the creation, operation and management of minor ports and all or any of the facilities related thereto in such manner, and on such terms and conditions, as it may think necessary and expedient in the public interest.

(2) So long as the Board is not constituted or does not start functioning, the State Government shall have the power to invite a private, public or joint sector undertaking for setting up, or for management and operation, of a minor port under sub-section (1).

21. Imposition and recovery rates at minor ports :-

(1) The Board shall, in consultation with, and with the approval of, the State Government, fix the scale of rates at which, and the terms and conditions under which, any of the services in, or in

relation to, any minor port or port approaches shall be made available by the Board to users, except the services in respect of vessels for which fees are chargeable under the Indian Ports Act, 1908.

(2) Different scales of rates and different conditions may be fixed for different classes of goods, services, and vessels and for different ports.

(3) The Board may also fix the scale of rates at which, and the conditions under which, any property or place within the limits of a port or port approaches may be used for the purposes of

(a) approaching, or lying at or alongside, any buoy, mooring, wharf, quay, pier, dock, land, building, or place by vessels, or

(b) entering upon, or plying for hire at, any wharf, quay, dock, land, building, road, bridge, approach, or place by animals or vehicles or vessels carrying passengers or goods, or

(c) leasing of land or sheds or berths or godowns by owners of goods imported or intended for export, or

(d) any other use of any land, building, works, vessels or appliances within the limits of the port.

(4) Where a minor port is owned, operated and managed by a private, public or joint sector undertaking, the views of such undertaking shall be obtained by the Board in fixing or revising the port charges and the terms and conditions of port services before seeking approval of the State Government.

(5) The Board may, if it thinks necessary and expedient so to do, fix, with the approval of the State Government, a consolidated scale of rates for any combination of services provided in the port or for services and users mentioned in this section.

22. Power of Board to prescribe lower rate :-

In fixing the scales of rates under the provisions of this chapter, the Board may prescribe a lower rate in respect of

(i) coastal goods, that is to say, goods other than imported goods as defined in the Customs Act, 1962, carried in a vessel from one Indian port to another Indian port:

Provided that there shall be no discrimination between Indian ports in prescribing a lower rate under this section;

(ii) other goods in special cases.

23. Rates etc. to be published by Board :-

Every scale of rates and every statement of conditions fixed by the Board under the provisions of this chapter shall be published by the Board in the Official Gazette after it receives the sanction of the State Government and shall have effect after such publication.

24. Exemption of Central Government or State Government from payment of rates and charges for the use of ports or works or services, etc. :-

(1) Notwithstanding the provisions of this chapter, a vessel, owned or hired by the Central Government or the State Government, or plying on official duty and for non-commercial purpose, shall be exempt from payment of the rates.

(2) Any vessel that may be used by the Board to undertake inspection of any port and its facilities shall also be exempt from payment of the rates.

(3) The State Government shall have the power to grant to any other vessel plying with humanitarian objectives, which are non-commercial in nature, within the limits of the ports or using the ports or any of its services or facilities, full or partial exemption from payment of the rates:

Provided that the State Government may grant such exemption only after prior consultation with the Board.

25. Exemption of goods and vessels from payment of rates and charges :-

The Board may, in special cases, and for reasons to be recorded in writing, exempt, either wholly or partially, any goods, vehicles or vessels or any class of goods, vehicles or vessels from the payment of any rate or of any charge leviable in respect thereof according to any scale of rates in force under this Act or remit the whole or any portion of such rate or charge so levied.

26. Power of Board to make regulations :-

(1) The Board shall have power to make, with the prior approval of the State Government, regulations for realisation of rates and for such other matters as are not provided in this Act or the rules made thereunder.

(2) Such regulations shall be published in the Official Gazette and shall have effect on such publication.

27. Settlement of dispute regarding rates :-

(1) In case there is a dispute or disagreement as to the rates fixed under this Act between the Board and any person entrusted with the operation and management of the port or any of its services or works, such dispute shall be referred, by either of the parties, to the State Government and the State Government may, by order, after considering the representations of the parties and, if necessary, after giving the parties an opportunity of being heard, direct the Board to cancel or to modify the rates as it may think fit.

(2) The order of the State Government under sub-section (1) to cancel or to modify the rates shall be published by the State Government in the Official Gazette and, on such publication, shall have effect from the date mentioned in the said order.

CHAPTER 5

Liabilities of Board and others in relation to the ports and port services

28. Inspection of ports, facilities and works in ports and vessels using ports :-

(1) The Board shall undertake inspections of ports and the facilities and works therein and the vessels using the ports to ensure that the facilities and services, including essential services of dredging, health and security, are being maintained properly, and the management of the ports or of any of the works and services of the ports shall render such assistance and furnish such information as may be required by the Board for the purpose.

(2) Where the Board, upon such inspection, is of the opinion that essential services of dredging or health or security are being persistently neglected by the management of a port, where such services are in the charge of a person other than the Board, the Board may, with the prior approval of the State Government, take over the management of such port or of any of its works or services. All costs incurred by the Board for such management or for any operation in this behalf shall be recovered from the person who had been managing or operating the port or the services before such taking over of the management.

(3) No person or vessel passing through a port or using its facilities or services shall refuse to pay the rates fixed therefor by the Board

or shall fraudulently avoid the payment thereof.

(4) Where the Board itself manages or operates a port, the Board, or where a person or an undertaking is in charge of the management and operation of a port under the provisions of this Act, such person or undertaking, shall be liable to pay the rents, rates and taxes that are payable to the State Government or the Central Government or the local authority as required under any law for the time being in force.

(5) The Board or the person who is in charge of the management or operation of a port shall not demand or levy any charge other than those fixed under the provisions of this Act.

(6)

(a) Where the State Government or the Board allows a person to set up a minor port, such person shall bear all the costs of acquisition of land for the purposes of the port.

(b) The funds for payment of the cost of acquisition of land shall be deposited by such person with the Board or the State Government according to the requisition made for such funds from time to time and the Board or the State Government, as the case may be, shall regulate the payment of costs of acquisition of land out of the said funds.

29. Payment of a percentage of annual turnover :-

Any person who manages and operates a port under the provisions of this Act shall pay to the Board an amount as may be fixed by the State Government from time to time. Such amount may be fixed as a percentage of the annual turnover or in such other manner as the State Government may decide in consultation with such person and the Board. The amount shall be payable on quarterly basis.

CHAPTER 6

Powers and responsibilities of Board in relation to the use of ports

30. Power of Board to undertake certain works :-

(1) The Board may undertake to carry out on behalf of any person any works or services or any class of works or services on such terms and conditions as may be agreed upon between the Board and the person concerned.

(2) The Board may, if it considers it necessary or expedient so to do in the public interest, lend any of its vessels or appliances or the

services of any of its employees to any person for such period, not exceeding six months, and on such terms and conditions, as may be agreed upon between the Board and the person as aforesaid.

31. Power of Board to order seagoing vessels to use docks, wharves, etc :-

(1) When any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage, erected at any port or port approaches under the provisions of this Act. has been completed with sufficient warehouses, sheds and appliances for receiving, landing or shipping goods or passengers from and upon seagoing vessels, the Board may, after obtaining the approval of the Collector of Customs and by two consecutive notifications, declare that such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage is ready for receiving, landing, or shipping goods or passengers from and upon seagoing vessels.

(2) With effect from the date of the publication of the notification for the second time under sub-section (1), it shall be lawful for the Board from time to time, when there is room at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage, to make an order directing any seagoing vessel within the port or port approaches, which has not commenced to discharge goods or passengers or which being about to take in goods or passengers has not commenced to do so, to come alongside of such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage for the purpose of discharging goods or passengers or for taking in goods or passengers, as the case may be:

Provided that before making such order, the Board shall have regard as far as possible to the convenience of such vessel and of the shippers in respect of the use of any particular dock, berth, wharf, quay, stage, jetty, pier or place of anchorage:

Provided further that if the Board is not the Conservator, the Board shall not itself make the order as aforesaid but shall require the Conservator or any other person exercising the rights, powers and authorities of the Conservator to make such order.

32. Seagoing vessels compelled to land at, or ship from, the docks, wharves, etc :-

When a sufficient number of docks, berths, wharves, quays, stages, jetties, piers or places of anchorage have been provided at any port or port approaches as aforesaid, the Board may, after obtaining the

approval of the Collector of Customs and by two consecutive notifications, direct that no goods or passengers shall be landed or shipped from or upon any seagoing vessel within the minor port or port approaches otherwise than at such docks, berths, wharves, quays, stages, jetties, piers or places of anchorage, except with the sanction of the Board and in accordance with such conditions as the Board may specify.

33. Seagoing vessels not to be brought alongside of, or removed from dock, berth, wharf, quay, stage, jetty, pier or place of anchorage :-

Any officer appointed by the Board in this behalf, may, in the case of emergency or for any other reason which appears to him sufficient, by notice in writing, direct the master, or the owner, or the agent, of any seagoing vessel not to bring such vessel alongside of, or to remove such vessel from, any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage belonging to, or under the control of the Board, and, if such notice is not complied with, the Board may charge in respect of such vessel such sum, not exceeding one thousand rupees, as it thinks fit for each day of twenty four hours or portion of such day during which such vessel remains at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage:

Provided that in the case of a vessel directed to be removed, no such charge shall be made till after the expiry of twelve hours from the service of such notice as aforesaid on the master or the owner or the agent, as the case may be, of the vessel.

34. Power of State Government to exempt vessels from obligation to use wharves etc :-

Notwithstanding anything contained in the foregoing provisions of this chapter, the State Government may, if, in its opinion, it is necessary in the public interest so to do, by general or special order from time to time, permit such vessels or classes of vessels to discharge or ship such goods or classes of goods at such place in a port or within the port approaches, in such manner, during such period, subject to such payments to the Board, and on such conditions. as the State Government may specify in the order.

35. Board to declare when vessels, other than seagoing vessels, to be compelled to use docks, wharves, etc :-

(1) When any dock, berth, wharf, quay, stage, jetty, pier or place

of anchorage for receiving, landing or shipment of goods or passengers from or upon vessels, not being seagoing vessels, has been made and completed with all appliances in that behalf, the Board may, after obtaining the approval of the Collector of Customs, by order published in the Official Gazette, (i) declare that such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage is ready for receiving, landing or shipment of goods or passengers from or upon vessels, not being seagoing vessels; and (ii) direct that within certain limits to be specified in the order, it shall not be lawful, without the express sanction of the Board, to land or ship any goods or passengers out of, or into, a vessel, not being a seagoing vessel, of any class specified in the order, except at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage.

(2) With effect from the date of publication of the order under sub-section (1), it shall not, without the consent of the Board, be lawful for any vessel of such class

(i) to land or ship any goods or passengers at any place with the limits specified in the order under sub-section (1), except at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage, or

(ii) while within the limits specified in the order under sub-section (1) to anchor, fasten, or lie within fifty meters of the ordinary low-water mark.

(3) If, after the publication of the order under sub-section (1), any vessel as aforesaid, while within the limits so specified, so anchors, fastens or lies, it shall be lawful for the Board to cause the same to be removed out of the said limits at the expense of the master or the owner or the agent of the vessel.

36. Performance of services by Board or other persons :-

(1) The Board shall have power to undertake the following services:

(a) stevedoring, landing, shipping or transshipping passengers and goods between vessels in a port and the wharves, piers, quays, or docks belonging to, or in the possession of the Board;

(b) receiving, removing, shifting, transporting, storing or delivering goods brought within the premises of the Board;

(c) carrying passengers within the limits of the port or port

approaches by such means and subject to such restrictions and conditions as the State Government may think fit to impose; and

(d) piloting, hauling, mooring, remooring, hooking or measuring of vessels or any other service in respect of vessels.

(2) The Board may, if so requested by the owner, take charge of his goods for the purpose of performing the services under sub-section (1) and shall give a receipt in such Form as the Board may specify.

(3) Notwithstanding anything contained in the foregoing provisions of this section, the Board may authorise any person to perform any of the services referred to in sub-section (1) on such terms and conditions as may be agreed upon.

(4) No person authorised under sub-section (3) shall charge, or recover, for any of the services as aforesaid any sum in excess of the amount according to the scale of rates fixed by the Board under this chapter.

(5) Any person as aforesaid shall, if so required by the owner of any goods, perform in respect of such goods any of the services referred to in sub-section (1) and, for that purpose, take charge of the goods and give a receipt in such Form as the Board may specify.

(6) The responsibility of such person for the loss, destruction or deterioration of the goods of which he has taken charge shall, subject to the other provisions of this Act, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872.

(7) After any goods have been taken charge of, and a receipt has been given for them, under this section, no liability for any loss or damage which may occur to them shall accrue to any person to whom a receipt has been given or to the master, or the owner, of the vessel from which the goods have been landed or transhipped.

37. Responsibility of Board for loss etc. of goods :-

(1) Subject to the provisions of this Act, the responsibility of the Board for the loss, destruction or deterioration of goods of which it has taken charge shall,

(i) in the case of goods received for carriage by railway, be governed by the provisions of the Indian Railways Act, 1890, and

(ii) in other cases, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872, omitting the words, in the absence of any special contract," in section 152 of that Act:

Provided that no responsibility under this section shall devolve upon the Board

(a) until a receipt mentioned in sub-section (2) of section 36 is given by the Board; and

(b) after the expiry of such period from the date of taking charge of such goods by the Board as may be prescribed by regulations.

(2) The Board shall not be in any way responsible for the loss, destruction or deterioration of, or damage to, goods of which it has taken charge, unless notice of such loss or damage has been given within such period from the date of taking charge of such goods by the Board as may be prescribed by regulations.

38. Accommodation to be provided for customs officers in wharves etc :-

(1) Where the Collector of Customs has, under the provisions of any law for the time being in force for the levy of duties of customs, appointed any dock, berth, wharf, quay, stage, jetty, pier, place of anchorage, warehouse, or shed, or a portion of any warehouse or shed provided at any port under the provisions of this Act, for the use of a seagoing vessel to be an approved place for landing or shipping of goods or a warehouse for storing of dutiable goods on the first importation thereof without payment of duty, within the meaning of such law, the Board shall set apart and maintain such place on, or adjoining, such dock, wharf, quay, stage, jetty, pier, or place of anchorage, or in such warehouse or shed or portion thereof; for the use of the officers of customs as may be necessary.

(2) Notwithstanding that any dock, wharf, quay, stage, jetty, pier, place of anchorage, warehouse or shed or portion thereof at any port has, under the provisions of sub-section (1), been set apart for the use of the officers of customs at the port, all rates and other charges payable under this Act in respect thereof, or for the storage of goods therein, shall be payable to the Board or to such person or persons as may be appointed by the Board.

39. Power of Board to permit creation of private wharves

etc. within a port :-

(1) No person shall make, erect or fix within the limits of a port or port approaches any wharf, dock, quay, stage, jetty, pier, place of anchorage, erection or mooring or undertake any reclamation of foreshore within the said limits except with the previous permission, in writing, of the Board and subject to such conditions, if any, as the Board may specify.

(2) If any person makes, erects or fixes any wharf, dock, quay, stage, jetty, pier, place of anchorage, erection or mooring or undertakes any reclamation of foreshore in contravention of the provisions of sub-section (1), the Board may, by notice require such person to remove it within such time as may be specified in the notice, and if such person fails so to remove it, the Board may cause it to be removed at the expense of such person.

40. Compensation payable in certain cases where use of any private wharf etc. rendered unlawful :-

(1) Where, as a result of an order published under this chapter, the use of any wharf, dock, quay, stage, jetty, pier, or place of anchorage, made, fixed, or erected by any person, is rendered unlawful, the Board may, after hearing the person concerned, by order, close, remove, fill up or destroy such wharf, dock, quay, stage, jetty, pier, or place of anchorage, or permit the use thereof by such person on payment of such rates and charges as the Board may, with the previous sanction of the State Government, determine.

(2) Save as otherwise provided in sub-section (3), no person shall be entitled to claim compensation for any injury, damage or loss caused, or alleged to have been caused, by an order made under sub-section (1).

(3) If it is proved to the satisfaction of the Board that any such wharf, dock, quay, stage, jetty, pier, or place of anchorage, was made, fixed or erected by any person with the previous permission of any authority competent to grant such permission, he shall be paid by the Board compensation, the amount of which shall be determined in the manner and in accordance with the principles provided in sub-section (4).

(4)

(a) In computing the compensation referred to in sub-section (3), there shall not be taken into account any rates or other charges which the person referred to in sub-section (3) shall be liable to pay for using any wharf, dock, quay, stage, jetty, pier, or place of anchorage provided by the Board

(b) The amount of compensation shall be calculated with reference to the cost of construction of such wharf, dock, quay, stage, jetty, pier, or place of anchorage.

(c) The amount of compensation may be fixed by agreement and, in such case, the compensation shall be paid in accordance with such agreement.

(d) Where there is no such agreement, the State Government shall appoint as arbitrator a person who is, or has been, or is qualified to be, appointed as a Judge of a High Court.

(e) The State Government may, in any particular case, nominate a person possessing special knowledge of any matter relating to any case under inquiry to assist the arbitrator in determining any question which has to be decided by him under this sub-section and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose.

(f) At the commencement of the proceeding before the arbitrator, the Board and the person to be compensated shall state what, in their respective opinion, is a fair amount of compensation.

(g) The arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just, and specify the person or persons to whom such compensation shall be paid.

(h) Where there is a dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and, if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof among such persons.

(i) Nothing in the Arbitration Act, 1940, shall apply to any arbitration under this sub-section.

(j) The arbitrator appointed under cause (d), while holding arbitration proceedings under this Act, shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure,

1908, in respect of the following matters:

(i) summoning and enforcing the attendance of any person and examining him on oath,

(ii) requiring the discovery and production of any documents,

(iii) receiving evidence on affidavits, and

(iv) issuing commissions for examination of witnesses or documents.

(k) Every award shall also state the amount of costs incurred in the arbitration proceedings under this section and by which persons and in what proportions they are to be paid.

(l) Any person aggrieved by an award of the arbitrator made under this section may, within thirty days from the date of the award, prefer an appeal to the High Court within whose jurisdiction the port is situated:

Provided that the High Court may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

CHAPTER 7

Revenue and expenditure of Board

41. General fund of Board :-

(1) All moneys received by or on behalf of the Board and the moneys, if any, received by it as the Conservator, if and when appointed as such under the Explanation to section 18, shall be deposited in a fund called the general account fund and all expenditure of the Board shall be met therefrom.

(2) The manner of payment into the general account fund, the custody of such fund, the investment and disbursement of moneys therefrom, and the related matters shall be such as may be prescribed.

42. Reserve fund :-

The Board may, from time to time, set apart such sums out of its surplus income as it thinks fit as a reserve fund or reserve funds for the purposes of expanding existing facilities or creating new facilities at the ports or for the purpose of providing against any temporary decrease of revenue or increase of expenditure or for the

purpose of replacement of, or for meeting expenditure arising from, loss or damage due to fire, cyclones or other accidents or for any other emergency arising in the ordinary conduct of its work under this Act:

Provided that the sums set apart annually for, or in respect of, and the aggregate at any time of, any such reserve fund or reserve funds shall not exceed such amount as may, from time to time, be fixed in that behalf by the State Government.

43. Charge of expenditure to capital :-

(1) No expenditure shall be charged by the Board to capital without previous sanction of the State Government: Provided that the Board' may, without such sanction, charge to capital expenditure, not exceeding such limit as may be specified, and subject to such conditions as may be imposed, by the State Government.

(2) Nothing in sub-section (1) shall be deemed to require further sanction of the State Government in any case where the actual expenditure incurred as a charge to capital exceeds the expenditure sanctioned in this behalf by the State Government unless the excess is more than ten per centum of the expenditure so sanctioned.

44. Budget estimates :-

(1) The Board shall prepare and submit to the State Government by the 15th of February every year a budget estimate showing its anticipated income and expenditure for the next financial year.

(2) The State Government shall, after consultation with the Board, accord approval to the budget estimate, with or without modifications, within a period of thirty days from the date of receipt there of.

(3) At any time during the financial year for which any budget estimate has been prepared under sub-section (1) and approved under sub-section (2), the Board may prepare and submit to the State Government one or more supplementary budget estimates for approval, as far as may be, in the same manner as is provided in this Act for the preparation and submission of budget estimate.

45. Accounts of Board and audit thereof :-

(1) The Board shall maintain proper accounts and other relevant

records and prepare the annual statement of accounts including balance sheets in such Form as may be approved by the State Government.

(2) The accounts of the Board shall be audited once in every year and, if so required by the State Government concurrently with the compilation of such accounts by an auditor appointed by the State Government in consultation with the Comptroller and Auditor General of India (hereinafter referred to as the Auditor), and any amount payable to the Auditor by the Board for such audit shall be debited to the general account of the Board.

(3) The Auditor shall have the same rights, privileges and authority in connection with the audit of the accounts of the Board as the Comptroller and Auditor General of India has in connection with the audit of the Government Accounts and, in particular, shall have the right to demand production of books of accounts, connected vouchers and other documents of the Board.

46. Laying of audit report before the State Legislature :-

(1) Within three weeks after the audit and examination of the accounts of the Board have been completed, the Auditor shall forward copies of the audit report to the State Government and to the Board.

(2) As soon as may be after such audit report is received by the State Government, it shall cause every such report to be laid for not less than thirty days before the State Legislature.

47. Board to take action on audit report :-

The Board shall forthwith take such action as it thinks fit on the audit report to rectify the defects and the irregularities that may be mentioned therein and shall also send a report of the action taken thereon to the State Government.

48. Difference of opinion between Board and the Auditor to be referred to State Government :-

If there is a difference of opinion between the Board and the Auditor on any matter included in the audit report and the Board is unable to implement the recommendation, if any, made by the Auditor, the matter shall be referred forthwith to the State Government which shall pass final orders thereon and the Board shall be bound to give effect to such orders.

49. Power to raise loans :-

(1) The Board may raise loans with the previous sanction of the State Government on such terms and conditions as may be prescribed.

(2) Loans may be raised by the Board in the open market on the Board securities issued by it or may be obtained from the State Government or any bank approved by the State Government.

50. Board securities :-

(1) The Board may, with the sanction of the State Government, prescribe the Form in which the securities of the Board shall be issued by the Board and the mode in which, and the conditions subject to which, they may be transferred.

(2) The holder of any Board security in any Form may obtain in exchange therefor upon such terms as the Board may from time to time determine, a Board security in such other Form as may be prescribed by regulations.

(3) The right to sue in respect of the money secured by Board securities shall be exercisable by the holders thereof for the time being, without preference in respect of priority of date.

51. Right of joint or several payees of Board securities :-

(1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872,

(a) when any of the Board securities is payable to two or more persons jointly and either or any of them dies, the Board security shall be payable to the survivor or survivors, and

(b) when any Board security is payable to two or more persons severally and either or any of them dies, the Board security shall be payable to the survivor or survivors or to the representatives of the deceased or to any of them.

(2) This section shall apply notwithstanding that such death occurs before or after the appointed day.

(3) Nothing herein contained shall affect any claim which any representative of a deceased person may have against the survivor or survivors in respect of any Board security to which sub-section

(1) applies.

(4) For the purposes of this section. a body incorporated or deemed to be incorporated under the Companies Act, 1956. or the West Bengal Co-operative Societies Act, 1983, or any other law for the time being in force, whether within or without India, shall be deemed to die on the dissolution thereof.

52. Power of one or more joint holders of Board securities to grant receipts :-

Where two or more persons are joint holders of any Board security, anyone of such persons may give an effectual receipt for any interest payable in respect of such security. unless notice to the contrary has been given to the Board by any other of such persons.

53. Endorsement to be made on Board security :-

No endorsement of a Board security, which is transferable by endorsement, shall be valid unless made by signature of the holder inscribed on the back of the Board security itself.

54. Endorsement on Board security not liable for payment of amount thereof :-

A person shall not, by reason only of his having endorsed any Board security, be liable to pay any money due either as principal or as interest thereunder.

55. Impression of signature on Board securities :-

(1) The signature of the person authorised to sign Board securities on behalf of the Board may be printed, engraved, lithographed, or impressed thereon by such other mechanical process as the Board may direct.

(2) A signature so printed, engraved, lithographed, or impressed on a Board security shall be as valid as if it had been inscribed under the handwriting of the person so authorised.

56. Issue of duplicate Board security :-

(1) When any Board security is alleged to have been lost, stolen or destroyed, either wholly or in part and a person claims to be the person to whom, but for the loss, theft or destruction, it would be payable, he may, on application to the Board and on producing proof, to its satisfaction, of the loss, theft or destruction and for the justification of the claim, obtain from the Board, on payment of such fee, if any, as may be prescribed by regulations, an order for

(a) the payment of interest in respect of the Board security alleged to be lost, stolen, or destroyed, pending the issue of a duplicate Board security, and

(b) the issue of a duplicate Board security payable to him.

(2) There shall not be any order from the Board under sub-section (1) until after the issue by the Board of a notification of the loss, theft or destruction in the manner prescribed by regulations.

(3) A list of Board securities in respect of which an order has been obtained under sub-section (1), shall be published by the Board in such manner as the Board may prescribe by regulations.

(4) If, at any time before the Board stands discharged under the provisions of this Act from the liability in respect of any Board security, the whole of which is alleged to have been lost, stolen or destroyed, such Board security is found, any order in respect thereof passed under this section shall be cancelled.

57. Issue of converted Board securities etc :-

(1) The Board may, subject to such conditions as it may prescribe, on the application of a person claiming to be entitled to a Board security issued by it, on being satisfied of the justification of the claim and on delivery of the Board security receipted in such manner and on payment of such fee, if any, as it may prescribe, convert, consolidate or subdivide the Board security, and issue to the applicant a new Board security accordingly.

(2) The conversion, consolidation or sub-division referred to in sub-section (1) may be into Board security or Board securities of the same or different classes or of the same or different loans.

58. Discharge of Board security in certain cases :-

Notwithstanding anything contained in the Limitation Act, 1963,

(i) on payment of the amount due on a Board security on or after the date on which payment becomes due, or

(ii) when a duplicate Board security has been issued, or

(iii) when a new Board security has been issued upon conversion, consolidation or sub-division, the Board shall be discharged from all liabilities in respect of the Board security so paid or, in place of which, a duplicate or a new Board security has been issued,

(a) in the case of payment, after the lapse of six years from the date on which payment was due,

(b) in the case of a duplicate Board security, after the lapse of six years from the date of the publication under sub-section (3) of section 56 of the list in which the Board security is first mentioned or from the date of the last payment of interest on the original Board security, whichever date is later, or

(c) in the case of a new Board security issued upon conversion or subdivision, after the lapse of six years from the date of the issue thereof.

59. Security for loans taken by Board :-

All loans raised by the Board under this Act shall be a first charge on

(a) the property vested, or may hereafter during the currency of the loans become vested, in the Board other than

(i) any sum set apart by the Board as the sinking fund for the purpose of paying off any loan or for the payment of pension to its employees; or

(ii) the provident or pension fund established by the Board; and

(b) the rates leviable by the Board under this Act.

60. Remedies for State Government in respect of loans made to Board :-

The State Government shall have, in respect of the loans made by it to the Board, the same remedies as holders of Board securities issued by the Board, and shall not be deemed to possess any prior or greater right in respect of such loans than the holders of such Board securities: Provided that when the terms of any such loan made before the appointed day expressly provide that the loan shall have priority over all other loans in the matter of repayment by the Board, such loan shall have priority.

61. Power of Board to repay loans before due date :-

The Board may, with the previous sanction of the State Government, apply any sums out of moneys at its disposal under the provision of this Act and which may be so applied without prejudice to the security of the other holders of the Board securities, in repaying to the Government any sum which may remain due to it in respect of the principal of any loan, although

the time fixed for the repayment of such loan may not have arrived:

Provided that no such repayment shall be made of any sum less than ten thousand rupees and that if such repayment is made, the amount of interest in each succeeding instalment shall be so adjusted as to represent exactly the interest due on the outstanding principal.

62. Establishment of sinking fund :-

If, in respect of a loan raised by the Board under this Act which is not repayable before the expiration of one year from the date of the loan, the State Government by an order in writing so directs, the Board shall set apart half-yearly out of its income, as a sinking fund, a sum sufficient to liquidate the loan within a period which shall not, in any case, unless the previous consent of the State Government has been obtained, exceed twenty-five years but the maximum period shall not in any case exceed forty years:

Provided that a sinking fund need not, in the absence of any stipulation to that effect, be established in the case of loans taken by the Board from the Central Government or any State Government.

63. Investment and application of sinking fund :-

(1) The sums so set apart by the Board under section 62 shall be invested in public securities or in such other securities as the State Government may approve in this behalf and shall be held by the Board in trust for the purposes of this Act.

(2) The Board may apply the whole or any part of the sums accumulated in any sinking fund in or towards the discharge of the moneys for the repayment of which the fund has been established:

Provided that the Board pays into the fund in each year and accumulates, until the whole of the moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund or the part of the sinking fund so applied.

64. Examination of sinking fund :-

(1) A sinking fund established for the liquidation of any loan shall be subject to annual examination by such person as may be appointed by the State Government in this behalf, and the person

so appointed shall conduct the annual examination of the fund to ascertain whether the cash and the current market value of the securities at the credit of the fund are actually equal to the amount which would have been accumulated if investment had been regularly made and the rate of interest as originally estimated had been obtained thereon.

(2) The Board shall pay forthwith into the sinking fund any amount which the person appointed under sub-section (1) to conduct the annual examination of the fund may certify to be deficient unless the State Government specifically sanctions a gradual readjustment.

(3) If the cash and the current market value of the securities at the credit of a sinking fund are in excess of the amount which should be at its credit, the person appointed under sub-section (1) shall certify the amount of the excess and the Board may, with the previous sanction of the State Government, reduce or discontinue the half-yearly contributions to the sinking fund required under section 62.

65. Power of Board to raise loans on short-term bills :-

Nothing contained in this Act shall be deemed to affect the power of the Board to raise loans under the Local Authorities Loans Act, 1914.

66. Power of Board to take temporary loans or overdrafts :-

Notwithstanding anything contained in this Act, the Board may

(i) borrow moneys by means of temporary overdraft or otherwise by placing the securities held by the Board in reserve funds or on security of the fixed deposits of the Board in banks;

(ii) obtain advances from such banks on pledge or hypothecation of its current assets without the previous sanction of the State Government:

Provided that such temporary overdrafts or advances

(a) shall not, at any time, have a longer currency than six months; and

(b) shall not be taken without the previous sanction of the State Government, if, at any time in any year, the amount of such overdrafts or advances exceeds such amount, not exceeding ten lakhs of rupees, as the State Government may fix in this behalf:

Provided further that all moneys so borrowed by overdrafts or advances shall be expended for the purposes of this Act.

67. Power of Board to borrow money from International Bank for Reconstruction and Development or other foreign institutions :-

Notwithstanding anything contained in this Act, but subject to the provisions of any other law for the time being in force, the Board may, with the previous sanction of the State Government and on such terms and conditions as may be approved by that Government, raise, for the purposes of this Act, loans in any currency or currencies from the International Bank for Reconstruction and Development or from any other bank or institution in any country outside India; and no other provision of this chapter shall apply to or in relation to any such loan unless the terms and conditions of the loan or the sanctions of the State Government otherwise provide.

CHAPTER 9

Power of Board to make regulations

68. Power of Board to make regulations :-

The Board may, with the previous approval of the State Government, make regulations consistent with the provisions of this Act and the rules made thereunder with respect to all or any of the following matters:

- (a) the procedure to be followed for the transaction of business at the Board's meetings;
- (b) the appointment, and conditions of service including promotion, suspension, removal and dismissal of its employees;
- (c) the manner of drawal of money and expenditure from the General Fund and maintenance of accounts subject to the rules made by the State Government and the provisions of Chapter VI of this Act;
- (d) the safe, efficient and convenient use, management and control of docks, wharves, jetties and other works and buildings constructed or acquired by, or vested in, the Board or any land or foreshore relating to the ports;
- (e) the reception, portage, storage and removal of goods brought within the premises of the Board and matters connected therewith;

- (f) the mode of payment of rates leviable by the Board;
- (g) the manner in which, and the conditions under which, loading and unloading of vessels within the port or port approaches shall be carried out;
- (h) the ensuring of safety of the port;
- (i) the efficient and proper functioning, maintenance and administration of the ports and port services;
- (j) the manner in which payment of interest in respect of Board's securities shall be made and other matters connected with such securities; and
- (k) any other matter which may be or is required to be provided by regulations under this Act.

69. Regulations to be published in the Official Gazette :-

No regulations made by the Board shall have effect until they are published by the Board in the Official Gazette.

70. . :-

1 ***

1. Section 70 om. by W.B. Act 24 of 2002, w.e.f. 10.1.2003, which was as under: "70. Penalty for breach of regulations. Any regulations under this section may provide that a breach thereof shall be punishable with fine which may extend to five hundred rupees and, where the offence is a continuing one, with a daily fine which may extend to one hundred rupees during the continuance of such offence.".

CHAPTER 10

Supervision and control by the State Government

71. Administration Report of Board :-

The Board shall, as soon as may be after the expiry of every financial year and not later than the date fixed in this behalf by the State Government, submit to the State Government a detailed Report on the administration of the ports during the preceding financial year in such Form as the State Government may direct.

72. Statement of income and expenditure :-

The Board shall annually, or oftener if directed by the State Government so, to do, submit statements of its income and expenditure to the State Government in such Form, and at such time, as that Government may direct.

73. Power of State Government to make rules :-

(1) The State Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for any matter connected with the Board, the administration and control of ports and port services as are required to be made by rules under the provisions of this Act, and any other matter which is required to be or may be prescribed by rules.

(3) The power to make rules under this section is subject to the condition of the rules being made after previous publication.

(4) Every rule made under this section shall be laid as soon as may be after it is made, before the State Legislature, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the

74. Power of State Government to issue direction :-

(1) The State Government may, from time to time, issue to the Board such directions, consistent with the provisions of this Act and the rules made thereunder, as that Government thinks fit in matters of policy connected with any port and port services and the functioning of the Board including financial management, and it shall be obligatory for the Board to comply with such directions:- Provided that the Board shall be given an opportunity to express its views before any such direction is given.

(2) The decision of the State Government whether a question is one of policy or not shall be final.

75. Supersession of Board :-

(1) If, at any time, the State Government is of opinion

(a) that on account of any emergency, the Board is unable to perform the duties imposed on it by or under the provisions of this Act or any other law for the time being in force, or

(b) that the Board has persistently made default in the performance of its duties and, as a result of such default, the financial position of the Board or the administration of the ports has greatly deteriorated, the State Government may, by notification,

supersede the Board for such period, not exceeding six months, as may be specified in the notification: Provided that before issuing such notification, the State Government shall give a reasonable opportunity to the Board to show cause why it should not be superseded, and shall consider the explanation and objections, if any, of the Board.

(2) Upon the publication of a notification under sub-section (1),

(a) all the members of the Board shall, as from the date of supersession, vacate their offices as such members;

(b) all the powers and duties which may, by or under the provisions of this Act or any other law for the time being in force, be exercised and performed by such person or persons as the State Government may direct; and

(c) all the properties vested in the Board shall, until the Board is reconstituted, vest in the State Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government may

(a) extend the period of supersession for such further period, not exceeding six months, as it may consider necessary, or

(b) reconstitute the Board by fresh appointment and, in such case, any person who vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for appointment, or

(c) reconstitute the Board by appointment only for such period as it may consider necessary and, in such case, the person who vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for such appointment merely because he was a member of the Board when the Board was superseded: Provided that the State Government may, at any time before the expiration of the period of supersession, whether as initially specified under sub-section (1) or as extended under this sub-section, take action under clause (b) or clause (c) of this sub-section.

(4) The State Government shall cause a notification issued under sub-section (1) and a full report of action, if any, taken under this section and the circumstances leading to such action to be laid before the State Legislature as soon as may be after the issue of the notification as aforesaid.

76. Persons employed by Board to be public servants for certain purposes :-

Every person employed by the Board under this Act shall, for the purposes of sections 161 to 171, 184, 185, and 409 of the Indian Penal Code and for the purposes of the Prevention of Corruption Act, 1988, be deemed to be a public servant within the meaning of section 21 of the said Code.

77. Penalties :-

(1) Whoever contravenes the provisions of any order made under section 31 or any notification under section 32 or any notice under section 33 or fails to comply with any condition specified in any order under section 34 shall be punishable with fine which may extend to one thousand rupees and, where the contravention or failure is a continuing one, with a daily fine which may extend to one hundred rupees during the continuance of such offence.

(2) Any person who contravenes the provision of section 39 shall be punishable with fine which may extend to one thousand rupees and, where the contravention is a continuing one, with a daily fine which may extend to one hundred rupees during the continuance of such offence.

(3) Any person who, with the intention of evading payment of the rates lawfully due in respect of any goods, or vessels carrying any goods, to the Board,

(a) understates or incorrectly gives the weight, quantity, value or description of such goods or the tonnage of such vessel in any document presented to any employee of the Board for the purpose of enabling him to determine such rates, or

(b) removes, or attempts to remove, or abets the removal of, such goods or such vessel, shall be punishable with fine which may extend to twice the amount of rates so due, subject to a minimum of two hundred rupees.

(5)¹ Any person who contravenes the provisions of any regulations made under this Act shall be punishable with fine which may extend to five hundred rupees and, where the contravention is a continuing one, with a daily fine which may extend to one hundred rupees during the continuance of such offence.

1. Sub-section (5) ins. by W. B. Act 24 of 2002, w.e.f. 10.1.2003

78. Jurisdiction of Court :-

No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try any offence punishable under this Act or the rules or the regulations made thereunder.

79. Offences by companies :-

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary, or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. For the purposes of this section,

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

CHAPTER 12

Miscellaneous

80. Recovery of damage caused to dock, wharf, quay, etc :-

If, through the negligence of any person having the guidance or command of any vessel or of any of mariners or persons employed on such vessel, any damage is caused to any dock, wharf, quay, mooring, stage, jetty, pier or other work in the possession of the Board or any movable property belonging to the Board, the amount of such damage shall, on the application of the Board, be

recoverable together with the cost of such recovery by distress and sale under a Magistrate's warrant of a sufficient portion of the boats, masts, spares, ropes, cables, anchors or stores belonging to such vessel:

Provided that no Magistrate shall issue such warrant until the master of the vessel has been duly summoned to appear before him and, if he so appears, until he has been heard:

Provided further that no such warrant shall be issued if the vessel was at the time under the orders of a duly authorised employee of the Board and the damage caused was attributable to the order, act, or improper omission of such employee.

81. State Minor Port Consultative Committee :-

(1) The State Government may, if it considers it necessary, by notification, constitute a State Minor Ports Consultative Committee bearing the name of the State and consisting of members of the Board and such other persons, being not less than seven and not more than fifteen, as the State Government may think fit from amongst the persons who are capable of representing the interests of the Chambers of Commerce, shipping customs, railways, road transport, labour, fisheries, industries and communications.

(2) The Chairman of the Board shall be the ex officio Chairman of the Committee.

(3) The functions of the Committee shall be

(a) to advise the Board on general questions relating to minor ports;

(b) to advise the Board in respect of any scheme pertaining to the development of any minor port;

(c) to review the administration of minor ports and to suggest ways and means of improving their work;

(d) such other matters relating to minor ports as the State Government may specify in the notification under sub-section (1).

(4) The terms and conditions and the tenure of appointment of the members of the Committee shall be such as the State Government may specify in the notification under sub-section (1).

82. Suits or proceedings against Board or its members or

employees :-

No suit or other legal proceeding shall be commenced against the Board or any member or employee thereof for anything done or purporting to have been done in pursuance of any provision of this Act until the expiration of sixty days after a notice in writing has been given to the Board or such member or employee, stating the cause of action or after six months after the accrual of the cause of action.

83. Restriction on suits :-

No suit or other legal proceeding shall lie against the Board, or any of its members, or any person in the employment of the Board, for anything in good faith done or purported to be done in pursuance of any provision of this Act or the rules or the regulations made thereunder or for any loss or damage sustained by any vessel in consequence of any defect in any of the moorings or other things belonging to, or under the control of, the Board.

84. Act not to affect the right of Central Government :-

Nothing in this Act shall affect

(a) the right of the Central Government to collect customs duties or of any Municipality or other local authority to collect any statutory levies on any dock, berth, wharf, quay, stage, jetty or pier in the possession of the Board; or

(b) any power or authority vested in the customs authorities under any law for the time being in force.

85. Interpretation as to facilities etc. of minor port :-

Save as expressly provided in this Act or the rules or the regulations made thereunder, all matters relating to a minor port, including the facilities and services or management thereof, shall, as far as may be, be interpreted and governed by the provisions of the Indian Ports Act, 1908 and the Indian Major Ports Act, 1963:

Provided that in the case of any dispute with regard to such interpretation or governance, such dispute shall be referred by the Board to the State Government, and the decision of the State Government thereon shall be final and binding on the Board.