

THE ODISHA MARITIME BOARD ACT, 2020

TABLE OF CONTENTS

PREAMBLE:

SECTIONS:

CHAPTER I

PRELIMINARY

1. Short title, Commencement and application.
2. Definitions:

CHAPTER II

ESTABLISHMENT OF ODISHA MARITIME BOARD

3. Establishment of Odisha Maritime Board.
4. Disqualifications of members.
5. Terms of office of members.
6. Vacation of office by the members.
7. Eligibility for re-appointment.
8. Filling of vacancies.
9. Absence of Chairperson.
10. Meetings of the Board.
11. Committees of the Board.
12. Meeting of the Board or a Committee through video conferencing.
13. Fees and allowances payable to the members.
14. Members of the Board or the Committee not to vote in certain cases.
15. Defects in appointment not to invalidate acts, etc.
16. Powers and Duties of the Chairperson and the Member Secretary.
17. Delegation of powers.
18. Powers and functions of the Board.

CHAPTER III STAFF OF THE BOARD

19. Appointment of Staff.

CHAPTER IV PROPERTY AND CONTRACTS

20. Property and contracts.
21. Existing rates, etc. to be continued until altered by the Board.
22. Repayment of capital with interest.
23. Procedure when immovable property cannot be acquired by agreement.
24. Contracts by the Board.

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

25. Powers of the Board to execute works and provide appliances.
26. Power of the Board in undertaking certain works.
27. Power of the Board to order sea going vessel to use dock. wharves etc.
28. Accommodation for sea going vessels 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 the State 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 the Board or other person.
33. Responsibility of Board for loss, etc. of goods.
34. Accommodation to be provided for customs officers in wharves, etc.
35. Power to permit erection of private wharves, etc. within the limits of port.

- 36. Compensation payable in certain cases where use of any private wharf, etc. rendered unlawful.
- 37. Appointment of Port Facilities Security officer.

CHAPTER VI

IMPOSITION AND RECOVERY OF RATES AT PORTS

- 38. Scales of rates for services performed by the Board or other person.
- 39. Scales of rates and statement of conditions for use of property belonging to the Board.
- 40. Consolidated scales of rates for combination of services.
- 41. Power to levy concessional rates in certain cases.
- 42. Scales of rate and conditions.
- 43. Power of the State Government to require modification or cancellation of rates.
- 44. Exemption or remission of rates or charges.
- 45. Refund of over charges.
- 46. Notice of Payment of charges short levied or erroneously refunded.
- 47. Time for payment of rates on goods.
- 48. Board's lien for rates.
- 49. Ship owner's lien on freight and other charges.
- 50. Sale of goods after two months if rates or rent are not paid or lien for freight is not discharged.
- 51. Disposal of goods not removed from premises of Board within the time limit.
- 52. Application of sale proceeds.
- 53. Recovery of rates and charges by detainment of vessel.
- 54. Grant of port clearance after payment of rates realization of damages, etc.,

CHAPTER VII

BORROWING POWERS OF BOARD

55. Powers to raise loans.
56. Board Securities.
57. Right of joint or several payees of securities.
58. Powers of one or two or more joint holders to grant receipt.
59. Endorsements to be made on the face of the Security.
60. Endorsement of security not liable for amount thereof.
61. Impression of signatures on securities.
62. Issue of duplicate security.
63. Issue of converted, consolidated or sub-divided securities.
64. Discharge in certain cases.
65. Security for loans taken by Board.
66. Remedies of State Government in respect of loans made to the Board.
67. Power of Board to repay loans before due date.
68. Establishment of sinking fund.
69. Investment and application of sinking fund.
70. Examination of sinking fund.
71. Power of the Board to raise loans on Short Term Bills.
72. Power of the Board to take temporary loans or overdrafts.
73. Power of the Board to borrow money from Foreign Lending Institutions.

CHAPTER VIII

REVENUE AND EXPENDITURE

74. General Fund of the Board.
75. Application of monies in General Fund.

76. Power to transfer moneys from general account to specified particular account and *vice versa*.
77. Establishment of Reserve Funds.
78. Power to reserve Board's securities on Board's own investments.
79. Prior approval of the State Government necessary to charge expenditure to capital account.
80. Works requiring sanction of the Board or the State Government.
81. Power of the Chief Executive Officer regarding execution of works.
82. Power of the Board to compound or compromise claims.
83. Writing off of losses.
84. Powers of the Board as Conservator.
85. Budget estimates.
86. Preparation of supplemental estimates.
87. Re-appropriation of amounts in estimates.
88. Adherence to estimate except in emergency.
89. Accounts and Audit.
90. Preparation and submission of audit report.
91. The Board to remedy defects and irregularities pointed out in audit report.
92. State Government to decide on differences between Board and auditors.

CHAPTER IX

SUPERVISION AND CONTROL OF THE GOVERNMENT

93. Annual administrative report.
94. Submission of statements of income and expenditure to the State Government.
95. Power of the State Government to supersede Board.
96. Power of the State Government to give directions to the Board.

CHAPTER X

PENALTIES

- 97. Persons employed under this Act to be public servants for certain purposes.
- 98. Penalty for contravention of section 27 to 29 and 31.
- 99. Penalty for setting up wharves, quays, etc., without permission.
- 100. Penalty for evading rates.
- 101. Recovery of value or damage to property of the Board.
- 102. Other offences.
- 103. Cognizance.
- 104. Offence by companies.

CHAPTER XI

MISCELLANEOUS

- 105. Constitution of State Ports Consultative Committee.
- 106. Local Advisory Committee.
- 107. Limitation of proceeding in respect of things done under this Act.
- 108. Protection of act done in good faith.
- 109. Power to make rules.
- 110. Power to make regulations.
- 111. Provisions with respect to regulations.
- 112. Power of the State Government to direct regulations to be made or to make regulations.
- 113. Power of the State Government to make first regulations.
- 114. Posting of certain regulations, etc.
- 115. Application of the provisions of this Act to Aircraft.
- 116. Power to remove difficulties.
- 117. Repeal of Odisha Act 30 of 1962.

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LAW DEPARTMENT

NOTIFICATION

The 28th March, 2022

No.3673-I-Legis-8/2022/L.—The following Act of the Odisha Legislative Assembly having been assented to by the President of India on the 18th February, 2022 is hereby published for general information.

ODISHA ACT NO.01 OF 2022

THE ODISHA MARITIME BOARD ACT, 2020

AN

ACT

TO PROVIDE FOR THE ESTABLISHMENT OF MARITIME BOARD FOR NON-MAJOR PORTS AND NON-NATIONALIZED INLAND WATERWAYS IN THE STATE OF ODISHA AND VEST IN SUCH BOARD, THE ADMINISTRATION, CONTROL AND MANAGEMENT OF SUCH PORTS, NON-NATIONALIZED INLAND WATERWAYS AND THE DEVELOPMENT OF PORT AND NON-PORT LAND AND INFRASTRUCTURE AND, TO PROVIDE FOR MATTERS CONNECTED THEREWITH AND INCIDENTAL THERETO.

BE it enacted by the Legislature of the State of Odisha in the Seventy-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
commencement
and application.

1. (1) This Act may be called the Odisha Maritime Board Act, 2021.

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

(3) It shall come into force on such date, as the State

Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different ports.

(4) It applies to all ports including all non-nationalized inland waterways in the State but it shall not apply to ports that have been declared as Major Ports by the Government of India in terms of the Major Port Trusts Act, 1963. 38 of 1963.

Definitions.

2. In this Act, unless the context otherwise requires, —

- (a) “administration” means administration of the port and non-port lands and non-nationalized inland waterways including grant of land or waterway on lease for any purpose, provision of civic amenities and services on port and non-port lands, and collection of such taxes, fees and charges and expenditure of such revenue as may be approved by the State Government;
- (b) “appointed date”, in relation to any port, means the date on which this Act is made applicable to that port or non-nationalized inland waterways;
- (c) “Board” means the Odisha Maritime Board constituted under section 3;
- (d) “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;
- (e) “chairperson” means Chairperson of the Board appointed under section 3 and shall include the person appointed under section 9 to act in his place;
- (f) “dock” means and includes all basins, locks, cuts, entrances, graving docks, graving blocks, inclined planes, slipway gridirons, moorings, transit sheds, warehouses, godowns, open lands and other works and things appertaining to any dock and shall also

include such portion of the sea enclosed or protected by the arms or groynes of a harbour;

- (g) “foreshore” means the area between the high water mark and the low water mark relating to that port;
- (h) “goods” means merchandise and includes live stock;
- (i) “High Water Mark” means the highest point at that port reached by ordinary spring tides during any season of the year;
- (j) “immovable property” means all immovable property of the Board and includes 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; 15 of 1908.
- (l) “Inland Water Transport (IWT)” means Inland Water Transport System including ferry services in the State;
- (m) “land” means land vested in the Board and shall include the bed of sea or river below high water mark and things attached to the earth or permanently fastened to anything attached to the earth;
- (n) “low Water Mark”, means the lowest point reached by ordinary spring tides at any season of the year at that port;
- (o) “major Port”, means a port designated by Government of India as a major port in terms of the Major Port Trusts Act, 1963; 38 of 1963.
- (p) “master” means any person for the time being in charge or control of a vessel or craft, as the case may be, except a pilot, harbour master, dock master or berthing master of the port;
- (q) “member” means a member of the Board or its Committee, as the case may be;
- (r) “Non-Nationalized Inland Waterways” means the Waterways other than those declared as National

Waterways by the Parliament by law;

- (s) “non-port land” means the land vested in the Board but not immediately put to any use directly related to maritime activities of the port;
- (t) “owner” means,—
 - (i) in relation to goods, 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 and includes any port owner, charterer, consignee or mortgagee in possession thereof;
- (u) “pier” means and includes any stage, stairs, landing place, hard jetty, floating barge trans-shipper or pontoon and any bridges or other works connected therewith;

*Explanation,—*Trans-shipper means a floating craft for vessel whether dump or self-propelled, with provision for discharging cargo from a barge or wharf and loading it onto a ship;

- (v) “port” means an Indian 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;
- (w) “port approaches”, in relation to a port, means those parts of the navigable rivers and channels leading to the port to which the Indian Ports Act applies;
- (x) “prescribed” means prescribed by rules or regulations made under this Act;
- (y) “public securities” means —
 - (i) promissory notes, debentures, stock or other securities of the Central Government or any State Government, the principal and the interest whereof have been fully and unconditionally guaranteed by such Government; and

- (ii) debentures or other securities for money issued by or on behalf of any Municipal Corporation, Municipality, Notified Area Council, Improvement Trust or Port Trust under the authority or any law for the time being in force in the State and includes the Board Securities;
- (z) “rate” means the money payable against any toll, dues, rent, fee or charge leviable under this Act;
- (za) “regulations” means regulations made under this Act;
- (zb) “rules” means rules made under this Act;
- (zc) “State” means the State of Odisha;
- (zd) “State Government” means the Government of Odisha;
- (ze) “vessel” means a means of transport by water, of passengers and goods; and
- (zf) “wharf” includes any wall or stage and any part of the land or foreshore that may be used for loading or unloading goods or for the embarking or disembarking of passengers and any wall enclosing or adjoining the same.
- (2) Words and expressions used in this Act but not defined, shall have the same meaning as assigned to them in the Indian Ports Act, 1908 and the Major Port Trusts Act, 1963.

15 of 1908.

38 of 1963.

CHAPTER II

ESTABLISHMENT OF ODISHA MARITIME BOARD

Establishment of
Odisha Maritime
Board.

3. (1) After the commencement of this Act, as early as it may deem fit, the State Government shall, by notification in the Official Gazette, establish a Maritime Board to be called the Odisha Maritime Board.
- (2) The Board shall be a body corporate having perpetual succession and a common seal with

power to sue and be sued, and power to acquire, hold and dispose of property, both movable and immovable, and to contract and grant concessions for implementation of projects and programs in the Public and Private Partnership Mode.

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

(4)The Board shall consist of a Chairperson and not more than twelve members who shall be appointed as follows, namely :—

- (i) Chief Secretary, Odisha, - Chairperson
- (ii) Secretary-in-charge of Commerce & Transport Department; - Member Secretary
- (iii) Special Secretary to Government, Commerce & Transport Department; - Member
- (iv) Director, Ports and Inland Water Transport, Odisha, Bhubaneswar; - Member
- (v) An officer of the State Government in Department of Water Resources not below the rank of Additional Secretary ; - Member
- (vi) An officer of the State Government in Industries Department not below the rank of Additional Secretary; - Member
- (vii) An officer of the State Government in Revenue & Disaster Management Department not below the rank of Additional - Member

Secretary ;

- (viii) Representative of Government of India, being an officer from the Ministry of Shipping not below the rank of Deputy Secretary, or an official of Indian Ports Association nominated by Secretary (Shipping), Government of India; - Member
- (ix) Representative of Indian Coast Guard; - Member
- (x) Representative of Naval Force; - Member
- (xi) Two members shall be appointed by Government from the Officers of Odisha Maritime Board ; - Member
- (xii) One member shall be appointed by the State Government, who is expert in one or more sectors of Shipping or Navigation or Ports or Sailing Vessels or Fisheries or Maritime Trade or Industry and Commerce or Finance or Project Finance or Public Private Partnership models or Law or Maritime Law. - Member

(5) Members at clause (xii) of sub-section (4) shall be appointed by the State Government and shall not have voting rights.

Disqualifications of members.

4. A person shall not be qualified for appointment, and if appointed, shall become disqualified for continuing in office as a member of the Board, if such person—

- (a) has been removed or dismissed from the service of Central Government or State Government or of local authority or of a corporation owned or controlled by that Government; or
- (b) has been convicted for an offence involving moral turpitude; or
- (c) is an un-discharged insolvent; or
- (d) directly or indirectly owns any share or interest in any work done by order of the Board or in any contract or employment with, by 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 only by reason of such person having a minor share in any company or firm which may contract with or be employed by or on behalf of the Board.

**Terms of office
of members.**

5. Subject to the provisions of this Act, members listed in clause (xii) of sub-section (4) of Section 3 shall hold office for a period of three years.

**Vacation of office
by the members.**

6. (1) The State Government shall remove a member of the Board, if such member,—

- (a) is or has become subject to disqualification mentioned in Section 4; or
- (b) fails to discharge the duty or has become incapable of discharging the duty; or
- (c) has, in the opinion of the State Government ceased to contribute according to the area of expertise or interests by virtue of which such member was appointed; or
- (d) absents, without obtaining prior permission of the Chairperson, from three consecutive meetings of the Board; or

(e) acts in contravention of the provisions of Section 14.

(2) The members listed in clause (xii) of sub-section (4) of section 3 may resign from his office as member of the Board by tendering his resignation in writing to the Chairperson who shall forward the same to the State Government, but the resignation shall not take effect until it is accepted by the State Government.

**Eligibility for re-
appointment.**

7. Subject to the provisions contained in sections 4 and 6, any person ceasing to be a member, shall be eligible for reappointment.

**Filling of
vacancies.**

8. (1) Any vacancy in the office of the member of the Board appointed under clause (xii) of sub-section (4) of section 3 shall be filled as early as possible after occurrence of such vacancy, by appointment and the member so appointed shall hold office for the unexpired term of the member in whose place he has been appointed:

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

(2) Any vacancy in the office of a member, other than the member appointed under clause (xii) of sub-section (4) of Section 3, shall be filled as early as possible after occurrence of such vacancy.

**Absence of
Chairperson.**

9. If the Chairperson is absent on leave or other-wise, such person as the State Government may appoint, shall act as the Chairperson during the period of absence.

**Meetings of the
Board.**

10. (1) Subject to the provisions contained in sub-sections (2) and (3), the Board shall hold meetings at such times and

places and shall follow such procedure in regard to issue of notice of meeting, transaction of business at the meetings, maintenance of record of meetings, quorum for the meeting, and the re-convening of a meeting in the absence of quorum, and other related matters, as may be prescribed in the rules.

(2) The Chairperson, and in his absence, the person appointed as Chairperson under section 9, shall preside over the meetings.

(3) All questions at a meeting shall be decided by a majority of the votes of those members present and eligible to vote and, in the event of a tie, the Chairperson at the meeting shall have a second or casting vote.

**Committees of
the Board.**

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

(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 prescribed by regulations.

**Meeting of the
Board or a
Committee
through video
conferencing.**

12. If one or more members are not physically present in any meeting of the Board or a Committee, and their participation is important, the Chairperson may allow them to participate and, if eligible to vote, to do so through video conferencing in a manner as may be prescribed in the regulations.

**Fees and
allowances
payable to the
members.**

13. The 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 doing other

tasks of the Board as may be prescribed by rules:

Provided that,—

- (a) no fees shall be payable to a member who is a Government Servant, Member of the Parliament or of the State Legislature; and
- (b) any allowances payable to a member who is a Member of the Parliament or of the State Legislature shall not exceed the compensatory allowance as defined in the Parliament (Prevention of Disqualification) Act, 1959 or as the case may be, in clause (a) of Section 2 of the Odisha Offices of Profit (Removal of Disqualification) Act, 1961.

10 of 1959.

26 of 1961.

Members of the Board or the Committee not to vote in certain cases.

14. A member of the Board or of a Committee thereof, who—

- (i) has any 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 State Government or an undertaking owned or controlled by the State Government or a local authority or a trade union registered under the Trade Unions Act, 1926 or member of an association formed for the purpose of promoting the interest or welfare of any class of employees of the Board—

16 of 1926.

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 vote for any decision of the Board or the Committee with respect to that matter.

Defects in
appointment not
to invalidate
acts, etc.

15. No act or proceeding of the Board or of any of the Committees shall be invalid merely by reason of,—

- (a) any vacancy therein or any defect in the constitution thereof; or
- (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 14 ; or
- (d) any irregularity in its procedure not affecting the merits of the case.

Powers and
Duties of the
Chairperson and
the Member
Secretary.

16. The Chairperson and the Member Secretary shall exercise such powers and perform such duties as may be prescribed by the rules.

Delegation of
powers.

17. With the previous approval of the State Government, the Board may direct that such of the powers vested in and duties imposed upon it under this Act, as may be specified in such direction, may also be exercised and performed by the Chief Executive Officer appointed under section 19 subject to such conditions and restrictions as may be specified in such direction:

Provided that the Chief Executive Officer shall exercise such powers and perform such duties as specified in the direction subject to the supervision and control of the Board.

Powers and
functions of the
Board.

18. (1) The Board shall exercise such powers and perform such duties as may be necessary to give effect to the purposes of this Act.

(2) Without prejudice to the generality of the above, the duties and functions of the Board shall include the followings, namely:—

- (a) to initiate and develop plans and frame

guidelines for the port sector in the State;

- (b) to promote the use, development and improvement of ports in the State;
- (c) to provide for construction, maintenance and operation of ports in the State directly or through the Public and Private Partnership mode;
- (d) to provide and maintain adequate and efficient lighthouses, beacons and navigational aids and services at such places as may be felt appropriate;
- (e) to regulate and control navigation within the limits of the port and port approaches in the State;
- (f) to initiate the development plans and frame guidelines for non-nationalized inland waterways in the State;
- (g) to exercise licensing and regulatory functions in respect of port infrastructure and services and non-nationalized inland waterways and services;
- (h) to exercise supervision and control over all works relating to ports in the State;
- (i) to prescribe the scales of rates for various services provided by the Board, and to review and revise the same from time to time;
- (j) to plan or provide or secure the provision of a safe economical and efficient sea and non-nationalized inland waterways transport system for movement of goods and persons from ports and other waterway stations in the State;
- (k) to furnish to the State Government all information in respect of its property and activities and the maritime and non-nationalized inland waterways sectors in such manner and within such times as the State Government or

the Government of India or the Indian Ports Association may require;

- (l) to develop new Ports in the State as per Indian Ports Act with the approval of the State Government subject to obtaining all clearances from the competent authorities including security clearance from Ministry of Home Affairs, Government of India ;
- (m) to promote facilities and create infrastructure for ship building, ship breaking and related activities;
- (n) to develop, promote, maintain and regulate ferry services and non-nationalized inland water transport system in the State for passengers and goods;
- (o) to provide such other services and other facilities as may be necessary for the efficient operation of ports systems in the State;
- (p) to initiate and implement measures to safeguard environment in ports and adjoining sea-line and the non-nationalized inland waterways;
- (q) to render basic civic services including water-supply, drainage, sanitation and street lights in the port and non-port land under its jurisdiction;
- (r) to collect taxes, duties, fees and charges under this Act or as may be authorized by the State Government;
- (s) to plan and act for optimising revenue generation from the ports and non-port lands and properties;
- (t) to plan and exercise projects including integrated townships for productive use of non-port lands vested in port authorities in the State;
- (u) to appoint staff according to the terms approved by the State Government and to take necessary steps for their training; and
- (v) to sue parties for securing the interest of the

Board, and, if sued, to defend the Board in the Courts of law.

CHAPTER III

STAFF OF THE BOARD

Appointment of Staff.

19. (1) Subject to the provision contained in clause (f) of sub-section (1) of Section 20, the State Government shall approve manpower, organizational set-up and minimum qualifications and experience required for each grade of the employees, necessary for smooth functioning of the Board, and prescribe their terms of appointment and service rules.

(2) The Board shall take measures to appoint staff according to their approved set-up and the terms of appointment and service rules.

(3) Without prejudice to the generality of the provision in sub-section (1), the approved set-up shall include the following, namely :—

(a) Secretary-in-charge of Commerce & Transport Department or any other senior officer appointed by the State Government who shall be the Chief Executive Officer of the Board; and

(b) Financial Controller and Chief Accounts Officer.

(4) The powers and functions of the Chief Executive Officer and the Financial Controller and Chief Accounts Officer shall be such as may be prescribed in the rules.

(5) The powers and functions of the other officials shall be such as may be prescribed by the Board in the regulations.

CHAPTER IV

PROPERTY AND CONTRACTS

Property and contracts.

20. (1) As from the appointed date, 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 the appointed date, 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 the appointed date, 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 the appointed date and declared to be capital expenditure by the State Government shall be treated as the capital provided by the State Government to the Board;
- (d) all rates, fees, rents and other sums of money due to the State Government in relation to the port, immediately before the appointed date, shall be deemed to be due to the Board;
- (e) all suits and other legal proceedings instituted by or against the State Government immediately before the appointed date for any matter in relation to port, may be continued by or against the Board;
- (f) every employee serving under the State Government immediately before the appointed date solely or mainly for or in connection with the affairs of the 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 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 .

(2) The absorption of employees in the service of the Board under clause (f) of sub-section (1) shall not be construed as retrenchment from current service under the Industrial Disputes Act, 1947 or any other law for the time being in force, and no compensation of any kind shall be payable to any employee in this regard:

14 of 1947.

Provided that this shall not bar the State Government or the Board from introducing any scheme of voluntary retirement for any or all grades of employees.

Existing rates, etc. to be continued until altered by the Board.

21. As from the appointed date, all rates, fees and other charges in relation to any port shall, unless varied by the Board in accordance with the provisions of this Act or the rules or regulations framed thereunder, continue to be levied and collected, at the same rate at which they were being levied and collected by the State Government before the appointed date.

Repayment of capital with interest.

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

Procedure when immovable property cannot be acquired by agreement.

23. Where any land is required for the purposes of the Board, the State Government may, at the request of the Board, acquire such land under the provisions of the Right to

Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and on payment of the compensation awarded under that Act by the Board and of the charges incurred by the State Government in connection with the proceedings, the land shall vest in the Board.

30 of 2013.

Contracts by the Board.

24. The Board may enter into contracts for the purposes of this Act, subject to the following conditions, namely:—

- (a) Every contract shall be made on behalf of the Board by the Chief Executive Officer or an officer specifically authorised for the purpose by the Board.
- (b) No contract for leasing of waterfront, jetty, waterway and related infrastructural facilities thereof for a term exceeding five years shall be made unless it is previously approved by the State Government on such terms and conditions as it may prescribe in the regulations.
- (c) No contract for the acquisition or sale of immoveable property or for the lease of any such property for a term exceeding thirty years, shall be made unless it is previously approved by the State Government, and on such terms and conditions as it may prescribe in the rules.
- (d) The form and manner of executing contracts and Concession Agreements on behalf of the Board shall be such as may be prescribed by rules or specifically approved for any project by the State Government, and
- (e) No contract made in contravention of the provisions of this Act and the rules framed under it shall be binding on the Board.

CHAPTER V

WORKS AND SERVICES TO BE PROVIDED AT PORTS BY THE BOARD

**Powers of the
Board to execute
works and
provide
appliances.**

25.(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 access to such appliances and facilities as it may deem necessary or expedient for the purpose.

(2) Without prejudice to the generality of the provision in sub-section (1), access to the appliances and facilities to be provided may include the following, namely:—

- (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) railways, 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;
- (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; and
- (o) without prejudice to the above, to provide or ensure providing of such other facilities as are in the opinion of the Board necessary for the operation of ports and non-nationalized inland waterways in the State.

Power of the Board in undertaking certain works.

26.(1) The Board may undertake 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.

Power of the Board to order sea going vessel to use dock, wharves etc..

27. (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 or crew from and upon sea-going vessels, the Board may, after obtaining the approval of the Commissioner of Customs and by notification published in the Official Gazette, declare that such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage is ready for receiving or for shipping goods or passengers from and upon sea-going vessels:

Provided that, the Board shall ensure that prior to such notifications, the provisions of the Customs Act, 1962 have been complied with and no imported goods shall be unloaded and no export goods shall be loaded at any place other than a place approved under that Act for unloading or loading of such goods, except with the permission of the Competent Authority.

52 of 1962.

(2) As from the date of the publication of such notification, it shall be lawful for the Board, from time to time, when there is room at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage to 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 in 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 shipping 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.

Accommodation
for sea going
vessels to use
docks, wharves
etc.

28. When sufficient number of docks, berth, 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 Commissioner of Customs and by notification published in the Official Gazette, direct that no goods or passengers shall be landed or shipped from or upon any sea-going vessel within the 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 prescribe:

Provided that, the Board shall ensure that prior to such notifications, the provisions of the Customs Act, 1962 shall be complied and no imported goods shall be unloaded and no export goods shall be loaded at any place other than a place approved under that Act for the unloading or loading of such goods, except with the permission of the Authority.

Power to order vessels not to come alongside of, or to be removed from docks, wharves etc.

29. An 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 seagoing vessel not to bring such vessel alongside of, or to remove such vessel from, any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage belonging to or under the control of the Board and if, such notice is not complied with, the Board may charge in respect of such vessel such sum as it thinks fit, not exceeding an amount as may be prescribed by rules 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, computation of such charge shall not commence till after the expiry of twelve hours from the service of such notice as aforesaid.

Power of the State Government to exempt vessels from obligation to use wharves etc.

30. Notwithstanding anything contained in Section 27 or 28, the State Government may, if in its opinion it is 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 State Government may deem fit:

Provided that any notification or permission regarding loading and unloading of exported or imported goods in certain specific vessels shall be done in accordance with the provisions of the Customs Act, 1962.

52 of 1962.

Board to declare when vessels other than sea going vessels compelled to use dock, wharves, etc.

31.(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, the Board may, after obtaining the approval of the Commissioner 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 or crew, out of, or into, any vessel of any class, specified in such order, except at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage.

(2) On and from the date of the publication of the order mentioned in sub-section (1), it shall not be lawful, without the express consent of the Board, for any vessel,—

- (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; and
- (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, shall while within the limits so specified, 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.

Performance of
services by the
Board or other
person.

32. (1) The Board shall have power to undertake the following services, namely:—

- (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 Board's 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 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 issue a receipt in such form as may be specified in the regulations.

(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 as may be prescribed by regulations.

(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 may be specified in the regulations.

(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 the Indian Contract Act, 1872.

9 of 1872.

(7) After any goods have been taken charge of and a receipt issued 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.

Responsibility of
Board for loss,
etc. of goods.

33.(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 –

(a) be subject to provisions of the Customs Act, 1962;

52 of 1962.

(b) in case of goods received for carriage by railways, be governed by the provision of the Railways Act, 1989 ; and

24 of 1989.

(c) in other cases, be that of a bailee under the Indian Contract Act, 1872:

9 of 1872.

Provided that, no responsibility under this section shall attach to the Board until a receipt under section 32 has been issued by the Board and after the expiry of such period from the date of taking charge of such goods by the Board, as may be prescribed by regulations.

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

Accommodation
to be provided
for customs
officers in
wharves, etc.

34.(1) Where the competent authority of Customs has, under the Customs Act, 1962 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 for a warehouse

52 of 1962.

for the storing of dutiable goods, 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 and as prescribed by the Handling of Cargo in Customs Area Regulation, 2009.

(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.

(3) The customs cargo service provider, for custody of imported goods or export goods and for handling of such goods in the custom area, shall fulfil such conditions as may be prescribed by rules.

Power to permit erection of private wharves, etc., within the limits of port.

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

(2) If any person acts 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 to remove it, the Board may cause it to be removed at the expense of that person.

Compensation payable in certain cases where use of any private wharf, etc., rendered unlawful.

36.(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, the compensation, amount of which shall be determined in the manner and in accordance with the principles hereinafter set forth, namely:—

- (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 a person as an arbitrator, who is, or has been, or is qualified for appointment as a Judge of a High Court;
- (e) The State government may, in any particular case, nominate a person possessing special knowledge of any matter relating to any case under inquiry to

assist the arbitrator in determining any question which has to be decided by him under this 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 fair and convey the same to 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;

26 of 1996.

(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 the Civil Procedure, 1908, in respect of the following matters, namely:—

5 of 1908.

(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; and

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

(k) every award shall also state the amount of costs incurred in the arbitration proceedings under this

section and by which persons and in what proportions, they are to be paid;

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

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

**Appointment of
Port Facilities
Security Officer.**

37. (1) There shall be an officer appointed as the Port Facility Security Officer (PFSO) to each operating Port in the manner prescribed.

(2) The Port Facility Security Officer shall be responsible for overall security of the Port and interact for the purpose with all security organizations such as Coast Guard, Indian Navy, State Marine Police and other organizations and ensure the enforcement and regulation of various aspects of the Port Security.

(3) The Port Facility Security Officer shall get the port security audited by the Indian Registrar of Shipping duly involving the Naval Authorities of the local areas.

CHAPTER VI

IMPOSITION AND RECOVERY OF RATES AT PORTS

**Scales of rates
for services
performed by the
Board or other
person.**

38. (1) The Board shall, from time to time, prescribe 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 the port or port approaches, namely:—

- (a) transshipping of passenger or goods between vessels in the port or port approaches;
- (b) stevedoring, landing and shipping of passenger or goods from or to such vessels, to or from any wharf, quay, jetty, pier, dock, berth, stage, or erection, land or building in the possession or occupation of the Board or at any place within the limits of the port or port approaches;
- (c) cranaage or portorage of goods on any such place;
- (d) wharfage, storage of goods or demurrage thereon at any such place; and
- (e) any other service in respect of vessels, passenger 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 prescribed by the Board for different classes of goods and vessels and for different ports and non-nationalized inland waterways.

Scales of rates and statement of conditions for use of property belonging to the Board.

39. (1) The Board shall, from time to time, also prescribe scale of rates on payment of which and a statement of conditions under which any property belonging to or in the possession or occupation of the Board or any place within the limits of the port or port approaches or non-nationalized inland waterways 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; and
- (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 prescribed for different classes of goods and vessels and for different ports and non-nationalized inland waterways.

Consolidated
scales of rate for
combination of
services.

40. The Board may, from time to time, prescribe consolidated scale of rates for any combination of the services specified in Section 38 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 39.

Power to levy
concessional
rates in certain
cases.

41. In prescribing 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 vessels from one port to another port:

52 of 1962.

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; and

- (b) other goods in special cases.

Scales of rate
and conditions.

42. Every scale of rate and every statement of conditions prescribed by the Board under the foregoing sections of this chapter shall be submitted to the State Government for

approval and shall take effect only when so approved and published in the official Gazette.

Power of the State Government to require modification or cancellation of rates.

43. (1) Whenever the State Government consider it necessary in 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 State Government may cancel any of such scales or make such modifications therein as deemed fit:

Provided that before so cancelling or modifying any scale, the Government shall consider the objection or suggestion if any, 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 State Governments in the Official Gazette and shall only thereupon have effect accordingly.

Exemption or remission of rates or charges.

44. 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 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.

Refund of overcharges.

45. 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 against its bills at any time.

**Notice of
Payment of
charges short
levied or
erroneously
refunded.**

46.(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 a 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 from the date of the payment of the charge, when the charge is short levied or from the date of the refund, where a charge has been erroneously refunded.

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

**Time for payment
of rates on
goods.**

47. 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.

**Board's lien for
rates.**

48. (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 may have been placed, or for any other dues to the Board under this Act or the Rules and Regulations framed thereunder, the Board shall have a lien on such goods and may seize and detain the same until such rates and rent are paid in full.

(2) Such lien shall have priority over all other liens and claims, except for general average and for the ship-owner's

lien upon the said goods for freight and other charges where such lien exists and has been preserved in the manner provided in sub-section (1) of section 49 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 State Government under any law for the time being in force.

**Ship owner's lien
on freight and
other charges.**

49. (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 the extent of 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 this 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 without regard to such lien:

Provided that the Board shall exercise reasonable care to ascertain the authenticity of such document.

**Sale of goods
after two months
if rates or rent
are not paid or
lien for freight is
not discharged.**

50. (1) The Board may, after the expiry of two months from the date the goods passed into its custody, or in the case of livestock and perishable or hazardous goods after the

expiry of a shorter period not being less than twenty-four hours after the landing of the livestock or goods as the Board may deem fit, sell by public auction or in such cases as the Board considers it necessary to do so, for reasons to be recorded in writing, sell by tender, private agreement or in any other transparent manner such goods or so much thereof as in the opinion of the Board may be necessary to recover—

- (a) any rates payable to the Board in respect of such goods if these have not been paid; or
- (b) any rent payable to the Board in respect of any place on or in which such goods have been stored if such rent has not been paid; or
- (c) any amount against any lien of any ship-owner for freight or other charges of which notice has been given but which 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 under sub-section (1), the Board shall give ten days notice of its intent to sell by publication thereof in at least two principal local daily newspaper:

Provided that, in the case of livestock 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 warrants.

(3) If the address of the owner of the goods has been stated 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 or fax or e-mail or short message service (SMS), but the title of a bonafide 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 State Government may prescribe in the rules.

Explanation— In this section and Section 51 “controlled goods” means goods the price or disposal of which is regulated under any law for the time being in force.

Disposal of
goods not
removed from
premises of
Board within the
time limit.

51. (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 person is known, cause a notice to be served upon him by letter delivered at such address or sent by post or fax or e-mail or short message service (SMS), or if the notice cannot be so served upon him or his address is not known, cause a notice to be published in at least two 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 transparent 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 transparent manner such goods or so much thereof as in the opinion of the Board may be necessary after giving notice of the sale in the manner specified in sub-section (2) and (3) of Section 50.

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

(a) The Board may, in the case of livestock 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 given such shorter notice of sale in such manner as in the opinion of the Board the urgency of the case warrants;

(b) controlled goods may be sold in accordance with the provisions of sub-section (4) of Section 50.

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

Provided that, in custom area, the Board shall ensure that the manner of disposal of unclaimed or unclear cargo shall be in accordance with the rules.

Application of
sale proceeds.

52. (1) The proceeds of every sale under section 50 or Section 51 shall be applied in the following order, namely:—

- (i) for payment of the expenses of the sale;
- (ii) for payment, according to their respective priorities, of the liens and claims excepted in sub-section (2) of section 48 from the priority of the lien of the Board;
- (iii) for payment of the rates and expenses of landing, removing, storing or warehousing the same and all other charges due to the Board in respect thereof including demurrage payable in respect of such goods for a period of four months from the date of landing;
- (iv) for payment towards any penalty or fine due to the Central Government under any law for the time being in force relating to customs; or
- (v) for 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 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:

Provided that, in custom area, the proceeds of every sale under sections 50 and 51 shall be applied subject to the order specified in section 150 of the Customs Act, 1962.

52 of 1962.

Recovery of
rates and
charges by
detainment of
vessel.

53. (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, or which has other over-dues to the Board, refuses or neglects to pay the same or any part thereof on demand, the Board may detain or arrest such vessel with 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 detention or arrest, is paid.

(2) In case any part of the said rates or penalties or of the cost of distress or arrest or the keeping of the same, remains unpaid for a period of five days after any such distress or arrest has been so made, the Board may cause the vessel or other thing so detained 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, tendering the surplus, if any, to the master of such vessel on demand.

Grant of port
clearance after
payment of rates
realization of
damages, etc.

54. 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—

- (a) that an amount specified therein is due in respect of rates, regulation 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 vessels; or
- (b) that an amount specified therein is due in respect of any damage referred to in section 101 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 VII

BORROWING POWERS OF BOARD

Powers to raise loans.

55. (1) For fulfilling the purposes of this Act, the Board may raise loans with the previous sanction of the State Government on such terms and conditions as it may prescribe.

(2) Loans under sub-section (1) may be raised by the Board in the open market on the board securities issued by it or may be obtained from the State Government or an institutional lender approved by the State Government.

Board Securities.

56. (1) The Board may, with the previous sanction of the State Government, specify the form in which the board securities shall be issued 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 thereof, 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 at the material time.

Right of joint or several payees of securities.

57. Notwithstanding anything contained in the Indian Contract Act, 1872—

9 of 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.

Powers of one or two or more joint holders to grant receipt.

58. 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 holder(s).

Endorsements to
be made on the
face of the
Security.

59. Endorsement by the Board of a security which is transferrable by endorsement shall be valid when the maker or holder of the board security signs the same in accordance with the provisions of Section 15 of the Negotiable Instruments Act, 1881.

26 of 1881.

Endorsement of
security not
liable for amount
thereof.

60. A person shall, by reason of his having endorsed any board security, be liable to pay any money due either as principal or as interest thereunder, unless his liability is excluded or made conditional in accordance with the provisions of the Negotiable Instruments Act, 1881.

26 of 1881.

Impression of
signatures on
securities.

61. (1) The signature of the person authorized to sign board securities may be printed, engraved or lithographed or impressed by such other mechanical process as the Board may direct and this shall in no way invalidate the security.

(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.

Issue of
duplicate
security.

62.(1) When any board security is stated to have been lost, stolen or destroyed either wholly or in part and a person claims to be the person to whom but for such 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 genuineness of the claim, and on payment of such fee, as may be prescribed by regulation, obtain from the Board an order for,—

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

(2) An order shall not be passed under sub-section (1), until the facts of the loss, theft or destruction and the Board's intent to issue duplicate to the applicant is published by the Board, by notification in the manner as may be 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.

Issue of
converted,
consolidated or
sub-divided
securities.

63. (1) The Board may, subject to such conditions as it may prescribe, on the application of a person claiming to be entitled to a Board security, or securities issued by it, on being satisfied of the genuineness of the claim and on delivery of the security or securities received in such manner and on payment of such fee, if any, as it may prescribe, convert, consolidate or subdivide 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 security or securities of the same or different classes or of the same or different loans.

Discharge in
certain cases.

64. Notwithstanding anything contained in the Limitation Act, 1963, the Board shall—

- (a) on payment of the amount due on a board security on or after the date on which payment becomes due, or
- (b) when a duplicate security has been issued under section 62, or

(c) when a new security or securities has or have been issued upon conversion, consolidation or sub-division under section 63, be discharged from the liabilities---

- (i) in respect of the security or securities in the case of payment, after the lapse of six years from the date on which payment was due;
- (ii) 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 62 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; and
- (iii) in the case of new security issued upon conversion, consolidation or sub-division after the lapse of six year from the date of the issue thereof.

Security for
loans taken by
Board.

65. All loans raised by the Board under this Act shall be a first charge on the property vested or which may, hereafter during the currency of loans, become vested in the Board other than,—

- (a) any sum set apart by the Board as sinking fund for the purpose of paying off any loan; or
- (b) any sum set apart by the Board for the payment of pension to its employees; or
- (c) the provident or pension fund established by the Board; or
- (d) the rates leviable by the Board under this Act.

Remedies of
State
Government in
respect of loans
made to the
Board.

66. The State Government shall have the same remedies as holders of board securities in respect of loan made by it to the Board and State Government shall not be deemed to possess greater rights in respect of such loans than that of the holders of such board securities:

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

Power of Board
to repay loans
before due date.

67. Without prejudicing the security of the other holders of the board securities, the Board may, with prior sanction of the State Government, apply any sums received by it under the provisions of this Act for premature payment to the State Government:

Provided that, the amount of interest, in such cases, shall be re-computed to correspond to the actual amount of outstanding principal.

Establishment of
sinking fund.

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

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

(2) Where any sinking fund has, before the appointed date, 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.

Investment and
application of
sinking fund.

69. (1) The sums forming part of any sinking fund set apart by the Board under section 68 shall be invested in public securities or in such other securities as the State Government may approve and shall be held by the Board in trust for the purpose 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 debt for which the fund has been established.

Examination of
sinking fund.

70. (1) A sinking fund established under section 68 shall be subject to annual examination by such person as the State Government may appoint who shall ascertain the adequacy of the sinking fund for the purpose of which it was created.

(2) The Board shall forthwith augment the sinking fund with any amount which the person appointed under sub-section (1) may certify to be deficient unless the State Government allows a gradual augmentation.

(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 prior consent of the State Government, suitably reduce or discontinue the half yearly contributions to the sinking fund required under section 68.

Power of the
Board to raise
loans on Short
Term Bills.

71. 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.

9 of 1914.

Power of the
Board to take
temporary loans
or overdrafts.

72. Notwithstanding anything contained in this Act, the Board may,—

(a) borrow money 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;

(b) obtain advances from such bank on pledge or hypothecation of its current assets :

Provided that, such temporary overdrafts or other loans shall not at any time have a currency longer than six months and shall not be taken, without the prior approval of the State Government, if, the amount of such overdrafts, or other loans exceeds such amount, as the State Government may prescribe:

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

**Power of the
Board to borrow
money from
Foreign Lending
Institutions.**

73. Notwithstanding anything contained in this Act, but subject to any other law for the time being in force, the Board may, with prior approval of the State Government, on such terms as may be approved, raise, for the purposes of this Act, loan in any currency or currencies from Lending Institutions 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 State Government otherwise provide.

CHAPTER VIII

REVENUE AND EXPENDITURE

**General Fund of
the Board.**

74. The Board shall create and maintain a fund to be called the General Fund of the Board to which shall be credited all monies received by or on behalf of the Board under the provisions of this Act and as Conservator of the Ports and of their approaches or as the body appointed under section 36 of the Indian Ports Act, and all grants, subventions, loans and advances received from the State Government.

**Application of
monies in
General Fund.**

75. (1) The amount credited to the General Fund under section 74 shall be applied by the Board in payment of the

following charges, namely:—

- (a) liabilities against loans that may have been raised or obtained by the Board and payment to the sinking fund established for such loan;
- (b) Salaries, fees, remunerations, allowances, pensions, gratuities, compassionate allowances or other moneys due to the Chairperson and other members of the Board, the employees of the Board and the surviving relatives, if any, of such employees;
- (c) 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 State 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) 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 established and maintained 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 towards works and services undertaken under section 26;

- (j) any other expenditure which may be incurred by the Board generally for the purposes of this Act; and
- (k) any other charge which may on the application of the Board or otherwise be specially sanctioned by the State Government or for which the Board may be legally liable.

(2) All monies 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 be deposited in a nationalized bank, or be invested in such public securities as may be determined by the Board to be held in trust for the purposes of this Act.

Power to transfer moneys from general account to specified particular account and vice versa.

76. The Board may, with the prior approval of the State Government, apply any sum out of the monies in 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.

Establishment of Reserve Funds.

77. 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 decrease in revenue or increase in 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 works under this Act.

Power to reserve Board's securities on Board's own investments.

78.(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 State 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.

Prior approval of the State Government necessary to charge expenditure to capital account.

79. Except within such limit as may be specified and subject to such conditions as may be prescribed by the State Government in the rules, the Board shall not charge any expenditure to capital account without the prior approval of the State Government.

Works requiring sanction of the Board or the State Government.

80. No new work or appliance, the estimated cost of which exceeds such amount as may be fixed by the State 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 and an estimate for such work or appliance has been submitted to and approved by the Board:

Provided that no separate approval of the State Government will be necessary in case where the actual expenditure exceeds the approved estimate by not more than ten per centum.

Power of the Chief Executive Officer regarding execution of works.

81. The Chief Executive Officer may direct the execution of any work, the cost of which does not exceed such maximum limit as may be prescribed by the State

Government and may enter into contract for the execution of such works but in every such case the Chief Executive Officer shall, as soon as possible, report to the Board of such direction given or contract entered into by him.

Power of the Board to compound or compromise claims.

82. Subject to the limits and the conditions as may be prescribed by the State Government, 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 in all other cases the Board may compound or compromise with prior approval of the State Government.

Writing off of losses.

83. Subject to such conditions as may be prescribed by the State Government, where the Board is of the opinion that any amount due or any loss, whether of money or of property, incurred by the Board is irrecoverable, the Board may sanction the writing-off of the said amount or loss:

Provided that where the amount due for any loss exceeds the limits prescribed, the Board shall require prior approval of the State Government to sanction such irrecoverable amount or loss.

Powers of the Board as Conservator.

84. All the powers, authorities vested in and restrictions imposed on the Board by this Act, shall apply mutatis mutandis to the works which may be executed by the Board as 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 there-under.

Budget estimates.

85. (1) The Board shall, on or before the thirty-first day of January in each year, hold a special meeting at which the Chairperson 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 State Government may specify.

(2) A copy of such estimate shall be sent by post, fax e-mail 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 of each year, cause a copy of such estimate as provisionally approved by it, to be sent to the State Government.

(5) The State 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 State Government may call for and shall, as required, modify or alter the estimate and resubmit it to the State Government.

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

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

Preparation of
supplemental
estimates.

86. The Board may, in the course of any year for which an estimate has been sanctioned by the State Government, cause one or more supplemental estimates for the residue of such year to be prepared and the provision of section 85 shall, so far as may be, apply to such estimate as if it were an original annual estimate.

Re-appropriation
of amounts in
estimates.

87. Subject to any direction which the State Government may give in this regard, 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 State Government

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

Adherence to
estimate except
in emergency.

88. (1) Subject to the provision of section 87, no sum exceeding such amount as the State Government may fix in this regard 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 which has been finally sanctioned by the State Government.

(2) If any sum exceeding such limit as may have been fixed in this regard 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 State Government together with an explanation of the way in which it is proposed by the Board to cover such extra expenditure.

Accounts and
Audit.

89. (1) The Board shall maintain proper account and other relevant records and prepare the annual statement of account including the balance-sheet in such form and according to such procedure as may be prescribed by the State Government.

(2) The accounts of the Board shall be audited once in every year and if so requested by the State Government concurrently with the compilation of such accounts by an auditor appointed by the State Government in consultation with the Comptroller and Auditor General of India (hereinafter referred to as the Auditor) and any amount payable to such Auditor by the Board in respect of such audit shall be chargeable 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 with regard to the audit of the State Government accounts in particular, shall have the right to demand production of books of accounts, related vouchers and other relevant records of the Board necessary for the purpose of audit.

Preparation and submission of audit report.

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

(2) After the audit report is received by the State Government, it shall at the earliest, cause the report to be laid for not less than thirty days before the Legislative Assembly of the State.

The Board to remedy defects and irregularities pointed out in audit report.

91. The Board shall address any defects or irregularities pointed out in the audit report and shall take needful remedial action and send a report of the action taken to the State Government.

State Government to decide on differences between Board and auditors.

92. If there is a difference of opinion between the Board and the Auditor on any point included in the audit report, and the Board express its inability to accept and implement any recommendation of the Auditor, the matter shall be referred to the State Government which shall issue directions thereon and the Board shall be bound thereafter to act upon such directions.

CHAPTER IX

SUPERVISION AND CONTROL OF THE GOVERNMENT

Annual administrative report.

93. (1) At the earliest possible after the first day of April every year and not later than such date as may be prescribed by the rules, the Board shall prepare and submit to the State Government a detailed report on the administration of the ports during the preceding year ending on the thirty-first day of March, in such form as may be prescribed.

(2) After the annual administrative report prepared under sub-section (1) is received by the State Government, it shall cause it to be laid for not less than thirty days before the State Legislative Assembly.

Submission of statements of income and expenditure to the State Government.

94. (1) The Board shall annually or whenever directed by the State Government to do so, submit a 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 for inspection by the public under the Right to Information Act, 2005.

22 of 2005.

Power of the
State
Government to
supersede
Board.

95. (1) If at any time, the State Government is of the opinion that the Board is unable to or has persistently defaulted for any reason whatsoever to perform the duties imposed on 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 suffered, the State Government may, by notification in the official Gazette, supersede the Board for a period not exceeding six months at a time or till reconstitution of Board, whichever is earlier :

Provided that the State 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 before issuing a notification under this sub-section.

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

- (a) all 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 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 State Government may direct; and
- (c) all properties vested in the Board shall, until the Board is reconstituted, vest in the State Government.

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

- (a) extend the period of supersession for such further term, not exceeding six months, or

- (b) reconstitute the Board by fresh appointment in which case, a person who has vacated his office under clause (a) of sub-section (2) shall not be deemed as disqualified for re-appointment only for reason of such vacation; or
- (c) reconstitute the Board by appointment only for such period as it may consider necessary, in which case a person who has vacated his office under clause (a) of sub-section (2) shall not be deemed as disqualified for reappointment only for reason of such vacation:

Provided that the State 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 sub-section, take action under clause (b) or (c) of this sub-section.

(4) The State Government shall issue a notification under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action and lay it before the State Legislative Assembly at the earliest possible opportunity.

Power of the State Government to give directions to the Board.

96.(1) Insofar as it is not inconsistent with the provisions of this Act, the State Government may, from time to time, issue to the Board directions in writing on matters of policy and the Board shall be bound to comply with the same:

Provided that the Board shall be given due opportunity to express its view before any direction is given under this sub-section.

(2) The decision of the State Government whether a matter pertains to policy or not shall be final.

CHAPTER X

PENALTIES

Persons employed under this Act to be public servants for certain purposes.

97. Every person employed by the Board under this Act shall be deemed to be a public servant in terms of the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988.

**45 of 1860.
49 of 1988.**

Penalty for contravention of Section 27 to 29 and 31.

98. Whoever fails to comply with any order issued under section 27, 28 or 29 or any condition imposed under section 31 shall, on conviction, be punishable with fine which may extend to five thousand rupees and, where the contravention or failure continues, with further fine which may extend to five hundred rupees for each subsequent day during which such contravention or failure continues.

Penalty for setting up wharves, quays, etc., without permission.

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

Penalty for evading rates.

100. Any person who with the intent of evading payment of the rate lawfully due in respect of any goods or vessels carrying any goods—

- (a) understates or incorrectly gives the weight, quantity, value or description of such goods, or the tonnage of such vessel in any document presented to any employee of the Board for the purpose of enabling him to determine such rates; or
- (b) removes or attempts to remove or abets the removal of such goods or such vessel, shall, on conviction, be punishable with fine which may extend to twice the amount of rates so due subject to a minimum of ten thousand rupees.

Recovery of
value or damage
to property of the
Board.

101. If, through negligence of any person having the guidance or command of any vessel, or of any 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 Magistrate's warrant, of a sufficient portion of the boats, masts, spares, ropes, cables, anchors or stores belonging to such vessel:

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

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

Other offences.

102. Any person who contravenes any of the provisions of this Act, or of any rule, regulation or order made there-under, 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.

Cognizance.

103. 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.

Offence by
companies.

104. (1) If the person committing an offence under this Act is a company, every person, who, at the time when the offence was committed was in charge of, and was responsible to the company for its conduct of business, 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 under this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or 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 XI MISCELLANEOUS

**Constitution of
State Ports
Consultative
Committee.**

105. (1) The State Government may, by notification in the official Gazette, constitute a State Ports Consultative Committee consisting of members of the Board and such other persons, not being more than twenty, as the State Government may appoint from amongst persons who are, in the opinion of the State Government, capable of representing the interests of the commerce, shipping, sailing, vessels, Customs, Railways, road transport, labour, communications, fisheries and industries, expertise in harbour engineering,

hydro-graphic survey, maritime research organisations, town planning and development, environment, labour welfare, Port User Association and any other relevant interest-group:

Provided that there shall be at least one member representing the each of the aforesaid interests.

(2) The Chairperson of the Board shall also be the Chairperson of the Committee.

(3) The Chief Executive Officer of the Board shall function as Secretary to the Committee.

(4) The functions of the committee shall include the following:—

- (a) to advise the Board on all general questions and schemes pertaining to the ports, non-nationalized inland water transport and ferries and coastal protection;
- (b) to review the administration of ports, non-nationalized inland water transport and ferries and coastal protection and to suggest measures for improvement;
- (c) to suggest measures to remove any difficulty experienced by the Board in its administration of ports, inland water transport and ferries and coastal protection;
- (d) to make *suo moto* recommendations to the Board in regard to any matter relating to administration of the ports, non-nationalized inland water transport and ferries and coastal protection, and productive use of non-port land; and
- (e) to report to the State Government or as the case may be, to the Board on such matter as may be referred to it either by the State Government or the Board for its opinion.

(5) The State Government may prescribe in the rules for —

- (a) convening the meeting of the committee and procedure of the meetings;
- (b) duties of the Secretary of the Committee;
- (c) the term of the office of persons appointed to be the members of the committee to represent any of the aforesaid interests, norms for travelling and other allowance to the members of the committee.

(6) Any person appointed to the Committee may resign from the membership by tendering his resignation in writing to the Chairperson and the resignation shall take effect from the date on which it is received by the chairperson who shall give intimation of the vacancy to the State Government.

Local Advisory
Committee.

106.(1) The State Government may, from time to time constitute to each of such ports as it may deem necessary a Local Advisory Committee, consisting of such number of persons as it may deem fit in each case and on such terms and conditions as may be prescribed.

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

(3) The Port Officer, appointed under the Indian Ports Act, shall be the *ex officio* Chairperson 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 Chairperson 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 State Government may specify.

Limitation of proceeding in respect of things done under this Act.

107. 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 and him stating the cause of action, or after six months from the date of cause of action.

Protection of act done in good faith.

108. No suit or other legal proceeding shall lie against the Board or any member or employee thereof in respect of anything which is done in good faith or intended to be done under this Act or any rule or regulation made there-under, 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.

Power to make rules.

109. (1) The State 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 powers, such rules may be made for all or any of the following matters, namely:—

- (a) Procedure for convening meetings of the Board, quorum and conduct of business by the Board;
- (b) the appointment, promotion, suspension, removal and dismissal of officers and employees of the Board;
- (c) the terms and conditions of service of persons who become employees of the Board under clause (f) of Section 20;
- (d) any other matter which is incidental to, or necessary for, the purpose of regulating the

appointment and conditions of service of its employees;

- (e) 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;
- (f) fees and allowances payable to the members of the Board or any of its committees under section 13;
- (g) the form and manner of executing contracts under section 24;
- (h) the terms and conditions on which the Board may raise loans under sub-section (1) of Section 55;
- (i) the terms and conditions of appointment of persons as member of a Local Advisory Committee under sub-section (1) of Section 106 and
- (j) any other matter which is to be or may be prescribed by rules.

(3) All rules made under this Act shall come into force from the date of their publication in the Official Gazette.

(4) Every rule made under this Act shall be laid, as soon as, after it is made, before the State Legislative Assembly, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before expiry of the session in which it is so laid or the session immediately following, the house makes any modification in the rule or decides that the rule should not be made, and notifies its 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:

Provided that any such modification or annulment shall cast no adverse effect on anything previously done or omitted to be done under that rule.

Power to make regulations.

110.(1) The Board may, with previous approval of the State Government, make regulations consistent with this Act, and the rules made thereunder, to carry out the purposes of this Act.

(2) Without prejudice to the generality of this power, such regulations may provide for all or any of the following matters, namely :—

- (a) the time and place of the meetings of the committees, the procedure to be followed for the transaction of business at any such meetings and the number of members necessary to constitute a quorum at such meetings;
- (b) the form of receipt to be given under sub-section (2) of Section 32;
- (c) the period within which notice may be given under sub-section (2) of Section 33;
- (d) the guidance of persons employed by the Board under this Act;
- (e) 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;
- (f) the reception, porter age, 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 alleged to have been so damaged;

- (g) maintaining cleanliness of 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 thereon;
- (h) the mode of payment of rates leviable by the Board under this Act;
- (i) 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;
- (j) 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;
- (k) regulating the lighterage of cargo between ships or between ships and shore or between shore and ships;
- (l) the exclusion from the premises of the Board of disorderly or other undesirable persons and of trespassers;
- (m) ensuring the safety of the port;
- (n) generally for the efficient and proper administration of the ports;
- (o) 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;

- (p) the manner in which payment of interest in respect of such board securities to be made, recorded and acknowledged;
- (q) the circumstances and the manner in which board securities may be renewed;
- (r) the circumstances in which such securities must be renewed before further payment of interest thereon can be claimed;
- (s) the form in which such securities delivered for renewal, conversion, consolidation or sub-division are to be receipted;
- (t) the proof which is to be produced by a person applying for duplicate securities;
- (u) the form and manner of publication of the notification mentioned in sub-section (2) of section 62 and the manner of publication of the list mentioned in sub-section (3) of that section;
- (v) 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;
- (w) the conditions subject to which the board securities may be converted, consolidated or sub-divided;
- (x) the amount for which stock certificate may be issued and the fees to be levied in respect of the issue of stock certificate;
- (y) generally all matters connected with issue of duplicate of securities, and renewal, conversion, consolidation and sub-division of securities;
- (z) procedure and fees for allowing tourists and visitors to the port;

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

Provisions with respect to regulations.

111. (1) No regulation made by the Board under this Act shall have effect until the same has been published 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 thousand rupees and where the breach is a continuing one, with further fine which may extend to five hundred rupees for every day during which such breach continues.

Power of the State Government to direct regulations to be made or to make regulations.

112. (1) Whenever the State Government considers it necessary so to do, it may, by order in writing, direct the Board to make any regulations for all or any of the matters specified in Section 110 or to amend any regulations within such period as the State Government may specify in this behalf:

Provided that, the State 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 specified under sub-section (1), the State 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 State Government may deem fit and publish the same in the Official Gazette:

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

Power of the State Government to make first regulations.

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

Posting of
certain
regulations, etc..

114. The Board may, for the benefits of stakeholders, display the text of key regulations and the scale of rates framed together with a statement of conditions framed by the Board prominently in the local language and English on display boards to be maintained for the purpose at the wharves, docks, piers and other convenient places on the premises of the Board.

Application of
the provisions of
this Act to
Aircraft .

115. 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.

Power to remove
difficulties.

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

Provided that, no such order shall be made in respect of a port after the expiry of two years from the appointed date.

(2) Every order made under sub-section (1) shall, as soon as may be, after it is made, be laid before the State Legislative Assembly.

Repeal of Odisha
Act 30 of 1962.

117. The Odisha Port Trust Act, 1962 is hereby repealed.

Odisha Act 30 of
1962.

By Order of the Governor

PRATAP KUMAR PATRA

Principal Secretary to Government-I/c