

Maharashtra Maritime Board Act, 1996

15 of 1997

[17 January 1997]

CONTENTS

CHAPTER 1 :- PRELIMINARY

1. Short Title, Extent, Commencement And Application
2. Definitions

CHAPTER 2 :- ESTABLISHMENT OF MAHARASHTRA MARITIME BOARD

3. Establishment Of Maharashtra Maritime Board
4. Disqualification Of Members
5. Term Of Office Of Members
6. Removal Of Members Of Board
7. Eligibility Of Appointment
8. Filling Of Vacancy
9. Absence Of Chairman
10. Meeting Of Board
11. Committees Of Board
12. Fees And Allowances Payable To Members
13. Member Of Board Or Committee Not To Vote In Certain Cases
14. Defects In Appointment Not To Invalidate Acts, Etc.
15. Delegation Of Powers
16. Duties Of Chairman, Etc.

CHAPTER 3 :- STAFF OF THE BOARD

17. Chief Executive Officer Of Board
18. Financial Controller-Cum-Chief Accounts Officer, Officers And Employees Of Board
19. Power To Grant Leave, Etc., To Employees Of Board

CHAPTER 4 :- PROPERTY AND CONTRACTS

20. Transfer Of Assets And Liabilities Of State Government To Board
21. Existing Rates, Etc., To Continue Until Altered By Board
22. Repayment Of Capital With Interest
23. Procedure When Land Cannot Be Acquired By Agreement
24. Contracts By Board

CHAPTER 5 :- WORKS AND SERVICES TO BE PROVIDED AT

MINOR PORTS BY THE BOARD

- 25. Power Of Board To Execute Works And Provide Appliances
- 26. Power Of Board To Undertake Certain Works
- 27. Power Of Board To Order Sea-Going Vessels To Use Docks, Wharves, Etc.
- 28. If Accommodation Sufficient, All Sea-Going Vessels Compelled To Use Docks, Wharves, Etc.
- 29. Power To Order Vessels Not To Come Alongside Of, Or To Be Removed From, Docks, Wharves, Etc.
- 30. Power Of Government To Exempt Vessels From Obligation To Use Wharves, Etc.
- 31. Board To Declare When Vessels Other Than Sea-Going Vessels Compelled To Use Dock, Wharves, Etc.
- 32. Performance Of Services By Board Or Other Person
- 33. Responsibility Of Board For Loss, Etc., Of Goods
- 34. Accommodation To Be Provided For Officers Of Customs In Wharves, Etc., Appointed Under Customs Act, 1962
- 35. Power To Permit Erection Of Private Wharves, Etc., Within Limits Of A Port Subject To Conditions
- 36. Compensation Payable In Certain Cases Where Use Of Any Private Wharf, Etc., Rendered Unlawful

CHAPTER 6 :- IMPOSITION AND RECOVERY OF RATES AT PORTS

- 37. Scales Of Rates For Services Performed By Board Or Other Person
- 38. Scales Of Rates And Statement Of Conditions For Use Of Property Belonging To Board
- 39. Consolidated Rates Of Combination Of Services
- 40. Power To Levy Concessional Rates In Certain Cases
- 41. Prior Sanction Of State Government To Rates And Conditions
- 42. Power Of State Government To Require Modification Or Cancellation Of Rates
- 43. Remission Of Rates Of Charges
- 44. Refund Of Excess Charges
- 45. Notice Of Payment Of Charges Short Levied Or Erroneously Refunded
- 46. Time For Payment Of Rates On Goods
- 47. Boards Lien For Rates
- 48. Ship-Owners Lien For Freight And Other Charges
- 49. Sale Of Goods After Two Months, If Rates Or Rent Are Not Paid Or Lien For Freight Is Not Discharged
- 50. Disposal Of Goods Not Removed From Premises Of Board Within Limit
- 51. Application Of Sale Proceeds
- 52. Recovery Of Rates And Charges By Distraint Of Vessel
- 53. Grant Of Part Clearance After Payment Of Rates, Realisation Of Damages, Etc.

CHAPTER 7 :- BORROWING POWERS OF BOARD

54. Power To Raise Loans
55. Board Securities
56. Right Of Joint Or Several Payees Of Securities
57. Power Of Two Or More Joint Holders To Give Receipt
58. Endorsement To Be Made On Security Itself
59. Endorsement Of Security Not Liable For Amount Thereof
60. Impression Of Signature On Securities
61. Issue Of Duplicate Security
62. Conversion Of Securities
63. Discharge In Certain Cases
64. Security For Loans Taken By Board
65. Remedies Of Government In Respect Of Loans Made To Board
66. Power Of Board To Repay Loans Before Due Date
67. Establishment Of Sinking Fund
68. Investment And Application Of Sinking Fund
69. Annual Examination Of Sinking Fund
70. Powers Of Board To Raise Loan On Short Term Bills
71. Powers Of Board To Take Temporary Loans Or Overdrafts
72. Power Of Board To Borrow Money From International Bank For Reconstruction And Development Of Other Foreign Institution

CHAPTER 8 :- REVENUE AND EXPENDITURE

73. General Fund Of Board
74. Application Of Moneys In General Funds
75. Power To Transfer Moneys From General Fund To Specified Account And Vice-Versa
76. Establishment Of Reserve Funds
77. Power To Reserve Maritime Board Securities For Boards Own Investments
78. Prior Sanction Of Government To Charge Expenditure To Capital
79. Works Requiring Sanction Of Board Or Government
80. Power Of Chief Executive Officer As To Execution Of Work
81. Power Of Board To Compound Or Compromise Claims
82. Writing-Off Losses
83. Power, Etc., Of Board As Conservator
84. Budget Estimates
85. Preparation Of Supplementary Estimates
86. Reappropriation Of Amount In Estimates
87. Adherence To Estimate Except In Emergency
88. Accounts And Audits
89. Publication Of Audit Report
90. Board To Remedy Defects And Irregularities Pointed Out In The Audit Report
91. Government To Decide Difference Between Board And Auditors

CHAPTER 9 :-SUPERVISIONAND CONTROL OF STATE GOVERNMENT

92. Administration Report
93. Submission Of Statement Of Income And Expenditure To State

Government

94. Power Of Government To Supersede Board

95. Power Of Government To Give Directions To Board

CHAPTER 10 :- PENALTIES

96. Persons Employed Under This Act To Be Public Servants For Certain Purposes

97. Penalty For Contravention Of Sections 27, 28, 29 And 30

98. Penalty For Setting Up Wharves, Quay, Etc., Without Permission

99. Penalty For Evading Rates, Etc.

100. Recovery Of Value Of Property Of Board

101. Other Offences

102. Cognizance Of Offences

103. Offence By Companies

CHAPTER 11 :- MISCELLANEOUS

104. Local Advisory Committee

105. Limitation Of Proceedings In Respect Of Things Done Under This Act

106. Protection Of Act Done In Good Faith

107. Power Of State Government To Make Rules

108. Power To Make Regulations

109. Provisions With Respect To Regulations

110. Power Of Government To Direct Regulations To Be Made Or To Make Regulations

111. Power Of Government To Make First Regulations

112. Posting Of Certain Regulations, Etc.

113. Saving Of Right Of Government And Municipalities To Use Wharves, Etc., For Collection Of Duties And Power Of Customs Officers

114. Application Of Provisions Of This Act To Aircraft

115. Power To Remove Difficulties

116. Deletion Of Section 5A Of Act No. Xv Of 1908

117. Repeal And Savings

118. Repeal Of Mah. Ord. Xvi Of 1996 And Saving

Maharashtra Maritime Board Act, 1996

15 of 1997

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PREAMBLE

An Act to make provision for constitution of a Maritime Board for minor ports in the State of Maharashtra and to vest administration, control and management of such ports in that Board and to provide for matters connected therewith and incidental thereto.

WHEREAS it was expedient to make provisions for the constitution

of a Maritime Board for minor ports in the State of Maharashtra and to vest administration, control and management of such ports in that Board and to provide for matters connected therewith and incidental thereto;

AND WHEREAS both Houses of the State Legislature were not in session;

AND WHEREAS the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to make a law, for the purposes aforesaid; and, therefore, promulgated the Maharashtra Maritime Board Ordinance, 1996, on the 4th October, 1996;

AND WHEREAS it is expedient to replace the said Ordinance by an Act of State Legislature; It is hereby enacted in the Forty.-seventh Year of the Republic of India as follows :--

NOTES

Statement.-The State of Maharashtra has about 720 kilometers long coastline along which there are 48 minor ports. These minor ports, were under the control of the State Ports Organisation.

The State Government attaches great importance to the development of the minor ports so as to augment industrial and economic development of the State. For the purpose of achieving the said objectives the Government of Maharashtra decided to constitute the Maharashtra Maritime Boards as an apex body which would, apart from having regulatory authority would also be responsible for the development of the minor ports with the participation of the private sector. It was therefore, considered expedient to enact a law on the lines of the Gujarat Maritime Board Act, 1981 (Guj.30 of 1981) to make provision for the constitution of the Maharashtra Maritime Board for minor ports in the State of Maharashtra and to vest the administration, control and management of such ports in that Board as also for dealing with matters connected therewith.

The Board is a body corporate consisting of official and non.-official members including experts. Under the provisions of the Act power have been given to the Board to issue securities to raise finance needed for the purpose of developing minor ports as also for administration, control and management of such minor ports. Power has also been taken to the State Government to give direction to the Board in the matter of discharging its functions under the Act. The Act also provides that the Board may get funds from the State Government way of grants, loans or advances, etc. (Mah. Act No. 15 of 1997).

1. For Statement of Objects and Reasons, see Maharashtra Government Gazette, 1996, Extraordinary, Part VIII, p. 916.

CHAPTER 1 PRELIMINARY

1. Short Title, Extent, Commencement And Application :-

(1) This Act may be called the Maharashtra Maritime Board Act, 1996.

(2) It extends to the whole of the State of Maharashtra.

(3) It shall be deemed to have come into force on the 4th October, 1996.

(4) It applies to all the minor ports in the State to which the Indian Ports Act, 1908, applies on the date of the commencement of this Act and the State Government may, by notification in the Official Gazette, apply the provisions of this Act to any other minor port in the State to which the Indian Ports Act, 1908 is extended by the State Government under section 4 of that Act, and with effect from such date, as may be specified in the notification.

2. Definitions :-

In this Act, unless the context otherwise requires,.-

(a) "appointed day", in relation to any minor port, means the day on which this Act is made applicable to that port;

(b) "Board" means the Maharashtra Maritime Board constituted under section 3;

(c) "Board Security" means debentures, bonds or dock certificates issued by the Board in respect of any loan contracted by it under the provisions of this Act;

(d) "Chairman" means the Chairman of the Board appointed under section 3 and includes the person appointed under section 9 to act as the Chairman;

(e) "dock" includes all basins, locks, cuts, entrances, graving docks, graving blocks, inclined planes, slipways, gridirons, moorings, transit sheds, warehouses, godowns, open plots and other works and things appertaining to any dock and also the portion of the sea enclosed or protected by the arms or groynes of a harbour;

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

(g) "goods" includes livestock and every kind of movable property;

(h) "Government" or "State Government" means the Government

of Maharashtra;

(i) "high water mark", in relation to a port, means a line drawn through the highest point reached by ordinary spring tides during any season of the year at that port;

(j) "immovable property" includes wharfage.-rights and all other rights exercisable on, over or in respect of any land, wharf, dock or pier;

(k) "Indian Ports Act" means the Indian Ports Act, 1908;

(l) "land" includes the bed of sea or river below high water mark and also things attached to the earth or permanently fastened to anything attached to the earth;

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

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

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

(p) "minor port" means a port other than a major port declared as such by the Central Government under any law;

(q) "owner",.-

(i) in relation to goods, means and includes any consignor, consignee, shipper or agent for the sale, custody loading or unloading of such goods, and

(ii) in relation to any vessel or craft making use of any port, means and includes any port owner, charterer, consignee or mortgagee in possession thereof;

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

(s) "port" means any minor port to which this Act applies within such limits as may, from time to time, be defined by the State Government under the Indian Ports Act;

(t) "port approaches", in relation to a port, means those ports of the navigable rivers and channels leading to the port in which the Indian Ports Act is in force;

(u) "prescribed" means prescribed by rules or regulations made under this Act;

(v) "public securities" means, .-

(i) promissory notes, debentures, stock or other securities of the

Central Government or of any State Government:

Provided that, securities both the principal and the interest whereof have been fully and unconditionally guaranteed by any such Government shall be deemed, for the purposes of this clause, to be the securities of that Government; and

(ii) debentures or other securities for money issued by or on behalf of any Municipal body, Improvement Trust or Port Trust under the authority of any law for the time being in force in the State and includes the Board Securities;

(w) "rate" means and includes any toll, dues, rent, fee or charge leviable under this Act;

(x) "regulations" means regulations made under this Act;

(y) "rules" means rules made under this Act;

(z) "State" means the State of Maharashtra;

(za) "vessel" includes anything made for the conveyance, mainly by water, of human being or of goods;

(zb) "wharf includes any wall or stage and any part of the land or foreshore that may be used for loading or unloading goods for the embarkation or disembarkation of passengers and any wall enclosing or adjoining the same.

CHAPTER 2 ESTABLISHMENT OF MAHARASHTRA MARITIME BOARD

3. Establishment Of Maharashtra Maritime Board :-

(1) As soon as may be after the commencement of this Act, the Government may, by notification in the Official Gazette, establish a Board to be called "the Maharashtra Maritime Board".

(2) The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and may by the said name sue and be sued.

(3) The head.-office of the Board shall be at such place as the State Government may, by notification in the Official Gazette, direct.

(4) The Board shall consist of the Chairman, the Vice.-Chairman and not more than eleven other members to be appointed by the State Government, namely :-

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a)	Minister, Ports	ex.- officio Chairman
(b)	Minister of State, Ports	ex.- officio Vice.- Chairman
(c)	Secretary to Government, Home Department (Transport)	ex.- officio Member
(d)	Secretary to Government, Finance Department	ex.- officio Member
(e)	Secretary to Government, Industries Department	ex.- officio Member
(f)	One representative from the Indian Navy to be nominated by the Central Government	ex.- officio Member
(g)	Not more than six non.-official members to be appointed from amongst the persons who, in the opinion of the Government have experience of, and shown capacity in, one or more of the following fields, namely :	Non.- official Members
	(i) ports, shipping, maritime affairs or commerce, or in the administration of such matters;	
	(ii) engineering and harbour works;	
	(iii) accounts pertaining to industry, commerce, ports or shipping;	
	(iv) navigation, particularly with reference to dredging and hydrological survey;	
	(v) trade, commerce and industry;	
	(vi) representing the interests of workers of minor ports; and	
(h)	Chief Executive Officer of the Board appointed under section 1.	ex.- officio Member.- Secretary

4. Disqualification Of Members :-

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

- (a) has been removed or dismissed from the service of the Central or State Government or of local authority or of a corporation owned or controlled by that Government;
- (b) has been convicted for an offence involving moral turpitude; or

(c) is an undischarged insolvent; or

(d) 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 :

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

(i) having a share in any company or firm which may contract with or 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 immoveable 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 premises or property belonging to the Board; or

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

5. Term Of Office Of Members :-

Subject to the provisions of this Act, the nonofficial members of the Board shall hold office during the pleasure of the Government and in any case for a period not exceeding three years.

6. Removal Of Members Of Board :-

(1) The Government shall remove a member of the Board, if he,.-

(a) is or has become subject to any disqualification mentioned in section 4; or

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

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

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

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

(f) acts in contravention of the provisions of section 13.

(2) A non-official member of the Board may resign from his office

by tendering his resignation in writing to the Chairman who shall forward the same to the Government, but the resignation shall not take effect until it is accepted by the Government.

7. Eligibility Of Appointment :-

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

8. Filling Of Vacancy :-

(1) Any vacancy in the office of the non.-official members of the Board shall be filled as early as possible in the like manner as if the appointment were being made for the first time under the relevant clause :

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

(2) A member appointed under sub-section (1) shall hold office so long only as the member in whose place he has been appointed would have held office if the vacancy had not occurred.

9. Absence Of Chairman :-

If the Chairman is absent on leave or otherwise, the Vice-Chairman and in the absence of both the Chairman as well as the Vice.-Chairman, such person as the State Government may appoint, shall act as the Chairman.

10. Meeting Of Board :-

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

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

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

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

11. Committees Of Board :-

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

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

12. Fees And Allowances Payable To Members :-

The non-official members shall be paid by the Board such fees and allowances for attending meetings of the Board or of any of its Committees and for attending to any work of the Board as may be prescribed by rules :

Provided that,.-

(a) no fees shall be payable to a member who is a Member of Parliament or State Legislature;

(b) any allowances payable to a member who is a Member of Parliament or State Legislature shall not exceed the compensatory allowance as defined in clause (a) of section 2 of the Parliament (Prevention of Disqualification) Act, 1959 or as the case may be, in the Explanation to entry 11 in Schedule I to the Maharashtra Legislature Members (Removal of Disqualifications) Act.

13. Member Of Board Or Committee Not To Vote In Certain Cases :-

A member of the Board or of a Committee thereof, who -

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

(ii) is interested professionally on behalf of a client or as agent for any person other than the Government or an undertaking owned or controlled by the Government or a local authority or trade union

registered under the Trade Unions Act, 1926 or member of an association formed for the purpose of promoting the interest or welfare of any class of employees of the Board shall, as soon as possible after relevant circumstances have come to his knowledge disclose the nature of his interest at such meeting and the disclosure shall be recorded in the minutes of the meeting of the Board or, as the case may be, the Committee and the member shall not take part in any deliberation or decision of the Board or the Committee with respect to that matter.

14. Defects In Appointment Not To Invalidate Acts, Etc. :-

No act or proceeding of the Board or of any of its Committees shall be invalid merely by reason of,-

- (a) any vacancy therein or any defect in the constitution thereof;
- (b) any disqualification of or any defect in the appointment of, a person acting as a member thereof; or
- (c) any member having acted or taken part in any proceedings in contravention of section 13;
- (d) any irregularity in its procedure not affecting merits of the case.

15. Delegation Of Powers :-

The Board may, with the previous approval of the State Government, direct that such of the powers and duties conferred or imposed upon the Board by or under this Act as may be specified in such direction, may also be exercised or performed by the Chief Executive Officer subject to such conditions and restrictions as may be specified in such direction.

16. Duties Of Chairman, Etc. :-

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

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

(3) The Chief Executive Officer shall exercise supervision and control over the acts of all employees of the Board in the matters of executive administration and in matters concerning the accounts

and records of the Board.

CHAPTER 3 STAFF OF THE BOARD

17. Chief Executive Officer Of Board :-

(1) The State Government shall appoint the Chief Executive Officer of the Board.

(2) The salary, allowances and other conditions of service of the Chief Executive Officer shall be such as may be prescribed by the rules.

18. Financial Controller-Cum-Chief Accounts Officer, Officers And Employees Of Board :-

(1) The Board shall, with the previous sanction of the State Government, appoint a person possessing the qualification prescribed by rules to be the Financial Controller.-cum.-Chief Accounts Officer. The State Government may sanction such appointment on such terms and conditions as it thinks fit.

(2) The Board may create such other posts and appoint such other officers and employees as it considers necessary for the efficient performance of the functions of the Board and determine by regulations their conditions of appointment and service and remuneration payable to them :

Provided that, no person shall be appointed as a pilot at any port who is not for the time being authorised by the State Government under the Indian Ports Act to pilot vessels at that port.

(3) The Board shall, from time to time, prepare and sanction a Schedule of the employees of the Board considered necessary, adequate and proper to maintain for the purposes of this Act and such Schedule shall indicate therein the designations and grades of employees and the salaries, fees and allowances which are proposed to be paid to them.

19. Power To Grant Leave, Etc., To Employees Of Board :-

(1) Subject to any regulations, the power of granting extension of service to, or granting leave to, suspending, reducing, removing or dismissing or of disposing of any other question relating to the services of the employees of the Board including the power of dispensing with the services of any such employee otherwise than by reason of the misconduct of such employee, shall be exercised by the Board or such authority as may be laid down by regulations.

(2) Any officer or employee of the Board aggrieved by an order involving his reduction in rank, removal or dismissal may, within such time and in such manner as may be provided for by regulations, prefer an appeal to the State Government.

CHAPTER 4 PROPERTY AND CONTRACTS

20. Transfer Of Assets And Liabilities Of State Government To Board :-

As from the appointed day in relation to any port,.-

(a) all property, assets and funds and all rights to levy rates vested in the State Government for the purposes of the port, immediately before such day, shall vest in the Board;

(b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for, the State Government immediately before such day, for or in connection with the purposes of the port shall be deemed to have been incurred, entered into and engaged to be done by, with, or for, the Board;

(c) all non-recurring expenditure incurred by the State Government for or in connection with the purposes of the port upto such day and declared to be capital expenditure by the State Government shall be treated as the capital provided by the Government to the Board;

(d) all rates, fees, rents and other sums of money due to the Government in relation to the port, immediately before such day, shall be deemed to be due to the Board;

(e) all suits and other legal proceedings instituted by or against the Government immediately before such day for any matter in relation to port, may be continued by or against the Board;

(f) every employee serving under the Government immediately before such day solely or mainly for or in connection with the affairs of the minor port shall become an employee of the Board, and shall hold his office or service therein by the same tenure and upon the same terms and conditions of service as he would have held the same if the Board had not been established and shall continue to do so unless and until his employment in the Board is terminated or until his tenure, remuneration or terms and conditions of service are duly altered by the Board :

Provided that, the tenure, remuneration and terms and conditions of service of any such employee shall not be altered to his disadvantage without the previous sanction of the Government.

21. Existing Rates, Etc., To Continue Until Altered By Board

:-

As from the appointed day, all rates, fees and other charges in relation to any port, shall unless and until varied in accordance with the provisions of this Act, continue to be levied and collected, at the same rate at which they were being levied and collected by the State Government before such day.

22. Repayment Of Capital With Interest :-

The Board shall repay, at such intervals and on such terms and conditions as the Government may determine, the amount which is treated under clause (c) of section 20 as capital provided by the Government, with interest at such rate as may be fixed by the Government and such repayment of capital or payment of interest shall be deemed to be a part of the expenditure of the Board.

23. Procedure When Land Cannot Be Acquired By Agreement :-

Where any land is required for the purposes of the Board, the Government may, at the request of the Board, procure the acquisition thereof under the provisions of the Land Acquisition Act, 1894, and on payment by the Board of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the Board.

24. Contracts By Board :-

With respect to the making of contracts by the Board for the purposes of this Act, the following provisions shall have effect, namely :-

(a) Every contract shall be made on behalf of the Board by the Chief Executive Officer or an officer authorised by the Board.

(b) No contract for leasing waterfront, jetty, waterway and corresponding infrastructural facilities thereof for a term exceeding five years shall be made unless it is previously approved by the Government on such terms and conditions as it may think fit.

(c) No contract for the acquisition or sale of immoveable property or for the lease of any such property for a term exceeding thirty days, shall be made unless it is previously approved by the Government, on such terms and conditions as it may think fit.

(d) The form and manner of executing contracts on behalf of the Board shall be such as may be prescribed by rules.

(e) No contract which is not made in accordance with the provisions of this Act and the rules shall be binding on the Board.

NOTES

Levy of penalty and additional landing charges.--In this petition, the petitioner which is a Private Limited Company which was using Mandava Jetty for unloading coal. Respondent No. 1 .- Board, issued No Objection Certificate to the petitioner containing terms and conditions. Respondent No. 1 submits that the petitioner did not abide requisite conditions so the penalty was imposed which was paid under protest. The petitioner requested respondent No. 1 to wave penalty as he has developed jetty, which was rejected. It was held by the Double Bench of the Bombay High Court that as per No Objection Certificate, the petitioner was not entitled to use jetty till agreement was executed between parties; but on ground of urgency petitioner started utilising jetty. Petitioner did not address any letter asking respondent No. 1 levying penalty without any authority of law, period of limitation is not prescribed for filing writ petition. Considering the aforesaid aspect of the matter, the High Court was of opinion that if a party allows a period of limitation prescribed under the Act to lapse it should not ordinarily be allowed to say that the petitioner should be entertained as there is no period of entertainment prescribed for filing such a writ petition. As no material was produced for the Court for coming to the conclusion that grant of reliefs would amount to unjust enrichment. The High Court dismissed the petition..- Esquire and Trading Pvt. Ltd. v. Maharashtra Maritime Board and Anr., 2009 (4) Bom. C.R. 176; See also V. M. Salgaonkar and Bros. v. Board of Trustees of Port of Mormugao Goa & Anr., 2005 (5) Bom. C.R. 374 (SC) : 2005 (4) SCC 613.

CHAPTER 5 WORKS AND SERVICES TO BE PROVIDED AT MINOR PORTS BY THE BOARD

25. Power Of Board To Execute Works And Provide Appliances :-

(1) The Board may, subject to any other law for the time being in force, execute such works, within or without the limits of port and provide such appliances as it may deem necessary or expedient.

(2) Such works and appliances may include,.-

(a) wharves, quays, docks, stages, jetties, piers, place of

anchorage and other works within the port or port approaches or on the foreshore of the port or port approaches in the State, with all such convenient arches, drains, landing places, stairs, fences, roads, bridges, tunnels and approaches, and buildings required for the residence of the employees of the Board as the Board may consider necessary;

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

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

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

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

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

(g) light.-houses, light.-ships, beacons, buoys, pilot boats and other appliances necessary for the safe navigation of the port and the port approaches in so far as it relates to State functions;

(h) vessels, tugs, boats, barges and launches and lighters for the use within the limits of the port or 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 purposes of landing, shipping or transshipping passengers or goods under section 32;

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

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

(k) lands abutting the sea coast including creeks;

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

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

(n) dry docks, slipways, boat basins and workshop to carry out

repairs or overhauling of vessels, tugs, boats, machinery or other appliances.

26. Power Of Board To Undertake Certain Works :-

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

(2) The Board may, if it considers necessary or expedient in the public interest so to do, lend any of its vessels or appliances or the services of any of its employees to any person for such period not exceeding three months and on such terms and conditions as may be agreed upon between the Board and the person concerned.

27. Power Of Board To Order Sea.-Going Vessels To Use Docks, Wharves, Etc. :-

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

(2) As from the date of the publication of such notification for the third time, it shall be lawful for the Board, from time to time, when there is room at such dock, berth, wharf, quay, stage, jetty or pier, to order to come alongside of such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage for the purpose of landing and shipping goods or passengers or for landing or for shipping the same any sea-going vessel within the port or port approaches which has not commenced to discharge goods or passengers or which being about to take in goods or passengers has not commenced to do so :

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

Provided further that, if the Board is not the Conservator of the

Port, the Board shall not itself make the order as aforesaid but shall require the Conservator of the Port or other person exercising the rights, powers and authorities of the Conservator of the Port to make such order.

28. If Accommodation Sufficient, All Sea-Going Vessels Compelled To Use Docks, Wharves, Etc. :-

When sufficient number of docks, berths, wharves, quays, stages, jetties or piers have been provided at any port or port approaches as aforesaid, the Board may, after obtaining the approval of the Collector of Customs and by notification published in three consecutive issues of the Official Gazette, direct that no goods or passengers shall be landed or shipped from or upon any sea-going vessel within the minor port or port approaches otherwise than at such docks, berths, wharves, quays, stages, jetties or piers, except with the sanction of the Board and in accordance with such conditions as the Board may specify.

29. Power To Order Vessels Not To Come Alongside Of, Or To Be Removed From, Docks, 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 or agent of any sea-going vessel not to bring such vessel alongside of, or to remove such vessel from, any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage belonging to or under the control of the Board and if, such notice is not complied with, the Board may charge in respect of such vessel such sum as it thinks fit, not exceeding one thousand rupees for each day of twenty-four hours or portion of such day, during which such vessel remains at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage :

Provided that, in the case of a vessel 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 or agent of the vessel.

30. Power Of Government To Exempt Vessels From Obligation To Use Wharves, Etc. :-

Notwithstanding anything contained in section 27 or 28, the Government may, if in its opinion it is necessary in the public

interest so to do, by general or special order, from time to time, permit certain specified vessels or classes of vessels to discharge or ship goods or certain specified goods or classes of goods at such place in a port or within the port approaches, in such manner, during such period and subject to such payments to the Board and on such conditions as the Government may think fit.

31. Board To Declare When Vessels Other Than Sea-Going Vessels Compelled To Use Dock, Wharves, Etc. :-

(1) When any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage for receiving, landing or shipment of goods or passengers from or upon vessels, not being sea-going vessels, has been made and completed with all proper appliances in that behalf, the Board may, after obtaining the approval of the Collector of Customs, by order published in the Official Gazette,.-

(i) declare that such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage is ready for receiving, landing or shipment of goods or passengers from or on vessels not being sea-going vessels; and

(ii) direct that within certain limits to be specified therein it shall not be lawful without the express sanction of the Board, to land or ship any goods or passengers, out of, or into, any vessel not being sea-going vessel of any class, specified in such order, except at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage.

(2) As from the date of the publication of the order mentioned in sub-section (1), it shall not be lawful, without the consent of the Board, for any vessel of such class, .-

(i) to land or ship any goods or passengers at any place within the limits so specified except at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage;

(ii) while within such limits, to anchor, fasten or lie within fifty yards of the ordinary low.-water mark.

(3) If after the publication of such order, any such vessel, while within the limits so specified, so anchor, fasten or lie, it shall be lawful for the Board to cause the same to be removed out of the said limits at the expense of the master or owner or agent of the vessel.

32. Performance Of Services By Board Or Other Person :-

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

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

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

(c) carrying passengers within the limits of the port or port approaches, by such means and subject to such restrictions and conditions as the State Government may think fit to impose; and

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

(2) The Board may, if so requested by the owner, take charge of the goods for the purpose of performing the service or services and shall give a receipt in such form as the Board may specify.

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

(4) No person authorised under sub-section (3) shall charge or recover for such service any sum in excess of the amount leviable according to the scale framed under sections 37, 38 or 40.

(5) Any such person shall, if so required by the owner, perform in respect of the goods any of the services and for that purpose take charge of the goods and give a receipt in such form as the Board may specify.

(6) The responsibility of 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 Contract Act, 1872.

(7) 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 has been given or to the master or owner of the vessel from which the goods have been landed or transhipped.

33. Responsibility Of Board For Loss, Etc., Of Goods :-

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

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

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

Provided that, no responsibility under this section shall attach to the Board, .-

(a) until a receipt mentioned in sub-section (2) of section 32 is given by the Board; and

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

(2) The Board shall not be in any way responsible for the loss, destruction or deterioration of, or damage to, goods of which it has taken charge, unless notice of such loss or damage has been given within such period as may be prescribed by regulations made in this behalf from the date of taking charge of such goods by the Board under sub-section (2) of section 32.

34. Accommodation To Be Provided For Officers Of Customs In Wharves, Etc., Appointed Under Customs Act, 1962 :-

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

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

35. Power To Permit Erection Of Private Wharves, Etc.,

Within Limits Of A Port Subject To Conditions :-

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

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

36. Compensation Payable In Certain Cases Where Use Of Any Private Wharf, Etc., Rendered Unlawful :-

(1) Where as a result of an order published under section 28, or section 31 the use of any wharf, dock, berth, quay, stage, jetty, pier or place of anchorage, made, fixed or erected by any person is rendered unlawful, the Board may, after hearing the person concerned by order, close, remove, fill up or destroy such wharf, dock, berth, quay, stage, jetty, pier or place of anchorage, or permit the use thereof to such person on payment of such rates and charges as the Board may, with the previous sanction of the State Government, determine.

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

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

(a) in computing the compensation, there shall not be taken into account any rates or other charges which such person shall be liable to pay for using any wharf, dock, berth, quay, stage, jetty, pier or

place of anchorage, provided by the Board;

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

(c) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(d) where no such agreement can be reached, the State Government shall appoint as an arbitrator, a person who is, or has been, or is qualified for appointment as a Judge of a High Court;

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

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

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

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

(i) nothing in the Arbitration and Conciliation Act, 1996, shall apply to arbitrations under this section;

(j) the arbitrator appointed under this section, while holding arbitration proceedings under this Act shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely :-

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

(ii) requiring the discovery and production of documents;

(iii) receiving evidence on affidavits;

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

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

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

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

CHAPTER 6 IMPOSITION AND RECOVERY OF RATES AT PORTS

37. Scales Of Rates For Services Performed By Board Or Other Person :-

(1) The Board shall, from time to time, frame by regulations 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 any person authorised under section 32 at or in relation to port or port approaches.-

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

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

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

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

(e) any other service in respect of vessels, passengers or goods excepting the services in respect of vessels for which fees are chargeable under the Indian Ports Act.

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

38. Scales Of Rates And Statement Of Conditions For Use Of Property Belonging To Board :-

(1) The Board shall, from time to time, also frame a scale of rates on payment of which and a statement of the 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 or port approaches may be used for the purposes specified hereunder :-

- (a) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;
 - (b) entering upon or plying for hire at or on any wharf, quay, pier, dock, land, building, road, bridge, approach 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, building, works, vessels or appliances belonging to or provided by the Board.
- (2) Different scales of rates and conditions may be framed for different classes of goods and vessels and for different ports.

39. Consolidated Rates Of Combination Of Services :-

The Board may, from time to time, frame a consolidated scale of rates for any combination of the services specified in section 37 or for any combination of such service or services with any use or permission to use any property belonging to, or in the possession or occupation of, the Board, as specified in section 38.

40. Power To Levy Concessional Rates In Certain Cases :-

In framing scales of rates under any of the foregoing provisions of this Chapter, the Board may prescribe a lower rate in respect of,-

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

Provided that, the Board shall not make any discrimination between one Indian port and another such port in prescribing a lower rate under this section;

(b) other goods in special cases.

41. Prior Sanction Of State Government To Rates And Conditions :-

Every scale of rates and every statement of conditions framed by the Board under the foregoing provisions of this Chapter shall be submitted to the Government for sanction and shall have effect when so sanctioned and published by the Board in the Official Gazette.

42. Power Of State Government To Require Modification Or Cancellation Of Rates :-

(1) Whenever the Government considers it necessary in the public interest so to do, it may, by order in writing, direct the Board to cancel any of the scales in force or modify the same within such period as it may specify.

(2) If the Board fails or neglects to comply with such direction within the specified period, the Government may cancel any of such scales or make such modifications therein as it may think fit :

Provided that, before so cancelling or modifying any scale the Government shall consider any objection or suggestion which may be made by the Board during the specified period.

(3) When in pursuance of this section any of the scales has been cancelled or modified, such cancellation or modification shall be published by the Government in the Official Gazette, and shall thereupon have effect accordingly.

43. Remission Of Rates Of Charges :-

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

44. Refund Of Excess Charges :-

No person shall be entitled to a refund of an excess charge made by the Board unless his claim to the refund has been preferred in writing by him or on his behalf to the Board within six months from the date of payment duly supported by all original relevant documents :

Provided that, the Board may, of its own motion, remit excess charges made in its bills at any time.

45. Notice Of Payment Of Charges Short Levied Or Erroneously Refunded :-

(1) When the Board is satisfied that any charge leviable under this Chapter has been short levied or erroneously refunded, it may issue a notice to the person who is liable to pay such charge or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :

Provided that, no such notice shall be issued after the expiry of

three years,.-

(a) when the charge is short levied, from the date of payment of the charge,

(b) where a charge has been erroneously refunded, from the date of the refund.

(2) The Board may, after considering the representation, if any, made by the person to whom notice has been issued under sub-section (1), determine the amount due from such person and thereupon such person shall pay the amount determined.

46. Time For Payment Of Rates On Goods :-

The rates in respect of goods to be landed shall be payable immediately on the landing of the goods and rates in respect of goods to be removed from the premises of the Board or to be shipped for export or to be transhipped shall be payable before the goods are removed, shipped or transhipped.

47. Boards Lien For Rates :-

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

(2) Such lien shall have priority over all other liens and claims, except for general average and for the ship.-owners lien upon the said goods for freight and other charges where such lien exists and has been preserved in the manner provided in sub-section (1) of section 48 and for money payable to the Central Government under any law for the time being in force, relating to customs other than by way of penalty or fine and to the Government under any law for the time being in force.

48. Ship-Owners Lien For Freight And Other Charges :-

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

in such notice, such goods shall continue to be liable to such lien to such amount.

(2) The goods shall be retained in the custody of the Board at the risk and expense of the owners of the goods until such lien is discharged as hereinafter mentioned and godown and storage rent shall be payable by the party entitled to such goods for the time during which they may be so retained.

(3) Upon the production before any officer appointed by the Board in that behalf of a document purporting to be a receipt for, or 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 after taking reasonable care with respect to the authenticity of such document.

49. Sale Of Goods After Two Months, If Rates Or Rent Are Not Paid Or Lien For Freight Is Not Discharged :-

(1) 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 animals and perishable or hazardous goods after the expiry of such shorter period not being less than twenty-four hours after the landing of the animals or goods as the Board may think fit, sell by public auction or in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing, sell by tender, private agreement or in any other manner such goods or so much thereof as in the opinion of the Board may be necessary,.-

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

(b) if any rent payable to the Board 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 to the Board an application for such sale.

(2) Before making such sale, the Board shall give ten days notice of the same by publication thereof in the Official Gazette, and also in at least one of the principal local daily newspapers :

Provided that, in the case of animals and perishable or hazardous goods the Board may give such shorter notice and in such manner as, in the opinion of the Board, the urgency of the case admits of.

(3) If the address of the owner of the goods has been stated in the manifest of the goods or in any of the documents which have come

into the possession of the Board or is otherwise known, notice shall also be given to him by letter delivered at such address or sent by post, but the title of a bona fide purchaser of such goods shall not be invalidated by reason of the omission to send such notice nor shall any such purchaser be bound to inquire whether notice has been sent.

(4) Notwithstanding anything contained in this section, controlled goods may be sold at such time and in such manner as the Government may direct.

Explanation..- In this section and section 50 "controlled goods" means goods the price or disposal of which is regulated under any law for the time being in force.

50. Disposal Of Goods Not Removed From Premises Of Board Within Limit :-

(1) Notwithstanding anything contained in this Act, where any goods placed in the custody of the Board upon the landing thereof are not removed by the owner or other person entitled thereto from the premises of the Board within one month from the date on which such goods were placed in their custody the Board may, if the address of such owner or person is known, cause a notice to be served upon him by letter delivered at such address or sent by post, or if the notice cannot be so served upon him or his address is not known cause a notice to be published in the Official Gazette, and also in at least one of the principal local daily newspapers requiring him to remove the goods forthwith and stating that in default of compliance therewith the goods are liable to be sold by public auction or by tender agreement or in any other manner :

Provided that, where all the rates and charges payable under this Act in respect of any such goods have been paid, no notice of removal shall be so served or published under this sub-section unless two months have expired from the date on which the goods were placed in the custody of the Board.

(2) The notice referred to in sub-section (1) may also be served on the agents of the vessel by which such goods were landed.

(3) If such owner or person does not comply with the requisition in the notice served upon him or published under sub-section (1), the Board may, at any time after the expiration of two months from the date on which such goods were placed in its custody, sell the goods by public auction or, in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing, sell by

tender, agreement or in any other manner such goods or so much thereof in the opinion of the Board may be necessary after giving notice of the sale in the manner specified in sub-sections (2) and (3) of section 49.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (3),-

(a) the Board may, in the case of animals and perishable or hazardous goods give notice of removal of such goods although, the period of one month or as the case may be, of two months specified in sub-section (1) has not expired or give such shorter notice of sale in such manner as in the opinion of the Board the urgency of the case requires;

(b) controlled goods may be sold in accordance with the provisions of sub-section (4) of section 49.

(5) The Government may, if it deems necessary so to do in the public interest, by notification in the Official Gazette, exempt any goods or classes of goods from the operation of this section.

51. Application Of Sale Proceeds :-

(1) The proceeds of every sale under section 49 or section 50 shall be applied in the following order -

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

(b) in payment, according to their respective priorities, of the liens and claims excepted in sub-section (2) of section 47 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 including demurrage (other than the penal demurrage) payable in respect of such goods for a period of four months from the date of landing;

(d) in payment of any penalty or fine due to the Central Government under any law for the time being in force relating to customs;

(e) in payment of any other sum due to the Board.

(2) The surplus, if any, shall be paid to the importer, owner or consignee of the goods or to his agent, on an application made by him in this behalf within six months from the date of the sale of the goods.

(3) Where no application has been made under sub-section (2), the surplus shall be applied by the Board for the purposes of this Act.

52. Recovery Of Rates And Charges By Distraint Of Vessel :-

(1) If the master of any vessel in respect of which any rates or penalties are payable under this Act, or under any regulations or orders made in pursuance thereof, refuses or neglects to pay the same or any part thereof on demand, the Board may distrain or arrest such vessel and tackle, apparel and furniture belonging thereto or any part thereof and detain the same until the amount so due to the Board, together with such further amount as may accrue for any period during which the vessel is under distraint or arrest, is paid.

(2) In case any part of the said rates or penalties or of the cost of the distress or arrest or the keeping of the same, remains unpaid for period 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 cost of sale remaining unpaid, rendering the surplus (if any), to the master of such vessel on demand.

53. Grant Of Part Clearance After Payment Of Rates, Realisation Of Damages, Etc. :-

If the Board gives to the officer of the Central Government whose duty is to grant the port clearance to any vessel at the port, a notice stating

(i) that an amount specified therein is due in respect of rates, fines, penalties or expenses chargeable under this Act or under any regulations or orders made in pursuance thereof, against such vessel, or by the owner or master of such vessel in respect thereof, or against or in respect of any goods on board such vessel; or

(ii) that an amount specified therein is due in respect of any damage referred to in section 100 and such amount together with the cost of the proceedings for the recovery thereof before a Magistrate under that section has not been realised, such officer shall not grant such port-clearance until the amount so chargeable or due has been paid or, as the case may be, the damage and cost have been realised.

CHAPTER 7 BORROWING POWERS OF BOARD

54. Power To Raise Loans :-

(1) The Board may raise loans, with the previous sanction of the

Government on such terms and conditions as may be prescribed by rules by Government for the purposes of this Act.

(2) Loans may be raised by the Board in the open market on the Board Securities issued by it or may be obtained from the Government or a Bank approved by the Government.

55. Board Securities :-

(1) The Board may, with the sanction of the Government, prescribed by regulations the form in which the Securities of the Board shall be issued by the Board and the mode in which, and the conditions subject to which, they may be transferred.

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

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

56. Right Of Joint Or Several Payees Of Securities :-

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

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

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

(2) Nothing herein contained shall affect any claim which any representative of a deceased person may have against the survivor or survivors under or in respect of any security to which sub-section (1) applies.

(3) For the purposes of this section, a body incorporated or deemed to be incorporated under the Companies Act, 1956, or any other enactment for the time being in force, whether within or outside India shall be deemed to die when it is dissolved.

57. Power Of Two Or More Joint Holders To Give Receipt :-

Where two or more persons are joint holders of any Board security,

any one of those persons may give an effectual receipt for any interest payable in respect of such security unless notice to the contrary has been given to the Board by any other holders.

58. Endorsement To Be Made On Security Itself :-

Notwithstanding anything contained in section 15 of the Negotiable Instruments Act, 1881, no endorsement of a Board Security which is transferable by endorsement shall be valid unless made under the signature of the holder inscribed on the back of the security itself.

59. Endorsement Of Security Not Liable For Amount Thereof :-

Notwithstanding anything contained in the Negotiable Instruments Act, 1881, a person shall not be, by reason only of his having endorsed any Board security, liable to pay any money due either as principal or as interest thereunder.

60. Impression Of Signature On Securities :-

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

(2) A signature so printed, engraved, lithographed, impressed or otherwise shall be valid as if it had been inscribed in the proper handwriting of the person so authorised.

61. Issue Of Duplicate Security :-

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

(a) the issue of a duplicate security payable to the applicant; and
(b) the payment of interest in respect of the security said to be lost, stolen or destroyed pending the issue of a duplicate security.

(2) An order shall not be passed under sub-section (1) until after the issue by the Board of the notification of the loss, theft or

destruction in the manner prescribed by regulations.

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

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

62. Conversion Of Securities :-

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

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

63. Discharge In Certain Cases :-

Notwithstanding anything contained in the Limitation Act, 1963.-

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

(ii) when a duplicate security has been issued under section 61, or

(iii) when a new security or securities has or have been issued upon conversion, consolidation or sub.-division under section 62.the Board shall be discharged from all liabilities in respect of the securities,-

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

(b) in the case of a duplicate security after the lapse of six years from the date of the publication under sub-section (3) of section 61 of the list in which the security is first mentioned or from the date of the last payment of interest on the original security, whichever is later;

(c) in the case of a new security issued upon conversion, consolidation or sub.-division after the lapse of six years from the

date of the issue thereof.

64. Security For Loans Taken By Board :-

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

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

(i) any sum set apart by the Board,-

(1) as sinking fund for the purpose of payment of any loan; or

(2) for the payment of pension to its employees; or

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

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

65. Remedies Of Government In Respect Of Loans Made To Board :-

The Government shall have in respect of loans made by it to the Board the same remedies as holders of Board Securities issued by the Board; and Government shall not be deemed to possess any prior or greater rights in respect of such loans than holders of such Board Securities :

Provided that, when the terms of any such loan made before the appointed day expressly provide that the loan shall have priority over all other loans in the matter of repayment by the Board, such loan shall have priority.

66. Power Of Board To Repay Loans Before Due Date :-

The Board may, with the previous sanction of Government, apply any sums out of moneys which may come into its hands under the provisions of this Act and which can be so applied without prejudicing the security of the other holders of the Board Securities, in repaying to Government any sum which may remain due to it in respect of the principal of any loan although the time fixed for the repayment of the same may not have arrived :

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

67. Establishment Of Sinking Fund :-

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

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

(2) Where any sinking fund has, before the appointed day, been established by any authority in respect of a loan raised by it, for which the Board is liable under this Act, the sinking fund so established by that authority shall be deemed to have been established by the Board under this section.

68. Investment And Application Of Sinking Fund :-

(1) The sums so set apart by the Board under sub-section (1) of section 67 and the sums forming part of the sinking fund referred to in sub-section (2) of that section shall be invested in public securities or in such other securities as the Government may approve in this behalf and shall be held by the Board in trust for the purposes of this Act.

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

69. Annual Examination Of Sinking Fund :-

(1) A sinking fund established for the liquidation of any loan shall be subject to annual examination by such person as may be appointed by the Government in this behalf and the person so appointed shall ascertain whether the cash and the current market value of the securities at the credit of the fund are actually equal to the amount which would have been accumulated if, investment had been regularly made and the rate of interest originally estimated

had been obtained thereon.

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

(3) If the cash and current market value of the securities at the credit of a sinking fund are in excess of the amount which should be at its credit, the person appointed under sub-section (1) shall certify the amount of the excess and the Board may, with the previous sanction of the Government, reduce or discontinue the half-yearly contributions to the sinking fund required under section 67.

70. Powers Of Board To Raise Loan 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.

71. Powers Of Board To Take Temporary Loans Or Overdrafts :-

Notwithstanding anything contained in this Act, the Board may,.-

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

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

Provided that, such temporary overdrafts or other loans, .-

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

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

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

72. Power Of Board To Borrow Money From International Bank For Reconstruction And Development Of Other Foreign Institution :-

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

CHAPTER 8 REVENUE AND EXPENDITURE

73. General Fund Of Board :-

The Board shall have and maintain in its own fund called the General Fund of the Board to which shall be credited all moneys received by or on behalf of the Board under the provisions of this Act and all moneys received by it from the Government by way of grants, subventions, loans and advances, and as the Conservator of the Ports and of their approaches or as the body appointed under section 36 of the Indian Ports Act.

74. Application Of Moneys In General Funds :-

(1) The moneys credited to the General Fund under section 73 shall be applied by the Board in payment of the following charges, namely :-

(a) the interest and instalments of principal due in respect of any loan that may have been raised or obtained by the Board or for the repayment of which the Board may be liable and payments to the sinking fund established for such loan;

(b) the salaries, fees, remunerations, allowances, pensions, gratuities, compassionate allowances or other moneys due to,-

(i) the Chairman, and other members of the Board;

(ii) the employees of the Board; and

(iii) the surviving relatives, if any, of such employees;

(c) the contributions, if any, payable to the Central or State Government on account of pension and leave allowance of any officer lent to the Board by such Government;

(d) the cost and expenses, if any, incurred by the Board in the conduct and administration of any provident fund, welfare fund, loan or special fund established by the Board;

- (e) the contributions, if any, duly authorised to be made, by regulations made under this Act, to any such fund referred to in clause (d);
- (f) such sums as may, from time to time, be agreed upon by the Board and the Government or the Central Government or any other authority, as a reasonable contribution payable by the Board towards the expenses in connection with the watch and ward functions of the Police Force or the Central Industrial Security Force or any other Force which the Government or the Central Government or any other authority, as the case may be, may establish and maintain for the protection of the port and the docks, warehouses and other property of the Board;
- (g) the cost of repairs and maintenance of the property belonging to, or vested in, the Board and all charges upon the same and all working expenses;
- (h) the cost of the execution and provision of any new work or appliance specified in section 25 which the Board may determine to charge to revenue;
- (i) any expenditure incurred under section 26;
- (j) any other expenditure which may be incurred by the Board generally for the purposes of this Act;
- (k) any other charge which may on the application of the Board or otherwise be specially sanctioned by the Government or for which the Board may be legally liable.

(2) All moneys standing at the credit of the Board which cannot immediately be applied in the manner or for the purposes specified in sub-section (1) shall,.-

- (a) be deposited in the State Bank of India or any corresponding new bank defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or in any corporation or financial institution controlled and managed by the State Government as the Board may decide; or
- (b) be invested in such public securities as may be determined by the Board and the said securities shall be held in trust by the Board for the purposes of this Act.

75. Power To Transfer Moneys From General Fund To Specified Account And Vice-Versa :-

The Board may, with the previous sanction of the Government, apply any sum out of the moneys credited to the General Fund of the Board towards meeting deficits, if any, in the particular or

specified accounts such as pilotage account, if so maintained or transfer the whole or part of any surplus funds in such particular accounts to the General Fund of the Board.

76. Establishment Of Reserve Funds :-

The Board may, from time to time, set apart such sums out of its surplus income as it thinks fit as a reserve fund or funds for the purpose of expanding existing facilities or creating new facilities at the ports or for the purpose of providing against any temporary decrease of revenue or increase of expenditure arising from transient causes or for purposes of replacement or for meeting expenditure arising from loss or damage from fire, cyclones, shipwrecks or other accident or for any other emergency arising in the ordinary conduct of its works under this Act :

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

77. Power To Reserve Maritime Board Securities For Boards Own Investments :-

(1) For the purposes of any investment which the Board is authorised to make under this Act, it shall be lawful for the Board to reserve and set apart any securities to be issued by it on account of any loan to which the consent of the Government has been given, provided that the intention to so reserve and set apart such securities has been notified as a condition to the issue of the loan.

(2) The issue by the Board of such securities direct to and in the name of the Board shall not operate to extinguish or cancel such securities, but every security so issued shall be valid in all respects as if issued to, and in the name of, any other person.

(3) The purchase by the Board or the transfer, assignment or endorsement to the Board of any security issued by the Board, shall not operate to extinguish or cancel any such security but the same shall be valid and negotiable in the same manner and to the same extent as if held by or transferred or assigned or endorsed to any other person.

78. Prior Sanction Of Government To Charge Expenditure To Capital :-

(1) No expenditure shall be charged by the Board to capital without the previous sanction of the Government :

Provided that, the Board may without such sanction charge to capital expenditure not exceeding such limit as may be specified and subject to such conditions as may be imposed by the Government.

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

79. Works Requiring Sanction Of Board Or Government :-

(1) No new work or appliance, the estimated cost of which exceeds such amount as may be fixed by the Government in this behalf, shall be commenced or provided by the Board nor shall any contract be entered into by the Board in respect of any such new work or appliance until a plan of an estimate for such work or appliance has been submitted to, and approved by the Board; and in case the estimated cost of any such new work or appliance exceeds such amount, as may, from time to time, be fixed by the Government in this behalf, sanction of the Government to the plan and estimate shall be obtained before such work is commenced or appliance provided.

(2) Nothing in sub-section (1) shall be deemed to require further sanction of the Government in any case where the actual expenditure incurred does not exceed by more than ten per cent, of the estimate cost so sanctioned.

80. Power Of Chief Executive Officer As To Execution Of Work :-

Notwithstanding anything contained in section 79, the Chief Executive Officer may direct the execution of any work the cost of which does not exceed such maximum limit as may be fixed by the Government in that behalf and may enter into contracts for the execution of such works but in every such case the Chief Executive Officer shall, as soon as possible, make a report to the Board of any such direction given or contract entered into by him.

81. Power Of Board To Compound Or Compromise Claims :-

The Board may compound or compromise any claim or demand or any action or suit instituted by or against it for such sum of money or other compensation as it deems sufficient :

Provided that, no settlement shall be made under this section without the previous sanction of the Government if such settlement involves the payment by the Board of a sum exceeding such amount as may be specified by the Government in this behalf.

82. Writing-Off Losses :-

(1) Subject to such conditions as may be specified by the Government, where the Board is of opinion that any amount due or any loss, whether of money or of property, incurred by the Board is irrecoverable, the Board may, with the previous approval of the Government, sanction the writing.-off finally of the said amount or loss :

Provided that, no such approval of the Government shall be necessary where such irrecoverable amount or loss, does not exceed in an individual case, twenty.-five thousand rupees or in the aggregate in any year, five lakhs of rupees.

(2) Notwithstanding anything contained in sub-section (1), where the Chief Executive Officer is of opinion that any amount due to or any loss whether of money or of property incurred by the Board is irrecoverable, the Chief Executive Officer may sanction the writing.-off finally of such amount or loss provided that such amount or loss does not exceed, in an individual case, five thousand rupees or in the aggregate in any one year, one lakh of rupees and in every such case, the Chief Executive Officer shall make a report to the Board giving reasons for such sanction.

83. Power, Etc., Of Board As Conservator :-

All the powers, authorities and restrictions in respect of the work authorised under this Act, shall apply to the works which may be executed by the Board as the Conservator of the port or as the body appointed under sub-section (1) of section 36 of the Indian Ports Act and also to the sanction of such works, the estimate therefor and the expenditure thereunder.

84. Budget Estimates :-

(1) The Board shall on or before the thirty.-first day of January in

each year, hold a special meeting at which the Chairman of the Board shall submit an estimate of the income and expenditure of the Board for the next financial year, in such form as the Government may specify.

(2) A copy of such estimate shall be sent by post or otherwise to each member of the Board so as to reach him not less than ten clear days prior to the date appointed for the special meeting referred to in sub-section (1).

(3) The Board shall consider the estimate at such meeting and may provisionally approve it with or without modification.

(4) The Board shall, on or before the tenth day of February, cause a copy of such estimate as provisionally approved by it, to be sent to the Government.

(5) The Government may sanction the estimate or may return it with remarks and may call for such additional information as it may deem necessary.

(6) When an estimate is returned under sub-section (5), the Board shall proceed to reconsider the estimate with reference to such remarks and shall furnish such additional information as the Government may call for and shall, if necessary, modify or alter the estimate and re-submit it to the Government.

(7) The Government shall sanction the estimate with or without modification.

(8) Where such estimate is not sanctioned by the Government before the commencement of the financial year to which it relates, the Government may authorise the Board to incur such expenditure as may be necessary in the opinion of the Government until such time as the approval of the estimate by the Government is communicated to the Board.

85. Preparation Of Supplementary Estimates :-

The Board may in the course of any year for which an estimate has been sanctioned by the State Government cause one or more supplementary estimates for the residue of such year to be prepared and the provisions of section 84 shall, so far as may be, apply to such estimate as if it were an original annual estimate.

86. Reappropriation Of Amount In Estimates :-

Subject to the directions which the Government may give in this behalf, any sum of money or part thereof, of which the expenditure has been authorised in an estimate for the time being in force

sanctioned, by the Government and which has not been so spent, may at any time be reappropriated by the Board to meet any excess in any other expenditure authorised in the said estimate.

87. Adherence To Estimate Except In Emergency :-

(1) Subject to the provision of section 86, no sum exceeding such amount as the Government may fix in this behalf shall, save in cases of emergency, be expended by, or on behalf of, the Board unless such sum is included in some estimate of the Board at the time in force which has been finally sanctioned by the Government.

(2) If any sum exceeding such limit as may have been fixed in this behalf under sub-section (1) is so expended by the Board on a pressing emergency, the circumstances shall be forthwith reported by the Chief Executive Officer to the Government together with an explanation of the way in which it is proposed by the Board to cover such extra expenditure.

88. Accounts And Audits :-

(1) The Board shall maintain proper accounts and other relevant records and prepare the annual statement of account including the balance-sheet in such form as may be approved by the Government.

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

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

89. Publication Of Audit Report :-

(1) Within fourteen days after the audit and examination of the accounts of the Board have been completed, the Auditor shall forward copies of the audit report to the Government and to the

Board.

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

90. Board To Remedy Defects And Irregularities Pointed Out In The Audit Report :-

The Board shall forthwith take into consideration any defect or irregularities that may be pointed out by the Auditor, in the audit report on the income and expenditure of the Board and shall take such action thereon as the Board may think fit and shall also send a report of the action so taken to the Government.

91. Government To Decide Difference Between Board And Auditors :-

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

CHAPTER 9 SUPERVISION AND CONTROL OF STATE GOVERNMENT

92. Administration Report :-

As soon as may be after the first day of April in every year and not later than such date as maybe fixed in this behalf by the Government, the Board shall submit to the Government a detailed report of the administration of the ports during the preceding year ending on the thirty.-first day of March, in such form as the State Government may direct.

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

93. Submission Of Statement Of Income And Expenditure To State Government :-

(1) The Board shall annually, or often, or if directed by the Government so to do, submit statement of its income and

expenditure in such form and at such time as the Government may direct.

(2) A copy of all such statements shall be open to inspection of the public at the office of the Board during office hours on payment of such fee for each inspection as may, from time to time, be fixed by the Board.

94. Power Of Government To Supersede Board :-

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

(a) that on account of a grave emergency, the Board is unable to perform the duties imposed on it by or under the provisions of this Act or of any other law; or

(b) that the Board has persistently made default in the performance of the duties imposed upon it by or under the provisions of this Act or of any other law and as a result of such default, the financial position of the Board or the administration of the ports has greatly deteriorated, the Government may, by notification in the Official Gazette, supersede the Board for such period, not exceeding six months at a time, as may be specified in the notification :

Provided that, before issuing a notification under this subsection for the reasons mentioned in clause (b), the Government shall give a reasonable opportunity to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of notification under sub-section (1) superseding the Board,.-

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

(b) all the powers and duties which may, by or under the provisions of this Act, or of any other law, be exercised or performed by or on behalf of the Board shall, until the Board is reconstituted under clause (b) or clause (c) of sub-section (3), be exercised and performed by such person or persons as the Government may direct;

(c) all property vested in the Board shall, until the Board is reconstituted under clause (b) or (c) of subsection (3), vest in the Government.

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

(a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary; or
(b) reconstitute the Board by fresh appointment and in such case, any person who has vacated his office under clause (a) of sub-section (2) shall not be deemed disqualified for appointment; or
(c) reconstitute the Board by appointment only for such period as it may consider necessary and in such a case the persons who vacated their offices under clause (a) of sub-section (2) shall not be deemed disqualified for such appointment merely because they were members of the Board when the Board was superseded :
Provided that, the Government may, at any time before the expiration of the period of supersession, whether as originally specified under sub-section (1) or as extended under this subsection, take action under clause (b) or (c) of this sub.-section.
(4) The Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before the State Legislature at the earliest possible opportunity.

95. Power Of Government To Give Directions To Board :-

(1) Without prejudice to the foregoing provisions of this Chapter, the Board shall, in the discharge of its functions under this Act, be bound by such directions on question of policy, as the Government may give in writing to it from time to time :
Provided that, the Board shall be given opportunity to express its view before any direction is given under this sub.-section.
(2) The decision of the Government whether a question is one of policy or not shall be final.

CHAPTER 10 PENALTIES

96. Persons Employed Under This Act To Be Public Servants For Certain Purposes :-

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

97. Penalty For Contravention Of Sections 27, 28, 29 And 30 :-

Whoever contravenes the provision of any order issued under sections 27, 28 or 29 or fails to comply with any condition imposed under section 30 shall, on conviction, be punishable with fine which may extend to five thousand rupees and where the contravention or failure is a continuing one with further fine which may extend to five hundred rupees for each day after the first, during which such contravention or failure continues.

98. Penalty For Setting Up Wharves, Quay, Etc., Without Permission :-

Any person who contravenes the provisions of section 35 shall, on conviction, be punishable with fine which may extend to five thousand rupees for the first contravention, and with a further fine which may extend to five hundred rupees for each day after the first during which the contravention continues.

99. Penalty For Evading Rates, Etc. :-

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

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

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

100. Recovery Of Value Of Property Of Board :-

If, through negligence of any person having the guidance or command of any vessel, or of any of mariner or persons employed on such vessel, any damage is caused to any dock, wharf, quay, mooring, stage, jetty, pier or other work in the possession of the Board or any movable property belonging to the Board, the amount of such damage shall, on the application of the Board, be recoverable together with the cost of such recovery by distress and sale under a Magistrates warrant, of a sufficient portion of the boats, masts, spares, ropes, cables, anchors or stores belonging to

such vessel :

Provided that, no Magistrate shall issue such a warrant until the master of the vessel has been duly 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 authorised employee of the Board and the damage caused was attributable to the order, act or improper omission of such employee.

101. Other Offences :-

Any person who contravenes any of the provisions of this Act, or of any rule, regulation or order made thereunder for the contravention of which no penalty is expressly provided thereunder, shall, on conviction, be punishable with fine which may extend to one thousand rupees.

102. Cognizance Of Offences :-

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

103. Offence By Companies :-

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

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

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

that offence and shall be liable to be proceeded against and punished accordingly.

Explanation..- For the purposes of this section,.-

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

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

CHAPTER 11 MISCELLANEOUS

104. Local Advisory Committee :-

(1) The Government may, from time to time, constitute for such ports as it may determine Local Advisory Committees, consisting of such number of persons as it may think fit in each case and on such terms and conditions as may be prescribed by rules.

(2) The Board may, if it thinks fit, consult the Local Advisory Committee concerned on any business coming before it and shall do so in respect of such business as the Government may, by general or special order in this behalf, specify or when required by the regulations so to do.

(3) The Port Officer, appointed under the Indian Ports Act, shall be the ex officio Chairman of a Local Advisory Committee.

(4) The Local Advisory Committee shall meet at such intervals as may be prescribed by rules and for the transaction of urgent business on such other occasions as the Chairman of the Board may require.

(5) The number of members necessary to constitute a quorum at a meeting of a Local Advisory Committee shall be, as the Government when constituting the Committee may specify.

105. Limitation Of Proceedings In Respect Of Things Done Under This Act :-

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

106. Protection Of Act Done In Good Faith :-

No suit or other legal proceeding shall lie against the Board or any member or employee thereof in respect of anything which is in

good faith done or intended to be done under this Act or any rule or regulation made thereunder, or for any damage sustained by any vessel in consequence of any defect in any of the mooring, hawsers or other things belonging to, or under the control of, the Board.

107. Power Of State Government To Make Rules :-

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

(2) In particular and without prejudice to the generality of the foregoing power, such rule may be made for all or any of the following matters, namely :-

(a) fees and allowances payable to the members of the Board or any of the committees for attending meetings of the Board or its committee or for attending any work of the Board, under section 12;

(b) the terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 17;

(c) the form and manner of executing contracts under section 24;

(d) the terms and conditions on which the Board with the previous sanction of the Government, may raise loans under sub-section (1) of section 54;

(e) the terms and conditions of appointment of persons as member of a Local Advisory Committee under sub-section (1) of section 104; and

(f) any other matter which is to be or may be prescribed by rules.

(3) All rules made under this Act shall be subject to the condition of previous publication :

Provided that, if the Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with previous publication of any rule to be made under this section.

(4) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if, before expiry of the session in which it is so laid or the session immediately following, both the Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, and notify their decision to that effect in the Official Gazette, the rule shall, from the date of publication of such

decision in the Official Gazette have effect only in such modified form or be of no effect, as the case may be, so however that, any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

108. Power To Make Regulations :-

The Board may, with the previous approval of the Government, make regulations consistent with this Act, and the rules made thereunder, to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for all or any of the following matters, namely :-

- (1) the time and place of the meetings of the Board or its committees, the procedure to be followed for the transaction of business at such meetings and the number of members necessary to constitute a quorum at such meetings;
- (2) the appointment, promotion, suspension, removal and dismissal of its officers and employees;
- (3) leave, leave allowances, pensions, gratuities, compassionate allowances and travelling allowances of the; officers and employees and the establishment and maintenance of a provident fund or any other fund for their welfare;
- (4) the time within which and manner in which appeals may be preferred under sub-section (2) of section 19 and the procedure for deciding such appeals;
- (5) the terms and conditions of service of persons who become employees of the Board under clause (f) of section 20;
- (6) any other matter which is incidental to, or necessary for, the purpose of regulating the appointment and conditions of service of its employees;
- (7) the form of receipt to be given under sub-section (2) of section 32;
- (8) the period within which notice may be given under sub-section (2) of section 33;
- (9) the guidance of persons employed by the Board under this Act;
- (10) the safe, efficient and convenient use, management and control of the docks, wharves, quays, jetties, buildings and other works constructed or acquired by, or vested in, the Board, or of any land or foreshore acquired by, or vested in, the Board under this Act;
- (11) the reception, portorage, storage and removal of goods

brought within the premises of the Board, for the exclusive conduct of these operations by the Board or persons employed by the Board, and for declaring the procedure to be followed for taking charge of goods which may have been damaged before landing, or may be alleged to have been so damaged;

(12) keeping clean the port, river or basins or the bank of the river and the works of the Board, and for preventing filth or rubbish being thrown therein or thereon;

(13) the mode of payment of rates leviable by the board under this Act;

(14) regulating, declaring and defining the docks, wharves, quays, jetties, stages and piers vested in the Board on which goods shall be landed from vessels and shipped on board vessels;

(15) regulating the manner in which and the conditions under which the loading and unloading of all vessels within the port or port approaches shall be carried out;

(16) regulating the lighterage of cargo between ships or between ships and shore or between shore and ships;

(17) the exclusion from the premises of the Board of disorderly or other undesirable persons and of trespassers;

(18) ensuring the safety of the port;

(19) generally for the efficient and proper administration of the ports;

(20) the person, if any, authorised to sign and the mode of affixing the corporate seal and of attestation of documents relating to Board Securities issued or to be issued by the Board;

(21) the manner in which payment of interest in respect of such Board Securities to be made, recorded and acknowledged;

(22) the circumstances and the manner in which Board Securities may be renewed;

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

(24) the form in which such securities delivered for renewal, conversion, consolidation or sub.-division are to be receipted;

(25) the proof which is to be produced by a person applying for duplicate securities;

(26) the form and manner of publication of the notification mentioned in sub-section (2) of section 61 and the manner of publication of the list mentioned in sub-section (3) of that section;

(27) the nature and amount of indemnity to be given by a person applying for the payment of interest on the Board Securities alleged to have been wholly or partly lost, stolen or destroyed, or for the

issue of duplicate Board Securities;

(28) the conditions subject to which Board Securities may be converted, consolidated or sub.-divided;

(29) the amounts for which stock certificate may be issued;

(30) generally all matters connected with grant of duplicate, renewal, conversion, consolidation and sub.-division of the securities;

(31) the fees to be paid in respect of the issue of duplicate securities and of the renewal, conversion, consolidation and sub.-division of the Board Securities;

(32) the fees to be levied in respect of the issue of stock certificate;

(33) any other matter, which is to be, or may be, prescribed by regulations.

109. Provisions With Respect To Regulations :-

(1) No regulation made by the Board under this Act shall have effect until the same has been published by the Board in the Official Gazette.

(2) Any regulation made under this Act may provide that a breach thereof shall, on conviction, be punishable with fine which may extend to two hundred rupees and where the breach is a continuing one, with further fine which may extend to fifty rupees for every day during which such breach continues.

110. Power Of Government To Direct Regulations To Be Made Or To Make Regulations :-

(1) Whenever the Government considers necessary in the public interest so to do, it may, by order in writing therefor, direct the Board to make any regulations for all or any of the matters specified in section 108 or to amend any regulations, within such period as the State Government may specify in this behalf :

Provided that, the Government may extend the period specified by it by such further period or periods as it may consider necessary.

(2) If the Board, fails or neglects to comply with such directions within the period allowed under sub-section (1), the Government may make the regulations or amend the regulations, as the case may be, either in the form specified in the direction or with such modification thereof as the Government may think fit :

Provided that, before so making or amending the regulations the Government shall consider any objection or suggestion made by the Board within the said period.

(3) Where in pursuance of sub-section (2) any regulations have been made or amended, the regulations so made or amended shall be published by the Government in the Official Gazette and shall thereupon have effect accordingly.

111. Power Of Government To Make First Regulations :-

Notwithstanding anything contained in this Act, the first regulations under this Act shall be made by the Government and shall have effect on being published in the Official Gazette.

112. Posting Of Certain Regulations, Etc. :-

The text of the regulations made under clauses (10) to (19) of section 108 and the scale of rates framed together with a statement of conditions framed by the Board under Chapter VI shall be prominently posted by the Board in Marathi and English on special boards to be maintained for the purpose at the wharves, docks, piers and other convenient places on the premises of the Board.

113. Saving Of Right Of Government And Municipalities To Use Wharves, Etc., For Collection Of Duties And Power Of Customs Officers :-

Nothing in this Act shall affect,.-

(1) the right of the Central Government to collect customs duties or of any municipality to collect town duties at any dock, berth, wharf, quay, stage, jetty or pier in the possession of the Board, or

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

114. Application Of Provisions Of This Act To Aircraft :-

The provisions of this Act shall also apply to all aircrafts making use of any port while on water in the same manner as they apply in relation to vessels.

115. Power To Remove Difficulties :-

If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by general or special order, do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the

difficulty:

Provided that, no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

116. Deletion Of Section 5A Of Act No. Xv Of 1908 :-

Section 5A of the Indian Ports Act, 1908, inserted therein in its application to the State of Maharashtra, shall stand deleted.

117. Repeal And Savings :-

On application of this Act to any minor port, the Bombay Landing and Wharfage Fees Act, 1882, shall stand repealed in relation to that port :

Provided that, such repeal shall not affect,.-

- (a) the previous operation of the Act so repealed, or anything duly done or suffered thereunder;
- (b) any right, privilege, obligation or liability acquired, accrued and incurred under the Act, so repealed;
- (c) any penalty, forfeiture, or punishment incurred in respect of any offence committed under the Act, so repealed; or
- (d) any investigation, legal proceedings, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture and punishment may be imposed, as if this Act had not been enacted :

Provided further that, subject to the preceding proviso, anything done or any action taken under the repealed Act, shall in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.

118. Repeal Of Mah. Ord. Xvi Of 1996 And Saving :-

(1) The Maharashtra Maritime Board Ordinance, 1996 (Mah. Ord. XVI of 1996), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken, as the case may be, under the corresponding provisions of this Act.