



The Orissa Port Trust Act, 1962

Act 30 of 1962

Keyword(s):

Dock, Goods, Major Port, Master, Pier, Port, Vessel, Wharf

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ORISSA ACT 30 OF 1962
THE ORISSA PORT TRUST ACT, 1962

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ORISSA ACT 30 OF 1962

[THE ORISSA PORT TRUST ACT, 1962]

[Received the assent of the President on the 4th November 1962, first published in an extraordinary issue of the Orissa Gazette, dated the 15th November 1962]

AN ACT TO PROVIDE FOR THE REGULATION, DEVELOPMENT, MANAGEMENT AND ADMINISTRATION OF PORTS WITHIN THE STATE OF ORISSA

BE it enacted by the Legislature of the State of Orissa in the Thirteenth year of the Republic of India as follows :—

CHAPTER I

Preliminary

1. (1) This Act may be called the Orissa Port Trust Act, 1962. Short title, extent and commencement.

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

(3) It shall come into force on such date as the Government may, by notification, appoint and different dates may be appointed in respect of different ports.

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

(1) "Board" in respect of any port means the Board of Trustees in respect of such port established under section 3 ;

(2) "bye-law" means a bye-law made by the Board under this Act;

(3) "Chief Officer of Customs" denotes the Chief Executive Officer of Customs for the port ;

(4) "dock" includes basins, locks, cuts, entrances, graving docks, graving blocks, inclined planes, slipways, grid-irons, quays, warehouses and other works and things appertaining to any dock and also denotes the portion of the sea enclosed or protected by the arms or groynes of the harbour ;

1. For the Statement of Objects and Reasons see *Orissa Gazette Extraordinary* dated the 23rd August 1962 (No. 417) and for report of Select Committee, dated the 10th September 1962 (No. 452).

(Sec. 2)

(5) "goods" means and includes every kind of movable property;

(6) "Government" means the State Government of Orissa ;

(7) "land" includes the bed of a river and of the sea below high water-mark ;

(8) "major port" means a port declared as such by or under any law made by Parliament or any existing law within the meaning of the Constitution of India;

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

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

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

(12) "port" means any port other than a major port with such limits as may be defined by notification issued by Government from time to time for the purposes of this Act and until a notification is so issued, with such limits as may have been defined by Government under the provisions of the Indian Ports Act, 1908. 15 of 1908

(13) "Port Trust Security " means debenture bonds or stock certificates or other securities issued by the Board in respect of any loan contracted under the provisions of this Act ;

(Secs. 3—4)

(14) "prescribed" means prescribed by rules made by Government under this Act ;

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

(16) "Regulations" means Regulations made by the Board under this Act ;

(17) "rules" means rules made by Government under this Act ;

(18) "Trustees" means a trustee on the Board ;

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

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

CHAPTER II

THE BOARD OF TRUSTEES

3. (1) With effect from such date as Government may, by notification appoint, there shall be in respect of a port a Board charged with the responsibility of development, management, regulation and administration of such port and the duties of carrying out the provisions of this Act to be known as the Board of Trustees for such port. Establishment and incorporation of the Board.

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

(3) With effect from the date of appointment of the Board in respect of any port no local authority constituted under the Orissa Municipal Act, 1950, the Orissa Grama Panchayats Act, 1948 or the Orissa Panchayat Samiti and Zilla Parishad Act, 1959, shall exercise jurisdiction within such port.

Orissa Act
23 of 1950.
Orissa Act
15 of 1948.
Orissa Act
7 of 1960.

4. (1) The Board shall consist of the following trustees, namely :— Composition of the Board.

(a) two persons to be appointed by Government as the Chairman and the Vice-Chairman respectively. *ex-officio* trustees;

(Sec. 5)

- (b) not more than five elected representatives of such commerce and labour organisations as may be notified by Government from time to time...elected trustees ;
- (c) not more than two other non-officials to be nominated by Government..... nominated trustees; and
- (d) not more than seven Government officials to be nominated by Government..... nominated trustees:

Provided that the total number of trustees in the Board shall not be less than eleven.

(2) Every appointment, election or nomination under this section shall take effect as soon as it is notified by Government.

Term of
Office.

5. (1) The Chairman and the Vice-Chairman shall hold office during the pleasure of Government.

(2) The term of office of the elected and nominated non-official trustees shall be a period of two years from the date the election or nomination, as the case may be, is notified by Government;

Provided that the outgoing trustee shall continue in office until the election or nomination of his successor is notified under section 4.

(3) Any nominated non-official trustee may resign his office by giving notice in writing to Government, and, on such resignation, being notified by Government, shall be deemed to have vacated office.

(4) Any elected trustee may resign his office, by giving notice in writing to the Board and on the acceptance of such resignation by the Board, shall be deemed to have vacated office.

(5) An outgoing trustee shall be eligible, as the case may be, for reappointment, reelection or re-nomination.

(Secs. 6—8)

6. (1) Notwithstanding anything contained in sub-section (1) of section 4—

Constitution of first Board and filling up casual vacancy.

- (a) the Board constituted for the first time shall consist of such number of trustees, not being less than seven and more than eleven, as Government may, from time to time, determine, who shall be nominated by Government;
- (b) any person whom Government may deem fit may be nominated as a trustee;
- (c) Government may, at any time remove any trustee and appoint another in his place ; and
- (d) without prejudice to the provisions of clause (c) a trustee shall hold office for such term, not being more than five years as Government may fix in that behalf.

(2) Every vacancy in the office of an elected trustee shall be filled up by the organisation concerned within thirty days of the occurrence of the vacancy.

(3) Where an organisation fails to elect a trustee for filling up the vacancy referred to in sub-section (2) within the period specified therein Government shall have the power to fill up such vacancy by appointing a trustee according as they deem fit and on such appointment the trustee shall be deemed to be an elected trustee under clause (b) of sub-section (1) of section 4.

7. If any appointed trustee or nominated non-official trustee is by infirmity or otherwise rendered temporarily incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving vacation of his office, Government may appoint or nominate another person to act in his place during his absence.

Temporary absence of Trustees.

8. (1) A person shall be disqualified for becoming a Trustee if he—

Disqualification for office of Trustee.

- (a) is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State or is under acknowledgment or adherence to a foreign State;

(Sec. 8—contd.)

- (b) has been convicted and sentenced to imprisonment for an offence involving moral turpitude which, in the opinion of Government, disqualifies him from being a Trustee and if such sentence has not been reversed, set aside, or remitted;
- (c) is of unsound mind;
- (d) is an undischarged insolvent;
- (e) holds any office of profit under the Board;
or
- (f) 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.

(2) No person shall be deemed to have a share or interest in any work, contract or employment within the meaning of clause (f) of sub-section (1) by reason only of his—

- (i) having a share in any incorporated Company which may contract with or be employed by, or on behalf of, the Board;
- (ii) having a share or interest in any newspaper in which any advertisement relating to the affairs of the Board may be published;
- (iii) being interested in any loan advanced to the Board;
- (iv) having a share or interest in any lease, sale, exchange or purchase of immovable property or any agreement for the same;
- (v) having a share or interest in any licence granted by the Board, or having any right by agreement or otherwise with the Board to the sole or preferential use of any berth for vessels in the docks belonging to the Board;
- (vi) having a share or interest in the occasional sale to the Board, to a value not exceeding two thousand rupees in any one financial year, of any article in which he trades; or

(Sec. 9)

(vii) being a person to whom, or a member of a firm or incorporated company to which, any of the functions specified in clauses (a) and (e) of sub-section (1) of section 35 shall have been relinquished under section 38.

(3) A Trustee shall cease to remain a Trustee on the Board if he—

(a) becomes disqualified in pursuance of the provisions of the foregoing sub-sections;

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

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

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

(4) Whenever any question arises as to whether any condition specified in sub-section (2) or (3) has been satisfied the same shall be referred to Government who shall make such orders as they deem fit and the order so made shall be final and binding on the parties:

Provided that no such order shall be made without giving the parties concerned not more than fifteen days time for being heard in the matter.

9. (1) The Chairman and the Vice-Chairman and the person appointed to act as Chairman shall be entitled to such remuneration, if any, by way of salary, leave and other allowances and on retirement to such gratuity or compassionate allowance, if any, as Government may from time to time determine in that behalf.

Remuneration and other conditions of service of Chairman and Vice-Chairman

(Secs. 10-12)

(2) Without prejudice to the provisions of sub-section (1), the other conditions of service of the Chairman and Vice-Chairman shall be as may be determined by Government from time to time.

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

10. Government may prescribe from time to time the fees, if any, to be paid to the Chairman, Vice-Chairman and other Trustees for attendance at meetings of the Board or its committees and prescribe conditions and restrictions subject to which such fees shall be payable.

Meetings of the Board.

11. (1) The Board, subject to the other provisions of this Act shall meet at such intervals and at such places and observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by regulations made in that behalf.

(2) The Chairman or in his absence the Vice-Chairman or, in the absence of both, any Trustee chosen by the Trustees present from amongst themselves, shall preside at a meeting of the Board.

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

(4) No business shall be transacted at a meeting unless, at least five Trustees are present throughout such meeting.

(5) The Chairman may, whenever he thinks fit, and shall upon the written request of not less than three Trustees, call a special meeting.

Minutes of proceedings and authentication of orders and decision of Board.

12. (1) Minutes in which shall be recorded the names of the trustees present and the proceedings of each meeting of the Board and standing committees shall be drawn up and recorded in a book to be kept for that purpose, and shall be laid before the next meeting of the Board and signed at such meeting by the presiding officer thereof, and shall be open to inspection by any Trustee during working hours of the office of the Board.

(Sec. 13)

(2) A copy of the minutes of every meeting of the Board and of its standing committees shall, as soon as may be, be sent for publication in the Official Gazette at the cost of the Board and another such copy shall within three days of the meeting be forwarded to Government.

(3) Government may also in any case ask for a copy of any paper or papers laid before the Board and the Board shall forward to Government a copy of such paper or papers.

(4) All orders and decisions of the Board shall be authenticated by the signature of the Chairman or any other trustee authorised by the Board in this behalf, and all other instruments issued by the Board shall be authenticated by the signature of an officer of the Board authorised in like manner in that behalf.

13. (1) The Board may, from time to time, appoint such number of Standing Committees as it deems fit, each consisting of not less than five of its Trustees as members and may, by general or special order, direct that subject to such conditions, limitations and restrictions as may be specified in the said order, all or any of the powers or duties of the Board shall also be exercised or discharged by any of the Committees so constituted :

Constitution
and conduct
of business
of Standing
Committees.

Provided that the Board shall always have the power to alter, from time to time, the constitution of or discontinue any such Committee.

(2) A Standing Committee may elect one of its members to preside at its meetings and if no such member has been elected or if a member so elected is not present at the time appointed for holding any of its meetings, the members present shall choose one from among themselves to preside at such meeting.

(3) The Standing Committees may meet and adjourn at their discretion, but the Chairman of the Board may, whenever he thinks fit, and shall, upon the written request of not less than two members of a Committee, call a special meeting of such Committee.

(Sec. 14)

(4) Questions at the meetings of a Standing Committee shall be decided by a majority of votes of the members present, and in the case of an equality of votes the person presiding at the meeting shall have a second or casting vote.

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

Restriction
on power of
Trustees to
vote or
discuss mat-
ters in which
they are inte-
rested.

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

(2) If any objection is raised at a meeting that a Trustee has in any such matter an interest of the nature specified in sub-section (1), the objection shall be considered and decided by the other Trustees of the Board or the Committee, as the case may be, in such manner as may be prescribed and the decision of such Trustees shall be final.

(3) If at any time it is brought to the notice of the Chairman of the Board that a Trustee had voted or taken part in the discussions at a meeting in contravention of the provisions of sub-section (1) the matter shall, unless *bona fide* rights have accrued to third parties in pursuance of the resolution passed at the meeting, be inquired into and decided in the manner prescribed, and pending such decision it shall be the duty of the Board or the Standing Committee, as the case may be, not to give effect to such resolution.

(4) A decision under sub-section (3) shall be final and if as a result of the enquiry the Trustee is found to have voted or taken part in the proceedings in contravention of the provisions of sub-section (1) the resolution in question shall stand annulled.

(Secs. 15—17)

15. No act or proceedings of the Board or of any Standing Committee shall be invalid merely by reason of—

Validation of
acts and
proceedings.

- (1) any vacancy in or defect in the constitution of the Board or the Committee ; or
- (2) any defect in the appointment, nomination or election of a person acting as a Trustee thereof ; or
- (3) any irregularity in its procedure not affecting the merits of the case.

16. The Board may from time to time, delegate such of its powers and duties to be exercised or discharged by the Chairman subject to such conditions and limitations as may be specified in that behalf in a resolution passed by the Board with the prior approval of Government.

Delegation
of powers to
the Chair-
man.

17. (1) The Chairman shall be the Chief Executive Officer of the Board and shall, subject to the provisions of this Act and the rules and regulations made thereunder, be responsible for implementing all orders and decisions of the Board.

Duties of
the Chair-
man.

(2) It shall be the duty of the Chairman—

- (i) to attend every meeting of the Board unless prevented by sickness or other reasonable cause ;
- (ii) to exercise supervision and control over the acts and proceedings of all officers and servants of the Board in matters of executive administration, and in matters concerning the accounts and records of the Board; and
- (iii) subject to the regulations made under sections 20 and 95 and to the schedule for the time being in force prepared and sanctioned under section 18, to dispose of all matters relating to the service of the officers and servants of the Board, and their pay, privileges and allowances ;

(Secs. 18-19)

Provided that, subject to the approval of the Board, the Chairman may delegate all or any of his duties to the Vice-Chairman or any other Trustee or officer or servant of the Board as he may, from time to time, consider fit.

CHAPTER III

OFFICERS AND SERVANTS OTHER THAN THE CHAIRMAN AND VICE-CHAIRMAN

Schedule of
Board's
staff.

18. (1) The Board shall, from time to time, subject to such rules as may be made in that behalf, prepare and sanction a schedule of its officers and servants, other than the Chairman and Vice-Chairman, setting forth the number, designation, grades, salaries, fees and allowances payable to such officers and servants.

Explanation—Artisans, porters and labourers and contractors or agents who provide porters and labourers are not officers and servants within the meaning of this section and sections 20 and 21.

(2) No such officer or servant shall undertake any work unconnected with his duties under this Act except with the permission of the Board.

Disqualifica-
tion for
appointment
as officer
servant.

19. (1) A person shall be disqualified for being appointed as an officer or servant if he has directly or indirectly, by himself or by a partner or any other person, any share or interest in any contract made with, or any work being done for the Board otherwise than as such officer or servant.

(2) If any such officer or servant acquires directly or indirectly any share or interest of the nature and in the manner referred to in sub-section (1) he shall, be liable to be removed from office by order of the authority having the power so to do by or under the provisions of this Act.

(Sec. 20)

[(3) Notwithstanding anything contained in sub-sections (1) and (2) Government may exempt—

- (a) any person, who is a member of the Board of Directors of any Company or Corporation owned or controlled by Government, from the operation of sub-section (1) ; and
- (b) any officer or servant of the Board, who is appointed as a member of the Board of Directors of any such Company or Corporation, from the operation of sub-section(2).]

20. Subject to the prior approval of Government, the Board may make regulations to provide for all or any of the following matters, namely :—

Regulations relating to recruitment and conditions of service.

- (a) tenure of office, provident funds, pensions, gratuities, compassionate allowance, leave of absence and other conditions of service of officers and servants referred to in section 18 ;
- (b) remuneration of persons appointed to act for any such officer or servant during absence on leave ;
- (c) powers, duties and functions of all such officers and servants ;
- (d) qualifications of candidates for appointment to such posts and the manner of selection for such posts ;
- (e) pension, gratuities, compassionate allowances, if any, payable to any of them or their relatives, as the case may be, in the event of injuries being sustained or death being caused in course of employment ;
- (f) procedure to be followed in imposing any penalty of withholding increment or promotion, censure, reduction in rank, compulsory retirement or dismissal in pursuance of departmental proceedings for indiscipline, carelessness, unfitness, neglect of duty or other misconduct and directing suspension pending such proceedings ; authority by whom such orders may be passed and to whom appeal may lie ;

(Secs. 21-22)

- (g) establishment of welfare or loan funds for the benefit of the employees of the Board ;
- (h) any of the matters covered by the aforesaid clauses in respect of artisans, porters and labourers and in respect of contractors and agents who provide such workmen ; and
- (i) such other matters as may be incidental to, or necessary for the purpose of regulating the appointment and conditions of service or for which in the opinion of the Board provisions should be made by regulations.

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

21. Subject to such conditions, limitations and restrictions, if any, as Government may by order direct, the Chairman shall have the power to—

- (a) appoint officers and servants specified in the schedule for the time being in force made under section 18 ;
- (b) grant leave and promotion to such officers and servants ;
- (c) dismiss or reduce in rank and take any other disciplinary action against such officers and servants ; and
- (d) exercise all other administrative control over such officers and servants ;

Provided that the orders of the Chairman made in pursuance of clause (c) shall be subject to the decision in appeal, if any, to the Board preferred within such period and in such manner as may be prescribed.

Power to
dispense
with services
and to
permit retire-
ment in
certain cases.

22. Notwithstanding anything to the contrary in sections 20 and 21—

- (1) in case of officers and servants appointed by Government the power to dispense with their services otherwise than for reasons of misconduct, and to order their retirement on pension, gratuity or compassionate allowance shall vest in Government and in all other cases such power shall vest in the Board ; and

(Secs. 23-24)

- (2) no orders made by the Board in respect of officers or servants as Government may, from time to time, direct, shall have effect without the prior approval of Government.

CHAPTER IV

PROPERTY AND CONTRACTS

23. (1) On the coming into force of this Act all property within the limits of the port other than private property, vested in or belonging to or held by the Government shall, subject only to such of the charges and liabilities outstanding against such property as may be notified by the Government in that behalf, vest in, belong to and be held by the Board and shall, with all the other property of whatever nature or kind which may become vested in the Board, be under its direction, management and control:

Property
vested in
Board.

Provided that no roads and electric installations thereon, if any, as are not public roads and which belong to Government immediately before the commencement of this Act shall vest in the Board under this sub-section unless Government in exchange for a price fixed and with the consent of the Board, so direct.

(2) All property vested in or belonging to, or acquired or held by and all moneys paid or payable to, the Board shall be deemed to be held by the Board in trust for the purposes of this Act.

24. The Board shall, for the purposes of this Act, have power to acquire and hold immovable or movable property or any interest therein, whether within or without the limits of the port, and also the power to lease or sell any immovable or movable property which may have been vested in or acquired by it:

Power to
acquire,
hold or
alienate
property

Provided that no acquisition of immovable property or sale or lease for a term exceeding ten years of any immovable property shall be valid unless the sanction of Government to such acquisition, sale or lease has been first obtained.

(Secs. 25—28)

Application
of Land
Acquisition
Act, 1894.

25. When any immovable property is required for the purposes of this Act, Government may at the request of the Board procure the acquisition thereof under the provisions of the Land Acquisition Act, 1894, ^{1 of 1894} and on payment by the Board of the compensation awarded under that Act and the charges incurred by Government in connection with the proceedings the land shall vest in the Board for the purposes of this Act.

Bar to acqui-
sition of
rights by the
public.

26. Whenever any property, to which public as such have no manner of right or claim, vests in the Board in pursuance of the provisions of this Act, no such right or claim shall accrue in respect of such property for so long as it continues to remain vested in the Board, anything in this Act or any other law or in any custom or usage having the force of law to the contrary notwithstanding.

Contracts by
the Board.

27. (1) Subject to the provisions of this Act the Board shall be competent to enter into and perform any contract necessary for the purposes of this Act.

(2) Every such contract shall be made on behalf of the Board by the Chairman in such form and manner as may be specified in the regulations made in that behalf.

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

CHAPTER V

WORKS AND SERVICES

Works and
appliances.

28. The Board may execute such works and provide such appliances as it may deem necessary or expedient for the purposes of the port and such works and appliances may include—

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

(Sec. 28—contd.)

- (2) railways, tramways, locomotives, rolling stock, sheds, warehouses and other accommodation for passengers and goods and other appliances within the port for carrying passengers and for conveying, receiving and storing goods landed, or to be shipped or otherwise ;
- (3) moorings for vessels and cranes, scales and all other necessary means and appliances, preferably mechanical process of loading and unloading vessels ;
- (4) reclaiming, excavating, enclosing and raising any part of the foreshore of the port which may be necessary for the execution of the works authorised by this Act, or otherwise for the purposes of this Act ;
- (5) such breakwaters and other works within or without the limits of the port as shall be expedient for the protection of the harbour or port ;
- (6) dredgers and other machines for cleaning, deepening and improving any portion of the port or foreshore ;
- (7) pilot-boats and other appliances necessary for the safe navigation of the port and of the approaches thereto ;
- (8) vessels, steam tugs or other boats for use as well within the limits of the port as beyond those limits, whether in territorial waters or otherwise, for the purpose of towing or rendering assistance to any vessel, whether entering or leaving the port or bound elsewhere, and for the purpose of saving or protecting life or property and for the purpose of landing, shipping or transshipping passengers and goods ;
- (9) boats, barges and other appliances necessary in connection with the supply of water to shipping in the port ;

(Secs. 29-30)

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

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

Sea-going vessels compelled to use wharves, etc.

29. (1) When any wharf, quay, stage, jetty or pier has been made and completed, with sufficient warehouses, sheds and appliances for landing or for shipping goods from and in sea-going vessels, the Board may, with the previous sanction of Government, by a notification published in three consecutive issues of the Official Gazette, declare that such wharf, quay, stage, jetty or pier is ready for receiving, landing and shipping or for landing or for shipping, as the case may be, goods from and in sea-going vessels.

(2) From and after such publication, the Board may, from time to time, when there is room at such wharf, quay, stage, jetty or pier, order to come alongside of such wharf, quay, stage, jetty or pier for the purpose of landing and shipping goods or for landing or for shipping the same, as the case may be, any sea-going vessel within the port which has not commenced to discharge cargo or which, being about to take in cargo, has not commenced to do so :

Provided that in making such order the Board shall have regard so far as may be, to the convenience of such vessel and of the shippers in respect of the use of any particular wharf, quay, stage, jetty or pier.

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

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

(Secs. 31—33)

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

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

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

32. (1) Notwithstanding anything contained in sections 29 and 30 Government may, by notification from time to time, permit specified vessels or classes of vessels to discharge or ship cargo or any specified cargo or any specified classes of cargo, at such part of the port, in such manner, during such period, subject to such payments and on such conditions as Government may think fit, and otherwise grant exemption from the provisions of the said sections and may in like manner cancel or modify any such notification.

Powers of Government to exempt from obligation to use wharves, etc., and to require preference to be given to Government vessels.

(2) Government may also at any time require that any vessel belonging to or in the service of Government shall be permitted to come alongside any wharf, quay, stage, jetty or pier belonging to the Board in preference to all other vessels at the time in the port and it shall be incumbent on the Board to give effect to any such requisition.

33. Government may, at any time, order a local survey or examination of any works of the Board or the proposed site therefor and the cost of such survey and examination shall be borne and paid by the Board out of its funds in the general account specified in clause (b) of sub-section (2) of section 40.

Power to order survey or examination of works.

(Secs. 34-35)

Power of Government to restore or complete works at the cost of the Board.

34. If, at any time, the Board—

- (a) allows any work, or appliance constructed or provided by or vested in it to fall into disrepair, or does not, within a reasonable time, complete any work commenced by it or included in any estimate sanctioned by Government ; or
- (b) does not, after due notice in writing, proceed to carry out effectually any work or repair or to provide any appliance which is necessary in the opinion of Government for the purposes of this Act,

Government may cause such work to be restored or completed or carried out or such repair to be executed or such appliance to be provided ; and the cost of any such restoration, completion, construction or provision shall be paid by the Board ; and shall be recoverable in the manner provided in the Local Authorities Loans Act, 1914. 9 of 1914

Performance of services by the Board.

35. (f) The Board shall provide all reasonable facilities for and shall have power to undertake the following services, namely :—

- (a) landing, shipping or transshipping passengers and goods, between vessels in the port and the wharves, piers, quays or docks in possession of the Board ;
- (b) providing proper amenities to and ensuring the safety of vessels entering the port ;
- (c) providing for pilotage, hauling, mooring, remooring, hooking, measuring and other services in respect of such vessels ;
- (d) carrying passengers by rail, tramways or otherwise within the limits of the port, subject to such restrictions and conditions as Government may deem fit to impose ;
- (e) receiving, removing, shifting, transporting, storing or delivering goods brought within the Board's premises ;

(Sec. 35)

- (f) providing special facilities for giving preference in receiving, transporting and shipping of such consignments of iron-ore as Government may, from time to time direct ; and
- (g) such other services as may be incidental or ancillary to or necessary or expedient for the carrying out of the purposes of this Act.

(2) The Board in addition to its obligation under sub-section (1) shall provide for each of the following matters and for rendering all such services as may be relevant thereto, namely :—

- (a) construction, maintenance and cleansing of drains and drainage works and public latrines, urinals and similar conveniences ;
- (b) construction and maintenance of works and means for providing supply of water for public and private purposes ;
- (c) scavenging, removal and disposal of filth, rubbish and other obnoxious or polluted matters ;
- (d) establishment and maintenance of hospitals and dispensaries and the carrying out of other measures necessary for public medical relief ;
- (e) construction and maintenance of markets and slaughter houses and regulation of all markets and slaughter houses ;
- (f) the regulation of places for the disposal of the dead and the provision and maintenance of places for the said purpose ;
- (g) regulation and abatement of offensive or dangerous trades, occupation and practices ;
- (h) regulation, maintenance, alteration and improvement of public streets, bridges, culverts, causeways and the like ;

(Sec. 36)

- (i) maintenance of fire-brigade and protection of life and property in case of fire ;
- (j) lighting, watering and cleansing of public streets and other public places ; and
- (k) fulfilment of any other obligation imposed by or under this Act or any other law for the time being in force.

(3) The Board may provide, either wholly or in part, for all or any of the following services, namely :—

- (a) furtherance of education, establishment of schools and improvement of educational facilities ;
- (b) providing housing accommodation for the employees of the Board and for labourers engaged within the port ;
- (c) construction and maintenance of warehouses and godowns ; and
- (d) any measure, not hereinbefore specified, likely to promote public safety, health, convenience or general welfare of labourers and other persons working or residing in the port area.

Obligation to render certain services if required by owner of goods.

36. (1) Subject to the provisions of sub-section (1) of section 38 where any of the services specified in clause (a) or (e) of sub-section (1) of section 35 has been undertaken by the Board, it shall be the duty of the Board to render the said services in respect of the goods if so required by the owner and if further required, to take charge of the same on granting in the prescribed form and manner a receipt therefor.

(2) On the issue of a receipt under sub-section (1) the person in whose favour such receipt is issued and the master or owner of the vessel from which the goods might have been transhipped shall cease to be responsible for the subsequent loss or damage, if any, to such goods.

(Secs. 37-38)

9 of 1872

37. (1) The responsibility of the Board for the loss, destruction or deterioration of goods of which it is 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, omitting the words "in the absence of any special contract" in section 152 of the said Act:

Responsi-
bility of
Board for
loss, etc., of
goods.

Provided that, till the receipt mentioned in sub-section (1) of section 36 is given by the Board, the goods shall be at the risk of the owner.

(2) The Board shall not be in any way responsible for loss of or damage to goods of which it has taken charge, unless notice of such loss or damage shall have been given within one month of the date of the receipt issued under sub-section (1) of section 36.

38. (1) The Board may, subject to the sanction of Government and subject to such conditions as may be prescribed—

Relinquish-
ment of
services
subject to
the control
of the
Government.

(a) enter into an agreement relinquishing the performance of any of the services specified in clauses (a) and (e) of sub-section (1) of section 35 to an approved person; or

(b) enter into an agreement accepting a liability greater or less than that imposed on the Board by sub-section (1) of section 37.

(2) Every agreement entered into under this section shall be in writing and signed by or on behalf of the parties concerned.

(3) No person to whom the performance of any service is relinquished under sub-section (1) shall charge or recover for such service any sum in excess of the amount leviable if such service had been performed by the Board.

(Secs. 39-40)

(4) Notwithstanding such relinquishment, the Board may charge dues according to the scales laid down in sections 70, 71 and 72 for the use of its works or appliances or for other services connected with that which has been relinquished without thereby incurring any liability under section 37.

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

39. In respect of any person to whom any or all of the services has or have been relinquished under section 38 the provisions of sections 36 and 37 shall, *mutatis mutandis*, apply.

CHAPTER VI

REVENUE, EXPENDITURE, ACCOUNTS AND AUDIT

Constitution of Port Trust Fund.

40. (1) Save as otherwise provided in this Act there shall be a Port Trust Fund (hereinafter referred to as the Fund) vested in the Board which shall be comprised of—

- (a) all funds which immediately before the establishment of the Board had vested in Government or any other authority on account of the port under the Indian Ports Act, 1908 and the Orissa Ports Regulation, 1937; 13 of 1908.
Orissa
Regulation
11 of 1937.
- (b) all moneys received by or on behalf of the Board under the provisions of this Act or any other law for the time being in force or under any contract;
- (c) all proceeds of the disposal of property by or on behalf of the Board;
- (d) all rents accruing from any property of the Board;
- (e) all moneys raised by means of rates, fees, charges and other dues levied for the purposes of this Act;
- (f) all fines and penalties levied by or under the provisions of this Act;

(Secs. 41-42)

- (g) all moneys received by or on behalf of the Board from Government, Central or State or from any individual or association of individuals by way of grant, gift or deposit;
- (h) all interests and profits arising from any investment of or from any transaction in connection with, any money belonging to the Board, including loans advanced under this Act; and
- (i) all moneys received by or on behalf of the Board from any other source whatsoever.

(2) The Fund constituted under sub-section (1) shall be held by the Board in trust for the purposes of this Act subject to the provisions herein contained and shall be maintained in the following distinct accounts, namely:—

- (a) the Pilotage Account relating to all moneys including all fees for Pilotage and all fines and penalties levied under this Act from pilots, harbour-masters or other persons employed in the Pilot Service other than fines and penalties imposed by a court;
- (b) the general account relating to all moneys received by or on behalf of the Board other than those specified in clause (a); and
- (c) such other special accounts as Government may, from time to time, direct.

41. All moneys payable to the credit of the aforesaid accounts shall be received by the Board and shall be forthwith paid into the State Bank of India to the credit respectively of the said accounts. Fund to be kept in State Bank.

42. (1) The moneys from time to time credited to the fund shall, subject to the provisions of section 96, be applied by the Board in payment of all sums, charges and costs necessary for carrying out the provisions of this Act and of the rules, regulations and bye-laws made thereunder. Application of the Fund.

(Secs. 43—46)

(2) Such moneys shall likewise be applied in payment of all sums payable out of the Fund under any law for the time being in force.

Emergent
expenditure.

43. The Chairman may, in cases, requiring immediate action, on being so authorised by the Board and subject to the rules and regulations, if any, made in that behalf, incur expenditure from out of the Fund for meeting such situations.

Reserve
fund.

44. (1) The Board may, from time to time set apart as reserve fund or funds from out of its revenue surplus for the purpose of providing against any temporary decrease in revenue or increase in expenditure from transient causes or for purposes of replacement or for meeting expenditure arising from loss or damage by fire, shipwreck or other accidents or for any other emergency arising in the ordinary course of administration of the provisions of this Act.

(2) The sums set apart as a reserve fund shall not exceed such amount and shall be invested in such manner as Government may from time to time direct.

Charge in
Capital
Account.

45. No expenditure shall be charged by the Board to capital account without the prior sanction of Government:

[Provided that whenever in the opinion of Government it is expedient so to do with a view to facilitate the development of the port or the construction thereof, Government may, from time to time, by notification specify the period during which no such sanction shall be necessary.]

Works
requiring
sanction
of
Board or
Government.

46. No work shall be undertaken or any contract in respect of such work entered into or any expenditure in connection therewith incurred without the plan and estimate of the work being earlier approved by the Board where the estimated cost exceeds two thousand rupees and also by Government where such cost exceeds twenty thousand rupees:

(Secs. 47—50)

[Provided that whenever in the opinion of Government it is expedient so to do with a view to facilitate the development of the port or the construction thereof, Government may, from time to time, by notification specify the period during which it shall not be necessary to obtain such prior approval—

- (a) of the Board, where the estimated cost as aforesaid does not exceed fifty thousand rupees; and
- (b) of Government where the said cost does not exceed rupees ten lakhs.]

47. The Chairman shall at a special meeting to be held on or before the 20th day of December every year lay before the Board an estimate of the income and expenditure of the Board for the next financial year. Budget Estimate.

48. The estimates shall be printed in the form prescribed and a copy thereof shall be served on each trustee not less than ten clear days prior to the day appointed for the meeting specified in section 47. Form and circulation of Budget Estimates.

49. The Board may, at such meeting, alter or modify the said estimates and shall subject to such alterations or modifications, if any, pass the same. Adoption of Estimates by Board.

50. (1) The estimates passed by the Board under section 49, shall, not later than the 10th day of January, be submitted to Government who may call for such further information as may be deemed necessary from the Board or return the estimates to the Board for reconsideration. Approval of Estimates by Government.

(2) Government may, after a consideration of the said estimates along with the information and the views as may have been received in pursuance of sub-section (1), approve the same subject to such alterations or modifications, if any, as they may decide.

(Secs. 51—54)

Supplemen-
tary
Estimates.

51. The Chairman may, in the course of any year for which an estimate has been approved by Government cause one or more supplemental estimates for the residue of such year to be prepared and laid before the Board and to such estimates the provisions of sections 48, 49 and 50 shall, so far as may be, apply.

Restriction
of expendi-
ture to
Budget
grant.

52. Save as otherwise provided in section 53 the Board shall not without the prior sanction of Government spend on any item of expenditure any sum greater than that allotted in the estimates approved by Government under section 50 or section 51 as the case may be.

Board's
power to
spend beyond
approved
estimates.

53. (1) In cases requiring immediate action the Board may, without prior sanction of Government, spend on any item of expenditure—

- (a) a sum not exceeding two thousand rupees in excess of the sum allotted for the item in the approved estimates; and
- (b) a sum not exceeding three thousand rupees on any item for which no funds are allotted for the year in the said estimates.

(2) On a decision being taken by the Board under sub-section (1) the Chairman shall forthwith report to Government the circumstances which necessitate such expenditure and the manner in which the Board proposes to meet the same.

Auditors.

54. (1) The accounts of receipts and expenditure of the Board shall, once in every year, be laid before Government and shall be audited by such auditors as Government may, from time to time, appoint and the Accountant-General for the State of Orissa may be appointed in that behalf.

2) The Auditors so appointed may, by summons in writing,—

- (a) require production of any book, deed, voucher, document or paper;

(Secs. 55--56)

- (b) require the attendance of any person in the custody of or accountable for any such book, deed, contract, voucher, document or paper; and
- (c) require such person to explain all matters relating thereto or to prepare and submit further statements in connection therewith according as such Auditors deem it necessary or expedient.

55. (1) The Auditors shall, before the expiry of fourteen days of the completion of the audit, ^{Audit Report.} prepare their report and submit copies thereof to Government and to the Board.

(2) The Board shall, on receipt of such report cause the same along with an abstract of the relevant accounts to be published in the Official Gazette.

(3) The Government shall, as soon as may be, after receipt of the report, cause a copy thereof to be laid before the Legislative Assembly.

CHAPTER VII

BORROWING POWERS OF THE BOARD

56. (1) The Board may, in pursuance of a resolution passed by it, borrow by way of debenture or on ^{Power to raise loans.} other security (hereinafter referred to as Port Trust Securities) or on the guarantee obtained from Government, any sums of money which may be required—

- (a) for acquiring any land which it has power to acquire ;
- (b) for erecting any building which it has power to erect ;
- (c) for the execution of any work, the provision of any plant, or the doing of any other thing which it has the power to execute, provide or to do ;
- (d) for meeting expenditures which it has the power to incur;

(Secs.57—60)

(e) to repay any loan raised under this Act or any debt due to Government ; or

(f) for any other purpose for which the Board is by virtue of this Act or under any other law authorised to borrow.

(2) No loan shall be raised without prior sanction of Government and previous publication of the application for sanction.

(3) The amount of loan, rate of interest and the terms and conditions including the date of floatation, the time and method of the payment and the like shall also be subject to the prior approval of Government.

Period within which loans to be repaid.

57. The time for repayment of any loan shall in no case, exceed sixty years, and the time for repayment of any money borrowed for discharging any previous loan shall not, except with the express sanction of Government, extend beyond the unexpired portion of the period for which such previous loan was sanctioned.

Port Trust Securities.

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

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

Indian Securities Act, 1920 applicable to Port Trust Securities.

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

Power to make regulations.

60. The Board may make regulations to carry out the purposes of this Chapter and in particular to provide for all or any of the following matters, namely :—

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

(*Sec. 60—contd.*)

- (b) the manner in which payment of interest in respect of Port Trust Securities is to be made and acknowledged ;
- (c) the circumstances and the manner in which Port Trust Securities may be renewed ;
- (d) the circumstances in which such securities must be renewed before further payment of interest thereon can be claimed ;
- (e) the form in which securities delivered for renewal and conversion are to be received ;
- (f) the proof which is to be produced by persons applying for duplicate securities ;
- (g) the form and manner of publication of the notification mentioned in sub-section (2) of section 10 of the Indian Securities Act, 1920, as applied to Port Trust Securities and the manner of publication of the list mentioned in sub-section (3) of that section ;
- (h) the nature and amount of indemnity to be given by a person applying for the payment of interest on debentures alleged to have been wholly or partly lost or destroyed, or for the issue of duplicate debentures ;
- (i) the conditions subject to which Port Trust Securities may be converted ;
- (j) the amounts for which stock certificates may be issued ;
- (k) generally, all matters connected with the grant of duplicate, renewed and converted securities ;
- (l) the fees to be paid in respect of the issue of duplicate securities and of the renewal and conversion of Port Trust Securities ;
- (m) the fees to be levied in respect of the issue of stock certificates ; and

(Secs. 61—63)

(n) any other matter which is required to be or may be provided for by regulations.

(2) The power to make regulations under subsection (1) shall be subject to the following conditions, namely:—

(i) a draft of the regulations shall be published in three consecutive issues of the official Gazette;

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

(iii) Government may, at any time, by notification cancel any regulation published under the provisions of this section.

Security for loans.

61. All loans may be raised on the security of—

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

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

Remedies of Government in respect of loans made to Board.

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

Power to repay loans before due date.

63. (1) The Board may apply any sum not being less than ten thousand rupees which can be so applied without prejudicing the security of the other debenture-holders of the Board, in repaying to the Government any sum which may remain due to them in respect of the principal of any loan before the time fixed for the repayment of the same.

(2) On any such repayment being made the portion of any subsequent instalment which represents interest shall be reduced to such an amount as represents interest on the outstanding principal.

(Secs. 64—68)

64. In respect of a loan not repayable before the expiration of one year from the date of the loan, the Board shall pay half-yearly out of its income into a sinking fund such sum sufficient for the repayment within the period fixed, of the loan.

Establishment of sinking fund.

65. (1) The accumulations in the sinking fund shall, subject to the prior approval of Government, be invested in promissory notes and other securities of the Central or the State Government or otherwise and shall be held in trust for the purpose of this Act by two trustees one being the Board and the other a person appointed by Government.

Investment and application of sinking fund.

(2) The Board may apply the whole or any part of sums accumulated in the sinking fund in or towards the discharge of the moneys for the repayment of which the fund has been established provided that it pays into the fund in each year and accumulates until the whole of the moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund, or the part of the sinking fund so applied.

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

Examination of sinking fund.

67. All payments due from the Board on account of interest on and repayment of loans shall be made in priority to all other payments due from the Board.

Priority of payment of interest and repayment of loan over other payments.

68. 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.

Power to raise loans under the Local Authorities Loans Act, 1914.

(Secs. 69—71)

CHAPTER VIII

LEVY AND RECOVERY OF RATES

Dues leviable under the Orissa Ports' Regulation, 1937 to continue. 69. All dues leviable immediately before the coming into force of this Act in respect of any port in pursuance of the provisions of the Orissa Ports' Regulation, 1937 shall continue to be so leviable until it is otherwise declared by Government by notification in that behalf. Orissa Regulation 11 of 1937.

Scale of rates. 70. (1) The Board shall frame a scale of rates on payment of which and a statement of conditions subject to which—

- (a) any of the services specified in Chapter V shall be rendered by it or by a person to whom any service has been relinquished under section 38 or partly by one and partly by the other ;
- (b) the benefit of any of the works and appliances specified in the said Chapter shall be availed of ; and
- (c) any property belonging to or in possession or occupation of the Board or any place within the limits of the port may be used.

(2) In determining the rates and conditions under sub-section (1) the Board may, and if so, directed by Government shall, provide for the levy of a special scale of rates in respect of wharves, roads and railways in the construction of which heavy expenditure has been incurred.

Scale of rates for particular services, benefits and uses. 71. Without prejudice to the generality of provisions of section 70 the Board shall, in particular, determine the rates and conditions under the said section—

- (i) in respect of the following services rendered and benefits available, namely:—
 - (a) transhipping of goods or passengers between vessels in harbours ;

(Sec. 72)

- (b) landing and shipping of goods or passengers from or to such vessels, to or from any wharf, quay, pier, dock, land or building in possession or occupation of the Board or at any place within the limits of the port;
 - (c) crantage or portorage of goods on any such place ;
 - (d) wharfage, storage or demurrage of goods on any such place ; and
 - (e) any other service in respect of vessels, passengers or goods ; and
- (ii) in respect of the use of any property belonging to or in possession or occupation of the Board for the purposes herein specified, namely:—
- (a) approaching or lying at or alongside any moorings, wharf, quay, pier, dock, land, building or place as aforesaid by vessels or boats ;
 - (b) entering upon or plying for hire at any wharf, quay, pier, dock, land, building or place as aforesaid by animals or vehicles carrying passenger or goods;
 - (c) leasing of land or sheds to owner of goods imported or intended for export or by steamer agents ; and
 - (d) any other use of any land, roads, canals, works or appliance belonging to or maintained or provided by the Board.

72. The Board may, frame a consolidated scale of rates for any combination of the services specified in sections 70 and 71 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 the said sections.

Consolidated rates for combination of services.

(Secs. 73-75)

Prior sanc-
tion of
Government
to such
scales.

73. (1) Every scale and every statement of conditions framed by the Board under sections 70, 71 or 72 shall be submitted to Government for sanction, and when so sanctioned and published in the official Gazette, shall have the force of law ; and may, in like manner from time to time, be amended or added to by the Board.

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

(3) In respect of any item of any scale of rates framed in pursuance of sections 70, 71 or 72 the Board, with the previous sanction of Government may fix maximum and minimum rates, and may levy any charges not exceeding the maximum and not below the minimum so fixed.

Refund of
over charges.

74. No person shall be entitled to the refund of an overcharge except on application made by him or on his behalf to the Board before the expiry of six months from the date of payment and in the form and manner specified by regulations made in that behalf.

Power to
increase rates
to cover defi-
ciency of
revenue.

75. (1) If in any case—

- (a) on the preparation of the estimate of any year, it appears that the estimated income of the Board for such year, after deducting therefrom the estimated expenditure of such year, will be insufficient for the payment of the interest which may be payable by the Board during such year to Government or to any other creditor and of any sinking fund established under section 64 and of any sum the repayment of which is due in pursuance of any terms fixed under section 56 ; or

(Secs.76-78)

- (b) at any time during the course of a year, it appears that the income of such portion of the year as has then elapsed, and the estimated income of the residue of such year after deducting therefrom the actual expenditure of such past portion and the estimated expenditure of such residue, will be insufficient for the payment of the said interest, sinking funds and sums due ;

the Board may, and upon the requisition of Government shall, increase the rates for the time being in force to such extent as will render the estimated income of the year sufficient as nearly as may be for the payment in full of the said interest, sinking funds and sums due.

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

76. If the Board shall, for fifteen days after the receipt by the Chairman of any such requisition from Government, neglect or refuse to submit to Government for approval such increased rates, Government may by notification increase such rates as they think fit, and such notification shall have the same force as if a new scale of rates to the same effect had been duly framed under section 70, 71 or 72 and sanctioned and published under section 73.

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

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

(Secs.79-84)

Payment of balance of Port fund to Board. 79. The Government may at any time direct that the whole or any portion of the balance of the moneys which may be credited to the Consolidated Fund of the State in the account of Port under the Indian Ports Act, 1908 or the Orissa Ports Regulation, 1937 after defraying therefrom all expenses legally chargeable from the said income shall be paid to the Board for the purpose of this Act. ^{15 of 1908. Orissa Regulation 11 of 1937.}

Time for payment rates on goods. 80. Rates in respect of goods to be landed shall be payable immediately on the landing of the goods and in respect of goods to be removed from the premises of the Board or to be shipped for export or transhipped, before the goods are removed or shipped or transhipped.

Lien of rates 81. For the amount of all rates leviable under this Act in respect of any goods, and for the rent due to the Board on any buildings, plinths, stocking 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.

Priority of lien of Board over other liens and claims. 82. Such lien shall have priority over all other liens and claims, except for general average and for the ship-owner's lien upon the said goods for freight and other charges where such lien exists and has been preserved in the manner provided in section 86 and for primage, and for money payable to Government.

Preservation of lien for freight goods after landed. 83. If the master or owner of any vessel or his agent at or before the time of landing from such vessel of any goods at any dock, wharf, quay, stage, jetty or pier in the occupation of the Board, gives to the Board notice in writing that such goods are to remain subject to a lien for freight or other charges including landing charges payable to the ship-owner to an amount to be mentioned in such notice, such goods shall continue liable to such amount.

Retention of such goods until lien is discharged. 84. Such goods shall be retained in the custody of the Board, at the risk and expense of the owners of the said goods until such lien is discharged as hereinafter mentioned, and godown or storage rent shall be payable by the party entitled to such goods for the time during which they may be so retained.

(Secs. 85-88)

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

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

- (a) if any rates payable to the Board in respect of such goods have not been paid ;
- (b) if any rent referred to in section 81 in respect of any place on or in which such goods have been stored has not been paid; or
- (c) if any lien of any ship-owner for freight or other charges of which notice has been given has not been discharged and if the person claiming such lien for freight or other charges has made an application for such sale.

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

88. If the address of the owner of the goods has been stated on the manifest of the cargo or in any of the documents which have come into the hands of the Board, or is otherwise known, notice shall also be given to the owner of the goods by registered post :

Provided that the title of a *bona fide* purchaser of such goods shall not be invalidated by reason of

(Secs 89-90)

the omission to send the notice hereinbefore mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

Application
of sale-
proceeds.

89. (1) The proceeds of every such sale shall be applied in the following order or priority, namely —

- (a) in payment of the expenses of the sale ;
- (b) in payment, according to their respective priorities of the liens subject to the provisions of section 82 ; and
- (c) in payment of the rates and expenses of landing, removing, storing or warehousing the same, and of all other charges due to the Board in respect thereof.

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

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

Recovery of
rates and
charges by
distrain of
vessel.

90. (1) If the master of any vessel in respect of which any rates or penalties are payable under this Act, or under any bye-laws, rules, regulations or orders made in pursuance thereof refuses or neglects to pay the same or any part thereof on demand it shall be lawful for the Board to distrain on its own authority such vessel and the tackle, apparel and furniture belonging thereto or any part thereof and detain the same until the amount so due is paid.

(2) In case any part of the said rates or penalties or of the cost of the distress or of the keeping of the same, remains unpaid for the space of five days next after any such distress has been made, the Board may cause the vessel or other things so distrained

(Secs. 91-95)

to be sold and with the proceeds of such sale, shall satisfy such rates or penalties and costs, including the costs of sale, remaining unpaid, paying the surplus, if any, to the master of such vessel on demand.

91. If the Board gives to the Officer of Government whose duty it is to grant the port-clearance of any vessel a notice stating that an amount therein specified is due in respect of rates or penalties chargeable under this Act, or under any bye-laws, rules or orders made in pursuance thereof, against such vessel, or by the owner or master of such vessel in respect of any goods on board such vessel, such Officer shall not grant such port-clearance until the amount so chargeable has been paid.

Grant of port-clearance after payment of rates.

92. Notwithstanding anything in this Act instead of proceeding against the defaulter by distress and sale as hereinbefore provided or after a defaulter has been so proceeded against unsuccessfully or with partial success, any sum due or the balance of any sum due, as the case may be, from such defaulter on account of any rates, damages, expenses, or costs, may be recovered by a suit in a court of competent jurisdiction.

Alternative remedy by suit.

CHAPTER IX

PILOTS AND HARBOUR-MASTERS

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

Pilotage fees

94. No person shall be appointed as pilot or harbour-master who is not for the time being authorised by Government under the provisions of the Indian Ports Act, 1908, to pilot vessels.

Appointment of pilots.

15 of 1908

95. (1) Notwithstanding anything contained in Chapter III the Board may make special regulations for regulating the behaviour and conduct of pilots or harbour-masters, and may provide that any breach thereof shall render the person committing it liable to a penalty not exceeding two hundred rupees in

Rules and regulations regarding pilots.

(Sec. 96)

addition to such punishment in the form of suspension, dismissal or the like as the Board may deem expedient to inflict.

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

Expenditure
on pilotage.

96. All sums credited to the pilotage account under clause (a) of sub-section (2) of section 40 may be applied, in such proportions as the Board may, from time to time, direct, to the following purposes only, namely :—

- (1) the purchase and maintenance in repair of such vessels, and the supply of such materials stores or other things as the Board may deem it necessary to maintain or supply for the efficiency of the pilot service ;
- (2) the payment of the salaries and allowances of pilots or harbour-masters and other officers and servants of the Board employed in the pilot service. or in the supervision thereof ;
- (3) the payment of pensions or retiring gratuities or compassionate allowances to pilots or harbour-masters and other officers and servants engaged in the pilot service, and of the contributions, if any, duly authorised to be made in their behalf to any provident fund ;
- (4) the payment of pensions, gratuities and compassionate allowances granted by the Board to pilots or harbour-masters and other officers and servants engaged in the pilot service, who have been injured in the execution of their duty and to the surviving relatives of pilots or harbour-masters, officers and servants so engaged, who may die in the service of the Board.

(Sec. 97)

CHAPTER X

RULES, REGULATIONS AND BYE-LAWS

97. (1) Government may, after previous publication, make rules to carry out the purposes of this Act.

Power of Government to make rules under the Act.

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

- (a) the qualifications of persons to be elected as Trustees of the Board ;
- (b) the salary and allowances to be paid to the Chairman, Vice-Chairman and persons appointed to act during their absence on leave and the conditions and restrictions subject to which the same are payable ;
- (c) the fees payable to the Chairman, Vice-Chairman and other Trustees of the Board for attendance at meetings and the conditions and restrictions subject to which such fees are payable ;
- (d) the inquiry into and decision of objections referred to in section 14 ;
- (e) the conditions subject to which the Board may relinquish the performance of any of the services specified in clauses (a) and (e) of sub-section (1) of section 35 or enter into any agreement accepting a greater or lesser liability than that imposed on the Board by sub-section (1) of section 37 ;
- (f) the form of the receipt to be given under sub-section (1) of section 36 by the Board, or in pursuance of the provisions of section 39 by a person to whom any service have been relinquished ;
- (g) the form of annual estimates of income and expenditure to be laid before the Board under section 47; and

(Sec.98)

(h) any other matter which under the provisions of this Act is required to be or may be prescribed.

(3) All rules made under this section shall have effect as if enacted in this Act.

Regulations
when to
take effect.

98. No regulation made by the Board shall have effect until it has been approved by Government and published in the Gazette.

Power to
frame bye-
laws.

99. The Board may from time to time make bye-laws not inconsistent with the provisions of this Act or of the Indian Ports Act, 1908 in respect of all or any of the following matters, namely:—^{15 of 19 08}

- (1) the guidance of persons employed by the Board under this Act ;
- (2) the safe and convenient use of the docks, wharves, quays, jetties, sheds, warehouses, railways, tramways and other works constructed or maintained by or vested in the Board under this Act ;
- (3) the use of the public landing places constructed by or vested in the Board ;
- (4) the reception, portorage, storage and removal of goods brought within the premises of the Board and for the exclusive conduct of these operations by the Board or persons employed by the Board ;
- (5) keeping clean the harbour and basins and the works of the Board and for preventing filth or rubbish being thrown therein or thereon ;
- (6) 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 ;
- (7) regulating the lighterage of cargo between ships or between ships and shore or between shore and ships:

(Sec. 100)

- (8) the exclusion from its premises of disorderly or other undesirable persons and of trespassers ;
- (9) regulation or restriction of the use of sites for different purposes within the limits of the port ;
- (10) regulation or restriction of buildings in different areas within the said limits and of temporary structures therein ;
- (11) permission, regulation or prohibition of use or occupation of any public street and any matter in connection with the construction, repair, maintenance and lighting of such street ;
- (12) regulation, control and supervision of places where dangerous or offensive trades, occupations or practices are carried on;
- (13) regulation and control of hospitals and dispensaries;
- (14) matters relating to water -supply, drainage and sewerage disposal;
- (15) imposition of fees that may be charged in respect of licences and permissions required to be granted by the Board under any bye-law and fees that may accompany notices and applications required to be given or made to the Board for any of the purposes of this Act;
- (16) the mode of payment of the rates leviable under this Act; and
- (17) generally for the carrying out of the purposes of this Act.

100. No bye-law or alteration or revocation of a bye-law shall have effect until the same has been published in three successive issues of the official Gazette and has been approved by Government. ^{Bye-laws when to have effect.}

(Secs. 101—105)

Penalties for
infringement
of bye-laws.

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

(2) Any such bye-law may also provide that a person contravening the same shall be required to remedy, so far as lies in his power, the mischief, if any, caused by such contravention.

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

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

Cancellation
of bye-laws.

103. Government may by an order published in the official Gazette at any time, annul any such bye-law.

CHAPTER XI

PENALTIES

Penalty for
being intere-
sted in con-
tracts with
Board.

104. Any person who, being a Trustee or an Officer or Servant of the Board, in any case not covered by sub-section (2) of section 8, 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 punishable under section 168 of the Indian Penal Code.

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Penalty for
obtaining
illegal grati-
fication.

105. Any officer or servant of the Board, not being a public servant within the meaning of section 21 of the Indian Penal Code, who accepts or obtains, or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification whatsoever, other than legal remuneration, as a reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to

45 of 1860

(Secs. 106—109)

45 of 1860

any person or for rendering or attempting to render any service or disservice to any person with the Board or with any public servant as such, or with the Government shall be liable to the same punishment as is provided under the Indian Penal Code in the case of a like offence committed by a public servant.

106. Any person who, when duly required so to do by any auditor of accounts under section 54, refuses or neglects to appear before such auditor or to produce any book, deed, accounts, voucher, document or paper or to answer any question or prepare and submit any statement shall be punishable for every such neglect or refusal with fine which may extend to one hundred rupees.

Penalty for refusing or neglecting to appear before an auditor of accounts etc.

107. Whoever infringes any order issued under section 29 or 30 or violates any condition imposed under section 32 shall be punished with fine which may extend from ten to one hundred rupees and if the infringement or violation be continuing with a further fine which may extend to one hundred rupees for every day during which such infringement or violation continues.

Penalty for infringement of section 29, 30 or 32.

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

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

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

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

(Secs. 110-112)

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

Penalty for understating quantity or weight of goods or incorrectly describing them

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

Penalty for evading rates, etc.

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

Recovery of value of damage to property of Board.

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

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

(Secs. 113—115)

Provided further that no such warrant shall issue if the vessel was at the time under the orders of a duly authorised servant of the Board or officer in the pilot service of the port and unless the damage caused was in no way attributable to the order, act or improper omission of such servant or officer.

113. Save as otherwise provided, no Magistrate other than a Magistrate of the first or second class shall try any offence against this Act or against any bye-law published under section 100.

Cognizance of offences against Act or bye-laws.

CHAPTER XII

MISCELLANEOUS

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

Saving of power of Customs Collector under existing law.

115. (1) No suit shall be commenced against the Board or any person for anything done or purporting to have been done in pursuance of this Act or the rules, regulations or bye-laws made thereunder

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

(a) until the expiration of one month after notice in writing has been given to the Board or to such person stating explicitly the cause of action, the nature of relief sought, the amount of the compensation, if any, claimed and the name and address of the intending plaintiff and unless the plaint contains a statement that such notice has been so given ; and

(b) after the expiration of six months from the date on which the cause of action for such suit arose.

(2) No suit or prosecution or other proceeding shall be entertained in any court against the Board or against any person for anything which is in good faith done or intended to be done under this Act or any rule, regulation or bye-law made thereunder.

(Secs. 116-118)

Saving of liability of Board for acts of officers or servants.

116. (1) The Board shall not be liable for any act or default of any officer or servant appointed under this Act or under the Indian Ports Act, 1908, if the Board be appointed by Government under the said Act to be the Conservator of the port, or of any person acting under the authority or direction of any such officer unless such act or default is done or made under the direction of the Board, nor for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers or other things belonging to the Board.

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

Submission of returns and information to Government.

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

Power of Government to take possession of works and cancel powers of Board.

118. (1) If, at any time, in the opinion of Government the works intended to be executed by the Board under this Act have not been, and are not likely to be properly carried out or maintained by the Board, they may give six months notice, by order published in the official Gazette, that unless, within that period, the Board takes measures, to their satisfaction for the carrying out or maintenance of the said works, the powers by this Act conferred on the Board shall, at the end of such period, be withdrawn or revoked.

(2) If, at the end of such period the Board fails to take such measures, Government may assume possession and management of the works already constructed and may, by a like notification, declare the powers of the Board to be withdrawn or revoked and upon publication of such modification, all immovable and movable property, all rights of levying and recovering rates and penalties, all benefit of contracts, and all rights of suit which at the time are vested in the Board shall be transferred to, and vested in Government and the rights of all creditors of the Board under this Act shall continue as against Government to the extent of the property so transferred to and vested in them.