

Fourteenth Kerala Legislative Assembly
Bill No. 78

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THE KERALA MARITIME BOARD BILL, 2017

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THE KERALA MARITIME BOARD BILL, 2017

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BILL

to provide for the constitution of the Kerala Maritime Board for the non-major ports in the State of Kerala and to vest administration, control and management of such ports and certain undertakings in that Board and matters connected therewith.

Preamble.—WHEREAS, it is expedient to constitute the Kerala Maritime Board for non-major ports in the State of Kerala and to vest administration, control and management of such ports and certain undertakings in the Board;

BE it enacted in the Sixty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Maritime Board Act, 2017.

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

(3) It shall come into force at once.

(4) It applies to all non-major ports, excluding the Fishing Harbours and Fish Landing Centres in the State, to which the Indian Ports Act, 1908 (Central Act 15 of 1908) applies on the date of commencement of this Act and the State Government may, by notification, apply the provisions of this Act to any other non-major ports in the State to which the Indian Ports Act, 1908 (Central Act 15 of 1908) is extended by the State Government under section 4 of that Act and with effect from such date, as may be specified in the notification.

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

(a) “appointed day” means the day as may be appointed by the Government by notification in the Gazette, for the vesting and transfer of the undertaking;

(b) “Board” means the Kerala Maritime Board established under section 3;

(c) “Chairman” means the Chairman of the Board appointed under section 3 and includes the person appointed under section 4 of the Act as Chairman;

(d) “Chief Executive Officer” means the officer appointed under sub-section (1) of section 13 of the Act as the Chief Executive Officer;

(e) “Court” means the High Court of Kerala and other courts having admiralty jurisdiction on civil and criminal matters to arrest and detain a vessel;

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

(g) “fishing vessel” means a ship fitted with mechanical means of propulsion which is exclusively engaged in sea fishing for profit;

(h) “foreign -going ship” means a ship, not being a home-trade ship employed in trading between any port or place in India and any other port or place or between ports or places outside India;

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

(j) “goods” includes livestock and every kind of movable property but does not include fish caught by traditional fishermen by mechanised boats or other vessels;

(k) “Government” means the Government of Kerala;

(l) “high watermark” in relation to a port, means a line drawn through the highest point reached by ordinary spring tides during any season of the year at that port;

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

(n) "Indian Ship" means a ship registered as such under the Merchant Shipping Act, 1958 (Central Act 44 of 1958) and includes any ship registered at any port in India at the commencement of the said Act which is recognised as an Indian Ship under the proviso to sub-section (2) of section 22 of the Merchant Shipping Act, 1958;

(o) "Kerala State Maritime Development Corporation" means the Kerala State Maritime Development Corporation registered under the Companies Act, 1956 (Central Act 1 of 1956);

(p) "Kerala State Maritime Society" means the Kerala State Maritime Society registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (Act 12 of 1955);

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

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

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

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

(u) " non- major port" or "port" means a port, other than a major port declared as such by the Central Government under any law, to which this Act applies within such limits as may, from time to time, be defined by the Government under the Indian Ports Act, 1908 (Central Act 15 of 1908);

(v) "notification" means a notification published in the official gazette;

(w) "owner",—

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

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

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

(y) "port approaches", in relation to any port, means those parts of the navigable rivers and channels leading to the port in which the Indian Ports Act, 1908 (Central Act 15 of 1908) is in force and in addition includes the road and rail infrastructures within the port limits;

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

(za) "public securities" mean,—

(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 the securities of that Government; and

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

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

(zc) "regulations" mean the regulations made by the Board under this Act;

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

(ze) "securities" mean the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (Central Act 42 of 1956);

(zf) "State" means the State of Kerala;

(zg) "undertakings" means the Kerala State Maritime Development Corporation and the Kerala State Maritime Society transferred to and vested in the Government under section 10 of this Act;

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

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

CHAPTER II

ESTABLISHMENT OF KERALA MARITIME BOARD

3. *Establishment of Kerala Maritime Board.*—(1) As soon as may be after the commencement of this Act, the Government may, by notification, establish a Board to be called the Kerala Maritime Board.

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

(3) The head office of the Board shall be at Kochi.

(4) The Board shall consist of the following members, namely:—

(i) The Chairman to be nominated by the State Government, who shall be a person having experience in shipping and maritime law.

(ii) Vice Chairman to be nominated and appointed by the State Government and shall be a person who is or has been an officer of the All India Service not below the rank of Principal Secretary to the Government of Kerala.

(iii)	Secretary to Government, Fisheries and Ports Department	-	Member (<i>Ex-officio</i>)
(iv)	Secretary to Government, Finance Department	-	Member (<i>Ex-officio</i>)
(v)	Law Secretary to Government, Law Department	-	Member (<i>Ex-officio</i>)
(vi)	One representative from the Indian Navy who is in charge of Kerala coast	-	Member (<i>Ex-officio</i>)
(vii)	One representative from the Indian Coast Guard in charge of Kerala coasts and coastal sea	-	Member (<i>Ex-officio</i>)
(viii)	Chief Executive Officer, Vizhinjam International Seaport Limited	-	Member (<i>Ex-officio</i>)
(ix)	Two Members nominated by the State Government	-	Members

4. *Absence of Chairman.*—If the Chairman is absent or on leave, the Vice Chairman and in the absence of both the Chairman and the Vice Chairman, such person as the Government may appoint, shall act as the Chairman.

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

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

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

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

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

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

7. *Defects in appointment not to invalidate acts, etc.*—No act or proceeding of the Board or of any of its Committees shall be invalid merely by reason of,—

- (a) any vacancy therein or any defect in the constitution thereof; or
- (b) any disqualification of or any defect in the appointment of, a person acting as member thereof; or
- (c) any irregularity in its procedure not affecting the merits of the act or proceedings.

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

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

(2) The Chief Executive Officer shall, as soon as possible, but not later than fifteen days of each meeting of the Board, transmit to the Government and to all members of the Board a copy of the minutes of such meeting and shall furnish to the Government such reports, returns, documents or, other information as it may, from time to time, call for.

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

CHAPTER III

VESTING AND TRANSFER OF UNDERTAKINGS

10. *Undertakings to vest in Government.*—(1) Notwithstanding anything contained in any other law for the time being in force or in any contract or other document, with effect on and from the appointed day, the undertakings, namely, the Kerala State Maritime Development Corporation registered under the Companies Act, 1956 (Central Act 1 of 1956) and the Kerala State Maritime Society registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (Act 12 of 1955) shall by virtue of this Act, stand transferred to and vest in the Government.

(2) The undertakings vested in the Government shall include the properties, rights, liabilities and obligations specified below, namely:—

(i) all the assets in relation to the undertakings and all the documents relating to the undertakings;

(ii) all the rights, liabilities and obligations in relation to the undertakings under any agreement entered into before the appointed day.

(3) If, on the appointed day, any suit, appeal or other proceeding of whatever nature instituted or preferred by or against the undertakings, is pending, the same shall not abate, shall not be discontinued or be, in any way, prejudicially affect by reason of such transfer or of anything contained in this Act, but the suit, appeal or other proceedings may be continued, prosecuted or enforced by or against the State Government or the Board.

11. *Transfer of undertakings to the Board.*—The Government may, by order, transfer the undertakings vested in them under section 10 to the Board on such terms and conditions as may be specified in the order and on such transfer, the undertaking together with all assets, liabilities, rights and obligations vested in or devolved on the Government under sub-section (1) of section 10, shall vest in or devolve on the Board.

12. *Transfer of existing employees, Provident Fund etc.*—(1) Every officer or other employee who was immediately before the appointed day employed in connection with the undertakings, shall, on the appointed day become an officer or an employee, of the Government and on transfer of undertakings under section 11, they shall become an officer or employee of the Board and shall hold his office by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the undertakings had not been transferred to and vested in the Government or the Board, as the case may be, and shall continue to do so unless and until his employment under the Government or the Board, as the case may be, is duly terminated or until his remuneration or terms and conditions of service are duly altered by the Government or the Board, as the case may be.

(2) The transfer of the services of any officer or other person employed in the undertakings shall not entitle such officer or other employee to any compensation under this Act and no such claim shall be entertained by any court, tribunal or other authority.

(3) Where the undertakings have established a provident fund, superannuation fund or any other fund for the benefits of the persons employed in such undertakings, the amounts in respect of the officer or other employees whose services have become transferred, by or under this Act to the Government or to the Board, shall, out of the amounts standing as on the appointed day to the credit of such provident fund, superannuation fund or other fund, stand transferred to and vest in the Government or the Board, as the case may be.

(4) The amounts which stand transferred under sub-section (1) to the Government or the Board, as the case may be, shall be dealt with by the Government or the Board, as the case may be in such manner as may be prescribed.

CHAPTER IV STAFF OF THE BOARD

13. *Chief Executive Officer of the Board.*—(1) The Government may, by notification, appoint the Chief Executive Officer of the Board.

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

14. *Controller of Finance and Accounts, officers and employees of the Board.*—(1) The Board shall, with the previous sanction of the Government in writing, appoint a person possessing the qualification such as may be prescribed to be the Controller of Finance and Accounts. The Government may sanction such appointment on such terms and conditions as it thinks fit.

(2) The Board may, with the previous sanction of the Government in writing, create such other posts and appoint on deputation or otherwise such other officers and employees as it considers necessary for the efficient performance of the functions of the Board and determine by regulations their conditions of appointment and service and remuneration payable to them:

Provided that no person shall be appointed as a Pilot at any port who is not for the time being authorised by the Government under the Indian Ports Act, 1908 (Central Act 15 of 1908) to pilot vessels at that port.

(3) Notwithstanding anything contained in this section, the Board may, with the previous approval of the Government in writing, appoint on deputation an employee of the Hydrographic Survey Wing to the Board subject to such usual terms and conditions of deputation as may be issued by Government from time to time.

(4) Save as otherwise provided in this Act, the rules and the regulations made thereunder, the provisions of the Kerala Service Rules, the Kerala State and Subordinate Services Rules, 1958, the Kerala Government Servants' Conduct Rules, 1960 and the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, as amended from time to time, shall *mutatis mutandis* apply to the employees of the Board appointed under this Act.

(5) The amounts standing in the credit of the employees referred to in sub-section (1) of section 12 in any pension, provident fund, gratuity or like funds constituted for them shall be transferred by the Government to the Board along with any accumulated interest due till the appointed day and with the accounts relating to such funds and the Board shall to the exclusion of the Government, be liable for payment of pension, provident fund, gratuity or other like sums as may be payable to such employees at the appropriate time in accordance with the conditions of their service.

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

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

CHAPTER V

PROPERTY AND CONTRACTS

16. *Transfer of assets and liabilities of Government to the Board.*—As from the appointed day, in relation to any port,—

(a) all property, assets and funds and all rights to levy rates vested in the 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 ports, shall be deemed to have been incurred, entered into and engaged to be done by, with or for, the Board;

(c) all non-recurring expenditures incurred by the Government for or in connection with the purposes of the ports 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;

(d) all rates, fees, rents and other sums of money due to the Government in relation to the ports, 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 ports may be continued by or against the Board;

(f) every employee serving under the Government immediately before such day solely or mainly for or in connection with the affairs of non-major ports 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 should have held the same if the Board had not been established and shall continue to do so unless and until his employment in the Board is terminated or until his tenure, remuneration or terms and conditions of service are duly altered by the Board by regulations:

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

Explanation.—For the purpose of this section other than the proviso, the term “Government” means the Directorate of Ports.

17. *Transfer of employees of the Directorate of Ports to the Board.*—Save as otherwise provided in this Act, officers and other employees of the Directorate of Ports shall, on and from the appointed day, become the officers and employees of the Board and shall hold office by the same tenure and upon the same remuneration and terms and conditions of service, and with the same right and privileges as to pension, gratuity and other matters as would have been admissible to them, if the same had not been transferred to the Board, and shall continue to do so unless and until their employment under the Board is duly terminated or until his tenure, remuneration or terms and conditions of service are duly altered by the Board by regulations.

18. *Transfer of accumulation in provident fund and other like funds.*—The sums standing to the credit of the provident fund accounts and to the superannuation funds and other like funds, if any, of the persons referred to in section 17 shall be transferred to the Board by the Directorate of Ports and the liability in respect of the said funds, shall be the liability of the Board.

19. *Existing rates etc., to continue until altered by the Board.*—As from the appointed day, all rates, fees and other charges in relation to any port shall unless and until altered by the Board as per 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.

20. *Repayment of capital with interest.*—The Board shall repay, at each intervals and on such terms and conditions as the Government may determine, the amount which is treated under clause (c) of section 16 as capital provided by the Government, with interest at such rates as may be fixed by the Government and such repayment of capital or payment of interest shall be deemed to be part of the expenditure of the Board.

21. *Procedure when land cannot be acquired by agreement.*—Where any land is required for the purposes of the Board, the Government may, at the request of the Board, procure the acquisition thereof under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) and on payment by the Board of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the Board.

22. *Contracts by the Board.*—With respect to the making of contracts by the Board for the purposes of this Act, the following provisions shall apply, namely:—

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

(b) no contract for the acquisition of sale of immovable property or for the lease or licence 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;

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

(d) the form and the manner of executing contracts on behalf of the Board shall be such as may be prescribed;

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

CHAPTER VI

WORKS AND SERVICES TO BE PROVIDED AT
NON-MAJOR PORTS BY THE BOARD*23. Powers of the Board to execute works and provide appliances.—*

(1) The Board may, subject to any other law for the time being in force, execute such works, within the limits of port and provide such appliances as it may deem necessary or expedient.

(2) Such works and appliances may include,—

(a) wharves, quays, docks, stages, jetties, piers, place of anchorage and other works within the port or port approaches or on the foreshore of the port or port approaches in the State, with all such convenient arches, drains, landing places, stairs, fences, roads, bridges, tunnels and approaches and buildings required for the residence of the employees of the Board as the Board may consider necessary;

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

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

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

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

(h) vessels, tugs, boats, barges and launches and lighters for the use within and beyond the limits of the port, whether in territorial waters or otherwise, for the purpose of towing or rendering assistance to any vessel whether entering or leaving the port or bound elsewhere and for the purpose of saving or protecting life or property and for the purpose of landing, shipping or transshipping passengers or goods under section 27;

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

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

(k) lands abutting the sea coast including creeks;

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

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

(n) dry docks, slipways, boat basins and workshop to carry out repairs or over hauling of vessels, tugs, boats, machinery or other appliances;

(o) carrying out hydrographic survey within the port areas and in other areas as decided by the Board, and providing necessary vessels, equipments and facilities for the same;

(p) container handling facilities.

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

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

25. *Control over fishing vessels.*—Every fishing vessel plying within the non-major ports including channels and basins thereof, shall be subject to the general control of the Board.

26. *Power of Board to order sea-going vessels to use docks, wharves etc.*—(1) Subject to the provisions of section 29 of the Customs Act, 1962 (Central Act 52 of 1962), regarding arrival of vessels and aircrafts in India when any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage 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, by notification published in three consecutive issues of the Official Gazette, declare that such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage is ready for receiving, landing and shipping or for landing or for shipping goods or passengers from and upon sea-going vessels.

(2) As from the date of 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, pier or place of anchorage to order to come alongside of such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage for the purpose of landing and shipping goods or passengers or for landing or for shipping the same, 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.

27. *If accommodation sufficient, all sea-going vessels compelled to use docks, wharves etc.*—When sufficient number of docks, berths, wharves, quays, stages, jetties or piers have been provided at any port or port approaches as aforesaid, the Board may, after obtaining the approval and permission of the proper officer envisaged in section 33 of the Customs Act, 1962 (Central Act 52 of 1962) and by notification published in three consecutive issues of the Official

Gazette, direct that no goods or passengers shall be landed or shipped from or upon any sea-going vessel within the non-major port or port approaches otherwise than at such docks, berths, wharves, quays, stages, jetties or piers, except with the sanction of the Board and in accordance with such conditions as the Board may specify:

Provided that the goods shall be loaded from and unloaded at a place approved under clause (a) of section 8 of the Customs Act, 1962 (Central Act 52 of 1962).

28. *Power to order vessels not to come alongside of, or to be removed from docks, wharves etc.*—Any officer appointed by the Board in this behalf, may, in case of emergency or for any reason which appears to him sufficient, by notice in writing, order the master or owner or agent of any sea-going vessel not to bring such vessel alongside of, or to remove such vessel from any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage belonging to or under the control of the Board and if, such notice is not complied with, the Board may charge in respect of such vessel such sum as it thinks fit, not exceeding ten thousand rupees for each day of twenty four hours or portion of such day, during which such vessel remains at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage:

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

29. *Power of Government to exempt vessels from obligation to use wharves, etc.*—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:

Provided that goods or class of goods are loaded from and unloaded at such places approved under clause (a) of section 8 of the Customs Act, 1962 (Central Act 52 of 1962).

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

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

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

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

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

(ii) while within such limits, to anchor, fasten or lie within twelve nautical miles from the sea shore.

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

31. *Performance of services by the Board or other person.*—(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 dock belonging to or in the possession of the Board;

(b) subject to the regulations made under sub-section (2) of section 141 of the Customs Act, 1962 (Central Act 52 of 1962), 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, re-mooring, hooking or measuring of vessels or any other service in respect of vessels.

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

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

(4) No person authorised under sub-section (3) shall charge or recover for such service any sum in excess of the amount leviable according to the scale framed under sections 32, 33 or 35 of this Act.

(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 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 (Central Act 9 of 1872).

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

32. *Responsibility of the Board for loss, etc., of goods.*—(1) Subject to the restrictions contained in section 45 of the Customs Act, 1962 (Central Act 52 of 1962), on custody and removal of imported goods the responsibility of the Board for the loss, destruction or deterioration of goods of which it has taken charge shall,—

(i) in the case of goods received for carriage by railway, be governed by the provisions of the Railways Act, 1989 (Central Act 24 of 1989); and

(ii) in other cases, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872 (Central Act 9 of 1872):

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

(a) until a receipt mentioned in sub-section (2) of section 31 is given by the Board; and

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

(2) The Board shall not be in anyway responsible for the loss, destruction or deterioration of, or damage to, goods of which it has taken charge, unless notice of such loss or damage has been given within thirty days from the date of taking charge of such goods by the Board under sub-section (2) of section 31.

33. *Accommodation to be provided for officers of Customs in wharves, etc., appointed under Customs Act, 1962.*—(1) Subject to sub-section (2) of section 141 of the Customs Act, 1962 (Central Act 52 of 1962), where the officer authorised under that Act, for the levy of duties of customs, appointed any such dock, berth, wharf, quay, stage, jetty, pier or 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 import thereof without payment of duty, within the meaning of the Customs Act, 1962 (Central Act 52 of 1962), the Board shall set apart and maintain such place on or adjoining such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage or in such warehouses 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 or place of anchorage, warehouse or shed or portion thereof at any port has, under the provisions of sub-section (1), been set apart for the use of the officers of Customs at the port, all rates and other charges payable under this Act in respect thereof or for the storage of goods therein, shall be payable to the Board, or to such person or persons as may be appointed by the Board to receive the same.

34. *Power to permit erection of private wharves, etc., within the limits of a port subject to condition.*—(1) No person shall make, erect or fix within the limits of a port or port approaches any dock, berth, wharf, quay, stage, jetty, pier, place of anchorage, erection or mooring or undertake any reclamation of foreshore within the said limits except with the previous permission in writing of the Board and subject to such terms and conditions if any, as the Board may specify:

Provided that where the previous permission is sought by a Government Department or an undertaking owned or controlled by Government, a decision thereon shall be taken and communicated within sixty days from the date of receipt of such request:

Provided further that where the Board fails to communicate the decision taken thereon within the stipulated time, permission shall be deemed to have been granted to the Government Department or undertaking, as the case may be.

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

35. *Compensation payable in certain cases where use of any private wharf, etc., rendered unlawful.*—(1) Where, as a result of an order published under section 26 or section 27 the use of any wharf, dock, berth, quay, stage, jetty, pier or place of anchorage, made, fixed or erected by any person is rendered unlawful, the Board may, after hearing the person concerned by order, close, remove, fill up or destroy such wharf, dock, berth, quay, stage, jetty, pier or place of anchorage or permit the use thereof to such person on payment of such rates and charges as the Board may, with the previous sanction of the Government, determine.

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

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

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

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

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

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