

THE ORISSA MARITIME BOARD BILL, 2011

A

BILL

TO PROVIDE FOR THE CONSTITUTION OF A MARITIME BOARD FOR MINOR PORTS IN THE STATE OF ORISSA AND TO VEST THE ADMINISTRATION, CONTROL AND MANAGEMENT OF SUCH PORTS IN THAT BOARD AND FOR MATTERS CONNECTED THERE WITH

Be it enacted by the legislature of the State of Orissa in the Sixty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent,
commencement
and application.

1. (1) This Act may be called the Orissa Maritime Board Act, 2011.

(2) It shall come into force on such date, as the Government may, by notification, in the official Gazette, appoint.

(3) It extends to the whole of the State of Orissa.

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

15 of 1908.

15 of 1908.

Definitions.

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

- (a) “appointed day” in relation to any minor port means the day on which this Act is made applicable to that port;
- (b) “Board” means the Orissa Maritime Board constituted under section 3;
- (c) “Board security” means debentures, bonds or dock certificates issued by the Board in respect of any loan contracted by it under the provisions of this Act;
- (d) “Chairperson” means the Chairperson of the Board;
- (e) “dock” includes all basins, locks, cuts, entrances, graving docks, graving blocks, inclined planes, slipways, gridirons, mooring, transit sheds, warehouses, godowns, open plots and other works and things appertaining to any dock and also the portion of the sea enclosed or protected by the arms or groynes of a harbour;
- (f) “foreshore” in relation to a port means the area between the high water mark and the low water mark relating to that port;
- (g) “goods” includes livestock and every kind of movable property;
- (h) “Government” mean the Government of Orissa;
- (i) “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 that port;
- (j) “immovable property” includes wharfage-rights and all other rights exercisable on, over or in respect of, land, any wharf, dock or pier;
- (k) “Indian Ports Act” means the Indian Ports Act, 1908;
- (l) “land” includes the bed of sea or river below high water mark and also things attached to the earth or permanently fastened to anything attached to the earth;
- (m) “low water mark” in relation to a port means a line drawn through the lowest points reached by ordinary spring tides at any season of the year at that port;

15 of 1908.

- (n) “master” in relation to any vessel or craft making use of any minor port means any person having, for the time being, the charge or control of such vessel or craft, as the case may be, except a pilot, harbour master, dock master, or berthing master of the port;
- (o) “member” means a member of the Board or its Committee, as the case may be;
- (p) “minor port” means a port other than a major port declared as such by the Central Government under any law;
- (q) “owner”—
 - (i) in relation to goods includes any consignor, consignee, shipper or agent for the sale, custody, loading or unloading of such goods, and
 - (ii) in relation to any vessel or craft making use of any port, includes any port owner, charterer, consignee or mortgagee in possession thereof;
- (r) “pier” includes any stage, stairs, landing place, hard jetty, floating barge or pontoon and any bridge or other works connected therewith;
- (s) “port” means any minor port to which this Act applies within such limits as may, from time to time, be defined by the Government under the Indian Ports Act;
- (t) “port approaches” in relation to a port means those parts of the navigable rivers and channels leading to the port in which the Indian Ports Act is in force;
- (u) “prescribed” means prescribed by rules or regulations made under this Act;
- (v) “public securities” means—
 - (i) promissory notes, debentures, stock or other securities of the Central Government or of any State Government:
Provided that securities both the principal and the interest whereof have been fully and unconditionally guaranteed by any such Government shall be deemed, for the purpose 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 the State (including the Board securities);

- (w) "rate" includes any toll, due, rent, fee or charge leviable under this Act;
- (x) "regulations" means regulations made under this Act;
- (y) "rules" means rules made by the Government under this Act;
- (z) "vessel" includes anything made for the conveyance, mainly by water, of human being or of goods; and
- (z-a) "wharf" includes any wall or stage and any part of the land or fore-shore 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

ESTABLISHMENT OF ORISSA MARITIME BOARD

Establishment of Orissa Maritime Board.

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

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

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

(4) The Board shall consist of a Chairperson and fourteen other members who shall be appointed by the Government, as follows, namely :—

(a) The Minister in charge of Commerce & Transport, who shall be the chairperson;

(b) eight members to be appointed by virtue of their office amongst officers of the Government save as otherwise provided hereunder, not below the rank of Additional Secretaries of whom—

(i) The Commissioner Rail Co-ordination and Special Secretary to Government, Commerce and Transport Department;

(ii) one shall be a representative of Industries Department;

(iii) one shall be a representative of the Water Resources Department;

(iv) one shall be a representative of the Finance Department;

(v) one shall be a representative of the Fisheries and Animal Resources Development Department;

- (vi) one shall be a representative of the Forest and Environment Department;
- (vii) one shall be a representative of the Law Department;
- (viii) Director, Ports and Inland Water Transport;
- (c) a representative of the Coast Guard (Sr. most officer based in Orissa);
- (d) a representative of the Indian Navy;
- (e) a representative of the Ministry of Shipping;
- (f) the Chief Executive Officer appointed under section 16 who shall be the Member- Secretary;
- (g) two other members appointed from amongst the persons who are, in the opinion of the Government, having expertise or experience in or capable of representing any one or more of the interests of shipping, navigation, ports, sailing vessels, fisheries, trade, Commerce, Finance, Industry, workers of minor ports and such other interests, as in the opinion of the Government, ought to be represented on the Board.

(5) The Board shall have powers to co-opt two persons having experience and knowledge in the field of Customs, Narcotics Bureau, Intelligence Bureau or Security Agencies depending on the situation, to the Board who shall have right to participate in the meeting of the Board, but shall have no right to vote in such meeting.

Disqualifications
of members.

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

- (a) has been removed or dismissed from the service of Government or of local authority or of a Corporation owned or controlled by the Government; or
- (b) has been convicted and sentenced to imprisonment for an offence which in the opinion of the Government involves moral turpitude; or
- (c) is an undischarged insolvent; or
- (d) has directly or indirectly any share or interest in any work done by order of the Board or in any contract or employment with, by or on behalf of the Board:

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

- (i) having a share in any company or firm which may contract with or be employed by or on behalf of the Board; or
- (ii) being interested in any loan of money to the Board; or
- (iii) having a share or interest in any lease, sale, exchange, or purchase of immovable property or any agreement for the same; or
- (iv) having a share or interest in any licence issued by the Board or right by agreement or otherwise with the Board to the sole or preferential use of any premises or property belonging to the Board; or
- (v) having a share or interest in the occasional sale to the Board to a value not exceeding ten thousand rupees in any one financial year, of any article in which he trades.

Term of office of members.

5. Subject to the provisions of this Act a member of the Board, other than the chairperson and the members appointed under clause (b) to (f) of sub-section (4) of section 3 shall hold office during the pleasure of the Government and in any case not exceeding a period of three years.

Vacation of office as a member.

- 6. (1)** The Government shall remove a member of the Board if he—
- (a) becomes subject to any disqualification mentioned in section 4; or
 - (b) refuses to act or becomes incapable of acting; or
 - (c) has, in the opinion of the Government, become incapable of representing the interests by virtue of which he was appointed; or
 - (d) is, without the prior permission of the Board absent from six consecutive meetings of the Board; or
 - (e) is absent from the meetings of the Board for a period exceeding six consecutive months;
 - (f) acts in contravention of the provisions of section 12.

(2) A member of the Board, other than the members appointed under clause (b) to (f) of sub-section (4) of section 3, may resign from his office by tendering his resignation in writing to the Chairperson who shall forward the same to the Government, but resignation shall not take effect until it is accepted by the Government.

Eligibility for reappointment.

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

Filling of vacancies.

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

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

(2) Any vacancy in the office of a member appointed under clauses (b) to (f) of sub-section (4) of section 3 shall be filled as early as possible after occurrence of such vacancy by appointment of a member under the said clause.

Meeting of the Board.

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

(2) The Chairperson and in his absence, the Chief Executive Officer shall preside at meetings of the Board.

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

(4) The number of members necessary to constitute a quorum at a meeting shall be eight.

(5) The secretary to the Board referred in Clause (f) sub-section (4) of section 3 shall, as soon as possible, transmit to the Government a copy of the minutes of every meeting of the Board and shall furnish to the

Government such reports, returns, documents and other information as it may, from time to time, call for.

Committee of the Board.

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

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

Fees and allowances payable to the members.

11. The members shall be paid by the Board such fees and allowances for attending meetings of the Board or of any of its committees and for attending any work of the Board as may be prescribed:

Provided that: —

(a) no fees shall be payable to the Chairperson or any other member who is a Member of Parliament or State Legislature or a servant of the Government.

(b) any allowance payable to a member, who is a Member of Parliament or State Legislature, shall not exceed the compensatory allowance as defined in clause (a) of section 2 of the Parliament (Prevention of Disqualification) Act, 1959 or, as the case may be, in clause (a) of section 2 of the Orissa Office of Profit (Removal of Disqualification) Act, 1961.

10 of 1959.

Orissa Act
26 of 1961.

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

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

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

(ii) is interested, professionally on behalf of a client or as agent for any person other than the Government or an undertaking owned or controlled by the Government or a local authority or a trade union registered under the Trade Unions Act, 1926 or member of an association formed for the purpose of promoting the interests or welfare of any class of employees of the Board,

16 of 1926.

shall, as soon as possible, after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and the disclosure shall be recorded in the minutes of the Board or, as the case may be, the committee, and the member, shall not take part in any deliberation or decision of the Board or the committee with respect to that matter.

Acts of Board or Committee shall not be invalidated by infirmity or vacancy.

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

- (a) any vacancy or any defect in the constitution of the Board or the Committee; or
- (b) any defect or irregularity in the appointment of a person acting as a member, thereof; or
- (c) any member having acted or taken part in any proceeding in contravention of section 12; or
- (d) any irregularity in its procedure not affecting the merits of the case.

Delegation of powers.

14. The Board may, direct that such of the powers and duties conferred or imposed upon the Board by or under this Act as may be specified in such direction, may also be exercised or performed by the Chief Executive Officer subject to such conditions and restriction as may be specified in such direction:

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

Duties of Chairperson.

15. (1) It shall be the duty of the Chairperson to attend every meeting of the Board unless prevented by the sickness or other reasonable cause.

(2) The Chairperson shall exercise supervision and control over the actions of all employees of the Board in the matters of executive administration and in the matters concerning the accounts and records of the Board.

CHAPTER III STAFF OF THE BOARD

Chief Executive Officer and other officers and servants of the Board.

16. (1) The Secretary to the Government in charge of the Commerce & Transport Department shall be appointed as Chief Executive Officer of the Board.

(2) The Board shall appoint such person, as it may think fit, to be the Financial Controller-*cum*-Chief Accounts Officer with the previous sanction of the Government subject to such terms and conditions as it may specify in such sanction order.

(3) The Government shall provide the Board with such officer and employees as may be considered necessary for the efficient performance of the function of the Board and determine the terms and conditions of service including the salary and allowances payable to them shall be such as may be prescribed.

(4) The Board may employ specialist or consultants only on contractual basis with such terms and conditions as may be prescribed, for not more than one year with the previous approval of the Government:

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

CHAPTER IV PROPERTY AND CONTRACTS.

Transfer of assets and liabilities of Government to the Board.

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

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

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

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

terms and conditions as may be determined by the Government;

- (d) all rates, fees, rents and other sums of money due to the Government in relation to the port immediately before such day, shall be deemed to be due to the Board;
- (e) all suits and other legal proceedings instituted by or against the Government immediately before such day for any matter in relation to port, may be continued by or against the Board; and
- (f) every employee serving under the Government immediately before such day solely or mainly for or in connection with the affairs of the port shall become an employee of the Board, and shall hold his office or service therein by the same tenure and upon the same terms and conditions of service as he would have held the same if the Board had not been established and shall continue to do so unless and until his employment in the Board is terminated or until his tenure, remuneration or terms and condition of service are duly altered by the Board.

Existing rates etc. to continue until altered by Board.

18. 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 competent 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 before such day.

Explanation.— The expression “competent authority” means such authority as the Government may declare.

Re-payment of capital with interest.

19. The Board shall repay, at such intervals and on such terms and conditions as the Government may determine, the amount which is treated under clause (c) of section 17 as capital provided by the Government, with interest at such rate as may be fixed by the Government and such repayment of capital or payment of interest shall be deemed to be a part of the expenditure of the Board.

Procedure when immovable property cannot be acquired by agreement.

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

Contracts by Board.

21. (1) Every contract shall be made on behalf of the Board by the Secretary of the Board or an officer authorized by the Board in such form and manner as may be prescribed.

(2) No contract in respect of leasing of waterfront, jetty, waterway and corresponding infrastructural facilities thereof for a term exceeding five years or for the sale of any immovable property or for lease of any such property for a term exceeding thirty years shall be made unless it is previously approved by the Government, on such terms and conditions as it may think fit.

(3) A contract or agreement which is made or executed in contravention of provisions of this Act or the rules shall not be binding on the Board.

CHAPTER V

WORKS AND SERVICES TO BE PROVIDED AT PORTS BY THE BOARD.

Power of Board to execute works and provide appliances.

22. (1) The Board may prepare a blue print for maritime development of the State including development of Inland waterways and for the purpose of preparation of such print, the Board may institute studies, surveys as it deems fit.

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

- (a) Wharves, quays, docks, stages, jetties, piers, place of anchorage and other works within the port or port approaches or on the foreshore of the port or port approaches in the State, with all convenient arches, drains, landing places, stairs, fences, roads, bridges, tunnels and approaches, and buildings as the Board may considered necessary, required for the residence of its employees.
- (b) buses, locomotives, rolling stock, sheds, hotels, warehouses and other accommodation for passengers and goods and other appliances for carrying passengers and for conveying, receiving and storing goods landed, or to be shipped or otherwise;
- (c) moorings and cranes, scales and all other necessary means and appliances for loading and unloading of vessels;

- (d) reclaiming, excavating and raising and raising any part of the foreshore of the port or port approaches which may be necessary for the execution of the works authorized by this Act or otherwise for the purposes 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, widening, deepening and improving any portion of the port or port approaches or of the foreshore of the port or port approaches;
- (g) light-houses, light-ships, buoys, pilot boats and other appliances necessary for the safe navigation of the port and the port approaches in so far as it relates to State functions;
- (h) vessels, tugs, boats, barges and launches and lighters for the use within the limits of the port or beyond those limits, whether in territorial waters or otherwise, for the purpose of towing or rendering assistance to any vessel, whether entering or leaving the port or bound elsewhere and for the purposes of saving or protecting life or property and for the purpose of landing, shipping or transshipping passengers or goods under section 29;
- (i) sinking of tubewells and equipment, maintenance and use of boats, barges and other appliances for the purpose or the supply of water at the port;
- (j) engines and other appliances necessary for the extinguishing of fires;
- (k) land abutting the sea coast including creeks;
- (l) ferry boats and other works and equipment appertaining to the running ferry service at or between the ports;
- (m) construction of models and plans for carrying out hydraulic studies; and
- (n) dry docks, slipways, boat basins and workshops to carry out repairs or overhauling of vessels, tugs, boats, machinery or other appliances.

Power of Board to undertake certain works.

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

(2) The Board may, if 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 Board and the person concerned.

Power of Board to order sea going vessels to use docks.

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

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

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

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

All sea going vessels compelled to use docks wharves, etc.

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

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

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

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

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

27. Notwithstanding anything contained in section 24 or 25, the Government may, if in its opinion it is necessary in the public interest so to do, by general or special order, from time to time, permit certain specified vessels or classes of vessels to discharge or ship goods or certain specified goods or classes of goods at such place in a port or within the port approaches, in such manner, during such period and subject to such payments to the Board and on such conditions as the Government may think fit.

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

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

- (a) declare that such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage is ready for receiving, landing or shipment of goods or passenger from or on vessels not being sea going vessels and
- (b) direct that within certain limits to be specified therein it shall not be lawful without the express sanction of the Board, to land or ship any goods or passengers, out of, or into, any vessel, not being sea-going vessels, of any class specified in such order, except at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage.

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

- (a) to land or ship any goods or passengers at any place within the limits so specified except at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage; and
- (b) while within such limits, to anchor, fasten or lie within fifty yards of the ordinary low-water mark.

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

Performance of services by Board or other person.

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

- (a) stevedoring, landing, shipping or transshipping passengers and goods between vessels in port and the wharves, piers, quays, or docks belonging to or in the possession of the Board;
- (b) receiving, removing, shifting, transporting, storing or delivering goods brought within the Board's premises;
- (c) carrying passengers within the limits of the port or port approaches, by such means and subject to such restrictions and conditions as the Government may think fit to impose; and
- (d) Piloting, hauling, mooring, remooring, hooking or measuring of vessels or any other service in respect of vessels.

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

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

(4) No person authorized under sub-section (3) shall charge or recover for such service any sum in excess of the amount leviable according to the scale framed under section 34,35 or 37.

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

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

9 of 1872.

(7) After any goods have been taken charge of and a receipt given for them under this section, on 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 transshipped.

Responsibility of Board for loss, etc. of goods.

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

(a) in the case of good received for carriage by railway, be governed by the provisions of the Railways Act, 1989, and

24 of 1989.

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

9 of 1872.

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

(i) until a receipt mentioned in sub-section (2) of section 29 is given by the Board; and

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

(2) The Board shall not be in any way responsible for the loss, destruction or deterioration of, or damage to, the goods of which it has taken charge, unless notice of such loss or

damage has been given within such period as may be prescribed by regulations made in this behalf from the date of taking charge of such goods by the Board under sub-section (2) of section 29.

Accommodation to be provided for customs officers.

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

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

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

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

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

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

33. (1) Where, as a result of an order published under section 25 or section 28, the use of any wharf, dock, quay, stage, jetty, pier or place of anchorage made, fixed or erected by any person is rendered unlawful, the Board may, after hearing the person concerned, by order, close, remove, fill up or destroy such wharf, dock, quay, stage, jetty, pier or place of anchorage, or permit the use thereof to such person on payment of such rates and charges as the Board 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 Board that any such wharf, dock, berth, quay, stage, jetty, pier, or place of anchorage was made, fixed or erected by any person with the previous permission of the authority competent to grant such permission, he shall be paid by the Board compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, namely:—

- (a) in computing the compensation, there shall not be taken into account any rates or other charges which such person shall be liable to pay for using any wharf, dock, berth, quay, stage, jetty, pier or place of anchorage, provided by the Board.
- (b) the amount of compensation shall be calculated with reference to the cost of construction of such wharf, dock, berth, quay, stage, jetty, pier or place of anchorage;
- (c) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;
- (d) where no such agreement can be reached, the Government shall appoint an arbitrator, a person who is, or has been, or is qualified for appointment as a Judge of a High Court;
- (e) the Government may, in any particular case, nominate a person possessing special knowledge of any matter relating to any case under inquiry to assist the arbitrator in determining any question which has to be decided by him

under this section, and where such nomination is made the person to be compensated may also nominate an assessor for the same purpose;

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

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

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

(i) nothing in the Arbitration and Conciliation Act, 1996 shall apply to arbitrations under this section; 26 of 1996.

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

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

(ii) requiring the discovery and production of documents.

(iii) receiving evidence on affidavits;

(iv) issuing commissions for examination of witness of documents;

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

(5) 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 VI

IMPOSITION AND RECOVERY OF RATES AT PORTS.

Scales of rates for service performed by Board or other person.

34. (1) The Board shall, from time to time, frame a scale of rates at which, and a statement of the conditions under which, any of the services specified hereunder shall be performed by itself or any person authorized under sub-section (3) of section 29 at or in relation to the port or port approaches —

- (a) transshipping of passengers or goods between vessels in the port or port approaches;
- (b) stevedoring, landing and shipping of passengers or goods from or to such vessels, to or from any wharf, quay, jetty, pier, dock, berth, mooring state, or erection and or building in the possession or occupation of the Board or at any place within the limits of the port or port approaches;
- (c) cranage or portorage of goods on any such place;
- (d) wharfage, storage or demurrage of goods on any such place;
- (e) any other service in respect of vessels, passengers or goods except the services in respect of vessels for which fees are chargeable under the Indian Ports Act.

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

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

35. (1) The Board shall, from time to time, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or the possession or occupation of, the Board or any place within the limits of the port or port approaches may be used for the purposes specified hereunder—

- (a) approaching or laying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;

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

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

Consolidated rates of combination of services.

36. The Board may, from time to time, frame a consolidated scale of rates for any combination of the services specified in section 34 or for any combination of such service or services with any user or permission to use any property belonging to or in the possession or occupation of the Board as specified in section 35.

Power to levy concessional rates in certain cases.

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

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

52 of 1962.

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

- (b) other goods in special cases.

Prior sanction of Government to rates and conditions.

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

Power of Government to require modification or cancellation of rates.

39. (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 Board to cancel any of the scales of rate in force or modify the same within such period as it may specify in the order.

(2) If the Board to whom a direction is given under sub-section (1) fails or neglects to comply with such direction within the specified period, the Government may cancel any of such scales or make such modifications therein as it may think fit:

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

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

Remission of rates or charges.

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

Refund of overcharges.

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

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

Notice of payment of charges short levied erroneously refunded.

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

Provided that no such notice shall be issued after the expiry of three years—

- (a) when the charge is short levied, from the date of the payment of the charge;
- (b) where a charge has been erroneously refunded, from the date of the refund.

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

Time for payment of rates on goods.

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

Board's lien for rates.

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

(2) Such lien shall have priority over all other liens and claims, except for the shipowner'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 45 and for money payable to the Central Government under any law for the time being in force, relating to customs other than by way of penalty or fine and to the Government under any law for the time being in force.

Shipowner's lien for freight and other charges.

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

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

(3) Upon the production before any officer appointed by the Board in that behalf of a document purporting to be a receipt for, or release from, the amount of such lien, executed by the person by whom or on whose behalf such notice has been given, the Board may permit such goods to be removed without regard to such lien, provided that the Board shall have used reasonable care in respect to the authenticity of such document.

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

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

- (a) if any rates payable to the Board in respect of such goods have not been paid, or
- (b) if any rent payable to the Board in respect of any place on or in which such goods have been stored has not been paid, or
- (c) if any lien of any ship-owner for freight or other charges of which notice has been given has not been discharged and the person claiming such lien for freight or other charges has made to the Board an application for such sale.

(2) Before making any sale of goods referred to in sub-section(1) the Board shall give ten days notice by publishing in the official Gazette and also in any one of the daily local news papers having wide circulation:

Provided that in the case of animals and perishable or hazardous goods the Board may give such shorter notice and in such manner as, it may be decided having regarded the urgency of the case requires.

(3) If the address of the owner of the goods has been found to be on the goods or in any of the documents which have come into the possession of the Board or is otherwise known, notice shall also be given to him by registered post but the title of a bonafide purchaser of such goods shall not be invalidated by reason of the omission to send such notice, nor shall any such purchaser be bound to inquire whether such notice has been sent.

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

Explanation.—In this section and section 47 “controlled goods” means goods the price or disposal of which is regulated under any law for the time being in force.

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

47. (1) Notwithstanding anything contained in this Act, where any goods placed in the custody of the Board upon the landing thereof are not removed by the owner or other person entitled thereof from the premises of the Board within one month from the date on which such goods were placed in their custody, the Board may, if the address of such owner or person is known, send a notice to him either by post or by hand deliver at such address or if the notice cannot be so served upon him or his address is not known, cause a notice to be published in the Official Gazette, and also at least in one of the local daily newspapers, requiring him to remove

the goods forthwith and stating that in default of compliance therewith the goods are liable to be sold by public auction or by tender, private agreement or in any manner:

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

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

(3) If such owner or person does not comply with the requisition in the notice served upon him or published under sub-section (1), the Board may at any time after the expiration of two months from the date of which such goods were placed in its custody, sell the goods by public auction or, in such cases as the Board considers it necessary so do, for reasons to be recorded in writing sell by tender, private agreement or in any other manner such goods or so much thereof in the opinion of the Board may be necessary after giving notice of the sale in the manner specified in sub-sections (2) and (3) of section 46.

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

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

(b) controlled goods may be sold in accordance with the provisions of sub-section (4) of section 46.

(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.

48. (1) The proceeds of every sale under section 46 or section 47 shall be applied in the following order, namely :—

(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

44 from the priority of the lien of the Board;

- (c) in payment of the rates and expenses of land- ing, removing, storing or warehousing the same, and all other charges due to the Board in respect thereof including demurrage (other than the penal demurrage) payable in respect of such goods for a period of four months from the date of landing;
- (d) in payment of any penalty or fine due to the Central Government under any law for the time being in force relating to customs;
- (e) in payment of any other sum due to the Board.

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

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

Recovery of rates and charges by distraint of vessel.

49. (1) If the master of any vessel in respect of which any rates or penalties are payable under this Act, or under any regulations or orders made in pursuance thereof, refuses or neglects to pay the same or any part thereof on demand, the Board may distraint or seize 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 Board together with such further amount, as may accrue for any period during which the vessel is under distraint or seizure, is paid.

(2) In case any part of the said rates or penalties or of the cost of the distraint or the seizure or the keeping of the same, remains unpaid for a period of five days from the date of such distraint or seizure, the Board may, cause the vessel or other thing so distrained or seized to be sold and with the proceeds of such sale, shall satisfy such rates or penalties and costs, including the cost of sale remaining unpaid, rendering the surplus, if any, to the master of such vessel on demand.

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

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

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

respect thereof, or against or in respect of any goods on board such vessel; or

- (ii) that an amount specified therein is due in respect of any damage referred to in section 96 and such amount together with the cost of the proceedings for the recovery thereof before a Magistrate under that section has not been realized, 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 realized.

CHAPTER VII

BORROWING POWERS OF BOARD

Power to raise loans.

51. (1) A Board may raise loans with the previous sanction of the Government on such terms and conditions as may be prescribed by the Government for the purposes of this Act.

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

(3) The terms of all loans shall be subject to the approval of the Government.

Board securities.

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

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

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

Right of joint or several payees of securities.

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

9 of 1872.

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

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

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

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

(4) For the purposes of this section, a body incorporated or deemed to be incorporated under the Companies Act, 1956 or the Orissa Co-operative Societies Act, 1962 or any other enactment for the time being in force shall be deemed to expire when it is dissolved. 1 of 1956.
Orissa Act
2 of 1963.

Power of one or two or more joint holders to give receipts.

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

Endorsements be made on a security itself.

55. Notwithstanding anything in section 15 of the Negotiable Instruments Act, 1881, no endorsement of a Board security which is transferable by endorsement shall be valid unless made by signature of the holder inscribed on the back of the security itself. 26 of 1881.

Endorsement to of security not liable for amount thereof.

56. Notwithstanding anything in the Negotiable Instruments Act, 1881, a person shall not, by reason only of his having endorsed any Board security, be liable to pay any money due either as principal or as interest thereunder. 26 of 1881.

Impression of signature on securities.

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

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

Issue of duplicate security.

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

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

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

(2) No order shall be passed under sub-section (1) unless the facts of loss, theft or destruction is published by the Board in the manner prescribed by regulations;

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

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

Issue of converted etc. securities.

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

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

Discharges in certain cases.

60. Notwithstanding anything contained in the Limitation Act, 1963—

36 of 1963.

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

(ii) when a duplicate security has been issued under section 58; or

(iii) when a new security or securities has or have been issued upon conversion, consolidation or sub-division under section 59,

the Board shall be discharged from all liabilities in respect of the security or securities so paid or in place of which a duplicate or new security or securities has or have been issued—

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

(b) in the case of a duplicate security after the lapse of six years from the date of the publication under sub-section (3) of section 58 of the list in which the security is first mentioned or from the date of the last payment of interest on the original security, whichever date is later;

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

Security for loans taken by the Board.

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

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

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

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

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

Remedies of Government in respect of loans made to Board.

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

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

Power of the Board to repay loans before due date.

63. The Board may, with the previous sanction of the Government, apply any sums out of moneys which may come into its hands under the provisions of this Act and which can be so applied without prejudicing the security of the other holders of the Board securities, in repaying to 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:

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

Establishment of sinking fund.

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

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

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

Investment and application of sinking fund.

65. (1) The sums so set apart by the Board under sub-section (1) of section 64 and the sums forming part of any sinking fund referred to in sub-section (2) of that section shall be invested in public securities or in such other securities as the Government may approve in this behalf and shall be held by Board in trust for the purposes of this Act.

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

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

Examination of sinking fund.

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

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

specifically sanctions a gradual readjustment.

(3) If the cash and current market value of the securities at the credit of a sinking fund are in excess of the amount which should be at its credits, the person appointed under sub-section (1) shall certify the amount of the excess and the Board may, with the previous sanction of the Government reduce or discontinue the half yearly contributions to the sinking fund required under section 64.

Powers of the Board to raise loans on short terms bills.

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

9 of 1914.

Powers of the Board, to take temporary loans or overdrafts.

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

- (i) borrow moneys by means of temporary overdraft or otherwise by placing the securities held by the Board in its reserve fund or on security of the Board in its banks;
- (ii) obtain advances from such banks on pledge or hypothecation of its current assets without the previous sanction of the Government:

Provided that such temporary overdrafts or other loans—

- (a) shall not at any time have a longer currency than six months; and
- (b) shall not be taken, without the previous sanction of the Government, if at any time in any year the amount of such overdrafts, or other loans exceeds such amount not exceeding ten lakhs of rupees, as the Government may fix in this behalf:

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

Power of the Board to borrow money from International Bank for reconstruction and development or other foreign institutions.

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

CHAPTER VIII REVENUE AND EXPENDITURE

General account
of port.

70. All moneys received by or on behalf of the Board under the provisions of this Act, and all moneys received by it as the Conservators of the Ports and their approaches or as the body appointed under section 36 of the Indian Ports Act shall be credited to a fund called the General Account of the Ports.

Application of
moneys in
General
Accounts.

71. (1) The moneys credited to the General Accounts of the Ports under section 70 shall be applied by the Board in payment of the following charges, namely:—

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

(b) the salaries, fees, remuneration, allowances, pensions, gratuities, compassionate allowance or other moneys dues to—

(i) any member of the Board under this Act;

(ii) the employees of the Board; and

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

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

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

(e) the contributions, if any, duly authorized to be made by regulations made under this Act to any such fund as is referred to in clause (d);

(f) such sums as may, from time to time, be agreed upon by the Board and the Government or the Central Government or any other authority, as a reasonable contribution payable by the Board towards the expenses in connection with the watch and ward functions of the Police Force or the Central Industrial Security

Force or any other Force which the Government or the Central Government or any other authority, as the case may be, may establish and maintain for the protection of the port and the docks, warehouses and other property of the Board;

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

(h) the cost of the execution and provision of any new work or appliance specified in section 22 which the Board may determine to charge to revenue;

(i) any expenditure incurred under section 23;

(j) any other expenditure which may be incurred by the Board generally for the purposes of this Act;

(k) any other charge which may on the application of the Board or otherwise be specially sanctioned by the Government or for which the Board may be legally liable.

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

(a) be deposited in the State Bank of India or any corresponding new bank as defined in clause (d) of section 2 of the Banking Companies Acquisition and Transfer of Undertakings Act, 1970, as the Board may decide; or

(b) be invested in such public securities as may be determined by the Board and the said securities shall be held in trust by the Board for the purposes of this Act.

5 of 1970.

Power to transfer moneys from General Account to specified particular account and vice-versa.

72. The Board may, with the previous sanction of the Government, apply any sum out of the moneys credited to the General Account of the Port towards meeting deficits, if any, in the particular or specified account such as pilotage account, if so maintained or transfer the whole or part of any surplus funds in such particular account to the General Account of the Port.

Reserve Funds.

73. The Board may, from time to time, set apart such sums out of its surplus income as it thinks fit as a reserve fund or funds for the purpose of expending existing facilities or creating new facilities at the ports or for the purpose of providing against any temporary decrease of revenue or increase of expenditure from transient causes or for purposes of replacement or for meeting expenditure arising from loss or damage from

fire, cyclone, shipwrecks or other accident or for any other emergency arising in the ordinary conduct of its works under this Act:

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

Power to reserve Board securities for its own investment

74. (1) For the purposes of any investment which the Board is authorized to make under this Act, it shall be lawful for the Board to reserve and set apart any securities to be issued by it on account of any loan to which the consent of the Government has been obtained :

Provided that the intention to so reserve and set apart such securities has been notified as a condition to the issue of the loan.

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

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

Charge in Capital Accounts.

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

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

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

Works requiring sanction of Board and Government.

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

(2) Nothing in sub-section (1) shall be deemed to require the further

sanction of the Government in any case where the actual expenditure incurred does not exceed by more than ten percent of the estimated cost so sanctioned.

Power of Chief Executive Officer to execute works.

77. Notwithstanding anything contained in section 76, the Chief Executive Officer may direct the execution of any work the cost of which does not exceed such maximum limit as may be fixed by the Government in that behalf and may enter into contracts for the execution of such works, but in every such case the Chief Executive Officer shall, as soon as possible, make a report to the Board of any such direction given or contracts entered into by him.

Power of Board to compound or compromise claims.

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

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

Writing off losses.

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

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

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

Power etc. of Board as conservator.

80. All the powers, authorities and restrictions contained in this Act in respect of the work by this Act authorized, shall apply to the works which may be executed by the Board as the Conservator of the port or as the

body appointed under sub-section (1) of section 36 of the Indian Ports Act and also as to the sanction of such works, the estimate therefor and the expenditure thereunder.

Budget estimates.

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

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

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

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

(5) The Government may sanction the estimate or may return it with remarks calling upon the Board to furnish such additional information as it may deem necessary.

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

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

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

Preparation of supplemental estimates.

82. The Board may in the course of any year for which an estimate has been sanctioned by the Government cause one or more supplemental estimates for the residue of such year to be prepared and the provisions of section 81 shall, so far as may be, apply to such estimate as if it were an

original annual estimate.

Reappropriation of amounts in estimates.

83. Subject to any directions which the Government may give in this behalf, any amount of money or part thereof which the expenditure has been authorized in an estimate for the time being in force sanctioned by the Government but has not been so spent, may at any time be reappropriated by the Board to meet any excess in any other expenditure authorized in the said estimate.

Adherence to estimate except in emergency.

84. (1) Subject to the provisions of section 83 no sum exceeding such amount as the Government may fix in this behalf shall, save in cases of emergency, be expended by or on behalf of the Board unless such sum is included in some estimate of the Board at the time in force which has been finally sanctioned by the Government.

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

Accounts and audit.

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

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

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

Publication and laying of audit report.

86. (1) Within fourteen days after completion of the audit and examination of the accounts of the Board the auditor shall forward copies of the audit report to the Government and to the Board.

(2) The Government shall, as soon as may be, after receipt of the report, cause a copy thereof to be laid, for not less than thirty days before the State Legislature, which shall comprise of one or more consecutive sessions.

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

87. The Board shall forthwith take into consideration any defects or irregularities that may be pointed out by the auditor in the audit report and shall take such action thereon as the Board may think fit and shall also sent a report of the action so taken to the Government.

Government to decide difference of opinion between Board and auditors.

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

CHAPTER IX

SUPERVISION AND CONTROL OF GOVERNMENT

Administration Report.

89. (1) 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 Government, the Board shall submit to the Government a detailed report of the administration of the ports during the preceding year ending on the thirty-first day of March, in such form as the Government may direct.

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

Submission of statements of income and expenditure to Government.

90. (1) The Board shall annually, or as directed by the Government so to do, submit statement of its income and expenditure in such form and at such time as the Government may direct.

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

Power of Government to supersede Board.

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

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

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

the Government may, by notification in the official Gazette, supersede the Board for such period, not exceeding six months at a time, as may be specified in the notification:

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

- (2) On and with effect from the date of publication such notification,—
- (a) all the members of the Board shall, be deemed to have vacated their offices as such members;
 - (b) all the powers and duties which may, by or under the provisions of this Act or of any other law, be exercised or performed by or on behalf of the Board, shall, until the Board, is reconstituted under clause (b) of sub-section (3), be exercised and performed by such person or persons the Government may direct; and
 - (c) all property vested in the Board shall, until the Board is reconstituted under clause (b) of sub-section (3), vest in the Government.

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

- (a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary, or
- (b) reconstitute the Board by fresh appointment and in such case, any persons who vacated their offices under clause (a) of sub-section (2) shall not be deemed to have been disqualified for appointment, merely because they were members of the Board where the Board was superseded.

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

Power of Government to give directions to Board.

92. (1) Without prejudice to the foregoing provisions of this Chapter, the Board shall, in the discharge of its functions under this Act, be bound by such directions, as the Government may give it in writing, from time to time:

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

- (2) The direction of the Government shall be final.

CHAPTER X PENALTIES

Penalty for
contravention of
sections
24,25,26 and 27.

93. Whoever contravenes the provision of any order issued under sections 24, 25 or section 26 or fails to comply with any condition imposed under section 27 shall be punishable with the fine which may extend to five thousand rupees and in case of a continuing offence, with an additional fine which may extend to five hundred rupees for every day during which such contravention or failure continues.

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

94. Any person who contravenes the provisions of section 32 shall be punishable with fine which may extend to five thousand rupees and in the case of a continuing offence, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues.

Penalty for
evading rates
etc.

95. Any person who with the intention of evading payment of the rates lawfully due to the Board under this Act, in respect of any goods or vessels carrying any goods, —

- (a) understates or incorrectly give the weight, quantity, value or description of such goods, or the tonnage of such vessels in any documents presented to any employee of the Board for the purpose of enabling him to determine such rates; or
- (b) remove or attempts to remove or abets the removal of such goods or such vessels,

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

Recovery of
value or
damage to
property of
Board.

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

Provided that no Magistrate shall issue such a warrant until the master of the vessel has been duly summoned to appear before him and if

he appears until he has been heard:

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

Person interested in contracts etc. with the Board to be deemed to have committed an offence under section 168 of the Indian Penal Code 1860.

97. Any person who, being a member or an employee of the Board, acquires, directly or indirectly, any share or interest in any contract or employment with, by or on behalf of the Board, shall be deemed to have committed an offence under section 168 of the Indian Penal Code, 1860:

Provided that nothing in this section shall apply to a person who is deemed not to have a share or interest in any contract or employment under the proviso to clause (d) of section 4. 45 of 1860.

Other offences.

98. Any person who contravenes any of the provisions of this Act or 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 extend to five thousand rupees.

Cognizance of offences.

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

Offence by companies.

100. (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 with all due diligence to prevent the commission of such offence.

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

liable to be proceeded against and punished accordingly.

Explanation.— For the purpose of this section—

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

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

CHAPTER XI

MISCELLANEOUS

Members officers & other employees of the Board to be public servant.

101. The members, officers and other employees of the Board shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code, 1860.

45 of 1860.

Local Advisory Committee.

102. (1) The Government may, from time to time, constitute a Local Advisory Committee for any port consisting of such number of persons as it may think fit in each case but not exceeding five and on such terms and conditions as may be prescribed.

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

(3) The Regional Port Officer shall be the *ex-officio* Chairman of a Local Advisory Committee.

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

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

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

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

Protection of act done in good faith.

104. No suit, prosecution or other proceeding shall lie against the Board or any member or officer or employee thereof in respect to anything which is in good faith done or intended to be done under this Act or any rule or regulation made thereunder, or for any damage sustained by any vessel in consequence of any defect in any of the mooring, hawsers or other things

belonging to or under the control of the Board.

Power of the Government to make rules.

105. (1) The Government may, by notification in the official Gazette, subject to the previous publication, make rules for carrying out the purposes of this Act.

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

(a) subject to the provisions of section 11, fees and allowances payable to the members of the Board or of its committees for attending meetings of the Board or its committee or for attending any work of the Board, under section 12;

(b) the mode of executing contracts under section 21;

(c) such other factors to be taken into consideration for determining fair and reasonable compensation under sub-section (3) of section 33;

(d) the terms and conditions of appointment of persons as member of a Local Advisory Committee under sub-section (1) of section 102; and

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

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

(4) All rules made under this Act shall be laid, as soon as may be after it is made, before the State legislature, while it is in session, for a total period of thirty days which may be comprised in, one session or in two or more successive sessions as aforesaid, and, if during the said period the state legislature makes modifications, if any, therein, the rules shall thereafter have effect only in such modified form on publication of the same in the official Gazette or be of no effect as the case may be; so, however, that any such modification shall be without prejudice to the validity of anything previously done under the rules.

General power to make regulations.

106. The Board may make regulations, not inconsistent with this Act and rules made thereunder with respect to all or any of the following matters, namely:—

(1) the time and places of the meetings of the Board or its committees, and the procedure to be followed for the transaction

- of business at such meetings;
- (2) the terms and conditions of service of persons to become employees of the Board under clause (f) of section 17;
 - (3) any other matter which is incidental to, or necessary for, the purpose of regulating the appointment and conditions of service of its officers and employees;
 - (4) the form of receipt to be given under sub-section (2) of section 29;
 - (5) the period within which notice may be given under sub-section (2) of section 30;
 - (6) the guidance of persons employed by the Board under this Act;
 - (7) the safe, efficient and convenient use, management and control of the docks, wharves, quays, jetties, buildings and other works constructed or acquired by, or vested in, the Board, or of any land or foreshore acquired by, or vested in, the Board under this Act;
 - (8) the reception, portorage, storage and removal of good brought within the premises of the Board, for exclusive conduct of these operations by the Board or person 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.
 - (9) 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;
 - (10) the mode of payment of rates leviable by the Board under this Act.
 - (11) 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;
 - (12) 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;
 - (13) regulating the lighterage of cargo between ships or between ships and shore or between shore and ships;
 - (14) the exclusion from the premises of the Board of disorderly or other undesirable persons and trespassers;
 - (15) ensuring the safety of the port;

- (16) generally for the efficient and proper administration of the ports;
- (17) the person, if any authorized to sign and the mode of affixing the corporate seal and of attestation of documents relating to Board securities issued, or to, be issued by the Board.
- (18) the manner in which the payment of interest in respect of such Board securities is to be made, recorded and acknowledged;
- (19) the circumstances and the manner in which Board securities may be renewed;
- (20) the circumstances in which such securities must be renewed before further payment of interest thereon can be claimed;
- (21) the form in which such securities delivered for renewal, conversion, consolidation or sub-division are to be received;
- (22) the proof which is to be produced by a person applying for duplicate securities;
- (23) the form and manner of publication of the notification mentioned in sub-section (2) of section 58 and the manner of publication of the list mentioned in sub-section (3) of that section;
- (24) the nature and amount of indemnity to be given by a person applying for the payment of interest in the Board securities alleged to have been wholly or partly lost, stolen or destroyed, or for the issue of duplicate Board securities;
- (25) the conditions subject to which Board securities may be converted, consolidated or sub-divided;
- (26) the amounts for which stock certificate may be issued;
- (27) generally all matters connected with a grant of duplicate, renewed, converted, consolidated and sub-divided securities;
- (28) the fees to be paid in respect of the issue of duplicate securities and of the renewal, conversion, consolidation and sub-division of Board securities; and
- (29) the fees to be levied in respect of the issue of stock certificate.

Provisions with respect to regulations.

107. (1) The regulation made by the Board under this Act shall have no effect until the same has been published by the Board in the official Gazette with the prior approval of the Government.

(2) Any regulation made under this Act may provide that a breach thereof shall be punishable with fine.

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

108. (1) Whenever the Government considers necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefor, direct the Board to make any regulation for all or any of the matter specified in section 106 or to amend any regulation, within such period as the Government may specify in this behalf:

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

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

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

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

Power of Government to make first regulations.

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

Posting of certain regulations, etc.

110. The text of the regulations made under clauses (9) to (18) of section 106 and the scale of rates together with a statement of conditions framed by the Board under Chapter VI shall be affixed on a conspicuous place by the Board in English and in Oriya, on special boards to be maintained for the purpose, at the wharves, docks, berth, piers and other convenient place of the Board.

Saving of right of Government and municipalities to use wharves etc. for collection of duties and power of Custom Officers.

111. Nothing in this Act shall affect—

- (a) the right of the Central Government to collect customs, duties or of any municipality to collect duties at any dock, wharf, quay, stage, jetty or pier in the possession of the Board, or
- (b) any power of authority vested in the customs authorities under

any law for the time being in force.

Application of provisions of Act to air craft.

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

Power to remove difficulties.

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

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

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

Repeal.

114. The Orissa Port Trust Act, 1962 is hereby repealed.

Orissa Act
30 of 1962.