

Government of India
Ministry of Shipping
Ports Wing

.....
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Subject: THE INDIAN PORTS BILL 2011

A draft **INDIAN PORTS BILL 2011** is hosted at Ministry of Shipping website for seeking comments from all stakeholders. It is requested that all stakeholder may be furnish their comments to this Ministry by 21st August , 2011 through fax(No. 23719456)/email(dspg@nic.in).

Sd/-
(A.R.Sengupta)
Under Secretary to the Government of India

DRAFT

**THE INDIAN PORTS
BILL 2011**

JULY, 2011

INDIAN PORTS BILL, 2011

A Brief Background Note

Based on a resolution in Maritime Development Council, Ministry of Surface Transport constituted the Committee headed by Shri C. Babu Rajeev the then Chairman, Cochin Port Trust in November, 1997, to review Indian Ports Act 1908 and Major Ports Act, 1963. This Committee comprised of a Maritime Law Expert, Representatives of Maritime States, Law Ministry, D.G. Shipping, Ministry of Shipping, Ports and MD, IPA. The Terms of Reference of the Committee were :-

- (i) To identify the provisions in the Statute which are no longer required due to changes in the maritime/port activities over the years
- (ii) To identify the provisions which are in tune with the present needs of the ports to co-operate in a commercial climate and in harmony with the liberalization of the economy; and
- (iii) To examine whether the existing statutes can be unified/simplified into a single statute.

The Committee submitted its Report along with the recommendations to the Ministry in November, 1999.

The Report was circulated to the Maritime States to the relevant Stake Holders. The Report was also discussed with the Ports' Chairmen in a meeting taken by the Secretary (Shipping), Joint Secretary(Ports) and other Sr. Officers of the Ministry at Goa in July, 2002.

During the Fifth Meeting of the Maritime States Development Council (MSDC) held in September, 2003 at Goa, it was decided that IPA should take up the review of recommendations of Babu Rajeev Committee's Report afresh look due to the recent changes in the Maritime Sector and also various liberalised policy initiatives taken by the Government. Accordingly, IPA constituted a small Committee which was headed by the then MD, IPA and comprising of the Members from D.G.Shipping, TAMP and Major Ports. The Committee after various deliberations, submitted its Report to the Ministry on 30th December, 2004. Subsequently, the IPA Committee's Recommendations were discussed during the meeting taken by the Secretary (Shipping) in April, 2005 and also during the Meeting of Governing Body of IPA in July, 2005.

Based on discussions as referred above, the Ministry during 2007 decided that IPA to re-examine the IPA Committee's Recommendations and give a fresh look to the Report. Accordingly, a fresh look was given to IPA Committee Report and revised recommendations with slight modification and was sent to the Ministry in January, 2008.

Thereafter, the Secretary (Shipping) in the Weekly meeting decided that a Power Point Presentation on the Amendments proposed to the Indian Ports Act, 1908 and Major Ports Act, 1963 by the IPA Committee may be made before him. Accordingly, a Power Point Presentation made to the Secretary (Shipping) on 15-06-2010. After the presentation, the Secretary (Shipping) desired that the existing legislations namely, Indian Ports Act, 1908 and Major Ports Act, 1963 may be merged into a single Consolidated Act in which Part A containing various operative provisions as applicable to both Major Ports and Non-Major Ports, Public or Private Ports may be incorporated and the Part B may be separately evolved to deal with Ownership Control and Management of Major Port Trusts. He also opined that the provisions relating to the existing TAMP may be de-linked from this Consolidated Act and a separate Act creating some Port Regulatory Authority Act may be promulgated. The powers to fix rates may be left to the Management of Port Authority or Government or any Authority so authorized by the Government.

In the light of the above, a thorough review has been made and the proposed new act titled "*Indian Ports Bill, 2011*" is prepared. In the proposed new legislations, various changes which inter-alia include provisions relating, ISPS Code, P.P. Act, 1971, Common Recruitment Rules Head of the Departments of Major Ports, overriding powers of Central Govt. in respect of port limits etc. have been incorporated. If this legislation is enacted, both the existing Indian Ports Act 1908 as well as Major Ports Act, 1963 will stand repealed.

- INDIAN PORTS ASSOCIATION
NEW DELHI

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The Indian Ports Bill, 2011

An Act to update and consolidate the law relating to Ports to meet the current requirements and to make provision for the constitution of port authorities for major ports in India to vest the administration, control and management of such ports in such authorities and for all matters connected thereto.

PART-A CHAPTER-I PRELIMINARY

1. Short title, commencement and application

- (1) This Act may be called the Indian Ports Bill, 2011.
- (2) It shall extend to all ports and to such parts of the navigable rivers or channels leading to such ports, notified under the Indian Ports Act, 1908 or Major Port Trusts Act, 1963, or parts of navigable rivers or channels to which the Government by notification in the Official Gazette may extend this Act and such other ports with effect from such date as the Government may, by notification in the official Gazette appoint.
- (3) But nothing in section 38 shall apply to any port, river or channel to which the section has not been specially extended by the Government.
- (4) Part-A and Part-C of this Act shall apply except or otherwise specifically mentioned, to all Ports and Part-B shall apply exclusively to the Board of Trustees constituted under this Act for the Major Ports.

2. Savings

Nothing in this Act shall –

- (i) apply to any vessel belonging to or in the service of the Central Government or a State Government or to any vessel of war belonging to any sovereign country, and used for the time being, only on Government non-commercial services.
- (ii) deprive any person of any right of property or other private right, except as hereinafter expressly provided, or
- (iii) affect any law or rule relating to the customs or any order or direction lawfully made or given pursuant thereto which is not consistent with the provisions of this Act.

3. Definitions

In this Act, unless there is anything repugnant in the subject or context unless or otherwise requires –

(a) “appointed day”, in relation to a port, means the date on which this Act is made applicable to that port;

(b) “Board”, in relation to a Major Port means the Board of Trustees constituted under this Act or the Board of Directors constituted under the Companies Act, 1956 as the case may be for that Major Port.

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

(d) “foreshore”, in relation to a port, means the area between the high-water mark and the low water mark relating to the port;

(e) “goods” includes bunkers, ship stores and livestock and every kind of movable property;

(f) “Government” in respect of major ports, for all purposes, and in respect of other ports for the purposes of making rules under clauses (m), (n) and (o) of section 6(1) and of the appointment of and control of the port heath-officers under section 21, means the Central Government, and save as aforesaid, means the State Government.

(g) “high-water mark”, in relation to a port, means a line drawn through the highest points reached by ordinary spring-tides at any season of the year at the port;

(h) “immovable property” includes wharfage rights and all other rights exercisable on, over, or in respect of, any land, wharf, dock or pier;

(i) “Indian Ports Act” means the Indian Ports Bill, 2011

(j) “land” includes the bed of the sea or river below high-water mark, and also things attached to the earth or permanently fastened to anything attached to the earth;

(k) “low-water mark”, in relation to a port, means a line drawn through the lowest points reached by ordinary spring-tides at any season of the year at that port;

(l) “Magistrate” means a person as is defined under the Code of Criminal Procedure 1973.

(m) “Major port” means any port which the Central Government may by notification in the Official Gazette declare, or may under any law for the time being in force have declared, to be a major port;

(n) “Master”, when used in relation to any vessel making use of any port, means, subject to the provisions of any other enactment for the time being in force, any person (except a pilot or harbour master of the port) having for the time being the charge or control of the vessel;

(o) “owner” (i) in relation to goods, includes any consignor, consignee, shipper or agent of any of them for the sale, custody, loading or unloading of such goods; and

(ii) in relation to any vessel making use of any port, includes any part-owner, charterer, assignee, or mortgagee in possession thereof;

(p) “pier” includes any stage, stairs, landing place, hard, jetty, floating barge, transhipper or pontoon, and any bridges or other works connected therewith;

Explanation - For the purposes of this clause, “transhipper” means a floating craft or vessel, whether dumb or self-propelled, on which gears are provided for discharging cargo from a barge or wharf and loading it into a ship.

(q) “Pilot” means a person for the time being authorised by the Government to pilot vessels;

(r) “Port” includes any part of a river or channel in which this Act is for the time being in force; or notified as such by the Government for the purposes of this Act by notification in the Official Gazette.

(s) “port approaches”, in relation to a port, means those parts of the navigable rivers and channels leading to the port as notified by the Government from time to time.

(t) "Port authority" in relation to a Port means an authority on whom the ownership, control and management of a port is transferred or vested for the time being *or* notified by the Government under this Act or any other Act for the time being in force.

(u) “Port Trust security” means debentures, bonds or stock certificates issued by a Board in respect of any loan contracted by it under the provisions of this Act or issued by any other authority for the payment of which the Board is liable under this Act;

(v) “prescribed” means prescribed by rules or regulations made under this Act;

(w) “public securities” means –

(i) promissory notes, debentures, stock or other securities of the Central Government or of any State Government.

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

(ii) debentures or other securities for money issued by or on behalf of any municipal body, Improvement Trust or Port Trust under the authority of any law for the time being in force in India (including the Port Trust securities);

(x) “rate” includes any toll, due, rent, rate, fee, or charge leviable under this Act;

(y) “regulations” means regulations made under this Act;

(z) “rules” means rules made under this Act;

(za) “Ton” means a ton as determined or determinable by the rules made under section 74 of the Merchant Shipping Act, 1958 (44 of 1958) for regulating the measurement of the gross tonnage of ships;

(zb) “Trustee”, in relation to a major port, means a member of the Board of Trustees constituted for the port under this Act;

(zc) "Vessel" means a craft intended for navigation and includes floating craft, pontoons, dredgers or any other floating device capable of being used in maritime transport for commercial purposes. For the purpose of the above definition, vessels also includes pleasure craft, floating hotels or any other floating device;

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

CHAPTER-II

POWERS OF THE GOVERNMENT

4. Power to extend or withdraw the Act or certain portions thereof.

(1) The Government shall by notification in the Official Gazette, define the limits of the area of a port to which it refers. All land and water within the limits so defined as on the date of the Notification including accretion and reclamation at any time thereafter shall vest in the respective port.

(2) Limits defined under sub-section (1) may include any piers, jetties, landing-places, wharves, quays, docks and other works made on behalf of the public for convenience of traffic, for safety of vessels, or for the improvement, maintenance or good government of the port and its approaches whether within or without high-water mark, and, subject to any rights of private property therein, any portion of the shore or bank within fifty meters of high-water mark.

(3) In sub-section (2) the expression “high-water mark” means the highest point reached by ordinary spring tides at any season of the year

(4) Notwithstanding the provision contained in sub-section (1) above, the State Government, before notification in the Official Gazette defining the limits of the area of a port under its jurisdiction, shall obtain clearance as to the extent of limits to be notified.

5. Alteration of limits of ports

(1) The Government may, subject to any rights of private property, alter the limits of any port in which this Act is in force by notification in the Official Gazette and by such other means, as it thinks fit.

(2) Notwithstanding the provisions contained in sub-section 4(1) and 5 (1) above, the Central Government shall exercise its power to settle any dispute arising out of defining or alteration of port limits by any Government and demarcate and delineate the specified limits for a port by making Notification in official gazette.

6. Power to make port-rules

(1) The Government may, in addition to any rules which it may make under any other enactment for the time being in force, make such rules, consistent with this Act, as it thinks necessary for any of the following purposes, namely –

- (a) for regulating the time and hours at and during which, the speed at which, and the manner and conditions in and on which, vessels generally or vessels of any class defined in the rules, may enter, leave or be moved in any port subject to this Act;
- (b) for regulating the berths, stations and anchorages to be occupied by vessels in any such port;
- (c) for regulating vessels whilst taking-in or discharge passengers, ballast or cargo, or any particular kind of cargo, in any such port, and the stations to be occupied by vessels whilst so engaged;
- (d) for regulating the manner in which oil or water mixed with oil shall be discharged in any such port and for the disposal of the same;
- (e) for regulating the bunkering of vessels with liquid fuel in any such port and the description of barges, pipe lines or tank vehicles to be employed in such bunkering;
- (f) for keeping free passages of such width as may be deemed necessary within any such port and along or near to the piers, jetties, landing-places, wharves, quays, docks moorings and other works in or adjoining to the same, and for marking out the spaces so to be kept free;
- (g) for regulating the anchoring, fastening, mooring and un-mooring of vessels in any such port;
- (gg) for regulating the moving and warping of all vessels within any such port and the use of warps therein;
- (h) for regulating the use of the mooring buoys, chains and other moorings in any such port;
- (i) for fixing the rates and charges to be paid, in a port, for the use of moorings piers, jetties, landing places, wharves, quays, warehouses and sheds of any port, when belonging to the Government or a person authorised under section 25(3), or of any boat, hawser or other thing belonging to the Government or a person authorised under section 25(3);
- (j) for regulating the use of piers, jetties, landing places, wharves, quays, warehouses and sheds when belonging to the Government
- (k) for licensing and regulating catamarans, flats and cargo, passenger and other boats plying, whether for hire or not and whether regularly or only occasionally, in or partly within and partly without any such port and for licensing and regulating the crews of any such vessels, and for determining the quantity of cargo or number of passengers or of the crew to be carried by any such vessels, and conditions under which such vessels shall be compelled to ply for hire, and further for conditions under which any licence may be revoked;

- (l) for providing the fees payable in respect of the services specified in clause (k) for any port other than a major port;
- (ll) for regulating the use of fires and lights within any such port;
- (m) for enforcing and regulating the use of marine communication by vessels in any such port;
- (n) for regulating the number of the crew which must be on board any vessel afloat within the limits of any such port;
- (nn) for regulating the employment of persons engaged in cleaning or painting vessels, or in working in the bilges, boilers or double bottoms of vessels in any such port;
- (o) for the prevention of danger arising to the public health by the introduction and the spread of any infectious or contagious disease from vessels arriving at, or being in any such port, and for the prevention of the conveyance of infection or contagion by means of any vessel sailing from any such port;
- (p) for the purpose of control or implementation of any subject arising out of any international convention and treaties in relation to port or port approaches to which the Government of India is a party;
- (q) for any other purpose for the smooth functioning and operation of any port and its approaches;
- (r) for imposing punishment in the form of fines for violation of any of the rules made under this section and fix the upper limits thereof.
- (s) laying down qualification and experience for employment of personnel holding certificate of Competency issued under Merchant Shipping Act, 1958 and Indian Vessels Act 1917 or any other relevant Act for the time being in force.
- (t) for the purpose of compliance with the relevant provisions of Part-IXB of Merchant Shipping Act, 1958 as amended from time to time.

(2) The power to make rules under sub-section (1) is subject to the condition of the rules being made after previous publication:

Provided that nothing in this sub-section shall be construed to affect the validity of any rule in force immediately before the commencement of this Act.

(3) Every rule made by the State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature.

(4) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both

Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule as fixed or presented by the Government from time to time.

7. Power of port authority to order sea-going vessels to use docks, wharves, etc.

(1) When any dock, berth, wharf, quay, stage, moorings, jetty or pier erected at any port or port approaches under the provisions of this Act has been completed with sufficient warehouses, sheds and appliances for receiving, landing or shipping goods or passengers from and upon sea-going vessels, the Port Authority 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, moorings, jetty or pier is ready for receiving, landing and shipping or for landing or for shipping goods or passengers from and upon sea going vessels.

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

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

Provided further that if the Port Authority is not the conservator of the port, the Port Authority 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.

8. If accommodation sufficient, all sea-going vessels compelled to use docks, wharves, etc.

When a sufficient number of docks, berths, wharves, quays, stages, moorings, jetties or piers have been provided at any port or port approaches as aforesaid, the Port Authority 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, moorings, jetties or piers, except with the sanction of

the Port Authority and in accordance with such condition as the Port Authority may specify.

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

Any officer appointed by the port authority in this behalf may, in cases of emergency or for any reason which appears to him sufficient, by notice in writing, order the master or owner or agent of any sea-going vessel not to bring such vessel inside the port limits or alongside of, or to remove such vessel from, any dock, berth, wharf, quay, stage, moorings, jetty or pier and, if such notice is not complied with, the port authority may charge, by way of penalty, in respect of such vessel such sum as it thinks fit, not exceeding one lakh rupees for each day of twenty-four hours, or portion of such day, during which such vessel remains at such dock, berth, wharf, quay, stage, moorings, jetty or pier;

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

10. Power of Government to exempt from obligation to use docks, wharves, etc.

Notwithstanding anything contained in sections 7 and 8, the Government may, if in its opinion it is necessary in the public interest so to do, by general or special order, from time to time, permit certain specified vessels or classes of vessels to discharge or ship goods or certain specified goods or classes of goods, at such place in a port or within the port approaches, in such manner, during such period and subject to such payments to the port authority and on such conditions as the Government may think fit.

11. Port Authority to declare when vessels other than sea-going vessels compelled to use docks, wharves, etc.

(1) When any dock, berth, wharf, quay, stage, moorings, jetty or pier for receiving, landing or shipment of goods or passengers from or upon vessels, not being sea-going vessels, has been made and completed with all proper appliances in that behalf, the Port Authority 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, moorings, jetty or pier 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 Port Authority, to land or ship any goods or passengers out of, or into, any vessel, not being a sea-going vessel, of any class specified in such order, except at such dock, berth, wharf, quay, stage, moorings, jetty or pier.

(2) As from the date of the publication of the order mentioned in sub-section (1), it shall not be lawful, without the consent of the Port Authority or any other authority, for any vessel of such class –

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

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

(3) If after the publication of such order, any such vessel shall, while within the limits so specified, so anchor, fasten or lie, it shall be lawful for the port authority 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.

12. Responsibility of Port Authority for loss, etc., of goods

Subject to the provisions of this Act, the responsibility of port authority for the loss, destruction or deterioration of goods of which it has taken charge shall –

(i) in the case of goods received for carriage by railway, be governed by the provisions of the Indian Railways Act, 1989; and

(ii) in other cases, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872 (9 of 1872), omitting the words “in the absence of any special contract” in section 152 of that Act;

Provided that no responsibility under this section shall attach to the Port Authority –

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

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

(2) A Port Authority shall not be in any way responsible for the loss, destruction or deterioration of, or damage to, goods of which it has taken charge, unless notice of such loss or damage has been given within such period as may be prescribed from the date of taking charge of such goods under section 12(ii)(a) above.

CHAPTER-III

PORT OFFICIALS AND THEIR POWERS AND DUTIES

13. Appointment of Conservator

- (1) The Government or any other authority which the Government may authorise, shall appoint any officer or body of persons or a company or port authority to be conservator of every port subject to this Act.
- (2) The conservator shall be subject to the control of the Government, or the authority which the Government may authorise.
- (3) The Government may prescribe qualifications, responsibilities and conditions of appointment and removal in respect of the Conservator.

14. Power of conservator to give and enforce directions for certain specified purposes

- (1) The conservator of any port subject to this Act may, with respect to any vessel within the port, give directions for carrying into effect any rule for the time being in force therein under section 6.
- (2) If any person wilfully and without lawful excuse refuses or neglects to obey any lawful direction of the conservator, after notice thereof has been given to him, he shall, for every such offence, be punishable with fine which may extend to fifty thousand rupees, and in the case of a continuing offence with a further fine which may extend to ten thousand rupees for every day during which, after such notice as aforesaid, he is proved to have wilfully and without lawful excuse continued to disobey the direction.
- (3) In case of such refusal or neglect, the conservator may do, or cause to be done, all acts necessary for the purpose of carrying the direction into execution, and may hire and employ proper persons for that purpose, and all reasonable expenses incurred in doing such acts shall be recoverable by him from the person so refusing or neglecting to obey the direction.

15. Removal of obstructions within limits of port

- (1) The conservator may remove, or cause to be removed, any timber, raft or any other thing, floating or cut or cause to be cut, any warp, rope, cable or hawser likely to endanger the safety of any vessel in the port or at or near to the entrance navigational channel thereof, which in his opinion obstructs or likely to impede free navigation thereof or the lawful use of any pier, jetty, landing place, wharf, quay, dock, mooring or other work on any part of the shore or bank or channel which has been declared to be within the limits of the port and the channel through which access or entrance there to and is not private property.

(2) The owner of any such timber, raft or other thing shall be liable to pay the reasonable expenses of the removal thereof, and if such owner or any other person has without lawful excuse caused any such obstruction or impediment, or causes any public nuisance affecting or likely to affect such free navigation or lawful use, he shall also be punishable with fine which may extend to Fifty thousand rupees.

(3) The Conservator or any Magistrate having jurisdiction over the offence may cause any such nuisance to be abated.

16. Recovery of expenses of removals

If the owner of any such timber, raft or other thing, or the person who has caused any such obstruction, impediment or public nuisance as is mentioned in the last foregoing section, neglects to pay the reasonable expenses incurred in the removal thereof, within one week after demand, or within fourteen days after such removal has been notified in the Official Gazette or in such other manner as the Government by general or special order, directs, the conservator may cause such timber, raft or other thing, or the materials of any public nuisance so removed, or so much thereof as may be necessary, to be sold by public auction;

and may retain all the expenses of such removal and sale out of the proceeds of the sale, and shall pay the surplus of such proceeds, or deliver so much of the thing or materials as may remain unsold, to the person entitled to receive the same;

and, if no such person appears, shall cause the same to be kept and deposited in such manner as the Government directs;

and may, if necessary from time to time, realize the expenses of keeping the same, together with the expenses of sale, by a further sale of so much of the thing or materials as may remain unsold.

17. Removal of lawful obstructions

(1) If any obstruction or impediment to the navigation of any port subject to this Act has been lawfully made, or has become lawful by reason of the long continuance of such obstruction or impediment or otherwise, the conservator shall report the same for the information of the Government, and shall with the sanction of the Government, cause the same to be removed or altered making reasonable compensation to the person suffering damage by such removal or alteration.

(2) Any dispute arising concerning such compensation shall be determined according to the law relating to like disputes in the case of land required for public purposes.

18. Raising or removal of wreck impeding navigation within limits of port

(1) Every vessel shall be granted entry only if such vessel is covered by adequate insurance for wreck removal expenses.

(1A) If any vessel is wrecked, stranded or sunk in any port in such a manner as to impede or likely to impede any navigation thereof, or causes any public nuisance or cause damage to environment, the conservator shall give notice to the owner of the vessel to raise, remove or destroy the vessel within such period as may be specified in the notice and to furnish such adequate security to the satisfaction of the conservator to ensure that the vessel shall be raised, removed or destroyed within the said period;

Provided that the conservator may extend such period to such further period as he may consider necessary having regard to the circumstances of such case and the extent of its impediment to navigation.

(2) Where the owner of any vessel to whom a notice has been issued under sub-section (1) fails to raise, remove or destroy such vessel within the period specified in the notice or the extended period or fails or furnish the security required of him, the conservator may cause the vessel to be raised, removed or destroyed.

(3) Notwithstanding anything contained in the foregoing sub-section, if the conservator is of the opinion that any vessel which is wrecked, stranded or sunk in any port is required to be immediately raised, removed or destroyed for the purpose of uninterrupted navigation in such port, he may, without giving any notice under sub-section (1A), cause the vessel to be raised, removed or destroyed.

(4) If any property recovered by a conservator acting under sub-section (2) and (3) is unclaimed or the person claiming it fails to pay the reasonable expenses incurred by the conservator under that sub-section and a further sum of twenty per cent of the amount of such expenses, the conservator may sell the property by public auction, forthwith if the property in the opinion of the Conservator is likely to be stranded or sunk again or is perishable in water and otherwise anytime not less than fifteen days after the recovery thereof.

(5) The expenses and further sum aforesaid shall be payable to the conservator out of the sale proceeds of the property, and the balance shall be paid to the person entitled to the property recovered or, if no such person appears and claims the balance, shall be held in deposit for payment, without interest, to any person thereafter establishing his right thereto:

Provided that the person makes his claim within three years from the date of the sale.

(6) Where the sale proceeds of the property are not sufficient to meet the expenses and further sum aforesaid, the owner of the vessel at the time the vessel was wrecked, stranded or sunk shall be liable to pay the deficiency to the conservator on demand, and if the deficiency be not paid within one month of such demand the conservator may recover the deficiency from such owner in the manner laid down in sub-section (2) of section 161 for recovery of expenses and damages or in any other manner, including recovery of expenses from the insurer.

19. Power to board vessels and enter buildings

(1) The conservator or any person authorized by him may, whenever he suspects that any offence against this Act has been, or is about to be, committed or whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act and the person appointed by a port authority to receive any port dues, fees or other charges payable in respect of any vessel, may, whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act, either alone or with any other person, board any vessel, or enter any building or place, within the limits of any port subject to this Act.

(2) If the master of the vessel, or any person in possession or occupation of the building or place, without lawful excuse, refuses to allow any such person as is mentioned in sub-section (1) to board or enter such vessel, building or place in the performance of any duty imposed upon him by this Act, he shall for every such offence be punishable with fine which may extend to Twenty thousand rupees.

20. Power to require crews to prevent or extinguish fire

(1) For the purpose of preventing or extinguishing fire in any port subject to this Act, the conservator or port officer may require the master of any vessel within the port to place at his disposal such number as he requires, not exceeding three-fourths, of the crew then under the orders of such master.

(2) Any master refusing or neglecting to comply with such requisition shall be punishable with fine which may extend to Fifty thousand rupees, and any seaman then under his orders who, after being directed by the master to obey the orders of the conservator or port-officer for the purpose aforesaid, refuses to obey such orders, shall be punishable with fine which may extend to ten thousand rupees.

21. Appointment and powers of Health-officer

(1) The Government may appoint at any port subject to this Act an officer to be called the health-officer.

(2) A health-officer shall, subject to the control of the Government, have the following powers, within the limits of the port for which he is appointed, namely –

(a) with respect to any vessel, the powers conferred on a shipping-master by the Indian Merchant Shipping Act, 1958 (44 of 1958);

(b) power to enter on board any vessel and medically examine all or any of the seaman or apprentices on board the vessel;

(c) power to require and enforce the production of the log-book and any other books, papers or documents which he thinks necessary for the purpose of enquiring into the health and medical condition of the persons on board the vessel;

(d) power to call before him and question for any such purpose all or any of those persons and to require true answers to any questions which he thinks fit to ask;

(e) power to require any person so questioned to make and subscribe a declaration of the truth of the statements made by him.

22. Indemnity of Government against act or default of port-official or pilot

The Government shall not be responsible for any act or default of any conservator, port-officer or harbour-master, of any port subject to this Act, or of any deputy or assistant of any of the authorities aforesaid, or of any person acting under the control or direction of any such authority, deputy or assistant, or for any act or default of any pilot, or for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers or other things belonging to the Government which may be used by the vessel:

Provided that nothing in this section shall protect the Government from a suit a respect of any act done by or under the express order or sanction of the Government.

CHAPTER-IV

WORKS AND SERVICES TO BE PROVIDED AT PORTS

23. Power of a port authority to execute works and provide appliances

- (1) A port authority may execute such works within or without the limits of the port and provide such appliances as it may deem necessary or expedient.
- (2) Such works and appliances may include –
 - (a) wharves, quays, docks, stages, jetties, piers and other works within the port or port approaches or on the foreshore of the port or port approaches, with all such convenient arches, drains, landing places, stairs, fences, roads, railways, bridge, tunnels and approaches and buildings required for the residence of the employees of the Port Authority as it may consider necessary;
 - (b) buses, railways, 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 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 purpose of this Act;
 - (e) such breakwaters and other works as may be expedient for the protection of the port;
 - (f) dredgers and other machines for cleaning, deepening and improving any portion of the port or port approaches or of the foreshore of the port or port approaches;
 - (g) lighthouses, lightships, beacons, buoys, pilot boats and other appliances necessary for the safe navigation of the port and of the port approaches;
 - (h) vessels, tugs or other boats for 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 purpose of landing, shipping or transshipping passengers or goods under section 24

- (i) sinking of tube-wells, and equipment, maintenance and use of boats, barges and other appliances for the purpose of the supply of water at the port;
- (j) construction of models and plans for carrying out hydraulic studies;
- (k) dry docks, slipways, boat basins and workshops to carry out repairs or overhauling of vessels, tugs, boats, machinery or other appliances.

24. Power of Port Authority to undertake certain works

- (1) Port Authority may undertake to carry out on behalf of any person any works or services or any class of works or services, on such terms and conditions as may be agreed upon between the Port Authority and the person concerned.
- (2) Port Authority may, if it considers it necessary or expedient in the public interest so to do, lend any of its vessels or appliances or the services of any of its employees to any person for such period not exceeding three months and on such terms and conditions as may be agreed upon between the Port Authority and the person concerned.

25. Performance of services by a Port Authority or other person

- (1) A port authority shall have power to undertake the following services :
 - (a) landing, shipping or transshipping passengers and goods between vessels in the port and the wharves, piers, quays or docks belonging to or in the possession of the port authority.
 - (b) receiving, removing, shifting, transporting, storing or delivering goods brought within the port authority premises;
 - (c) carrying passengers by rail or by other means within the limits of the port or port approaches.
 - (d) receiving and delivering, transporting and booking and despatching goods originating in the vessels in the port and intended for carriage by the neighbouring railways, or vice versa, as a railway administration under the Indian Railways Act, 1989; and
 - (e) piloting, hauling, mooring, re-mooring, hooking, or measuring of vessels or any other service in respect of vessels.
 - (f) developing and providing infrastructure facilities for other major ports subject to such guidelines as may be prescribed by the Government.
- (2) A port authority may, if so requested by the owner, take charge of the goods for the purpose of performing the service or services and shall give a receipt in such form as the port authority may specify.

(3) Notwithstanding anything contained in this section, the port authority may, authorise any person to perform any of the services under provisions mentioned in this Act on such terms and conditions as may be agreed upon. The Central Government may, however, by general order specify certain category of cases requiring its prior approval before authorising any person to perform any of the services connected therewith.

(3A) Without prejudice to the provisions of sub-section (3), a Port Authority may enter into any agreement or other arrangement (whether by way of partnership, joint venture or in any other manner) with any body corporate or any other person to perform any of the services and functions assigned to the Port Authority under this Act on such terms and conditions as may be agreed upon. The Government may however, by a general order may specify certain category of cases requiring its prior approval before entering any contract.

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

(5) The responsibility of any such person for the loss, destruction or deterioration of goods of which he has taken charge shall, subject to the other provisions of this Act, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872 (9 of 1872).

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

Explanation: Person referred to in the above section includes body Corporate, firm and any other legal entity.

26. Dues at customs wharves, etc.

Notwithstanding that any dock, berth, wharf, quay, stage, jetty, pier, warehouse or shed or portion thereof at any port has 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 Port Authority, or to such person or persons as may be appointed by the Port Authority to receive the same.

27. Power to permit erection of private wharves, etc., within a port subject to conditions

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

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

Provided in case of unauthorized construction on port land, the Port Authority need not serve a notice for such unauthorised construction and may remove at the cost of such person.

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

(1) Where, as a result of an order published under section 8 and section 11 of Indian Ports Act, the use of any wharf, dock, berth, quay, stage, jetty or pier, made, fixed or erected by any person is rendered unlawful, the Port Authority may, after hearing the person concerned, by order, close, remove, fill up or destroy such wharf, dock, berth, quay, stage, jetty or pier, or permit the use thereof to such person on payment of such rates and charges as the Port Authority may, with the previous sanction of the 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 Port Authority that any such wharf, dock, berth, quay, stage, jetty or pier, 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 Port Authority compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say –

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

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

(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 Government shall appoint as arbitrator, a person who is, or has been, or is qualified for appointment as, a Judge of a High Court;

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

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

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

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

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

(j) the arbitrator appointed under this section, while holding arbitration proceedings under this Act, shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely -

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

(ii) requiring the discovery and production of documents;

(iii) receiving evidence on affidavits;

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

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

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

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

CHAPTER-V

THE SAFETY OF SHIPPING AND THE CONSERVATION OF PORTS

29. Injuring buoys, beacons and moorings

- (1) No person shall, without lawful excuse, lift, injure, loosen or set adrift any buoy, beacon or mooring fixed in any port subject to this Act.
- (2) If any person offends against the provisions of this section, he shall for every such offence be liable, in addition to the payment of the amount of damage done, to fine which may extend to one hundred thousand rupees, or to imprisonment for a term which may extend to two years.

30. Wilfully loosening vessel from moorings

If any person wilfully and without lawful excuse loosens or removes from her moorings any vessel within any such port without leave or authority from the owner or master of the vessel, he shall, for every such offence, be punishable with fine which may extend to fifty thousand rupees, or with imprisonment for a term which may extend to six months.

31. Improperly discharging ballast

- (1) No ballast or rubbish, and no other thing likely to form a bank or shoal or to be detrimental to navigation, or environmental hazard shall, without lawful excuse, be cast or thrown into any such port or into or upon any place on shore from which the same is liable to be washed into any such port, either by ordinary or high tides, or by storms or land-floods and no oil or water mixed with oil shall be discharged in or into any such port, to which any rules made under clause (d) of sub-section (1) of section 6 apply, otherwise than in accordance with such rules.
- (2) Any person who by himself or another so casts or throws any ballast or rubbish or any such other thing or so discharges any oil or water mixed with oil, and the master of any vessel from which the same is so cast thrown or discharged, shall be punishable with fine which may extend to five lakh rupees and shall pay any reasonable expenses which may be incurred in removing the same.
- (3) If after receiving notice from the conservator of the port to desist from so casting or throwing any ballast or rubbish or such other thing or from so discharging any oil or water mixed with oil, any master continues so to cast throw or discharge the same, he shall also be liable to simple imprisonment for a term which may extend to one year and to fine which may extend to five lakh rupees.

(4) Nothing in this section applies to any case in which the ballast or rubbish or such other thing is cast or thrown into or the oil or water mixed with oil is discharged in or into any such port with the consent in writing of the conservator, or within any limits within which such act may be authorised by the Government.

32. Warping

(1) Every master of a vessel in any port subject to this Act shall, when required so to do by the conservator, permit warps or hawsers to be made fast to the vessel for the purpose of warping any other vessel in the port, and shall not allow any such warp or hawser to be let go until required so to do.

(2) A master offending against sub-section (1) shall be punishable for every such offence with fine which may extend to Twenty Thousand rupees.

33 . Appropriate Reception Facilities

(1) Appropriate reception facilities shall be provided at every port in terms of the provisions of Part-XIB of Merchant Shipping Act, 1958.

(2) Details of reception facilities including the manner of the disposal of waste shall be prescribed by the authority authorised by the Government.

34. Discharge of fire-arms in port

If any person, without lawful excuse, discharges any firearm in any port subject to this Act or for such other purposes as may be allowed by the Government, he shall for every such offence be punishable with fine which may extend to one lakh rupees in addition to any penalty imposed under the Arms Act and other relevant provisions of law for the time being in force.

35. Penalty on master omitting to take order to extinguish fire

If the master of any vessel in which fire takes place while laying in any such port wilfully omits to take order to extinguish the fire or obstructs the conservator or the port-officer, or any person acting under the authority of the conservator or port-officer, in extinguishing or attempting to extinguish the fire, he shall be punishable with imprisonment which may extend to two years, or with fine which may extend to one hundred thousand rupees or with both.

36. Unauthorised person not to search for lost stores

(1) No person, without the permission of the conservator, shall, in any port subject to this Act, creep or sweep for anchors, cables or other stores lost or supposed to be lost therein or carry out under water work.

(2) If any person offends against the provisions of sub-section (1), he shall be punishable with fine which may extend to five thousand rupees.

37. Removing stones or injuring shores of port prohibited

(1) No person without the permission of the conservator shall in any port subject to this Act remove or carry away any rock, stones, shingle, gravel, sand or soil or any artificial protection from any part of the bank or shore of the port;

And no person shall sink or bury in any part of such bank or shore, whether the same is public or private property, any mooring-post, anchor or any other thing or do any other thing which is likely to injure or to be used so as to injure such bank or shore, except with the permission of the conservator, and with the aid or under the inspection of such person, if any, as the conservator may appoint to take part in or overlook the performance of such work.

(2) If any person offends against sub-section (1), he shall for every such offence be punishable with fine which may extend to five thousand rupees and shall pay any reasonable expenses which may be incurred in repairing any injury done by him to the bank or shore.

38. Moving of vessels without pilot or permission of Harbour Master

(1) No vessel of the measurement of five hundred tons or upwards shall enter, leave or be moved in any port to which this section has been especially extended without having a pilot, harbour master or assistant of the port-officer or harbour master on board;

and no mechanically propelled vessel of any measurement less than five hundred tons and no other vessel of any measurement less than five hundred tons and exceeding one hundred tons shall enter, leave or be moved in any such port without having a pilot, harbour-master or assistant of the port-officer or harbour-master on board, unless permission is obtained from the conservator so to do or some officer empowered by him to give such permission.

Provided that the Government or any authority authorised by Government exempt any class of vessels from the provisions of this section.

(2) Notwithstanding anything in sub-section (1), the owner or master of a vessel which is by that sub-section required to have a pilot, harbour-master or assistant of the port-officer or harbour-master on board, shall be answerable for any loss or damage caused by the vessel or by any fault of the navigation of the vessel, in the same manner as he would have been if he had not been so required by that sub-section;

(3) If any vessel, except in case of urgent necessity, enters, leaves or is moved in the port contrary to the provisions of sub-section (1), the master of the vessel shall for every such offence be punishable with fine which may extend to ten thousand rupees, unless upon application to the proper officer the master was unable to procure a pilot, harbour-master or assistant of the port-officer or harbour-master to go on board the vessel.

CHAPTER – VI

PORT- DUES, FEES AND OTHER CHARGES

39. Levy of port-dues

(1) The Government or Port Authority or any other Authority, which the Government may authorise, as the case may be shall from time to time, by notification in the Official Gazette, fix levy of port-dues on vessels entering the port.

(2) The port-dues now chargeable shall continue to be chargeable unless and until they are altered in exercise of the power conferred by sub-section (1).

(3) An order increasing or imposing port dues under this section shall not take effect till the expiration of 60 days from the day on which the order was published in the Official Gazette.

40. Variation of port-dues by Government

The Government or Port Authority or any other authority, which the Government may authorise, as the case may be from time to time, may exempt, subject to such conditions, if any, as it thinks fit to impose, any vessel or class of vessels entering a port-subject to this Act from payment of port dues and cancel the exemption, or may vary the rates at which port-dues are to be levied in the port, in such manner as, having regard to the receipts and charges on account of the port, it thinks expedient, by reducing or raising the dues, or any of them or may extend the periods for which any vessel or class of vessels entering a port shall be exempt from liability to pay port dues.

Provided that the rates shall not in any case exceed the amount authorised to be taken by or under this Act.

41. Port dues on vessel in Ballast

A vessel entering any port subject to this Act in ballast and not carrying passengers shall be charged with a port due at a rate to be determined by the Port Authority and not exceeding three-fourths of the rate with which she would otherwise be chargeable.

42. Port dues on vessel not discharging or taking in cargo

When a vessel enters a port subject to this Act but does not discharge or take in any cargo or passengers therein (with the exception of such unshipment and reshipment as may be necessary for purposes of repair) she shall be charged with a port due at a rate to be determined by the Port Authority and not exceeding half the rate with which she would otherwise be chargeable.

43. Existing rates, etc., to continue until altered

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

44. Fees for pilotage and other services

(1) Within any Port subject to this Act, the Port Authority or any other Authority which the Government may authorise, may fix charges to be recovered by the ports for pilotage hauling mooring, re-mooring, hooking measuring and charges for any other services rendered to vessel at such rate and under such condition as may be prescribed.

(2) The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by sub-section (1).

(3) The Government may, in special cases, remit the whole or any portion of the fees chargeable under sub-section (1) or sub-section (2).

45. Power to collect Port dues

The Government shall appoint some officer or body of persons at every port at which any dues is levied under Section 39, to receive the same and subject to the control of and authority from the Government, appropriate the same fully or partly for such time as the Government may authorise and to expend the receipts on any of the objects authorised by the Government.

46. Master to report arrival

(1) Immediately after its arrival but not more than 4 hours after the arrival within the limit of any port subject to this Act of any vessel liable to the payment of port-dues under this Act, the master of the vessel shall report her arrival to the conservator of the port.

(2) A master failing without lawful excuse to make report such within the time aforesaid shall for every such offence be punishable with fine which may extend to twenty thousand rupees.

(3) Nothing in this section applies to tug-steamers, ferry steamers or river steamers plying to and from any of the ports subject to this Act.

47. Ascertainment of tonnage of vessel liable to port-dues

(1) In order to ascertain the tonnage of any vessel entering the port liable to pay port dues, the conservator may require the owner or the master of the vessel or any person having possession of her register to produce the register for inspection

(2) If the owner or master of such person neglects or refuses to produce the register or otherwise fails to satisfy the conservator as to what is the true tonnage of the vessel in respect of which the port-dues are payable, he shall be punishable with fine which may extend to ten thousand rupees, and the conservator may cause the vessel to be measured, and the tonnage thereof to be ascertained, and in such case the owner or master of the vessel shall also be liable to pay the expenses of the measurement.

(3) If the vessel is a vessel of which the tonnage cannot be ascertained according to the mode of measurement mentioned in clause (1) above, the tonnage of the vessel shall be determined by the conservator as per the provisions of Tonnage Measurement of Ships Convention, 1969 and as amended from time to time.

48. Recovery of rates and charges by distraint of vessel

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

(2) In case any part of the said rates or penalties, or of the cost of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest has been so made, the Port Authority may cause the vessel or other thing so distrained or arrested to be sold, and, with the proceeds of such sale, shall satisfy such rates or penalties and costs, including the costs of sale remaining unpaid, rendering the surplus (if any) to the claimant. Such sale by the Port Authority shall be free from all encumbrances and maritime liens.

(3) Before effecting such sale, the Port Authority shall publish a notice giving the details of the vessel and that the vessel is being sold for recovery of an amount to be specified in the said notice and that such sale would be free from all encumbrances and maritime liens and this notice shall be published at least 10 days before the actual sale of the vessel.

(4) After appropriating the expenses/cost of the said sale and the amount payable to the Port Trust, the balance if any shall be retained with the Port Authority for payment to the owner of the vessel provided the owner notifies the Port of his intention to recover such amount within a period of one year

from the date on which the amount has come into the possession of the Port Authority. The Port Authority shall not pay any part of the balance amount to the owner unless the owner satisfies the Port Authority that owner has published a notice in an international newspaper giving at least 30 days for any person having a lien, maritime or otherwise, on the said amount to come forward and claim from the Port Authority and that no such claimant has approached the Port Authority.

49. No port clearance to be granted until port charges are paid

If a Port Authority gives to the officer of the Government whose duty it is to grant the port-clearance to any vessel at the port, a notice stating –

- (i) that an amount specified therein is due in respect of rates, fines, penalties or expenses chargeable under this Act or under any regulations or orders made in pursuance thereof, against such vessel, or by the owner or master of such vessel in respect thereof, or against or in respect of any goods on board such vessel; or
- (ii) that an amount specified therein is due in respect of any damage caused to any dock, wharf, quay, mooring, stage, jetty, pier or other work in the possession of any Port or any movable property belonging to any Port Authority;

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.

50. Port charges payable in one port recoverable at any other port

(1) If the master of any vessel in respect of which any such sum as is mentioned in the last foregoing section is payable causes her to leave any port without having paid the sum the authority appointed to receive port dues, fees and other charges at the port under this Act may require in writing the authority appointed to receive port dues, fees and other charges under this Act at any other port in India to which she may proceed or in which she may be, to levy and recover the sum from the said vessel.

(2) The authority to whom the requisition is directed shall proceed to levy and recover such sum in the manner prescribed in section 48, and a certificate purporting to be made by the authority appointed to receive port dues, fees and other charges at the port where such sum as is mentioned in the last foregoing section became payable stating the amount payable, shall be sufficient *prime facie* proof of such amount in any proceeding under section 48 and also (in case the amount payable is disputed) in any subsequent proceeding under section 163.

51. Penalty for evading payment of port charges

(1) If the master of a vessel evades the payment of any such sum as is mentioned in section 49 he shall be punishable with fine which may extend to five times the amount of the sum.

(2) In any proceeding before a Magistrate on a prosecution under sub-section (1) any such certificate as is mentioned in section 50, sub-section (2), stating that the master has evaded such payment, shall be sufficient prima facie proof of the evasion, unless the master shows to the satisfaction of the Magistrate that the departure of the vessel without payment of the sum was caused by stress of weather, or that there was lawful or reasonable ground for such departure.

(3) Any Magistrate having jurisdiction under this Act in any port to which the vessel may proceed, or in which she may be found, shall be deemed to have jurisdiction in any proceeding under this section.

52. Port's lien for rates

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

(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 53, and for money payable to the Government under any law for the time being in force relating to customs, other than by way of penalty or fine.

53. Ship-owner's lien for freight and other charges

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

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

(3) Upon the production before any officer appointed by the Port Authority in that behalf of a document purporting to be a receipt for, or release from, the amount of such lien, executed by the person by whom or on whose

behalf such notice has been given, the Port Authority may permit such goods to be removed without regard to such lien, provided that the Port Authority shall have used reasonable care in respect to the authenticity of such document.

54. Sale of goods after thirty days if rates or rent are not paid or lien for freight is not discharged

(1) The Port Authority may, after the expiry of thirty days from the time when any goods have passed into its custody, or in the case of animals and perishable or hazardous goods after the expiry of such shorter period not being less than twenty-four hours after the landing of the animals or goods as the Port Authority may think fit, sell by public auction or in such cases as the Port Authority considers it necessary so to do, for reasons to be recorded in writing, sell by tender, private agreement or in any other manner such goods or so much thereof as, in the opinion of the Port Authority, may be necessary –

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

(b) if any rent payable to the Port Authority in respect of any place on or in which such goods have been stored has not been paid, or

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

(2) Before making such sale, the Port Authority shall give a minimum of 10 days' notice of the same by publication in at least two of the daily newspapers, circulated locally;

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

55 Disposal of goods not removed from premises of Port within time limit

(1) Notwithstanding anything contained in this Act, or any other law for the time being in force where any goods placed in the custody of the Port Authority upon the landing thereof are not removed by the owner or other person entitled thereto from the premises of the Port within 30 days from the date on which such goods were placed in their custody, the Port Authority may, if the address of such owner or person is known, cause a notice to be served upon him by letter delivered at such address or sent by post, or if the notice cannot be so served upon him or his address is not known, cause a notice to be published in the Port Gazette except there is no Port Gazette, and also in at least one of the principal local daily newspapers, requiring him

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 30 days have expired from the date on which the goods were placed in the custody of the Port Authority.

(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 Port Authority may, at any time after the expiration of thirty days from the date on which a notice is served or published sell the goods by public auction or in such cases as the Port Authority consider it necessary so to do for reasons to be recorded in writing sell by tender, private agreement or any other manner as deemed fit.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (3), the Port Authority may, in the case of animals and perishable or hazardous goods, give shorter notice of removal of such goods although the period specified in sub-section (1) has not expired or give such shorter notice of sale and in such manner as, in the opinion of the Port Authority, the urgency of the case requires;

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

(6) If in any auction under Section 54 or section 55 or by tender or private agreement if a bid/offer received is less than the reserve price if any fixed, the Port Authority may re-auction the goods within 15 days without any further notice to any person whatsoever.

56. Application of sale proceeds

(1) The proceeds of every sale under section 54 or section 55 shall be applied in the following order –

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

(b) in payment, according to their respective priorities, of the liens and claims excepted in sub-section (2) of section 52 from the priority of the lien of the Port;

(c) in payment of the rates and expenses of landing, removing, storing or warehousing the same, and of all other charges due to the Port Authority in respect thereof including demurrage other than penal demurrage payable in respect of such goods for a period of three months from the date of landing;

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

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

(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 three months from the date of the sale of the goods.

(3) Where no application has been made under sub-section (2), the surplus shall be appropriated by the Port Authority for the purpose of this Act.

CHAPTER-VII

IMPOSITION AND RECOVERY OF RATES AT PORTS

57. Scale of rates for services performed by a Port Authority

(1) The Government or Port Authority or any other Authority to which Government may authorise from time to time, shall by notification in the Official Gazette, frame a scale of rates prescribing the maximum ceiling rates at which, and a statement of conditions under which, any of the services except those listed below performed by a Port Authority or any other person authorised under Section 24 at or in relation to the port or port approaches;

- Activities of container freight station
- Tolling of Roads
- Public Utilities
- Internal Transport
- Parking
- Labour Supply

58. Time for payment of rates on goods

Rates in respect of goods to be landed shall be payable immediately on the landing of the goods and rates in respect of goods to be removed from the premises of a Port Authority, or to be shipped for export, or to be transhipped, shall be payable before the goods are so removed or shipped or transhipped.

59 Scale of rates and statement of conditions for use of property belonging to Port Authority within the Custom bound area of the Port as notified in Customs Act, 1962

(1) The Government or Port Authority or any other authority which the Government may authorised shall, from time to time, by notification in the Official Gazette, also frame a scale of rates prescribing maximum ceiling rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Port Authority, or any place within the Custom bound area of the Port as notified in Customs Act, 1962 may be used for the port purposes.

(2) Notwithstanding anything contained in sub-section (1), the Board may, by auction or by inviting tenders, lease any land or shed belonging to it or in its possession or occupation.

(3) In respect of the properties not covered under sub-section(1), the port authority shall decide the rates leviable.

60. Fees for pilotage and certain other services.

(1) Within any port, fees may be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels, at such rates within the ceiling rates as the Government or any other Authority to which Government may authorise from time to time, may fix.

(2) The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by sub-section (1).

61. Fixation of port dues

(1) The Government or Port Authority or any other authority to which Government may authorise shall from time to time, by notification in the Official Gazette, fix maximum ceiling rates of port-dues on vessels entering the port.

(2) An order increasing or altering the fees for pilotage and certain other services or port-dues at every port shall not take effect until the expiration of thirty days from the day on which the order was published in the Official Gazette.

62. Port dues on vessels in ballast

A vessel entering any port in ballast and not carrying passengers shall be charged with a port-due at a rate to be determined by the Government or any other Authority to which Government may authorise from time to time and not exceeding three-fourths of the rate with which she would otherwise be chargeable.

63. Port dues on vessels not discharging or taking in cargo

When a vessel enters a port but does not discharge or take in any cargo or passengers therein (with the exception of such unshipment and reshipment as may be necessary for purposes of repair), she shall be charged with a port-due at a rate to be determined by the Government or any other Authority to which Government may authorise from time to time and not exceeding half the rate with which she would otherwise be chargeable.

64. Exemption from, and remission of, rates or charges

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

65. Power of Government to require modifications or cancellation of rates

(1) Whenever the Government considers it necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefor, direct the Tariff Authority or the Port Authority as the case may be to cancel any of the scales in force or modify the same, within such period as that Government may specify in the order.

(2) If the Port Authority as the case may be fails or neglects to comply with the direction under sub-section (1) within the specified period, the Government may cancel any of such scales or make such modifications therein as it may think fit;

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

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

66. Refund of overcharges

(1) No person shall be entitled to a refund of an overcharge made by a Port Authority unless this claim to the refund has been preferred in writing by him or on his behalf to the Port Authority within six months from the date of payment duly supported by all relevant documents;

(2) The above time limits shall not apply to refunds arising out of rectification of errors in billing made by the Port Authority.

(3) A Port Authority may of its own motion remit overcharges made in its bills at any time.

67. Notice of payment of charges short-levied or erroneously refunded

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

Provided that no such notice shall be issued after the expiry of two years –

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

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

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

CHAPTER – VIII
HOISTING SIGNALS

68. Master to establish communication and reveal identity of vessel

(1) The master of every inward or outward bound or vessel moving within the port limits, on arriving within communication distance of any signal station or communication centres or vessel traffic management system shall on arrival within the communicating distance and later on when asked to do so, reveal identification by using appropriate means of communication until acknowledged by such a communication centre.

(2) If the master of a vessel arriving or departing as aforesaid and also when within the port limits offends against sub-section (1), he shall be punishable for every such offence with a fine which may extend to ten thousand rupees.

69. Pilot, Master of vessel exempted from taking a pilot or master holding a special pilot licence required to reveal identity of his vessel

(1) Every pilot in charge of a vessel or master of every vessel exempted from taking a pilot or master holding special pilot's licence shall reveal identity of his vessel as provided by last foregoing section or whenever required by other vessels.

(2) When required under sub section(1) above, the master refuses to reveal the identity of his vessel, the vessel may not be allowed to proceed to her destination until the above requirements under sub-section(1) above are met.

70. Penalty on pilot disobeying provisions of this Chapter

Any pilot incharge of a vessel or any master holding special pilot's licence or master of a vessel exempted from taking a pilot who disobeys, or abets disobedience to, any of the provisions of this Chapter, shall be punishable with fine which may extend to ten thousand rupees for each instance of such disobedience or abetment, and in addition, shall be liable to have his authority to act as a pilot or being exempted from taking a pilot withdrawn.

CHAPTER-IX
SUPPLEMENTAL PROVISIONS

71. Application of the provisions of Merchant Shipping Act, 1958 concerning Maritime Security

A Port facility in India shall comply with all the requirements contained in Chapter IXB of the Merchant Shipping Act, 1958 or the rules made thereunder so far as they are not inconsistent with the provisions of this Act.

Explanation - For the purposes of this section, the expression "Port facility" shall have the same meanings as assigned to them in Part- IXB of the Merchant Shipping Act, 1958.

72. Port Security

(1) Any Port Authority shall institute appropriate Security Agency, so authorised by the Government, within its premises and precincts thereof or at places, as determined, so as to prevent as security threat or hazards to the port and expenses towards such security arrangements shall be borne by such Port Authority or any person authorised under section 25(3).

(2) In the interest of national security and sovereignty, any direction issued by Central Government shall be binding on any port authority or person authorised under section 25(3) and such port authority shall ensure compliance of such directions by themselves as well as by a person authorised under section 25(3).

73. Hoisting unlawful flags in ports

(1) If any vessel while within the limits of any port or its approaches, subject to this Act, hoists, exhibits, or wears any flags, jack, pennant or colours which either show disrespect to the Republic of India or any other sovereign State or misrepresent facts about such vessel or the use of which has been prohibited by any statute in force or hereafter to be in force or by any proclamation made in pursuance of any such statute or by any Regulations in force or by any International Convention, the master of the vessel shall for every offence, be punishable with fine which may extend to ten thousand rupees.

(2) Such fine shall be in addition to any other penalty recoverable in respect of such an offence.

(3) The conservator of the port, or any officer of the Indian Navy, may board any such vessel and seize any flag, jack, pennant or colour so unauthorisedly hoisted, carried or worn on board the same.

74. Application of sections 15 and 31

(1) The provisions of sections 15 and 31 shall be applicable to all ports heretofore or hereafter declare by the Government to be ports for the shipment and landing of goods but not otherwise subject to this Act, and may be enforced by any Magistrate to whose ordinary jurisdiction any such port is subject.

(2) Any penalties imposed by him, and any expenses incurred by his order, under the said provisions, shall be recoverable respectively in the manner provided in sections 155 and 161.

(3) In any of the said ports for the shipment and landing of goods the consent referred to in section 31, sub-section (4) may be given by the principal officer of customs at such port or by any other officer appointed in that behalf by the Government.

75. Exercise of powers of conservator

(1) All acts, orders or directions by this Act authorized to be done or given by any conservator may, subject to his control, be done or given by any person authorised by him.

(2) Any person authorised by this Act to do any act may call to his aid such assistance as may be necessary.

76. Service of written notices of directions

Any written notice of a direction given under this Act, left for the master of any vessel with any person employed on board thereof, or affixed on a conspicuous place on board of the vessel, shall, for the purposes of this Act, be deemed to have been given to the master thereof.

77. Authorities exercising jurisdiction in ports to co-operate in manoeuvres for defence of Port Authority

Every authority exercising any powers or jurisdiction in, or relating to, any port to which this Act for the time being applies shall, if so required by an officer authorized by general or special order of the Government in this behalf, co-operate in such manner, as such officer may direct, in carrying out any manoeuvres in connection with any scheme or preparations for the defence of the said port authority in time of war, and for this purpose shall, if so required, temporarily place at the disposal of such officer the services of any of its staff and the use of any of its vessels, property, equipment or other material;

Provided, firstly that if any vessels are placed at the disposal of such officer in accordance with this section, the Government shall, in respect of the period during which they are so at his disposal bear the running expenses of such vessels, and be responsible for any damage thereto.

Explanation: The expression 'running expenses' in this proviso includes all outlay incurred in connection with the use of vessels other than any charges for their hire, or for the wages of the officer and crews of such vessels

Provided, secondly, that any officer making a requisition under this section shall exercise his powers in such a way as to cause as little disturbance to the ordinary business of the port as is compatible with the exigencies of the efficient carrying out of the manoeuvres;

Provided, thirdly, that no suit or other legal proceeding shall lie against any authority for any default occurring by reason only of compliance with a requisition under this section.

78. Duties of the said authorities in an emergency

Whenever the Government is of opinion that an emergency has arisen which renders it necessary that the duties imposed for the purposes specified in section 77 on the authorities therein mentioned, or other duties of a like nature, should be imposed on such authorities continuously during the existence of the emergency, it may, by general or special order, authorise any officer to require the said authorities to perform such duties until the Government is of opinion that the emergency has passed, and the said authority shall comply accordingly, and the provisions of the said section shall apply subject to the following modification, namely :

The Government shall pay any authority, on whom a requisition has been made, such compensation for any loss or damage attributable to such requisition, and for any services rendered or expenditure incurred in complying therewith as, in default of agreement, shall be decided to be just and reasonable, having regard to the circumstances of the case, by the arbitration of a person to be nominated in this behalf by the Government, and the decision of such person shall be final.

PART – B
Part- I
CHAPTER-X

VESTING OF OWNERSHIP, CONTROL AND MANAGEMENT OF MAJOR PORTS

79. Ownership, Control and Management of Major Ports

- (1) With effect from such dates as notified in the official gazette, the Central Government may vest the ownership, control and management of a major port in a “Port Authority”.
- (2) The constitution, working and other aspects of the Board of Trustees shall be governed by Part-II of Part-B of this Act.
- (3) It shall be open to the Central Government at its discretion w.e.f. such dates as notified in the official gazette, from time to time, to divest ownership, control and management of a major port from the Board of Trustees and vest in a company, whether in a Government Company or a Public Limited Company.
- (4) The Central Government may make regulations for the manner and mode in which ownership, control and management of any major port be vested in a company registered under the Companies’ Act, 1956, the constitution, share holding and the representation in the management of such company and the terms, conditions and provision under which the same may be vested and all matters in relation to and incidental thereto.

PROPERTY AND CONTRACTS

80. Transfer of assets and liabilities of Central Government, etc., to Port Authority

- (1) As from the appointed day in relation to any major port –
 - (a) all property, assets and funds and all rights to levy rates vested in the Central Government or, as the case may be, any other authority for the purposes of the port immediately before such day, shall vest in the port authority as designated by the Central Government in such manner as is specified;
 - (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 Central Government or, as the case may be, the other authority immediately before such day, for or in connection with the purposes of the port, shall be deemed to have been incurred, entered into and engaged to be done by, with or for the port authority;

(c) unless otherwise expressly specified all non-recurring expenditure incurred by the Central Government or any State Government for or in connection with the purposes of the port up to such day and declared to be capital expenditure by the Central Government shall be treated as the capital provided by the Central Government or, as the case may be, the State Government to the port authority;

(d) unless otherwise expressly provided all rates, fees, rents and other sums of money due to the Central Government or, as the case may be, the other authority in relation to the port immediately before such day shall be deemed to be due to the port authority;

(e) all suits and other legal proceedings instituted by or against the Central Government or, the Trustees of any major port immediately before the appointed day for any matter in relation to a port may be continued by or against the appropriate port authority;

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

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

(2) Notwithstanding anything contained in the Industrial Disputes Act 1947 (14 of 1947) or in any other law for the time being in force, the transfer of the services of any employee under this section to the port authority shall not entitle such employee to any compensation under that Act or other law, and no such claim shall be entertained by any court, tribunal or other authority.

(3) Notwithstanding anything contained in clause (a) of sub-section (1), the right to fix rates vested in Port Authority shall vest in the Government or any other authority as from the date it is notified by central government, except the areas explicitly excluded in Section-28.

81. Repayment of capital with interest

A port authority shall repay, at such intervals and on such terms and conditions as the Central Government may determine, the amount of capital provided under clause (c) of sub-section (1) of section 80 with interest at such rate as may be fixed by that Government and such repayment of

capital or repayment of interest shall be deemed to be part of the expenditure of the port authority.

82. Acquisition of immovable property for the port authority

When any immovable property is required for the purposes of the port authority, the Central Government may, at the request of the port authority, procure the acquisition thereof under the provisions of the Land Acquisition Act, 1894 (1 of 1894), and on payment by the port authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the port authority, on such terms and conditions as may be specified by the Government.

CHAPTER-XI

PENALTIES

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

Every person employed by a Port Authority or any other authority notified by central Government under this Act, including members of Board of Trustees shall, for the purposes of sections 166 to 171 (both inclusive), 184, 185 and 409 of the Indian Penal Code and for the purpose of the Prevention of Corruption Act, 1988 be deemed to be a public servant within the meaning of section 21 of the said Code.

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

Any person, who contravenes the provisions of section 26 shall be punishable with fine which may extend to one lakh rupees for the first contravention, and with a further fine which may extend to ten thousand rupees for every day after the first during which the contravention continues.

85. Penalty for evading rates, etc.

Any person who, with the intention of evading payment of the rates lawfully due, in respect of any goods or vessel carrying any goods, to the Port Authority –

(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 Port Authority for the purpose of enabling him to determine such rates; or

(b) removes or attempts to remove or abets the removal of such goods or such vessel;

shall be punishable with fine which may extend to ten times the amount of rates so due subject to a minimum of five thousand rupees.

86. Recovery of value of damage to property of Port Authority

(1) If, through the negligence of any person having the guidance or command of any vessel, or any of the mariners or persons employed on such vessel, any damage is caused to any dock, wharf, quay, mooring, stage, jetty, pier or other work in the possession of any Port Authority or any movable property belonging to any Port Authority, the amount of such damage shall be recovered along with a cost of such recovery by arrest and sale of the said vessel or a portion of the boats, masts, spares, works, cables, anchors or stores belonging to such vessel;

(2) On receipt of information of any such damage as aforesaid, the Port Authority shall notify the Master or person in charge of the said vessel or its agent if any in the said Port that a survey would be conducted by the Port Authority to ascertain the cause and nature of such damage and the modus, cost, charges and expenses of repairing or replacing the damage and notifying the Noticee to appoint a surveyor on their behalf. The surveyor appointed by the Port Authority and the one appointed by the Noticee shall be a surveyor named in the panel published by the Port Authority from time to time.

(3) The Port Authority for this purpose shall maintain a list of surveyors in a panel which panel may be altered, amended or modified from time to time as deemed fit by the Port Authority provided while publishing the panel and while altering, amending or modifying such panel, the Port Authority shall do so in consultation with the interest of the shipowners and ship agents.

(4) The surveyors so appointed shall submit a report as soon as possible and if necessary an interim report. In the event of disagreement between the two surveyors, such disagreement shall be referred to a third surveyor from the panel and the third surveyor shall be jointly appointed by the two surveyors. If the two surveyors disagree on the appointment, the appointment of the third surveyor will be made by the Chairperson or Chief Executive Officer of the Port Authority. The decision of such surveyor shall be final and binding on the parties.

(5) If a vessel or part of the vessel or any property in the ownership of the shipowners is arrested or detained by the Port Authority for recovery of any damage under these provisions, the same shall be released on receipt of security to pay such amount as is certified by the surveyors jointly or by a third surveyor appointed as aforesaid of an amount not exceeding the total estimate of costs or expenses estimated by the surveyors.

(6) The Port Authority shall be entitled to recover under the security provided such amount is certified by the surveyors jointly as having been incurred or to be incurred by the Port Authority.

(7) If security acceptable to the Port is not provided by the noticee within such time as is specified by the Port Authority not being less than 10 days from the date of receipt of such notice, the Port Authority may proceed to sell the vessel free from all encumbrances and maritime lien as provided under Section 67 supra.

CHAPTER-XII
MISCELLANEOUS

87. Limitation of proceedings in respect of things done under the Act

No suit or other proceeding shall be commenced against a Port Authority 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 Port Authority or him stating the cause of action, or after six months after the accrual of the cause of action.

88. Protection of acts done in good faith

No suit or other legal proceedings shall lie against the Port Authority or any member or employee thereof in respect of anything which is in good faith done or intended to be done under this Act or any rule or regulation made thereunder, or for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers or other things belonging to or under the control of the Port Authority.

89. Saving of right of Central Government and municipalities to use wharves, etc., for collecting duties and of power of Customs Officers

Nothing in this Act shall affect –

- (1) the right of the Central Government to collect customs duties or of any municipality to collect town duties at any dock, berth, wharf, quay, stage, jetty or pier in the possession of a Port Authority; or
- (2) any power or authority vested in the customs authorities under any law for the time being in force.

90. Alternative remedy by suit

Without prejudice to any other action that may be taken under this Act, a Port Authority may recover by suit any rates, damages, expenses, costs, or in the case of sale the balance thereof, when the proceeds of sale are insufficient, or any penalties payable to, or recoverable by, the Port Authority under this Act or under any regulations made in pursuance thereof.

91. Power to remove difficulties

If any difficulty arises in giving effect to the provisions of this Act, particularly in relation to the transition from the enactment repealed by this Act to the provisions of this Act, the Central Government may, by general or special order, do anything not inconsistent with such provisions which appears 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 a period of two years from the appointed day.

92. Power to evict certain persons from the premises of Port Authority

(1) Notwithstanding anything contained in any other law for the time being in force, if a Port Authority in exercise of the powers conferred on it by the regulations made under this Act cancel the allotment of any premises made to any employee or any public premises allotted to a person or body of person or company or firm as the case may be, the Port Authority may, by notice in writing, order such allottee or any other person, who may be in occupation of the whole or any part of the premises to surrender or deliver possession thereof to the Port Authority or a person appointed by the Port Authority in that behalf within such period as may be specified in the notice.

(2) If any person or body of person or company or firm occupies the public premises unauthorisedly, a Port Authority shall proceed before the appropriate authority appointed under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (*ibid*).

(3) If any allottee or other person refuses or fails to comply with an order made under sub-section (1), appropriate authority appointed under section-3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, on application made by or on behalf of the Port Authority, order any police officer, with proper assistance, to enter into the premises and evict any person from, and take possession of, the premises and to deliver the same to the Port Authority or a person appointed by the appropriate authority in that behalf and the police officer may, for the purpose, use such force as may be necessary.

Explanation - For the purposes of this section, “premises” means any building or part of a building and includes –

(i) the garden, grounds and out-houses, if any, appertaining to such building or part of a building;

(ii) any fittings affixed to such building or part of a building or part of a building for the more beneficial enjoyment thereof; and

(iii) any furniture, books or other things belonging to the Port Authority and found in such building or part of a building.

Explanation: Public Premises has the same meaning as defined under clause (v) of sub-section (2) of section 2 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

93. Power of Central Government to issue directions to Port Authority

(1) Every Port Authority shall, in the discharge of its functions under this Act be bound by such directions on questions of policy as the Central Government may give in writing from time to time;

Provided that the Port Authority, shall be given opportunity to express its views before any direction is given under this sub-section.

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

Part-II
CHAPTER-XIII

**SPECIAL PROVISIONS FOR CONSTITUTION, WORKING AND OTHER
ASPECTS OF THE BOARD OF TRUSTEES**

94. Constitution of Board of Trustees

(1) With effect from such date as may be specified by notification in the Official Gazette, the Central Government may cause to be constituted in respect of certain major ports as deemed fit by the Central Government, a “Board of Trustees”, to be called the ‘Board of Trustees’ of that port, which shall consist of the following Trustees, namely –

- (a) a Chairperson to be appointed by the Central Government;
- (b) one Deputy Chairperson or more, as the Central Government may deem fit to appoint;
- (c) Not more than 16 other members appointed by the Central Government, from time to time, may form the Board of Trustees, in its opinion capable of representing one or more of such of the following interests as may be specified in the notification, namely :

- 1. Ministry of Railways
- 2. Central Government
- 3. DG (Shipping)
- 4. Indian Navy
- 5. Coast Guard
- 6. State Government
- 7. Department of Revenue (Customs)
- 8. Labour employed in Port
- 9. Major users & Terminal Operator
- 10. Shipowners/Agents
- 11. Exporters/Importers
- 12. Other Interests

Provided that the number of persons representing the ‘other interests’ shall not be less than four.

(2) A Trustee appointed by the Central Government under this Act may be appointed by name or by virtue of office.

95. First Board of Trustees

The Chairperson, the Deputy Chairperson and the Board of Trustees constituted under MPT Act 1963 shall continue to hold office, as Board of Trustees under this Act until appointment is made under Section 94.

96. Board of Trustees to be body corporate

Board of Trustees constituted under this Act shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold or dispose of property and may by the name by which it is constituted, sue or be sued.

97. Disqualification for office of Trustees

A person shall be disqualified for being chosen as a Trustee, if he or she –

- (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) persons of unsound mind; or
- (d) who has applied to be adjudicated as an insolvent and application is pending; or
- (e) who has defaulted any amount of Board, Central or State Government, any Central or State company, Public Enterprise or Undertaking, Autonomous Organisations or any Scheduled Bank under RBI Act, 1934; or
- (f) who is disqualified by a court; or
- (g) who has acted against the interest of the Board; or
- (h) persons who have completed 65 years of age.

98. Term of office of Trustees

(1) The Chairperson and the Deputy Chairperson shall hold office during the pleasure of the Central Government.

(2) Subject to the provisions of this Act –

- (a) Term of Trustees, other than Chairperson and Deputy Chairperson, shall be for a period of three years or till the concerned trustee attained the age of 65 years;

Provided where such a Trustee is appointed any time after 1st April of the year of the constitution of the Board and his term shall expire on 31st March, the date when the term of other Trustees also expires.

- (b) a person appointed by virtue of an office to be a Trustee shall, until the Central Government by notification in the Official Gazette otherwise directs, continue to be a Trustee so long as he continues to hold that office.

99. Vacation of office of Trustees

- (1) The Central Government shall remove a Trustee if he –
 - (a) becomes subject to any of the disqualifications mentioned in section 96; or
 - (b) has, in the opinion of the Central Government, ceased to represent the interest by virtue of which he was appointed or elected; or
 - (c) refuses to act or becomes incapable or acting; or
 - (d) is, without the permission of the Board previously obtained, absent from three consecutive ordinary meetings of the Board; or
 - (e) is absent from the meetings of the Board for a period exceeding nine consecutive months; or
 - (f) acts in contravention of the provision of section 106.
- (2) A Trustee may resign his office by giving notice in writing to the Chairperson who shall forward the same to the Central Government, and on such resignation being accepted by that Government he shall be deemed to have vacated his office.

100. Eligibility of Trustee for re-appointment or re-election

Any person ceasing to be a Trustee shall, unless disqualified under section 97, be eligible for re-appointment or re-election.

Provided that no trustee other than the Chairperson and the Deputy Chairperson and those appointed by virtue of their office shall be appointed for more than two consecutive terms.

101. Filling of vacancies in office of Trustee

- (a) All appointments to fill vacancy if any, in the Board of Trustees shall be only for the unexpired term of that Board of Trustees;
- (b) Any vacancy will not affect or disqualify the Board of Trustees, who would continue to function with the rest of the trustees, as if newly constituted.

102. Absence of Chairperson and Deputy Chairperson

In the absence of the Chairperson, or the Deputy Chairperson, the Central Government may appoint any person to act as Chairperson.

103. Conditions of service of Chairperson and Deputy Chairperson

The Chairperson and the Deputy Chairperson shall be paid such salary and be governed by such terms and conditions of service as may, from time to time, be determined by the Central Government.

104. Meetings of Board

- (1) A Board shall meet at such time and places and shall, subject to the provisions of sub-section (2),(3) and (4), observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by rules made under this Act.
- (2) The Chairperson or, in his absence, the Deputy Chairperson , and in the absence of both, any person chosen by the Trustees present from among themselves, shall preside at meetings of the Board.
- (3) All questions at a meeting of the Board shall be decided by a majority of the votes of the Trustees present and voting and, in the case of an equality of votes, the person presiding shall have a second or casting vote.
- (4) No business shall be transacted at any meeting of the Board unless not less than five Trustees are present throughout such meeting including Chairperson and Deputy Chairperson .
- (5) A Board may, from time to time, constitute from amongst the Trustees one or more committees, each consisting of such number as the Board may consider necessary, for the purpose of discharging such of its functions as may be delegated to such committee or committees by the Board.

105. Fees and allowances payable to Trustees

- (1) The Trustees shall be paid by the Board such fees and allowances for attending the meetings of the Board or of any of its committees and for attending to any other work of the Board as may be provided by rules made under this Act;

Provided that no fees shall be payable to the Chairperson, Deputy Chairperson, or any other Trustee who is a servant of the Central Government.

106. Restriction of power of Trustees to vote in certain cases

No Trustee shall vote or take part in the discussion of any matter coming up for consideration at a meeting of the Board or any of its committees if the matter is one in which he has any direct or indirect pecuniary interest by himself or his partner, or in which he is interested professionally on behalf of a client or as agent for any person other than the Central Government or an undertaking owned or controlled by the Central Government or a local authority or a trade union registered under the Trade Unions Act, 1926 (16 of 1926), or other than as officer or member of an association formed for the purpose of promoting the interests or welfare of any class of employees of the Board.

107. Defects in appointments or election not to invalidate act, etc.

No act or proceeding of a Board or of any of its committees shall be invalid merely by reason of –

- (a) any vacancy therein or any defect in the constitution thereof, or
- (b) any defect in the appointment of a person as a member thereof, or
- (c) any Trustee having acted or taken part in any proceedings in contravention of section 106, or
- (d) any irregularity in its procedure not affecting the merits of the case.

108. Delegation of powers

A Board of Trustees may specify –

- (a) the powers and duties conferred or imposed upon the Board of Trustees by or under this Act, which may also be exercised or performed by the Chairperson *or* Deputy Chairperson or any other officer; and
- (b) the powers and duties conferred or imposed on the Chairperson by or under this Act, may also be exercised or performed by the Deputy Chairperson or any officer of the Board of Trustees and the conditions and restrictions, if any, subject to which such powers and duties may be exercised and performed;

109. Duties of Chairperson and Deputy Chairperson

- (1) It shall be the duty of the Chairperson and the Deputy Chairperson to attend every meeting of the Board unless prevented by sickness or other reasonable cause.
- (2) The Chairperson shall, as soon as possible, furnish to the Central Government such reports, returns, documents or other information as it may, from time to time, call for.
- (3) The Chairperson shall exercise supervision and control over the acts of all employees of the Board of Trustees in matters of executive administration and in matters concerning the accounts and records of the Board of Trustees.

110. Board's Staff

(1) The Board shall have powers to create/sanction staff positions, subject to guidelines prescribed by the Central Government, from time to time.

111. Appointment of Staff

Appointment to the posts created or sanctioned by Board shall be made in accordance with guidelines prescribed by the Central Government, from time to time.

(a) in the case of a post –

(i) the incumbent of which is to be regarded as the Head of a department; or

(ii) to which such incumbent is to be appointed; or

(iii) The maximum of the pay scale of which (exclusive of allowances) exceeds such amount as the Central Government may, by notification in the Official Gazette, fix, be exercisable by the Chairperson; or

(b) in the case of any other post, be exercisable by the Chairperson or by such authority as may be prescribed by regulations.

112. Power to grant leave, etc., to employees of Board

(1) Subject to any regulations made under section 89, the power of granting extension of service to, granting leave to, suspending, reducing, compulsory retiring, removing or dismissing or of disposing of any other question relating to the services of, the employees of a Board, including the power of dispensing with the services of any such employee otherwise than by reason of the misconduct of such employee, shall be exercised –

(a) in the case of an employee holding a post referred to in clause (a) of sub-section (1) of section 85, by the Chairperson;

(b) in any other case, by the Chairperson or by such authority as may be prescribed by regulations;

Provided that no such order, so far as the same involves extension *to* service shall have effect until it is approved by the Central Government.

113. Power to create posts

Notwithstanding anything contained in section 110, the power to create any post, whether temporary or permanent, shall, -

(a) in the case of a post the holder of which is to be regarded as the Head of a department or in the case of a post the maximum of the pay scale of which (exclusive of allowances) exceeds such amount as the Central Government may, by notification in the Official Gazette, fix, be exercisable by that Government;

(b) in the case of a post other than a post referred to in clause (a), the maximum of the pay scale of which exceeds such amount as the Central Government may, from time to time by order fix in this behalf, or where no such amount has been fixed, is not less than fifteen thousand rupees, be exercisable by the Board.

(c) in the case of any other post, be exercisable by the Chairperson;

114. Power to make regulations

A Board may make regulations, not inconsistent with this Act, to provide for any one or more of the following matters, namely :-

(a) the appointment, promotion, suspension, reduction in rank, compulsory retirement, removal and dismissal of its employees;

(b) their leave, leave allowance, pensions, gratuities, compassionate allowances and travelling allowances and the establishment and maintenance of a Provident Fund or any other fund for their welfare;

(c) the terms and conditions of service of persons who become employees of the Board under clause (f) of sub-section (1) of section 80;

(d) the time and manner in which appeals may be preferred and the procedure for deciding such appeals;

(e) any other matter which is incidental to, or necessary for, the purpose of regulating the appointment and conditions of service of its employees.

115. Contracts by Board

Subject to the provisions of section 116, a Board of Trustees shall be competent to enter into and perform any contract necessary for the performance of its functions under this Act.

116. Execution of contracts and lease or sale of property on behalf of Board

Every contract shall, on behalf of a Board, be made by the Chairperson or by any such officer of the Board not below the rank of the Head of a department as the Chairperson may, by general or special order, authorise in this behalf] and shall be sealed with the common seal of the Board;

Provided that no contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf shall be made unless it has been previously approved by the Board;

Provided further that no contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf, shall be made unless it has been previously approved by the Central Government.

CHAPTER-XIV

BORROWING POWERS OF BOARD OF TRUSTEES

117. Power to raise loans

- (1) A Board may subject to such term and conditions as Central Government may prescribe raise loans for the purposes of this Act.
- (2) Loans may be raised by a Board in the open market or against securities issued by the Board or may be obtained from the Central Government or a State Government or a Port Authority.

118. Port Trust securities

- (1) A Board of Trustees may, with the sanction of the Central Government, prescribe the form in which Port Trust securities shall be issued by it and the mode in which, and the conditions subject to which, they may be issued or transferred.
- (2) The holder of any Port Trust security in any form may obtain in exchange therefor, upon such terms as the Board of Trustees may from time to time determine, a Port Trust security in any other form prescribed by regulations.
- (3) The right to sue in respect of moneys secured by Port Trust securities shall be exercisable by the holders thereof for the time being without preference in respect of priority of date.

119. Power of Board of Trustees to make regulations

A Board of Trustees may, from time to time, make regulations to provide for all or any of the following matters –

- (a) Right of survivors of joint or several payees of securities.
- (b) Power of joint holders of port trust securities.
- (c) Procedure to be followed for transfer of securities.
- (d) Nominate authorised signatory and the manner and mode of affixing common seal of the Board of Trustees, including the manner of impressing the signature on securities by such authorised persons
- (e) Procedure related to issue of duplicate securities.
- (f) Issue of converted, consolidated or sub-divided securities.
- (g) Administration and discharge of the securities.
- (h) Any other matter for proper and effective conduct of the affairs relating to issue, administration and discharge of port trust securities.

120. Security for loans taken out by Board of Trustees

All loans raised by a Board of Trustees under this Act shall be a first charge on –

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

(i) any sum set apart by the Board-

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

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

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

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

121. Remedies of Government in respect of loans made to Boards

The Central Government or a State Government shall have in respect of loans made by it to a Board of Trustees, or of loans made to any other authority for the repayment of which the Board of Trustees is legally liable, the same remedies as holders of Port Trust securities issued by the Board of Trustees; and such Government shall not be deemed to possess any prior or greater rights in respect of such loans than holders of such Port Trust securities;

Provided that where 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.

122. Power of Board of Trustees to repay loans before due date

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

123. Establishment of sinking fund

(1) In respect of loan, other than from the Central Government or any State Government, raised by a Board under this Act, the Board of Trustees shall establish a sinking fund by setting apart sufficient fund out of its income to liquidate the loan within the tenure of the loan which shall not in any case, unless the previous consent of the Central Government has been obtained, exceed thirty years; but the maximum period shall not in any case exceed sixty years;

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

(2) Where any sinking fund has, before the appointed day, been established by any authority in respect of a loan raised by it for which loan 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.

124. Investment and application of sinking fund

(1) The sums so set apart by a Board of Trustees under section 120 shall be invested in public securities or in such other securities as the Central Government may approve in this behalf, and shall be held in trust for the purposes of this Act by the Board of Trustees.

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

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

125. Examination of sinking fund

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

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

(3) If the cash and the current market value of the securities at the credit of a sinking fund are in excess of the amount which should be at its credit, the person appointed under sub-section (1) shall certify the amount of this excess, and the Board of Trustees may, with the previous sanction of the Central Government reduce or discontinue the half-yearly contributions to the sinking fund required under section 120.

126. Power of Board of Trustees to take temporary loans or overdrafts

Notwithstanding anything contained in this Act, a Board of Trustees may borrow moneys for the purpose of this Act by means of temporary overdraft or otherwise by pledging the securities held by the Board of Trustees in its reserve funds or on the security of the fixed deposits of the Board of Trustees in its banks;

Provided that overdrafts & other loans having the currency for more than six months shall be taken with previous sanction of the Central Government.

CHAPTER-XV
REVENUE AND EXPENDITURE

127. General account of Port

All moneys received by or on behalf of a Board of Trustees under the provisions of this Act, and all moneys received by it as the Conservator of the Port and of the Port approaches shall be credited to a fund called the general account of the Port.

128. Application of moneys in general account

(1) The moneys credited to the general account under section 127 shall be applied by the Board of Trustees in defraying the following charges for that year –

- (a) working and establishment expenses;
- (b) maintenance, depreciation, *replacement* and renewal of the property of and the discharge of the functions of the authority properly chargeable to revenue;
- (c) interest on loans and repayments of money borrowed;
- (d) such capital expenditure as the Board may determine to charge to the revenues;
- (e) any other expenditure which may be incurred by the Board generally for the purposes of this Act;
- (f) any other expenditure not covered under above sub-section, which may on the application of the Board or otherwise be specially sanctioned by the Central Government.

(2) Subject to such general or special directions as the Central Government may specify, the amount remaining at the credit of the Board of Trustees, which can not immediately be applied in the manner or for the purpose specified in sub-section(1) shall –

- (a) be deposited in scheduled banks; or
- (b) be invested in public securities or in such other securities and the said securities shall be held in trust by the Board of Trustees for the purposes of this Act; or
- (c) be given as a loan to the Board of Trustees of another Port for the development of the Port or to any other body corporate engaged in the development of a Port or other infrastructure Projects connected with the Port; or
- (d) be invested, in any manner, in an arrangement referred to in sub-section (3A) of section 25; or

(e) be invested, in any manner, in the development or management of any port including a port other than a major port on such terms and conditions as may be approved by the Central Government; or

(f) be transferred, to a separate Central Port Development Fund to be constituted by the Central Government solely for the purpose of Development of the port sector in India. The terms and conditions by which moneys are transferred and utilized shall be determined by the Central Government by a notification in Official Gazette.

(3) Every direction issued by the Central Government under sub-section (2) shall be complied with by the Board of Trustees and shall not be called in question in any court on any ground.

(4) No suit or other legal proceeding shall lie against the Central Government, the Board of Trustees or any officer or other employee of the Board of Trustees authorised by it in this behalf for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any direction issued under sub-section (2).

129. Establishment of reserve funds

(1) A 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 port or for the purpose of providing against any temporary decrease of revenue or increase of expenditure from transient causes or for purposes of replacement or for meeting expenditure arising from loss or damage from fire, cyclones, shipwreck or other accident or for any other emergency arising in the ordinary conduct of its work under this Act;

(2) Any such reserve fund or funds may be invested in public securities or in such other securities as the Central Government may approve in this behalf.

130. Power to reserve Port Trust securities for Board of Trustees' own investments

(1) For the purposes of any investment which a Board of Trustees is authorised to make by this Act, it shall be lawful for every Board of Trustees to reserve and set apart any securities to be issued by it on account of any loan to which the consent of the Central 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 any Board of Trustees of any such securities direct to and in the name of the Board of Trustees 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 a Board of Trustees, or the transfer, assignment or endorsement to a Board of Trustees or to the Trustees of the sinking fund set up by a Board of Trustees, of any security issued by the Board of Trustees, 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 indorsed to, any other person.

131. Prior sanction of Central Government to charge expenditure to capital

(1) Board of Trustees without prior sanction of the Central Government, shall not charge any expenditure to Capital exceeding such limits as may be specified by the Central Government.

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

132. Works requiring sanction of Board of Trustees or Central Government

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

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

133. Powers of Chairperson as to execution of works

Notwithstanding anything contained in section 130, the Chairperson may direct the execution of any work the cost of which does not exceed such maximum limit as may be fixed by the Central Government in this behalf, and may enter into contracts for the execution of such works.

134. Power of Board of Trustees to compound or compromise claims

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

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

135. Writing off of losses

(1) Subject to such conditions as may be specified by the Central Government, where a Board of Trustees is of opinion that any amount due to or any loss, whether of money or of property, incurred by, the Board of Trustees is irrecoverable, the Board of Trustees may sanction the writing off finally of the said amount or loss;

136. Powers, etc., of Board as Conservator or body appointed under Section 13

All the powers, authorities and restrictions contained in this Act in respect of the works by this Act authorised, shall apply to the works which may be executed by the Board as the Conservator of the port or as the body appointed under section 13 (ibid). and also to the sanction of such works, the estimates therefore, and the expenditure thereunder.

137. Budget Estimates

(1) A Board of Trustees shall, on or before the thirty first day of December in each year, hold a special meeting at which the Chairperson of the Board of Trustees shall submit an estimate of the income and expenditure of the Board of Trustees for the next financial year, in such form as the Central Government may specify.

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

(3) The Central Government shall sanction the estimate with or without modifications.

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

138. Preparation of supplemental estimate

A Board of Trustees may in the course of any year for which an estimate has been sanctioned by the Central Government cause one or more supplemental estimates for the residue of such year to be prepared, and the provisions of section 137 shall, so far as may be, apply to such estimate as if it were an original annual estimate.

139. Adherence to estimate except in emergency

(1) No sum exceeding such amount as the Central Government may fix in this behalf shall, save in cases of pressing emergency, be expended by, or on behalf of, any Board of Trustees unless such sum is included in some estimate of the Board of Trustees at the time in force which has been finally sanctioned by the Central Government.

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

140. Accounts and audit

(1) A Board of Trustees shall maintain proper accounts and other relevant records and prepare the annual statement of accounts, including the balance-sheet in such form as may be specified by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Board of Trustees shall be audited once in every year by the Comptroller and Auditor-General of India or such other person as may be appointed by him in this behalf and any amount payable to him by the Board of Trustees in respect of such audit shall be debitable to the general account of the Board of Trustees.

(3) The Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of a Board of Trustees shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books of accounts, connected vouchers and other documents of the Board.

141. Publication of audit report

(1) Within fourteen days after the audit and examination of the accounts of a Board of Trustees have been completed, the Comptroller and Auditor-General of India shall forward copies of the audit report to the Central Government and to the Board of Trustees.

(2) The Central Government shall cause every audit report to be laid for not less than thirty days before each House of Parliament as soon as may be after such report is received by that Government.

142. Board of Trustees to remedy defects and irregularities pointed out in audit report

Every Board of Trustees shall forthwith take into consideration any defects or irregularities that may be pointed out by the Comptroller and Auditor-General of India in the audit report on the income and expenditure of the Board of Trustees and shall take such action thereon as the Board of Trustees may think fit and shall also send a report of the action so taken to the Central Government.

143. Central Government to decide difference between Board of Trustees and auditors

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

CHAPTER-XVI

SUPERVISION AND CONTROL OF CENTRAL GOVERNMENT

144. Administration report

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

145. Submission of statements of income and expenditure to Central Government

(1) Every Board of Trustees shall annually, or oftener if directed by the Central Government so to do, submit statements of its income and expenditure in such form and at such time as that Government may direct.

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

146. Power of Central Government to order survey or examination of works of Board of Trustees

The Central Government may, at any time, order a local survey or examination of any works of a Board of Trustees, or the intended site thereof and the cost of such survey and examination shall be borne and paid by the Board of Trustees from and out of the moneys credited to the general account of the port.

147. Power of Central Government to supersede Board of Trustees

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

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

(b) that the Board of Trustees has persistently made default in the performance of the duties imposed upon it by or under the provisions of this Act or of any other law and as a result of such default, the financial position of the Board of Trustees or the administration of the port has greatly deteriorated.

The Central Government may, by notification in the Official Gazette, supersede the Board of Trustees for such period, not exceeding six months at a time, as may be specified in the notification;

Provided that before issuing a notification under this sub-section for the reasons mentioned in clause (b), the Central Government shall give a reasonable time of not less than three months to the Board to show cause why it could not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of a notification under sub-section (1) superseding the Board of Trustees –

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

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

(c) all property vested in the Board of Trustees shall, until the Board of Trustees is reconstituted, vested in the Central Government

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

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

(b) reconstitute the Board of Trustees by fresh appointment and fresh election, and in such case, any persons who vacated their offices under clause (a) of sub-section (2) shall not be deemed disqualified for appointment or election, as the case may be, or

(c) reconstitute the Board of Trustees by appointment only for such period as it may consider necessary and in such a case, the persons who vacated their offices under clause (a) of sub-section (2) shall not be deemed disqualified for such appointment merely because they were Trustees when the Board of Trustees was superseded;

Provided that the Central 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 clause (c) of this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest possible opportunity.

148. Person interested in contracts, etc., with the Board of Trustees to be deemed to have committed an offence under section 168 of the Indian Penal Code

Any person who, being a Trustee or an employee of the Board of Trustees, acquires, directly or indirectly, any share or interest in any contract or employment with, by or on behalf of, any Board of Trustees, shall be deemed to have committed an offence under section 168 of the Indian Penal Code (45 of 1860);

Provided that nothing in this section shall apply to a person who deemed not to have a share or interest in any contract or employment, with, by, or on behalf of the Board.

149. Power of Central Government to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for all or any of the following purposes, namely :-

(a) the times and places of the meetings of a Board and the procedure to be followed for the transaction of business at such meetings;

(b) the fees and allowances payable to the members of a Board or of its committees;

(c) the common recruitment rules and other terms and conditions of appointment including transfers of Head of Departments of Major Ports.

(d) any other matter in respect of which rules may be made by the Central Government.

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

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

150. General power of Board of Trustees to make regulations

(1) The Board of Trustees may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such regulations may provide or any of the following matters, namely –

- (a) the times and places of the meetings of a Board of Trustees and for the procedure to be followed for the transaction of business at such meetings;
- (b) for the form and manner in which contracts shall be made by the Board;
- (c) for the form of receipt to be given under sub-section (2) of section 24;
- (d) for the period within which notice may be given under sub-section (2) of section 17;
- (e) for the guidance of persons employed by the Board under this Act;
- (f) for the safe, efficient and convenient use, management and control of the docks, wharves, quays, jetties, railways, tramways, buildings and other works constructed or acquired by, or vested in, the Board, or of any land or foreshore acquired by, or vested in, the Board under this Act;
- (g) for the reception, portorage, storage and removal of goods brought within the premises of the Board, for the exclusive conduct of these operations by the Board or persons employed by the Board; and for declaring the procedure to be followed for taking charge of goods which may have been damaged before landing, or may be alleged to have been so damaged;
- (h) for keeping clean the port, river or basins or the bank of the river and the works of the Board, and for preventing filth or rubbish being thrown therein or thereon;
- (i) for the mode of payment of rates leviable by the Board under this Act;
- (j) for 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;
- (k) for 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;
- (l) for regulating the lighterage of cargo between ships or between ships and shore or between shore and ships;
- (m) for the exclusion from the premises of the Board of disorderly or other undesirable persons and of trespassers;
- (n) for ensuring the safety of the port;
- (o) generally, for the efficient and proper administration of the port.

151. Provisions with respect to regulations

(1) No regulation made by the Board of Trustees under this Act, other than a regulation made under section 114, shall have effect until it has been approved by the Central Government and until such approval has been published in the Official Gazette.

(2) Any regulation made under this Act other than a regulation made under section 114 may provide that a breach thereof shall be punishable with fine which may extend to ten thousand rupees, and where the breach is a continuing one, with further fine which may extend to One thousand rupees for every day after the first during which such breach continues.

152. Power of Central Government to make first regulations

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

153. Requirements as to publication of notifications, orders, etc., in the Official Gazette –

(1) Any requirement in this Act that a notification, order, rule or regulation issued or made by a Port Authority or the Central Government or any other Authority shall be published in the Official Gazette, shall, unless otherwise expressly provided in this Act, be construed as a requirement that the notification, order, rule or regulation shall –

(a) where it is issued or made by the Boards of Trustees, be published in the Official Gazette of the State in which the port is situated, and

(2) Any notification, order, rule or regulation issued by the Central Government shall, for general information, be also republished in the Official Gazette of the State in which the port is situated.

PART-C
CHAPTER-XVII

PROVISIONS WITH RESPECT TO PENALTIES

154. Penalty for disobedience to rules and orders

If any person disobeys any rule or order made in pursuance of this Act and for the punishment of disobedience to which express provision has not been made elsewhere in this Act, he shall be punishable for every such offence with fine which may be prescribed by Government from time to time.

155. Offences how triable, and penalties how recovered

All offences against this Act shall be triable by a Magistrate, and any Magistrate may, by warrant under his hand, cause the amount of any fine imposed upon the owner or master of any vessel, for any offence committed on board of the vessel or in the management thereof or otherwise in relation thereto, whereof the owner or master is convicted, to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

156. Penalty for contravention of sections 7, 8, 10 and 11

Whoever contravenes the provisions of any order issued under section 7 or section 8 or section 11 or fails to comply with any condition imposed under section 10 shall be punishable with fine which may extend to one lakh rupees and where the contravention or failure is a continuing one, with further fine which may extend to ten thousand rupees for every day after the first during which such contravention or failure continues.

157. Other offences

Any person who contravenes any of the provisions of this Act or of any rule, regulation or order made thereunder, for the contravention of which no penalty is expressly provided thereunder, shall be punishable with fine which may be prescribed by the Government from time to time.

158. Cognizance of offences

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

159. Offences by companies

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

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

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

160. Costs of conviction

(1) In case of any conviction under this Act, the convicting Magistrate may order the offender to pay the costs of the conviction in addition to any fine or expenses to which he may be liable.

(2) Such costs may be assessed by the Magistrate and may be recovered in the same manner as any fine under this Act.

161. Ascertainment and recovery of expenses and damages payable under this Act

(1) If any dispute arises as to the sum to be paid in any case as expenses or damages under this Act, it shall be determined by a Magistrate upon application made to him for that purpose by either of the disputing parties.

(2) Whenever any person is liable to pay any sum, not exceeding one thousand rupees, as expenses or damages under this Act, any Magistrate, upon application made to him by the authority to whom the sum is payable, may, in addition to or instead of any other means for enforcing payment, recover the sum as if it were a fine.

162. Cost of distress

Whenever any fine, expense or damages is or are levied under this Act, by distress and sale, the cost of the distress and sale may be levied in addition to such fine, expenses or damages, and in the same manner.

163. Civil Court to determine the amount to be levied in case of dispute

If any dispute arises concerning the amount leviable by any distress or arrest under this Act or the costs payable under the last foregoing section, the person making the distress or using the arrest may detain the goods distrained or arrested, or the proceeds of the sale thereof, until the amount to be levied has been determined by an appropriate Civil Court, who, upon application made to him for that purpose, may determine the amount, and award such costs to be paid by either of the parties to the other of them as he thinks reasonable and payment of such costs, if not paid on demand, shall be enforced as if they were a fine.

164. Jurisdiction over offences beyond local limits of jurisdiction

(1) Any person offending against the provisions of this Act in any port subject to this Act shall be punishable by any Magistrate having jurisdiction over any district or place adjoining the port.

(2) Such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner and to the same extent as if the offence had been committed locally within the limits of his jurisdiction, notwithstanding that the offence may not have been committed locally within such limits, and, in case any such Magistrate exercises the jurisdiction hereby vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction.

165. Conviction to be quashed on merits only

(1) No conviction, order or judgement of any Magistrate under this Act shall be quashed for error of form or procedure, but only on the merits, and it shall not be necessary to state, on the face of the conviction, order or judgement, the evidence on which it proceeds.

(2) If no jurisdiction appears on the face of the conviction, order or judgement, but the depositions taken supply that defect, the conviction, order or judgement shall be aided by what so appears in the depositions.

166. Publication of order of Government

Every declaration, order and rule of a Government made in pursuance of this Act shall be published in the Official Gazette, and a copy thereof shall be kept in the office of the conservator, if any, of every Port Authority to which the declaration, order or rule relates, and shall there be open at all reasonable times.

167. Repeal and Saving of Notification and Rules

(1) All Notifications' issued by the Government and rules framed under the Indian Ports Act, 1908 in so far as it is not inconsistent with this Act shall continue to be valid until Notifications are issued or rules are framed under this Act and the old Notifications and/or rules are specifically annulled.

(2)(i) On the application of the Act to the Major Ports of Calcutta, Paradip, Visakhapatnam, Chennai, Tuticorin, Cochin, New Mangalore, Mormugao, Jawaharlal Nehru, Mumbai, Kandla, and Port Blair, the Major Port Trusts Act, 1963 (Act No. 38 of 1963) and Port Laws (Amendment) Act 1997 (Act No. 15 of 1997) save and except for the provisions relating to Municipal Assessment of properties of the Ports of Mumbai and Calcutta and matters connected therewith specially saved under Sub-Section 2A and Sub-Section 2B under Section 133 of the Major Port Trusts Act, 1963 shall cease to have force in relation to those ports.

All regulations framed by a port before the commencement or application of this Act to that port, shall continue to be in force till such regulations are made under this Act.

(a) every Trustee of the Board of Trustees of any major port holding office as such immediately before the application of this Act as the case may be, shall be deemed to have been appointed or elected as such under this Act and shall continue to hold such office after such application until a Board of Trustees in respect of that port is constituted under the provisions of this Act;

(b) anything done or any action taken or purported to have been done or taken (including any rule, regulation, bye-laws, notification, order or notice made or issued or any resolution passed or any appointment or declaration made or any licence, permission or exemption granted or any rates, charges or duties levied or any penalty or fine imposed) under the Major Port Trust Act, 1963, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(ii) If immediately before the application of this Act to any other port, there is in force in that port any law, which corresponds to this Act or to any provision thereof, that corresponding law shall, on such application, cease to have force in relation to that port and section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply as if such corresponding law were a Central Act and such cesser of operation were a repeal.