

MANGALORE PORT TRUST ACT, 1953

15 of 1953

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SCHEDULE 1 :- The properties vested in the Board

MANGALORE PORT TRUST ACT, 1953

15 of 1953

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The Mangalore Port Trust Act, 1953, prepared in accordance with the provisions of sub-section (2) of Section 2 of the Tuticorin Port Trust (Appli- cation to Mangalore) Act, 1953 (Madras Act XV of 1953), is published below as required by that sub-section. Whereas, it is expedient to make provision for the regulation, conservancy and improvement of the port of Mangalore; It is hereby enacted as follows :

CHAPTER 1

Preliminary

1. Short title :-

This Act may be called the Mangalore Port Trust Act, 1953.

2. Commencement :-

This Act shall come into force on such date or dates as the State Government may, by notification, direct.

3. Interpretation clause :-

In this Act, unless there be something repugnant in the subject or context.

(1) "Board" means the Trustees of the Port of Mangalore appointed under this Act;

(2) "Chief Officer of Customs" denotes the Chief Executive Officer of Customs for the Port of Mangalore for the time being;

¹[(2-A) "Executive Officer" means the Chairman of the Board;]

(3) "Goods" means and includes every kind of movable property.

(4) "Land" includes the bed of the sea and river below high water-

mark;

(5) "Master", when used in relation to any vessel, means any person having for the time being the charge or control of such vessel except a pilot or harbour master;

(6) "Owner", when used in relation to goods, includes any consignor, consignee, shipper or agent for the sale, custody, loading or unloading of such goods; and when used in relation to any vessel, includes any part owner, charterer, consignee, or mortgagee in possession thereof;

(7) "Pier" includes any stage, stairs, landing place, hard, jetty, landing stage, floating barge or pontoon, and any bridges or other works connected therewith;

(8) "Port" means the Port of Mangalore within such limits as may from time to time be defined by the State Government for the purposes of this Act by notification in the Official Gazette, and until a notification is so issued, within such limits as may have been defined by the Government under the provisions of the Indian Ports Act, 1908 (Central Act XV of 1908);

²[(8-A) "Port premises" means any land or any building or part of a building belonging to the Board;]

(9) "Port Trust Security" means debentures, bonds or stock certificates issued by the Board in respect of any loan contracted under the provisions of this Act;

(10) "Prescribed" means prescribed by rules or regulations or bye-laws made under this Act;

(11) "Rate" includes any toll due, rent, rate or charge leviable under this Act;

³ [(11-A) "Unauthorised occupation" in relation to any port premises means the occupation by any person of the port premises without authority for such occupation, and includes the continuance in occupation by any person of the port premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever;]

(12) "Vessel" denotes anything made for the conveyance by water of human beings or of property;

(13) "Wharf" includes any wall or stage and any part of the foreshore that may be used for loading or unloading goods, and any wall enclosing or adjoining the same.

1. Clause (2-A) inserted by Act No. 38 of 1964 and subsequently repealed by Act No. 22 of 2000, w.e.f. 29-11-2000.

2. Clause (8-A) inserted by Act No. 38 of 1964 and subsequently repealed by Act No. 22 of 2000, w.e.f. 29-11-2000.

3. Clause (11-A) inserted by Act No. 38 of 1964 and subsequently repealed by Act No. 22 of 2000, w.e.f. 29-11-2000.

CHAPTER 2

The Board of Trustees

4. Imposition of duty of working the Act on a Board :-

The duty of carrying out the provisions of this Act shall, subject to such conditions and limitations as are hereinafter contained, be vested in a Board to be called "The Trustees of the Port of Mangalore", and such Board shall be a body corporate and have perpetual succession and a common seal and shall sue and be sued by the aforesaid name.

5. Constitution of the Board :-

(1) The Board shall consist of such number of Trustees, not being less than thirteen or more than seventeen including the Chairman and Vice-Chairman as the State Government may notify: Provided that the Chairman or Vice - Chairman, if absent on leave for more than a fortnight and if another Chairman or Vice-Chairman is appointed to act for him, shall cease to be a Trustee and shall, on return to duty, again become a Trustee.

(2) Not less than one-third of the number of the Trustees shall be citizens of India, of whom two shall be persons engaged in sea-borne trade at Mangalore and not more than one-third shall be Government officials.

Explanation. For the purpose of this section, neither the Chairman nor the Vice- Chairman will be reckoned as a Government official unless he is such otherwise than in virtue of the office of Chairman or Vice-Chairman, as the case may be.

6. Appointment of Chairman and Vice-Chairman, election of Trustees and appointment of nominated Trustees :-

(1) The Chairman, and Vice- Chairman shall be appointed by the State Government, provided one of them at least shall be a citizen

of India.

(2)

(a) The members for the time being of each of the following bodies shall be entitled to elect the number of Trustees specified against it, at a meeting of the body held in accordance with its rules as then in force.

(i) The Mangalore Municipal Council 2 Trustees,

(ii) The Kanara Chamber of Commerce 4 Trustees.

(iii) The Western India Tiles Manufacturers' Association 2 Trustees:

Provided that a person who is a member of either of the bodies referred to in items (ii) and (iii) shall not vote except as a member of one of those bodies chosen by him, such choice not being revocable for a period of two years reckoned from the date on which he last so voted, whether he continues to be a member of that body or not.

(b) A return of the name of every person elected as Trustee under clause (a) shall be made to the State Government, by the Chairman or President of the body concerned.

(3) One Trustee shall be appointed by the State Government from a panel consisting of persons elected by trade unions of workers at the port, which have been registered under the Indian Trade Unions Act, 1926 '(Central Act XVI of 1926)' the members for the time being of each of the unions being entitled to elect one person to the panel at a meeting of the union held in accordance with its rules as then in force.

(4) The remaining Trustees shall be appointed by the State Government with due regard to the provisions contained in subsection (2) of Section 5.

7. Publication of names of Trustees :-

The names of persons appointed or elected as Trustees shall be published in the Official Gazette and the South Kanara District Gazette.

8. Disqualifications for office of Trustee :-

(1) No person shall be qualified to - be a Trustee who.

(a) is not a citizen of India, or a Commonwealth citizen; or

(b) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government disqualifies him from being a Trustee, if such sentence has not been reversed, set aside, or remitted; or

(c) is an uncertificated bankrupt or undischarged insolvent; or

(d) holds any office or place of profit under the Board:

Provided that this disqualification shall not apply to the Chairman or Vice-Chairman who may, subject to the sanction of the State Government, be permitted to hold any of the offices under the Board referred to in Section 28; or

(e) has, directly or indirectly, any share or interest in any work done by order of the Board, or in any contract or employment with, by, or on behalf of, the Board. 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 Joint Stock Company which shall contract with or 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 inserted; or

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

(iv) having a share or interest in any lease, sale, exchange or purchase of immovable property or any agreement for the same; or

(v) having a share or interest in any licence by the Board, or right by agreement or otherwise with the Board to the sole or preferential use of any railway siding or any berth for vessels in the docks belonging to the Board; or

(vi) having a share or interest in the occasional sale to the Board, to a value not exceeding two thousand rupees in any one official year, of any article in which he trades; or

(vii) being a person to whom, or a member of a firm or company to which any of the functions specified in clauses (a) and (b) of sub-section (1) of Section 40 shall have been relinquished under Section 42; or

(f) not being an Indian by birth, is domiciled in any British

possession or colony as defined in the Interpretation Act of 1889, the laws of which do not confer or recognize rights and privileges in respect of resident Indians which are equal to those conferred or recognized in respect of other residents:

Provided that the decision of the State Government shall be final as to whether the conditions of the clause are fulfilled.

(2) Any Trustee who.

(a) becomes disqualified for any of the aforesaid reasons; or

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

(c) fails to attend, without the permission of the Board previously obtained, three consecutive ordinary meetings of the Board; or

(d) is absent from the meetings of the Board for a period exceeding six consecutive months, shall cease to be a Trustee.

9. Term of office of Chairman, Vice-Chairman and Trustees

:-

The Chairman and Vice-Chairman shall hold office during the pleasure of the State Government. The remaining Trustees shall hold office for a term of two years from the date of election or appointment, as the case may be, but the Board may at any time accept the resignation of any Trustee.

10. First election of Trustees and first appointment of Chairman, Vice- Chairman and nominated Trustees :-

The first elective Trustees shall be elected, and the first Chairman, Vice-Chairman and nominee Trustees shall be nominated on such dates as may be notified.

11. Eligibility of Trustees for re-election or re-appointment

:-

Any person ceasing to be a Trustee, shall, unless disqualified under sub-section (1) of Section 8, be eligible for re-election or reappointment.

12. Filling up of vacancies arising in Board of Trustees :-

(1) Every vacancy in the office of a Trustee elected under Section 6, sub-section (2), shall be filled up by the body concerned, within one month of the occurrence of the vacancy, in the manner provided in that sub-section.

(2) Every vacancy in the office of a Trustee appointed under Section 6, sub-section (3), shall be filled up by the State Government from a panel constituted in the manner provided in that sub-section, all elections to the panel by the trade unions concerned being made within one month of the occurrence of the vacancy:

Provided that if any one or more of such unions do not elect persons to the panel within the period aforesaid, the vacancy shall be filled up by the appointment of the person, or one of the persons, elected to the panel within the said period by the remaining union or unions:

Provided further that if no person is elected to the panel by any of the unions within the period aforesaid, the State Government shall have power to fill up the vacancy by appointing any person they think fit.

(3) If the Chairman or Vice-Chairman appointed under Section 6, subsection (1), or any Trustee appointed under Section 6, subsection (4), ceases to hold office, the State Government may appoint a Chairman, Vice-Chairman or Trustee, as the case may be.

13. Nomination of elected Trustees by State Government in default of election :-

If a Trustee is not elected on the date notified under Section 10 or within the period allowed by Section 12, the State Government may appoint a Trustee and the person so appointed shall be deemed to be an elected Trustee.

14. Grant of leave of absence to Chairman or Vice-Chairman :-

The State Government may from time to time grant to the Chairman or Vice-Chairman such leave of absence as they may deem fit, and any person appointed by the State Government to act for the Chairman or Vice-Chairman during any such absence on leave shall, while so acting, be deemed for all the purposes of this Act, to be the Chairman or Vice-Chairman, as the case may be.

15. Appointment of acting Trustee :-

(1) When any Trustee departs from Mangalore with the intention of being absent for a longer period than three months, a person shall be elected or appointed in the manner provided in Section 6 to act in the place of such absent Trustee until he returns to Mangalore,

or ceases to be a Trustee. The person so appointed shall be subject to all the restrictions and be entitled to all the privileges to which the Trustee for whom he is acting was subject or entitled.

(2) If any question arises whether any Trustee departed with such intention as is referred to in sub-section (1), the decision of the State Government on the question shall be final.

16. Remuneration to Chairman or Vice-Chairman and acting Chairman or Vice-Chairman :-

The State Government may from time to time determine the remuneration, if any, to be paid as salary, leave allowances or other allowances to the Chairman or Vice-Chairman and to the person appointed under Section 14 to act for the Chairman or Vice-Chairman during his absence on leave and may prescribe any conditions and restrictions upon and under which such remuneration shall be payable.

17. Fees payable to Chairman, Vice-Chairman and other Trustees :-

The State Government may prescribe from time to time the fees, if any, to be paid to the Chairman, Vice-Chairman and other Trustees for attendance at meetings and to prescribe conditions and restrictions upon and under which such fees shall be payable.

18. Provisions concerning Boards proceedings :-

The following provisions shall be observed with respect to the proceedings of the Board, namely.

(1) Meetings, etc., for transaction of business. The Board shall meet together and shall from time to time make such arrangements not inconsistent with this Act with respect to the place, day, hour, notice, management, and adjournment of its meetings, and generally with respect to the transaction of business, as it may think fit, subject to the following conditions, namely.

(a) Ordinary monthly meetings. that a meeting shall be held once at least in every month;

(b) Special meetings. that the Chairman may, whenever he thinks fit, and shall, upon the written request of not less than three Trustees, call a special meeting;

(c) Quorum. that no business shall be transacted at any meeting unless at least five Trustees are present throughout such meeting;

(d) President at meetings. that every meeting shall be presided over by the Chairman, if he is present at the time appointed for holding the same, or the Vice-Chairman in his absence, and if and while both are absent, by such one of the Trustees present as may be chosen by the meeting;

(e) Decision of questions by majority of votes. that all questions shall be decided by a majority of votes of the Trustees present the President having a second or casting vote in all cases of equality of votes;

(f) Demand of poll. that if a poll be demanded, the names of the Trustees voting and the nature of their votes shall be recorded by the President of the meeting;

(g) Minutes of proceedings. that minutes shall be kept of the names of the Trustees present and of the proceedings at each meeting in a book to be provided for this purpose, which shall be signed, as soon as practicable, by the President of such meeting, and shall be open to inspection by any Trustee during office hours;

(h) Adjournment of meetings. that the President may, with the consent of any meeting, adjourn it;

(i) Transmission of minutes to Government and their publication in Gazette. that a copy of the minutes of every meeting of the Board shall, 1[x x x x x] within three days of every meeting be transmitted to such Secretary to the State Government as may from time to time be appointed to receive the same.

(2) Appointment of Committees by Board. The Board may, from time to time, appoint Committees consisting of not less than five of its number for carrying into effect any part of the provisions of this Act, with such powers and under such instructions, directions or limitations as may be defined by the Board. The Board may at any time alter the constitution of or discontinue any such Committee.

(3) Chairman at meetings of Committees. A Committee may elect a Chairman of its meetings, and if no such Chairman is elected, or, if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be Chairman of the meeting.

(4) Meetings of Committees. Committees may meet and adjourn at their discretion, but the Chairman of the Board may whenever he

thinks fit

(5) Decisions of questions at meetings of Committees. Questions at any meeting of a Committee shall be decided by a majority of votes of the members present, and in case of an equal division of votes the Chairman shall have a second or casting vote.

(6) Quorum in Committees. No business shall be transacted at any such meeting unless at least three of the members of the Committee are present throughout such meeting.

19. Restriction on power of Trustees to vote or discuss matters in which they are interested :-

(1) No Trustee shall vote on or take part in the discussion of any question coming up for consideration at a meeting of the Board or of any Committee if the question is one in which he has any direct or indirect pecuniary interest by himself or his partner, or in which he is interested professionally on behalf of a client or as agent for any person other than the Government, a local authority or a railway company.

(2) If objection is made that any Trustee has in any question before the meeting such interest as is referred to in sub-section (1), the objection shall be considered and decided by the other Trustees in such manner as may be prescribed by the State Government. The decision of the other Trustees shall be final.

(3) If objection is made to the Chairman that a Trustee voted on or took part in the discussion of any question contrary to the provisions of sub-section (1), the objection, unless, in pursuance of the resolution, a right in a third party has been created, shall be inquired into and decided in accordance with such rule as may be prescribed by the State Government, and such decision shall be final. Pending such decision the resolution on the question shall not be given effect to. If the decision is that the Trustee voted or took part contrary to the provisions of sub-section (1), the resolution on the question shall not be given effect to.

20. Validation of acts and proceedings :-

No act or proceeding of the Board or of any Committee or of any person acting as Chairman or Vice- Chairman shall be deemed to be invalid by reason only of some defect in the establishment of the Board or Committee or on the ground that any Trustee was disqualified for the office or by reason of such act having been done

during the period of any vacancy in the office of Chairman or Vice-Chairman or of any Trustee.

21. Delegation of powers to Chairman or Vice-Chairman :-

The Board may, by resolution in writing, with the sanction of the State Government, determine which of the powers and duties by this Act conferred or imposed upon the Board may be exercised and performed by the Chairman or Vice- Chairman.

22. Duties of Chairman :-

It shall be the duty of the Chairman.

(1) to attend every meeting of the Board unless prevented by sickness or other reasonable cause;

(2) to exercise supervision and control over the acts and proceedings of all officers and servants of the Board in matters of executive administration, and in matters concerning the accounts and records of the Board;

(3) subject to the regulations prescribed under Sections 25 and 98 and to the Schedule for the time being in force framed by the Board under Section 24, to dispose of all questions relating to the service of the officers and servants of the Board, and their pay, privileges and allowances:

Provided that, subject to the control of the State Government, the Chairman may delegate all or any of these duties to the Vice-Chairman as may seem good to him from time to time.

23. Power to State Government to direct that Vice-Chairman be elected :-

Notwithstanding anything contained in this chapter, the State Government may by notification direct that the Board shall elect, in such manner as may be prescribed, one of its Trustees as Vice-Chairman. Such Vice-Chairman shall hold office for the remainder of his term as Trustee. The provisions of Sections 14 and 16 shall not apply to a Vice-Chairman elected under this section.

CHAPTER 3

Officers and Servants other than the Chairman and Vice-Chairman

24. Schedule of Boards staff :-

The Board shall, from time to time, prepare and sanction a Schedule of the staff of officers other than the Chairman and Vice-Chairman and of servants whom the Board shall deem it necessary

and proper to maintain for the purposes of this Act. Such Schedule shall also set forth the amount and nature of the salaries, fees and allowances which the Board sanctions for each such officer or servant.

Explanation. Artisans, porters and labourers and suppliers of porters and labourers are not officers and servants within the meaning of this section or of Section 25 or 27.

25. Power to frame regulations regarding leave; absetee allowances, acting allowances, length of service, pensions, etc., and contributions to provident fund, pensions in the case of subordinates injured or who died while in the service of the Board :-

(1) The Board may, from time to time, frame regulations.

(a) for regulating the grant of leave to the officers (other than the Chairman or Vice-Chairman) and servants of the Board;

(b) for authorizing the payment of allowances to the said officers and servants, or to any of them, whilst absent on leave;

(c) for determining the remuneration to be paid to the persons appointed to act for any such officers or servants during their absence on leave;

(d) for regulating the period of service of all such officers and servants;

(e) for determining the conditions under which such officers and servants or any of them may become entitled, on retirement, to pensions, gratuities or compassionate allowances, and the amount of such pensions, gratuities or compassionate allowances;

(f) for authorising the payment of contributions at such rates and subject to such conditions as the Board may prescribe to any provident fund, which may, with the Board's approval, be established by the officers and servants appointed under this Act, or to such provident fund, if any, as may be established by the Board with the approval of the State Government, for the benefit of such officers and servants;

(g) for determining the conditions under which pensions, gratuities or compassionate allowance may be paid to any of such officers and servants injured, or to the surviving relatives of any of such officers

and servants who died while in the service of the Board; and

(h) generally for the regulation of similar matters.

(2) The regulations framed under clauses (e), (f) and (g) of subsection (1) shall be subject to the approval of the State Government.

(3) Subject to the provisions of Section 100, all pensions, contributions and allowances mentioned in this section shall be chargeable to the general fund of the Board.

26. Power to frame regulations for artizans, porters, etc :-

Notwithstanding anything contained in Sections 24 and 25, the Board may, subject to the sanction of the State Government, frame regulations of the nature mentioned in clauses (e) to (g) of Section 25 for the benefit of artizans, porters and labourers and the suppliers of porters and labourers; and subject to the provisions of Section 100, all pensions, contributions and allowances payable under any such regulation shall be chargeable to the general fund of the Board.

27. Power to appoint, punish or grant leave to officers and servants :-

(1) Subject to the regulations prescribed under Section 25 and the Schedule for the time being in force framed by the Board under Section 24, the power of appointing, promoting, suspending, dismissing, fining, reducing or granting leave to the officers and servants of the Board shall be exercised by the Chairman or Vice-Chairman in such cases and subject to such restrictions as may be determined by the State Government and in every other case by the State Government.

(2) In the case of punishments inflicted by the Chairman or Vice-Chairman an appeal shall lie to the Board.

(3) Power of dispensing with services or permitting retirement of officers or servants. The power of dispensing with the services of any officer or servant of the Board, otherwise than by reason of such officer's or servant's own misconduct, or of permitting any such officer or servant to retire on a pension, gratuity or compassionate allowance shall, in the case of officers appointed by the State Government lie with the State Government and in all other cases with the Board.

28. Prior sanction of State Government to orders or regulations of Board :-

Every order or regulation made by the Board under Section 24, 25 or 27 shall, so far as the same relates to the Secretary, Engineer, Traffic Manager, or Chief Accountant of the Board, be subject to the previous sanction of the State Government. In this section the word "Engineer" means the Engineer of the highest grade on the Board's ordinary staff and also any one who may, from time to time, be employed as Consulting Engineer to the Board on a monthly salary.

CHAPTER 4

Property of the Board

29. Property vested in Board :-

On the coming into force of the whole of this Act, the several immovable properties specified in the Schedule and all movable property held by or vested in the Mangalore Port Conservancy Board shall vest in the Board but subject to all charges and liabilities affecting the same.

30. Power to acquire, hold or alienate property :-

(1) Subject to the provisions herein contained the Board shall, for the purpose of this Act, have the power to acquire and hold immovable or movable property, whether within or without the limits of the port, and also power to lease or sell any immovable or movable property which may have vested in or been acquired by it.

(2) Every acquisition of immovable property, not being an acquisition from the Government, every sale and every lease for a term exceeding ten years of immovable property, shall be made with the previous sanction of the State Government.

31. Application of Land Acquisition Act (Central Act I of 1894) :-

When any immovable property is required for the purposes of this Act, the State Government may declare that such property is required for a public purpose, and may order proceedings to be taken for obtaining possession of the same under the Land Acquisition Act, 1894 (Central Act I of 1894). Such property, when so acquired, shall, on payment by the Board of the compensation awarded and all costs connected with its acquisition, be deemed to be vested in the Board.

CHAPTER 5

Works and Services

32. Power to execute works and provide appliances :-

The Board may execute such works and provide such appliances as it may determine to be necessary or expedient for the purposes of the port.

33. General nature of works to be executed or appliances to be provided :-

Such works and appliances may include.

(1) wharves, quays, docks, stages, jetties and piers within the port or on the foreshore of the port, with all necessary and convenient arches, drains, landing places, stairs, fences, roads, railways and approaches;

(2) railways, tramways, locomotives, rolling stock, sheds, warehouses and other accommodation for passengers and goods and other appliances within the port for carrying passengers and for conveying, receiving and storing goods landed, or to be shipped or otherwise;

(3) moorings for carrying out the purposes of this Act, and cranes, scales, and all other necessary means and appliances for loading and unloading vessels;

(4) reclaiming, excavating, enclosing and raising any part of the foreshore of the port which may be necessary for the execution of the works authorized by this Act, or otherwise for the purposes of this Act;

(5) such breakwaters and other works within or without the limits of the port as shall be expedient for the protection of the harbour or port;

(6) dredgers and other machines for cleaning, deepening and improving any portion of the port or foreshore;

(7) pilot-boats and other appliances necessary for the safe navigation of the port and of the approaches thereto within a distance of three miles from the limits of the port;

(8) vessels, steam tugs or other boats for use as well within the limits of the port as beyond those limits, whether in territorial waters or otherwise, for the purpose of towing or rendering assistance to any vessel, whether entering or leaving the port or bound elsewhere, and for the purpose of saving or protecting life or property and for the purpose of landing, shipping or transshipping

passengers or goods under Section 40;

(9) boats, barges, and other appliances necessary in connection with the supply of water to shipping in the port;

(10) engines and other appliances necessary for the extinguishing of fires in the port and on the property of the Board;

(11) all such other works and appliances as may be in the opinion of the Board, expedient for carrying out the purposes of this Act.

34. Seagoing vessels compelled to use wharves, etc :-

When any wharf, quay, stage, jetty or pier has been made and completed, with sufficient warehouses, sheds and appliances for landing or for shipping goods from and in seagoing vessels, the Board may, with the previous sanction of the State Government, by a notification published in three consecutive issues of the Official Gazette and one issue of the South Kanara District Gazette, declare that such wharf, quay, stage, jetty or pier is ready for receiving, landing and shipping or for landing or for shipping, as the case may be, goods from and in seagoing vessels. From and after such publication, the Board may from time to time, when there is room at such wharf, quay, stage, jetty or pier, order to come alongside of such wharf, quay, stage, jetty or pier, for the purpose of landing and shipping goods, or for landing or for shipping the same, as the case may be, any seagoing vessel within the port which has not commenced to discharge cargo, or which being about to take in cargo, has not commenced to do so. In 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 wharf, quay, stage, jetty or pier.

35. If accommodation sufficient, all seagoing vessels compelled to use wharves, etc :-

When a sufficient number of wharves, quays, stages, jetties, piers, warehouses, sheds and appliances have been provided as afore said, the Board may, with the previous sanction of the State Government, by an order published in three consecutive issues of the Official Gazette, and one issue of the South Kanara District Gazette direct that no goods shall be landed or shipped from or in any seagoing vessel within the port, save at such wharves, quays, stages, jetties and piers, and may, in like manner, alter, vary or revoke any such order.

36. Power to order vessels not to come alongside of, or to

be removed from wharves, etc :-

Any officer appointed by the Board in this behalf may, in cases of emergency, or for any reason which appears to him sufficient by notice in writing order the master or owner of any vessel not to bring such vessel alongside of, or to remove such vessel from, any wharf, quay, stage, jetty or pier belonging to the Board, and, if such notice is not obeyed, the Board may charge in respect of such vessel such sum as it thinks fit, not exceeding five hundred rupees for each day of twenty-four hours, or portion of such day, during which such vessel remains at such wharf, quay, stage, jetty or pier:

Provided that, in the case of a vessel ordered to be removed, such charge shall not commence to be made till after the expiry of twelve hours from the service of such notice as aforesaid on the master or owner of the vessel.

37. Power to State Government to exempt from obligation to use wharves, etc., and to require preference to be given to Government vessels :-

Not with standing anything contained in Sections 34 and 35, the State Government may, by notification in the Official Gazette and the South Kanara District Gazette, from time to time, permit certain specified vessels or classes of vessels to discharge or ship cargo, or certain specified cargo or classes of cargo, at such part of the port, in such manner, during such period subject to such payments and on such conditions as they may think fit, and otherwise grant exemption from the provisions of such sections. The State Government may also, by like notification, cancel or modify any such notification. The State Government may also at any time require that any vessel belonging to or in the service of Government shall be permitted to come alongside of any wharf, quay, stage, jetty or pier belonging to the Board in preference to all other vessels at the time in port; and it shall be incumbent on the Board to give effect to any such requisition.

38. Power to order survey or examination of works :-

The State Government may, at any time, order a local survey or examination of any works of the Board, or the intended site thereof. The cost of such survey and examination shall be borne and paid by the Board out of its general fund.

39. Power of State Government to restore or complete works at the cost of Board :-

If at any time, the Board allows any work or appliance constructed

or provided by or vested in it to fall into desrepair, or does not, within a reasonable time, complete any work commenced by it or included in any estimate sanctioned by the State Government, or does not, after the due notice in writing, proceed to carry out effectually any work or repair or to provide any appliance which is necessary in the opinion of the State Government for the purposes of this Act, the State Government may cause such work to be restored or completed or carried out, or such repair to be carried out, or such appliance to be

provided; and the cost of any such restoration, completion, construction or provision shall be paid by the Board; and if the Board does not within a reasonable time provide for such payment, the same shall be recoverable in the manner provided in the Local Authorities Loans Act, 1914 (Central Act IX of 1914).

40. Performance of services by the Board :-

(1) The Board shall, according to its powers, provide all reasonable facilities for and shall have power to undertake the following services.

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

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

(c) carrying passengers by rail, tramway or otherwise within the limits of the port, subject to such restrictions and conditions as the State Government may see fit to impose; and

(d) receiving and delivering, transporting and booking and despatching goods originating in the vessels in the port and intended for carriage by the neighbouring railways, or vice versa as a railway company or administration under the Indian Railways Act, 1890 (Central Act IX of 1890).

(2) The Board shall, if so required by any owner, perform in respect of goods all or any of the services mentioned in clauses (a), (b) and (d) of sub-section (1), which it shall have undertaken: Provided that the Board shall not be bound to perform any service which it has relinquished under the provisions of clause (a) of sub-section (1) of Section 42.

(3) The Board shall, if required, take charge of the goods for the purpose of performing the service and shall give a receipt in the form and to the effect prescribed from time to time by the State Government. After any goods have been taken charge of and a receipt given for them under this section, no liability for any loss or damage which may occur to them shall attach to any person to whom a receipt shall have been given or to the master or the owner of the vessel from which the goods have been landed or transshipped.

41. Responsibility of Board for loss, etc., of goods :-

(1) The responsibility of the Board for the loss, destruction or deterioration of goods of which it has taken charge shall, subject to the other provisions of this Act and subject also, in the case of goods received for carriage by railway, to the provisions of the Indian Railways Act, 1890 (Central Act DC of 1890), be that of a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872 (Central Act IX of 1872), omitting the words "in the absence of any special contract" in Section 152 of the last-mentioned Act: Provided that, till the receipt mentioned in sub-section (3) of Section 40 is given by the Board, the goods shall be at the risk of the owner.

(2) The Board shall not be in any way responsible for loss of or damage to goods of which it has taken charge, unless notice of such loss or damage shall have been given within one month of the date of the receipt given for the goods under sub-section (3) of Section 40.

42. Relinquishment of services subject to the control of the State Government :-

(1) The Board may, subject to the sanction of the State Government and to such conditions as the State Government may prescribe.

(a) enter into an agreement relinquishing the performance of any of the services specified in clauses (a) and (b) of sub-section (1) of Section 40 to an approved person; or

(b) enter into an agreement accepting a greater or less liability than that imposed on the Board by sub-section (1) of Section 41.

(2) Every agreement entered into under this section shall be in

writing and signed by or on behalf of the parties concerned.

(3) No person to whom the performance of any service, specified in clause (a) or (b) of sub-section (1) of Section 40 is relinquished shall charge or recover for such service any sum in excess of the amount leviable according to the scale framed under Section 44, Section 45 or Section 46 if such service were performed by the Board.

(4) Notwithstanding such relinquishment, the Board may charge dues according to the scales laid down in Sections 44, 45 and 46 for the use of its works or appliances or for other services connected with that which has been relinquished without thereby incurring any liability under Section 41.

43. Performance of services by persons to whom the services have been relinquished by the Board :-

(1) Any person to whom any or all of the services under clauses (a) and (b) of sub-section (1) of Section 40 has or have been relinquished under Section 42, shall, if so required by the owner, perform in respect of goods any of the services so relinquished and for that purpose take charge of the goods and give a receipt in the form prescribed by the State Government.

(2) The responsibility of any such person for the loss, destruction or deterioration of 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 (Central Act DC of 1872).

CHAPTER 5A

Eviction of Unauthorised Occupants from Port Premises

43A. Issue of notice to show cause against order of eviction :-

(1) If the Executive Officer is of opinion that any persons are in unauthorised occupation of any Port premises and that they should be evicted, the Executive Officer shall issue in the manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall.

(a) specify the grounds on which the order of eviction is proposed

to be made; and

(b) require all persons concerned to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(3) The Executive Officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the Port premises, and in such other manner as may be prescribed by rules, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the Executive Officer knows or has reason to believe that any persons are in occupation of the Port premises, then without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by registered post or by delivering or tendering it to that person, or failing service by the means aforesaid in such other manner as may be prescribed by rules.

Explanation. In this section, the expression "persons concerned" in relation to any Port premises, means all persons who are, or may be, in occupation of, or claim interest in the Port premises.

43B. Eviction of unauthorised occupants :-

(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under Section 43-A and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Executive Officer is satisfied that the Port premises are in unauthorised occupation, the Executive Officer may, on a date to be fixed for the purpose, make an order of eviction, for reasons to be recorded therein, directing that the Port premises shall be vacated by all persons who may be in occupation thereof, or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the Port premises.

(2) If any person refuses or fails to comply with the order of eviction within thirty days from the date of affixture of the order under sub-section (1), the Executive Officer or any other officer duly authorised by the Executive Officer in this behalf may evict that person and take possession of the Port premises and may, for that purpose, use such force as may be necessary.

43C. Disposal of property left on Port premises by unauthorised occupants :-

(1) Where any person has been evicted from any Port premises under Section 43-B, the Executive Officer may, after giving fourteen days' notice to the person from whom possession of the Port premises has been taken and after publishing the notice in atleast one newspaper having circulation in the locality and after proclaiming the contents of the notice in the locality by beat of drum, remove or cause to be removed or dispose of by public auction any property remaining on such premises.

(2) Where any property is sold under sub-section (1), the sale proceeds shall, after deducting the expenses of the sale and the amount, if any, due to the Board on account of arrears of rent or damages, be paid to such person as may appear to the Executive Officer to be entitled to the same:

Provided that where the Executive Officer is unable to decide as to the person to whom the balance of the amount is payable or as to the apportionment of the same, he may refer such dispute to the Civil Court of competent jurisdiction and the decision of the Court thereon shall be final.

43D. Power to recover rent or damages in respect of Port premises as arrears of land revenue :-

(1) Subject to the provisions of Chapter VI, where any person is in arrears of rent payable to the Board in respect of any Port premises, the Executive Officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been, in unauthorised occupation of any Port premises, the Executive Officer may, having regard to such principles of assessment of damages as may be prescribed by rules, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order:

Provided that no such order shall be made until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice why such order should not be made, and until his objections, if any, and any

evidence he may produce in support of the same, have been considered by the Executive Officer.

(3) If any person refuses or fails to pay the arrears of rent or any installment thereof payable under sub-section (1) or the damages or any installment thereof payable under sub-section (2) within the time specified in the order relating thereto, the Executive Officer may issue a certificate for the amount due to the Deputy Commissioner who shall proceed to recover the same as arrears of land revenue.

43E. Powers of the Executive Officer :-

The Executive Officer shall, for the purpose of holding an inquiry under this Chapter, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely.

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) any other matter which may be prescribed by rules.

43F. Appeals :-

(1) An Appeal shall lie from every order of the Executive Officer made in respect of any Port premises under Section 43-B or Section 43-D to an appellate officer who shall be the District Judge of South Kanara District.

(2) An appeal under sub-section (1) shall be preferred.

(a) in the case of an appeal from an order under Section 43-B within thirty days from the date of affixture of the order under sub-section (1) of that section; and

(b) in the case of an appeal from an order under Section 43-D within thirty days from the date on which the order is communicated to the appellant:

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred from an order of the Executive

Officer, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit.

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

43G. Finality of orders :-

Save as otherwise expressly provided in this Chapter, every order made by the Executive Officer or appellate officer under this Chapter shall be final and shall not be called in question in any original suit, application or execution proceedings: Provided that nothing in this section shall preclude institution of a suit by the Board or any person for declaration of title and for possession of any premises:

Provided further that in no suit referred to in the preceding proviso shall the Court grant any permanent or temporary injunction or make any interim order restraining any proceeding taken or about to be taken under this Chapter.]

CHAPTER 6

Levy and Recovery of Rates

44. Scale of rates :-

The Board shall frame a scale of rates at which and a statement of the conditions under which any of the services specified hereunder shall be performed by itself or by a person to whom any service has been relinquished under Section 42 or partly by one and partly by the other.

(a) transshipping of passengers or goods between vessels in the harbour;

(b) landing and shipping of passengers or goods from or to such vessels to or from any wharf, quay, pier, dock, land or building in the possession or occupation of the Board or at any place within the limits of the port;

(c) cranage or portorage of goods on any such place;

(d) wharfage, storage or demurrage of goods on any such place;

(e) any other service in respect of vessels, passengers or goods.

45. Scale of rates and statement of conditions for use of property belonging to the Board :-

The Board shall also frame a scale of rates on payment of which

and a statement of conditions under which any property belonging to or in the possession or occupation of the Board or any place within the limits of the port may be used for the purposes specified hereunder:

- (a) approaching or lying at or alongside any moorings, wharf, quay, pier, dock, land, building or place as aforesaid by vessels or boats;
- (b) entering upon or plying for hire at or on any wharf, quay, pier, dock, land, building or place as aforesaid by animals or vehicles carrying passengers or goods;
- (c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;
- (d) any other use of any land, works or appliances belonging to or provided by the Board.

46. Consolidated rates for combination of services :-

The Board may frame a consolidated scale of rates for any combination of the services specified in Section 44 or for any combination of such service or services with any user or permission to use any property belonging to or in the possession or occupation of the Board, as specified in Section 45.

47. Prior sanction of State Government to such scales :-

(1) Every scale and every statement of conditions framed by the Board under Section 44, Section 45 or Section 46 shall be submitted to the State Government for sanction; and, when so sanctioned and published in the Official Gazette, shall have the force of law; and subject to the like sanction and publication may from time to time be amended or added to by the Board.

(2) Remission of rates in special cases. The Board may, in special cases, with the previous sanction of the State Government, remit the whole or any portion of the rates or of any charge leviable according to any scale in force under this section. It may also on its own initiative correct mistakes, remit overcharges made in its bills, and write off irrecoverable sums up to a limit of two hundred rupees in each case.

(3) Power to fix maxima and minima rates. In respect of any item of any scale of rates framed under the powers conferred by Section 44, Section 45 or Section 46, the Board, with the previous sanction

of the State Government, may fix maximum and minimum rates, and may levy any charges not exceeding the maximum and not below the minimum thus fixed.

48. Refund of overcharges :-

No person shall be entitled to a refund of an overcharge unless his claim to the refund has been preferred in writing by him or in his behalf to the Board within six months from the date of payment.

49. Power to increase rates to cover deficiency of revenue :-

(1) If, on the preparation of the estimate of any year, it appears that the estimated income of the Board for such year, after deducting therefrom the estimated expenditure of such year, will be insufficient for the payment of the interest which may be payable by the Board during such year to the Government or to any other creditor, and of any sinking fund established under Section 75 and of any sum the repayment of which is due in pursuance of any terms under Section 67; or if, at any time in the course of a year, it appears that the income of such portion of the year as has then elapsed, and the estimated income of the residue of such year after deducting therefrom the actual expenditure of such past portion and the estimated expenditure of such residue, will be insufficient for the payment of the said interest, sinking funds and sums due; The Board may, and upon the requisition of the State Government, shall increase the rates for the time being in force to such extent as will render the estimated income of the year sufficient, as nearly as may be, for the payment in full of the said interest, sinking funds and sums due.

(2) Such increased rates shall be fixed by the Board, and shall be submitted to the State Government, and, if approved by the State Government, shall be published in the Official Gazette, and shall become leviable after the expiration of one month from the date of such publication, and continue leviable until altered by the Board with the sanction of the State Government.

50. Power of State Government to enhance rates if Board fails to do so :-

If the Board shall, for fifteen days after the receipt by the Chairman of any such requisition from the State Government, neglect or refuse to submit to the State Government for approval such increased rates, the State Government may, by notification in the

Official Gazette, increase such rates as they think fit; and such notification shall have the same force as if a new scale of rates to the same effect had been duly framed under Section 44, Section 45 or Section 46 and sanctioned and published under Section 47.

51. Board not to lease rates without sanction :-

The Board shall not lease, farm, sell or alienate any power vested in it under this Act of levying rates without the assent of the State Government.

52. Fines and penalties payable to Board :-

All fines and penalties recovered under this Act other than fines and penalties imposed by a Court shall be paid to the Board.

53. Payment of balance of Mangalore Port Fund to Board :-

The State Government may, at any time direct that the whole or any portion of the balance of the moneys which may be credited under the Indian Ports Act, 1908 (Central Act XV of 1908), to the account of the Port Fund, if any, which may be formed for the Port of Mangalore, after defraying therefrom all expenses legally chargeable to the said account, shall be paid to the Board for the purposes of this Act.

54. Time for payment of rates on goods :-

Rates in respect of goods to be landed shall be payable immediately on the landing of the goods; in respect of goods to be removed from the premises of the Board or to be shipped for export, or transshipped, before the goods are removed or shipped or transshipped.

55. Lien for rates :-

For the amount of all rates leviable under this Act in respect of any goods and for the rent due to the Board on any buildings, plinths, stacking areas or other premises on or in which any goods may have been placed, the Board shall have a lien on such goods, and may seize and detain the same until such rates are fully paid.

56. Priority of lien of Board over other liens and claims :-

Such lien shall have priority over all other liens and claims, except for general average and for the ship-owner's lien upon the said goods for freight and other charges, where such lien exists and has been preserved in the manner provided in Section 57, and for primage, and for money payable to the Government.

57. Preservation of lien for freight after goods are landed :-

If the master or owner of any vessel or his agent, at or before the time of landing from such vessel any goods at any dock, wharf, quay, stage, jetty or pier in the occupation of the Board, gives to the Board notice in writing that such goods are to remain subject to a lien for freight or other charges including landing charges, payable to the ship-owner to an amount to be mentioned in such notice such goods shall continue liable to such lien to such amount.

58. Retention of such goods until lien is discharged :-

Such goods shall be retained in the custody of the Board, or with the consent of the Chief Officer of Customs in the public customs, wharves and warehouses, at the risk and expense of the owners of the said goods until such lien is discharged as hereinafter mentioned; and godown or storage rent shall be payable by the party entitled to such goods for the time during which they may be so retained.

59. Discharge of ship-owners lien for freight :-

Upon the production to any officer appointed by the Board in that behalf of a document purporting to be a receipt for, or a release from, the amount of such lien, executed by the person by whom or on whose behalf such notice has been given, the Board may permit such goods to be removed without regard to such lien,

provided that the Board shall have used reasonable care in respect to the authenticity of such document.

60. Sale of goods after two months if rates are not paid or lien for freight is not discharged :-

The Board may, after the expiry of two months from the time when any goods have passed into its custody, or in the case of perishable goods after the expiry of such shorter period not being less than 24 hours as the Board may think fit, sell by public auction so much as may be necessary of such goods.

(a) if any rates payable to the Board in respect of such goods have not been paid; or

(b) if any rent referred to in Section 55 in respect of any place on or in which such goods have been stored has not been paid; or

(c) if any lien of any ship-owner for freight or other charges of which notice has been given has not been discharged and if the person claiming such lien for freight or other charges has made an application for such sale.

61. Notice of sale :-

Before making such sale, ten days' notice of the same shall be given by publication thereof in the South Kanara District Gazette, unless the goods are of so perishable a nature as, in the opinion of the Board, to render their immediate sale necessary or advisable, in which event such notice shall be given as the urgency of the case admits of.

62. Notice of sale to owner :-

If the address of the owner of the goods has been stated on the manifest of the cargo or in any of the documents which have come into the hands of the Board, or is otherwise known, notice shall also be given to the owner of the goods by registered letter; but the title of a bonafide purchaser of such goods shall not be invalidated by reason of the omission to send the notice hereinbefore mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

63. Application of sale proceeds :-

(1) The proceeds of every such sale shall be applied as follows.

(a) In payment of the expenses of the sale;

(b) in payment, according to their respective priorities, of the liens and claims excepted in Section 56 from the priority of the lien of the Board;

(c) in payment of the rates and expenses of landing, removing, storing or warehousing the same, and of all other charges due to the Board in respect thereof.

(2) The surplus, if any, shall be paid to the importer, owner or consignee of the goods, or to his agents, on his applying for the same:

Provided such application be made within one year from the sale, or reason be shown to the satisfaction of the Board why such application was not so made; and, in case such application shall not be so made or reason shown, such surplus shall be held by the Board upon trust for the purposes of this Act.

64. Recovery of rates and charges by distraint of vessel :-

If the master of any vessel in respect of which any rates or penalties are payable under this Act, or under any bye-laws, rules or orders made in pursuance thereof, refuses or neglects to pay

the same or any part thereof on demand, it shall be lawful for the Board to distrain or arrest on its own authority such vessel and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount so due is paid; and, in case any part of the said rates or penalties, or of the cost of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest has been so made, the Board may cause the vessel or other thing so distrained or arrested to be sold, and, with the proceeds of such sale, shall satisfy such rates or penalties and costs, including the costs of sale remaining unpaid, rendering the surplus (if any) to the master of such vessel on demand.

65. Grant of port-clearance after payment of rates :-

If the Board gives to the officer of Government whose duty it is to grant the port-clearance of any vessel a notice stating that an amount therein specified is due in respect of rates or penalties chargeable under this Act, or under any bye-laws, rules 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, such officer shall not grant such port-clearance until the amount so chargeable has been paid.

66. Alternative remedy by suit :-

Notwithstanding anything contained in the twelve sections last preceding and in Sections 111, 112 and 114, the Board may recover by suit any rates, damages, expenses, costs or in case of sale the balance thereof, when the proceeds of sale are insufficient, payable to, or recoverable by, the Board under this Act or under any bye-laws made in pursuance thereof.

CHAPTER 7

The Borrowing Powers of the Board

67. Power to raise loans :-

(1) The Board may, with the previous sanction of the State Government, and after due notification in the Official Gazette, raise loans for the purposes of this Act.

(2) Loans may be raised in the open market on Port Trust Securities or obtained from the State Government or the Central Government. The terms of all loans shall be subject to the approval of the State Government.

68. Port Trust Securities :-

(1) The Board may, with the sanction of the State Government, prescribe the form in which Port Trust Securities shall be issued, the mode in which and the condition subject to which they may be transferred.

(2) The right to use in respect of moneys secured by Port Trust Securities shall be exercisable by the holders thereof for the time being without preference in respect of priority of date.

69. Indian Securities Act applicable to Port Trust Securities :-

The provisions of Sections 4, 5, 8, 9, 10 and 15 of the Indian Securities Act, 1920 (Central Act X of 1920), shall mutatis mutandis apply to all securities issued by the Board subject in the case of Sections 10 and 15 to the understanding that the word "prescribed" shall mean "prescribed by the State Government or by the Board with the sanction of the State Government".

70. Power to frame rules :-

(1) The Board may from time to time make rules to provide for all or any of the following matters, viz.

(a) the person, if any, authorized to sign, the mode of affixing the corporate seal and of attestation of documents relating to Port Trust Securities;

(b) the manner in which payment of interest in respect of Port Trust Securities is to be made and acknowledged;

(c) the circumstances and the manner in which Port Trust Securities may be renewed;

(d) the circumstances in which such securities must be renewed before further payment of interest thereon can be claimed;

(e) the form in which securities delivered for renewal and conversion are to be receipted;

(f) the proof which is to be produced by persons applying for duplicate securities;

(g) the form and manner of publication of the notification mentioned in sub-section (2) of Section 10 of the Indian Securities Act, 1920 (Central Act X of 1920), as applied to Port Trust

Securities and the manner of publication of the list mentioned in sub-section (3) of that section;

(h) the nature and amount of indemnity to be given by a person applying for the payment of interest on debentures alleged to have been wholly or partly lost or destroyed, or for the issue of duplicate debentures;

(i) the conditions subject to which Port Trust Securities may be converted;

(j) the amounts for which stock certificates may be issued;

(k) generally, all matters connected with the grant of duplicate, renewed and converted securities;

(1) the fees to be paid in respect of the issue of duplicate securities and of the renewal and conversion of Port Trust Securities; and

(m) the fees to be levied in respect of the issue of stock certificates.

(2) The power to make rules under sub-section (1) is subject to the following conditions.

(i) A draft of the rules shall be published in three consecutive issues of the Official Gazette;

(ii) The same shall have no effect until approved by the State Government after such publication and until such approval has also been published in the Official Gazette;

(iii) The State Government may at any time by notification cancel any rule published under the provisions of this section.

71. Place and currency of loans raised :-

All loans contracted by the Board, shall be raised in India, and in Indian currency, unless the State Government shall, by a notification in the Official Gazette, otherwise direct.

72. Securities for loans :-

All loans may be raised on the security of.

(a) the property now vested, or which may hereafter become vested in the Board, other than any sums set apart by the Board as a sinking fund for the purpose of paying off any loan; and

(b) the tolls, dues, rates, rents and charges leviable under this Act.

73. Remedies of the Government in respect of loans made to Board :-

The Government shall have, in respect of loans made by it to the Board, or to the Mangalore Port Conservancy Board, the same remedies as debenture-holders; and it shall not be deemed to possess any prior or greater rights in respect of such loans than debenture-holders.

74. Power to repay loans before due date :-

The Board may apply any sum, not less than ten thousand rupees which can be so applied without prejudicing the security of the other debenture-holders of the Board, in repaying to the Government any sum which may remain due to it in respect of the principal of any loan before the time fixed for the repayment of the same. On any such repayment being made, the portion of any subsequent installment which represents interest shall be reduced to such an amount as represents interest on the outstanding principal.

75. Establishment of sinking fund :-

In the case of loans raised by the Board which are not repayable before the expiration of one year from the date of the loan, 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 shall have been obtained, exceed thirty years; but the maximum period shall not in any case exceed sixty 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 from the State Government.

76. Investment of sinking fund :-

(1) The sums so set apart shall be invested in securities of the Central or the State Government or in Port Trust Securities, and shall be held in trust for the purposes of the Act by two trustees, one being the Board and the other a person appointed by the State Government.

(2) Application of sinking fund. The Board may apply the whole or any part of the sums accumulated in the sinking fund in or towards the discharge of the moneys for the repayment of which the fund has been established, provided that it 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.

77. Examination of sinking fund :-

The sinking fund established for the liquidation of any loan shall be subject to annual examination by the Accountant-General, Madras, who shall ascertain whether the cash and the current value of the securities at the credit of the fund are actually equal to the amount which would have been accumulated, had investments been regularly made, and had the rate of interest as originally estimated been obtained thereon. The Board shall pay forthwith into the sinking fund any amount which the Accountant-General may certify to be deficient.

78. Power 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 (Central Act IX of 1914).

CHAPTER 8
Expenditure

79. Objects on which Board may spend money :-

(1) Subject to the provisions of Section 99 and to any other law for the time being in force, the rents, income, and other proceeds of any property vested in, or acquired by, the Board under this Act, and all moneys acquired by the Board under or by virtue of this Act shall be applied by the Board as follows and in the following order, namely.

(a) the salaries, fees, allowances, pensions, gratuities, compassionate allowances or other moneys due to the Chairman, Vice- Chairman, officers and servants appointed under this Act, and the contributions, if any, authorized to be made to any provident fund established for the benefit of the said officers and servants;

(b) the cost of repairs to and the maintenance of the property vested in the Board, and all charges upon the same and all working expenses;

(c) the payment of any interest which is from time to time owing by the Board;

(d) payments to sinking funds and the repayment of the principal

of loans as they fall due;

(e) the cost or portion of the cost of any new work, plant, vessel, or appliance which the Board may determine to charge to revenue;

(f) the remuneration of the members of the Board; and

(g) generally for the purposes of this Act.

(2) The Board may, with the special sanction of the State Government incur expenditure on the provision of amenities for the recreation of its employees, or otherwise for the promotion of their well-being.

80. Establishment of reserve fund :-

(1) The Board may, from time to time, set aside such sums out of its revenue surplus, as it thinks fit, as a reserve fund or funds for the purpose of providing against any temporary decrease of revenue or increase or expenditure from transient causes or for purposes of replacement, or for meeting expenditure arising from loss or damage from fire, shipwreck or other accident, or for any other emergency arising in the ordinary conduct of its work under this Act: Provided that the sums set aside as a reserve fund or funds shall not exceed such amount, annual or in the aggregate, as may from time to time be fixed by the State Government.

¹ [(2) Such reserve fund may be invested.

(i) in promissory notes or other securities of the Central or the State Government or in Port Trust Securities; or

(ii) with the previous sanction of the State Government in fixed deposit account in a Bank specified in column (2) of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970) to such extent and subject to such conditions as the State Government may fix and impose.]

1. Sub-section (2) substituted by Act No. 60 of 1976 and subsequently repealed by Act No. 22 of 2000, w.e.f. 29-11-2000.

81. Prior sanction of State Government to charge expenditure to capital :-

No expenditure shall be charged by the Board to Capital without the previous sanction of the State Government.

82. Works requiring sanction of Board of State Government

:-

Before any new work or appliance, the estimated cost of which exceeds two thousand rupees, is commenced or provided by the Board, or any contract in respect of any such new work or appliance is entered into by the Board, a plan of, and estimate for such work or appliance shall be submitted to, and approved by the Board; and, if the estimated cost of such new work or appliance exceeds twenty-five thousand rupees, the sanction of the State Government, to the plan and estimate shall be obtained before such work is commenced, or appliance provided.

83. Restriction of expenditure to budget grant :-

Save in a case requiring immediate, action, the Board shall not, without the assent of the State Government, spend on any item of expenditure any greater sum than shall have been allotted for that item in an estimate approved by the State Government and for the time being in force.

84. Limit to excess of expenditure over budget grant :-

(1) In a case requiring immediate action, the Board may, without the assent of the State Government, spend on any item of expenditure on which the Board is empowered to spend money under this Act.

(i) any sum not exceeding five thousand rupees in excess of any sum which may have been allotted for that item in an estimate approved by the State Government and for the time being in force;

(ii) any sum not exceeding five thousand rupees on any item for which no funds have been allotted in any such estimate.

(2) Whenever the Board sanctions any expenditure under sub-section (1), the Chairman shall forthwith report to the State Government the circumstances of the case and the manner in which the Board proposes to meet the expenditure.

CHAPTER 9

Accounts, Estimates and Contracts

85. Audit and examination of accounts :-

Power of auditors to call for books, etc The accounts of the receipts and expenditure of the Board shall, once in every year, be laid before the State Government and shall be audited and examined by such auditors as shall, from time to time, be appointed by the State Government. For the purposes of any such audit and

examination of accounts, the auditors may by summons in writing, require the production before them of all books, deeds, contracts, vouchers, and all other documents and papers which they deem necessary; and may require any person holding or accountable for any such books, deeds, contracts, vouchers, documents, or papers to appear before them at any such audit and examination or adjournment thereof; and to answer all questions which may be put to him with respect to the same, or to prepare and submit any further statement which such auditors may consider necessary in explanation thereof.

86. Publication of audit report :-

Within fourteen days after the audit and examination have been completed, the auditors shall report upon the accounts audited and examined, and shall forward copies of their report to the State Government and to the Board. The Board shall cause the report and an abstract of the accounts to be published in the Official Gazette and the South Kanara District Gazette.

87. Auditors remuneration :-

The auditors shall be paid by the Board such remuneration as the State Government may determine.

88. Submission to Board of annual estimate of income and expenditure :-

The Chairman shall, at a special meeting to be held on or before the twentieth day of January in each year, lay before the Board an estimate of the income and expenditure of the Board for the financial year then next ensuing. Every such estimate shall be in such form as the State Government may prescribe.

89. Circulation of estimate to Trustees :-

Such estimate shall be printed, and a copy thereof sent by post or otherwise to each Trustee not less than ten clear days prior to the day appointed for the special meeting before which the estimate is to be laid under Section 88.

90. Revision and passing of estimate :-

It shall be in the discretion of the Board, at such meeting, to pass or to reject the estimate, or to modify or alter it, and to pass it as so modified or altered.

91. Approval of estimate by State Government :-

(1) Every such estimate, when so passed by the Board, shall be

submitted to the State Government not later than the tenth day of February; and the State Government may either approve the estimate, or may return it with remarks and may call for such additional information as they may deem necessary; and the Board shall forthwith proceed to reconsider the estimate with reference to such remarks, and shall furnish such additional information as the State Government may call for and shall, if necessary, modify or alter the estimate and shall re-submit it to the State Government.

(2) The State Government shall then pass, reject or modify all or any of the items entered in the estimate or add thereto any items. Provided that no such modification, rejection or addition be inconsistent with provisions of this Act or involve the raising of a loan.

92. Preparation of supplemental estimates :-

The Board may, in the course of any year for which an estimate has been approved by the State Government, cause one or more supplemental estimates for the residue of such year to be prepared and laid before the Board; the procedure prescribed by Sections 89, 90 and 91 shall, so far as it may be applicable, be followed in the case of such supplemental estimates.

93. Power to enter into contracts :-

(1) Subject to the provisions of subsection (2), the Board may enter into any contract for carrying into effect the purposes of this Act.

(2) Where the sum payable under any such contract exceeds twenty-five thousand rupees, the Board shall enter into the contract only with the assent of the State Government.

94. Mode of executing contract :-

Subject to such restrictions or conditions as the Board may determine, every contract for and on behalf of the Board shall be executed by the Chairman or Vice-Chairman in such manner and form as if such contract were on his own behalf.

95. Power to compound or compromise claims :-

The Board may compound or compromise any claim or demand arising out of any contract entered into by the Board or any action or suit instituted by or against the Board.

CHAPTER 10

Pilots and Harbour-Masters

96. Pilotage fees :-

The Board shall have the right and privilege of maintaining pilots or harbour-masters for the navigation of vessels at the port, and all fees for pilotage shall be paid to the Board.

97. Appointment of Pilots :-

No person shall be appointed as pilot or harbour-master who is not for the time being authorized by the State Government under the provisions of the Indian Ports Act, 1908 (Central Act XV of 1908), to pilot vessels.

98. Rules and regulations regarding pilots :-

(1) Notwithstanding anything contained in Sections 24, 25 and 27, the Board may make special regulations for regulating the behaviour and conduct of pilots or harbourmasters, and may provide that any breach thereof shall render the person committing it liable to a penalty not exceeding two hundred rupees in addition to such punishment in the form of suspension, dismissal or the like as the Board may deem expedient to inflict.

(2) Such regulations shall have no effect until they have been approved by the State Government and published in the Official Gazette.

99. Pilotage account :-

In the accounts of the Board, a pilotage account shall be kept separate from the general account. All fees for pilotage and all fines and penalties levied under this Act from pilots or harbour-masters or other persons employed in the pilot service other than fines and penalties imposed by a Court shall be credited to the pilotage account.

100. Expenditure on pilotage :-

All sums credited to the pilotage account under Section 99 may be applied, in such proportions as the Board may from time to time direct, to the following purposes only, namely.

(1) the purchase and maintenance in repair of such vessels, and the supply of such materials, stores or other things as the Board may deem it necessary to maintain or supply for the efficiency of the pilot service;

(2) the payment of the salaries and allowances of pilots or harbourmasters and other officers and servants of the Board

employed in the pilot service or in the supervision thereof;

(3) the payment of pensions or retiring gratuities or compassionate allowances to pilots or harbour-masters and other officers and servants engaged in the pilot service, and of the contributions, if any, duly authorized to be made in their behalf to any provident fund;

(4) the payment of pensions, gratuities, and compassionate allowances granted by the Board to pilots or harbour-masters and other officers and servants engaged in the pilot service, who have been injured in the execution of their duty and to the surviving relatives of pilots or harbour-masters, officers and servants so engaged, who may die in the service of the Board.

CHAPTER 11

Bye-laws

101. Power to frame bye-laws :-

The Board may, from time to time, make bye-laws not inconsistent with the provisions of this Act or of the Indian Ports Act, 1908 (Central Act XV of 1908).

(1) for the guidance of persons employed by the Board under this Act;

(2) for the safe and convenient use of the docks, wharves, quays, jetties, sheds, warehouses, railways, tramways, and other works constructed by or vested in the Board under this Act;

(3) for the use of the public landing places constructed by or vested in the Board;

(4) for the reception, portorage, storage and removal of goods brought within the premises of the Board and for the exclusive conduct of these operations by the Board or persons employed by the Board;

(5) for keeping clean the harbour and basins and the works of the Board, and for preventing filth or rubbish being thrown therein or thereon;

(6) for the mode of the payment of the rates leviable under this Act;

(7) for regulating, declaring and defining the docks, wharves, quays, jetties, stages, and piers vested in the Board on which

goods will be landed from vessels and shipped on board vessels;

(8) for regulating the lighterage of cargo between ships, or between ships and shore or between shore and ships;

(9) for the exclusion from its premises of disorderly or other undesirable persons and of trespassers; and

(10) generally for carrying out the purposes of this Act.

102. Validity of bye-laws :-

No bye-law, or alteration or revocation of a bye-law, shall have effect until the same has been published in three successive issues of the Official Gazette and one issue of the South Kanara District Gazette and has been approved by the State Government.

103. Penalties for infringement of bye-laws :-

The Board may provide that a breach of any bye-law shall be punishable with fine which may extend to one hundred rupees and in case of a continuing breach with fine which may extend to fifty rupees for every day during which the breach continues after conviction for the first breach.

104. Exhibition of bye-laws and scales of rates and charges :-

The Board shall cause the said bye-laws and the scales of rates leviable by the Board together with a statement of the conditions under which it is prepared to render service or to provide for services to be rendered to be hung up at the several wharves, docks, and piers and other convenient places on the premises of the Board.

105. Cancellation of bye-laws :-

The State Government may, by an order published in the Official Gazette and the South Kanara District Gazette at any time, annul any such bye-law.

CHAPTER 12

Penalties

106. Penalty for being interested in contracts with Board :-

Any person who, being a Trustee or an officer or servant of the Board, shall, in any case not covered by clause (e) of sub-section (1) of Section 8, acquire, directly or indirectly, any share or interest in any contract or employment with, by, or on behalf of, the Board, shall be deemed to have committed an offence punishable under

Section 168 of the Indian Penal Code (Central Act XLV of 1860).

107. Penalty for obtaining illegal gratification :-

Any officer or servant of the Board, not being a public servant within the meaning of Section 21 of the Indian Penal Code (Central Act XLV of 1860), who shall accept or obtain, or agree to accept or attempt to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a reward for doing or forbearing to do, any official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person; or for rendering or attempting to render any service or disservice to any person with the Board or with any public servant as such, or with the Government, shall be liable to the same punishment as is provided by the Indian Penal Code (Central Act XLV of 1860), in the case of the like offence committed by a public servant.

108. Penalty for refusing or neglecting to appear before an auditor of accounts, etc :-

Any person who, when duly required so to do by any auditor of accounts under Section 85, shall refuse or neglect to appear before such auditor or to produce any books, deeds, contracts, accounts, vouchers, documents or papers, or to answer any question or prepare and submit any statement, shall be punishable for every such neglect or refusal with fine which may extend to one hundred rupees.

109. Penalty for infringement of Sections 34, 35 or 37 :-

Whoever infringes any order issued under Section 34 or 35 or violates any condition imposed under Section 37 shall be punished with fine which may extend from ten to one hundred rupees; if the infringement or violation be continuing, with a further fine which may extend to one hundred rupees for every day during which such infringement or violation continues.

110. Penalty for depositing filth, etc., on the wharves or foreshore :-

Any person who without licence of Competent Authority wilfully deposits, or permits his servants to deposit any dust, dirt, dung, ashes, refuse or filth of any kind, or broken glass, earthenware, or rubbish, in or upon any wharf, dock or pier in the possession of the Board, or in or upon any part of the foreshore of the port, shall be punishable with fine which may extend to ten rupees for each offence.

111. Penalty for setting up wharves, quays, etc., without permission :-

(1) Any person, other than the Board or the Conservator of the Port, who shall, without first obtaining the written consent of the State Government to his so doing, make, set up or fix, within the limits of the port, any wharf, quay, pier, mooring or other erection whatsoever, shall be punishable with fine which may extend to one thousand rupees, and to a further fine which may extend to one hundred rupees for every day during which he shall permit such wharf, quay, pier, mooring or other erection, to remain after notice to remove the same has been given to him.

(2) Any such wharf, quay, pier, mooring or other erection within the limits of the port may be removed by the Board and the person who made, set up, or fixed the same, shall be liable to pay all expenses which may be incurred by the Board in the removal thereof. Such expenses shall, on the application of the Board be recoverable under a Magistrate's warrant as if the amount were a fine inflicted by such Magistrate.

112. Penalty for understating quantity or weight of goods, or incorrectly describing them :-

If it be found when goods are imported at, or exported from, any wharf, dock or pier in the possession of the Board, that the weight, quantity or description of such goods has been understated or incorrectly given in any document presented to any officer of the Board for the purpose of enabling him to determine the rates payable in respect of the said goods, the owner of such goods shall be liable to pay to the Board such sum not exceeding twice the proper rates on the whole weight or quantity of the consignment of goods so understated or incorrectly described, as may be determined by the Board, and the said sum shall, on the application of the Board, be recoverable under a Magistrate's warrant as if it were a fine inflicted by such Magistrate.

113. Penalty for evading rates, etc :-

Any person who removes or attempts to remove, or abets the removal of, any vessel or goods with the intention of evading payment of the rates lawfully due in respect thereof to the Board, shall be punishable with fine which may extend to fifty rupees.

114. Recovery of value of damage to property of Board :-

If through the negligence of any person having the guidance or

command of any vessel, or of any of the mariners or persons employed on such vessel, damages shall be caused to any wharf, dock, pier or other work in the possession of 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, spars, ropes, cables, anchors or stores belonging to such vessel:

Provided that no Magistrate shall issue such a warrant until the master of the vessel has been summoned to appear before him and, if he appears, until he has been heard; and provided also that no such warrant shall issue if the vessel was at the time under the orders of a duly authorized servant of the Board or officer in the pilot service of the port unless the damage caused was in no way attributable to the order, act or improper omission of such servant or officer,

115. Cognizance of offences against Act or bye-laws :-

Save as otherwise

provided, no Magistrate other than a Magistrate of the first or second class shall try any offence against this Act or against any bye-law published under Section 102.

CHAPTER 13

Miscellaneous

116. Saving of power of Customs Collector under existing law :-

Nothing in this Act shall affect any power vested in the Chief Officer of Customs under any law for the time being in force.

117. Limitation of proceedings in respect of things done under the Act :-

No suit or other proceeding shall be commenced against any person for anything done, or purporting to have been done, in pursuance of this Act until the expiration of one month after notice in writing has been given to him stating the cause of action or after the expiration of six months from the date on which the cause of action for such suit or proceeding arose.

118. Saving of liability of Board for acts of officers or servants :-

(1) The Board shall not be liable for any act or default of any officer

or servant appointed under this Act, or under the Indian Ports Act, 1908 (Central Act XV of 1908), if the Board be appointed by Government under the Indian Ports Act to be Conservator of the Port, or of any person acting under the authority or direction of any such officer unless such act or default is done or made under the direction of the Board; nor for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers, or other things belonging to the Board; nor shall the Board, or any of the said officers or servants, be liable in damages for any act bona fide done, or ordered to be done by them in pursuance of this Act.

(2) Notwithstanding anything contained in sub-section (1), the Board may, in any special case, with the sanction of the State Government, award compensation to any person for any act done, default made or damage caused by the Board or any of its employees.

119. Power of State Government to make rules under the Act :-

(1) The State Government may make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely.

(a) the qualifications of persons to be elected as Trustees of the Board;

(b) the salary and allowances to be paid to the Chairman, Vice-Chairman and persons appointed to act during their absence on leave and the conditions and restrictions upon and under which the same are payable;

(c) the fees payable to the Chairman, Vice-Chairman and other Trustees of the Board for attendance at meetings and the conditions and restrictions upon and under which such fees are payable;

(d) the enquiry into and decision of objections referred to in Section 19;

(e) the conditions subject to which the Board may relinquish the performance of any of the services specified in clauses (a) and

(b) of sub-section (1) of Section 40 or enter into any agreement accepting a greater or less liability than that imposed on the Board by sub-section (1) of Section 41;

(f) the form of the receipt to be given under sub-section (3) of Section 40 by the Board, or under sub-section (1) of Section 43 by a person to whom any services have been relinquished; ¹[x x x]

² [(f-a) the form of any notice required or authorised to be given under Chapter V-A and the manner in which it may be served;

(f-b) the holding of inquiries under Chapter V-A;

(f-c) the procedure to be followed in taking possession of Port premises;

(f-d) the manner in which and the principles according to which damages for unauthorised occupation may be assessed;

(f-e) the manner in which appeals may be preferred and the procedure to be followed in appeals; and;]

(g) the form of annual estimates of income and expenditure to be laid before the Board under Section 88.

(3) The power to make rules under this section is subject to the following conditions.

(a) a draft of the rules shall be published in the Official Gazette and the South Kanara District Gazette;

(b) such draft shall not be further proceeded with until one month after such publication;

(c) all rules made under this section shall be published in the Official Gazette and the South Kanara District Gazette, and upon such publication shall have effect as if enacted in this Act.

1. The word "and" omitted by Act No. 38 of 1964 and subsequently repealed by Act No. 22 of 2000, w.e.f. 29-11-2000.

2. Clauses (f-a) to (f-e) inserted by Act No. 38 of 1964 and subsequently repealed by Act No. 22 of 2000, w.e.f. 29-11-2000.

120. Submission of returns and information to State Government :-

The Chairman shall supply such returns and information as may be called for by the State Government for the purposes of this Act.

121. Power of State Government to take possession of

works and cancel powers of Board :-

If, at any time, it appears to the State Government that the works intended to be executed by the Board under this Act have not been, and are not likely to be, properly carried out or maintained by the Board the State Government may give six months' notice by order published in the Official Gazette, that unless, within that period, the Board takes measures to the satisfaction of the State Government for the carrying out or maintenance of the said works, the powers by this Act conferred on the Board shall, at the end of such period, be withdrawn or revoked. If, at the end of such period, the Board has not taken such measures, the State Government, may assume possession and management of the works already constructed, and may, by a like notification, declare the powers of the Board to be withdrawn or revoked; and upon publication of such notification, all immovable and movable property, all rights of levying and recovering rates and penalties, all benefit of contracts, and all rights of suit which at the time are vested in the Board, shall be transferred to, and vested in, the State Government; and the rights of all creditors of the Board under this Act shall continue as against the State Government to the extent of the property so transferred to and vested in them.

SCHEDULE 1

The properties vested in the Board

SCHEDULE

[See Section 29]

The properties vested in the Board

