

C. B. No. 160

LOK SABHA
THE MAJOR PORT TRUSTS BILL, 1962

(Report of the Select Committee)

(Presented on the 13th August, 1963)



LOK SABHA SECRETARIAT
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1. Page 3, line 30, for 'ol' read 'or'	to Select 54
2. Page 16, line 38, after 'landing' insert ','	the Select 55
3. Page 20, (i) line 7, for 'forms' read 'form'	the Select 56
(ii) marginal heading to clause 43, omit 'any'	56
4. Page 21, line 37, for 'berth' read ' <u>beath</u> '	57
5. Page 22, line 9, for 'costruction' read 'construction'	
6. Page 24, marginal heading to clause 52, for 'cond ons' read 'conditions'	

P.T.O.

7. Page 29, marginal heading to clause 65.
for 'rate' read 'rates'

8. Page 41, line 12.
for 'therefore' read 'therefor'

9. Page 46, marginal heading to clause 114.
after 'quays,' insert 'etc.,'

New Delhi;

The 17th August, 1963

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THE MAJOR PORT TRUSTS BILL, 1962

Composition of the Select Committee

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

2. Shri Tridib Kumar Chaudhuri
3. Shri Sudhansu Bhushan Das
4. Shri Shivajirao S. Deshmukh
5. Dr. P. D. Gaitonde
6. Shri V. B. Gandhi
7. Shri Indrajit Gupta
8. Shri Himmatsinhji
9. Shri P. G. Karuthiruman
10. Shri Lahri Singh
11. Shri Rama Chandra Mallick
12. Shri Niranjana Lall
13. Shri Raghunath Singh
14. Shri Raj Bahadur
15. Shri C. R. Raja
16. Shri M. Thirumala Rao
17. Shri H. Siddananjappa
18. Dr. L. M. Singhvi
19. Shri Ravindra Varma
20. Shri Vishram Prasad
21. Shri Jagjivan Ram.

DRAFTSMAN

Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

REPORT OF THE SELECT COMMITTEE

I, the Chairman of the Select Committee to which the Bill* to make provision for the constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith was referred, having been authorised to submit the report on their behalf present their Report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in Lok Sabha on the 23rd November, 1962. The motion for reference of the Bill to a Select Committee was moved by Shri Raj Bahadur, Minister of Shipping in the Ministry of Transport and Communications, on the 8th December, 1962; and was adopted on the same day (Appendix I).

3. The Committee held seven sittings in all.

4. The first sitting of the Committee was held on the 12th December, 1962, to draw up a programme of work. The Committee at this sitting decided to hear evidence from associations etc. and to issue a press communique inviting memoranda for the purpose. The Chairman was authorised to decide, after examining the memoranda submitted by the associations as to which of them should be called upon to give oral evidence before the Committee.

5. The Report of the Committee was to be presented by the first day of the Fourth Session. As this could not be done, the Committee, at their second sitting held on the 25th January, 1963 decided to ask for an extension of time for presentation of their report upto the first day of the Fifth Session. Necessary motion was brought before the House and adopted on the 18th February, 1963.

6. Ten memoranda/representations on the Bill were received by the Committee from different associations and public bodies as mentioned in Appendix II.

7. At their Third and Fourth Sittings held on the 30th March and 4th June, 1963, respectively, the Committee heard the evidence given by the representatives of three associations and one Port Trust specified in Appendix III.

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 23rd November, 1962.

8. The Committee have decided that the evidence given before them should be laid on the Table of the House *in extenso*.

9. The Committee considered the Bill clause by clause at their Fourth, Fifth and Sixth Sittings held on the 4th, 5th and 7th June, 1963.

10. The Committee considered and adopted the report on the 9th August, 1963.

11. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

12. *Clause 2*—The amendments made to the clause are of drafting nature.

13. *Clause 3*.—The Committee are of the view that the number of persons to be elected to a Board of Trustees by State or local bodies representing commercial, shipping or local interests should not exceed twelve so that parity is maintained between elected and nominated members.

The clause has been amended accordingly.

14. *Clause 4*.—The amendment made to sub-clause (1) (c) is consequential to the amendment to clause 3.

The other amendment is of drafting nature.

15. *Clause 5*.—The Committee feel that the proviso to the clause is redundant in view of the second proviso to sub-clause (1) of clause 34 and as such could be omitted.

The clause has been amended accordingly.

16. *Clause 8*.—The Committee are of the opinion that the proper procedure would be for a Trustee to give notice of resignation to the Chairman who should forward the same to the Government.

The clause has been amended accordingly.

17. *Clause 10*.—The Committee are of the view that if the normal term of office of the vacating Trustee is due to expire within three months, no useful purpose would be served by filling up the vacancy for such a short duration.

The clause has been amended accordingly.

18. *Clauses 13, 21 and 22.*—The amendments made to the clauses are of drafting and verbal nature.

19. *Clauses 24 and 25.*—The Committee consider that—

- (1) the power of disposing of questions relating to service matters of a Head of a Department or an employee appointed by the Board should be exercised by the Board subject to any order involving extension of service, suspension, reduction in rank, removal or dismissal of a Head of a Department taking effect only after approval by the Central Government, but in the case of any other post a certain measure of decentralisation of authority is desirable; and
- (2) employees (other than Heads of Departments in whose case approval of the Central Government would be necessary under the proviso to sub-clause (1) of amended clause 25, before an order for their reduction in rank etc. could take effect) should have a right of appeal against an order involving reduction in rank, removal or dismissal.

The clauses have been amended to carry out this intention. The other amendments are of a drafting nature.

20. *Clause 28.*—The Committee consider it desirable to make clear that the Board would have the power to make regulations for any alteration that may be necessary in respect of tenure, remuneration or terms and conditions of service of the existing port employees after they become employees of the Board.

A new sub-clause (c) has been added accordingly.

The addition of new sub-clause (d) is consequential to the amendment to clause 25.

21. *Clause 29.*—The Committee feel that provision should be made in the clause to forestall any possible demand for compensation under the Industrial Disputes Act, 1947, or any other law by any port employee serving under the Central Government or other authority on the transfer of his service to the Board under this clause.

The clause has been amended accordingly.

The other amendments are of a drafting nature.

22. *Clauses 37, 38, 41 and 44.*—The clauses have been amended with a view to bring them in line with the provisions of the Customs Act, 1962.

23. *Clause 42*—The Committee are of the opinion that, where it is not possible for the Board to undertake any of the services mentioned in the clause, the Board should have the power to authorise any person to perform such services on agreed terms and conditions.

The clause has been amended accordingly.

24. *Clauses 45 and 47*—The amendments made to the clauses are of a drafting nature.

25. *Clause 48*—The amendment made to the clause is consequential to the amendment to clause 42.

26. *Clauses 51, 53, 61 and 62*—The amendments made to the clauses are of drafting and clarificatory nature.

27. *Clause 63*—The Committee feel that it will not be desirable to provide in this Bill that the proceeds of sale under clause 61 or clause 62 may be applied in payment of dues outstanding in favour of the Board in respect of any *other* goods belonging to the same importer, owner or consignee. Dues outstanding in respect of such *other* goods should more appropriately be recovered by separate independent action. The Committee also consider that sub-clause (1) does not specifically refer to confiscated goods and, therefore, reference to such goods in sub-clause (2) would be inappropriate.

The clause has been amended accordingly.

28. *Clauses 68, 97, 99 and 104*.—The amendments made to the clauses are of drafting nature.

29. *Clause 115*.—The clause has been re-drafted to make the intention clear. It has now been made more comprehensive to cover other methods that may be resorted to for evasion of rates.

30. *Clauses 120 and 121*.—The Committee are of the opinion that the protection granted by these clauses should extend to members of the Board also.

The clauses have been amended accordingly.

31. *Clauses 122 and 123*.—The amendments made to the clauses are of drafting and clarificatory nature.

32. *Clause 124*.—The Committee feel that the regulations framed under clause 28 should also be published in the Official Gazette prior to their approval by the Central Government so as to enable the employees to express their opinion on the terms and conditions of service.

The clause has been amended accordingly.

The other amendments are of drafting nature.

(viii)

33. *Clauses 125, 127 and 130*—The amendments made to the clauses are of drafting and clarificatory nature.

34. The Select Committee recommend that the Bill as amended be passed.

S. V. KRISHNAMOORTHY RAO,

NEW DELHI;
The 9th August, 1963.

*Chairman,
Select Committee.*

Minute of Dissent

Clause 3 provides that the Central Government shall cause to be constituted in respect of any major port a Board of Trustees, to be called the 'Board of Trustees' of the port, which will represent various interests. Not more than ten persons are to be appointed by the Central Government from amongst the persons, who are, in its opinion, capable of representing labour in the port, Mercantile Marine Department, Customs, State Government, Defence Services, the Indian Railways and such other interest as, in the opinion of the Central Government, ought to be represented on the Board. It also provides that not more than 12 persons are to be elected by such State or local bodies representing commercial, shipping or local interests as the Central Government may from time to time specify.

It is surprising that in the composition of the Board of Trustees for a major port, no specific provision is made for non-official central interests. It is difficult to understand why, when States and local bodies have been given representation on the Board, an important section of the Central Government has been omitted altogether. Moreover, in spite of the fact that major ports are a central subject and are financed, partially or totally by the Central Government, no representation is provided for Parliament. As is well known, major ports provide for a very large proportion of the foreign trade of the country involving, from time to time, major international issues. Further, the efficiency of the port as a means of growth of international trade, comprising particularly the export trade of the country, necessitates that the legislative wing of the Central Administration should be adequately represented on the Board. It is, therefore, suggested that provision should be made for two members from Lok Sabha and one from Rajya Sabha to represent Parliament on the Board.

The Bill has also departed from the principle embodied in the existing Port Trust Acts of Bombay, Calcutta and Madras of specifically providing for two representatives of labour to be included in the Board of Trustees. The present Bill, in clause 3(1) (c), does away with this minimum assured representation of labour, and leaves the whole question entirely at the discretion of the Central Government. Thus, in any future Board of Trustees of a major port, labour may

(x)

have only one representative or, conceivably, none at all. This is an undesirable state of affairs, particularly in view of the reality that--

- (a) the major ports, together with their labour force, are expected to expand rapidly;
- (b) in every port, there are generally several registered trade unions, and more than one of them can claim to have a representative character; and
- (c) it is the policy of the existing Port Trusts to grant recognition to more than one union in each port.

The practical experience of Calcutta, Bombay and Madras demonstrates that, because of the above-stated realities, even the existing provision in their Acts for two representatives of labour is often inadequate to meet the requirements of the situation and only stimulates unhealthy inter-union rivalries leading to labour unrest.

Hence, even assuming that the ports of Cochin, Visakhapatnam and Kandla at present employ fewer workers than are employed at the older major ports, we strongly feel that the present Bill should specifically provide for not less than two representatives of labour to be nominated on each Board of Trustees. There is no justification for leaving a loophole whereby labour's quota is encroachable upon by "other interests".

It is a pity that the Select Committee could not visit any of the ports for on-the-spot study of the problems faced by the Port Trusts in their functioning.

New DELHI;

The 18th August, 1963.

RAGHUNATH SINGH
INDRAJIT GUPTA.

THE MAJOR PORT TRUSTS BILL, 1962

ARRANGEMENT OF CLAUSES

CLAUSES

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THE MAJOR PORT TRUSTS BILL, 1962

(AS REPORTED BY THE SELECT COMMITTEE)

(Words underlined or sidelined indicate the amendments suggested by the Committee; asterisks indicate omissions)

A

BILL

to make provision for the constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5 1. (1) This Act may be called the Major Port Trusts Act, 1963. Short title, commencement and application.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- (3) It applies in the first instance to the major ports of Cochin, Kandla and Vishakhapatnam, and the Central Government may, by
10 notification in the Official Gazette, apply the provisions of this Act to such other major port (not being the major port of Bombay, Calcutta or Madras), and with effect from such date, as may be specified in the notification.
2. In this Act, unless the context otherwise requires,— Definitions.
- 15 (a) “appointed day”, in relation to a port, means the date on which this Act is made applicable to that port;

(b) "Board", in relation to a port, means the Board of Trustees constituted under this Act for that port;

(c) "Chairman" means the Chairman of a Board and includes the person appointed to act in his place under section 14;

(d) "Collector of Customs" has the same meaning as in the Customs Act, 1962;

5
52 of 1

(e) "Deputy Chairman" means the Deputy Chairman of a Board and includes the person appointed to act in his place under section 14;

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

15

(g) "foreshore", in relation to a port, means the area between the high-water mark and the low-water mark relating to that port;

(h) "goods" includes livestock and every kind of movable property;

20

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

(j) "Indian Ports Act" means the Indian Ports Act, 1908;

15 of 19

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

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

30

(m) "major port" has the same meaning as in the Indian Ports Act;

(n) "master", in relation to any vessel or any aircraft making use of any 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, assistant harbour master, dock master or berthing master of the port;

35

(o) "owner", (i) in relation to goods, includes any consignee, consignee, shipper or agent for the sale, custody, loading or unloading of such goods; and (ii) in relation to any vessel or any aircraft making use of any port, includes any part-owner, charterer, consignee, or mortgagee in possession thereof;

40

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

5 (q) "port" means any major port to which this Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of this Act by notification in the Official Gazette, and, until a notification is so issued, within such limits as may have been defined by the Central Government under the provisions of the Indian Ports Act;

10 (r) "port approaches", in relation to a port, means those parts of the navigable rivers and channels leading to the port, in which the Indian Ports Act is in force;

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

(t) "prescribed" means prescribed by rules or regulations made under this Act;

20 (u) "public securities" means—

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

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

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

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

35 (w) "regulations" means regulations made * * * under this Act;

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

(y) "Trustee", in relation to a port, means a member of the Board constituted for the port;

(z) "vessel" includes a caisson;

(za) "wharf" includes any wall or stage and any part of the land or foreshore that may be used for loading or unloading goods, 5 or for the embarkation or disembarkation of passengers and any wall enclosing or adjoining the same.

CHAPTER II

BOARD OF TRUSTEES AND COMMITTEES THEREOF

Constitution
of Board of
Trustees.

3. (1) With effect from such date as may be specified by notification in the Official Gazette, the Central Government shall cause to be constituted in respect of any major port a Board of Trustees to be called the Board of Trustees of that port, which shall consist of the following Trustees, namely:—

(a) a Chairman to be appointed by the Central Government; 15

(b) a Deputy Chairman, if the Central Government deems fit to appoint one;

(c) not more than ten persons to be appointed by the Central Government from amongst persons who are in its opinion capable of representing— 20

(i) labour employed in the port;

(ii) the Mercantile Marine Department;

(iii) the Customs Department;

(iv) the Government of the State in which the port is situated; 25

(v) the Defence Services;

(vi) the Indian Railways; and

(vii) such other interests as, in the opinion of the Central Government, ought to be represented on the Board:

Provided that before appointing any person under sub-clause 30 (i), the Central Government shall obtain the opinion of the trade unions, if any, composed of persons employed in the port and registered under the Indian Trade Unions Act, 1926;

16 of 1926.

(d) not more than twelve persons to be elected by such State or local bodies representing commercial, shipping or local 35 interests as the Central Government may, from time to time, by notification in the Official Gazette, specify.

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

(3) Every notification issued under clause (d) of sub-section (1) may also specify the number of Trustees that each of the bodies referred to in that clause may elect.

(4) The election of Trustees under clause (d) of sub-section (1) shall be held within such period as may, from time to time, be specified by the Central Government.

(5) The chief executive authority of every electing body shall communicate forthwith to the Central Government the result of any election held in pursuance of sub-section (4).

(6) The names of persons appointed or elected as Trustees shall be notified by the Central Government in the Official Gazette.

4. (1) Notwithstanding anything contained in section 3, the Central Government may, by notification in the Official Gazette, constitute in respect of any major port the first Board of Trustees thereof consisting of—

(a) a Chairman to be appointed by the Central Government;

(b) a Deputy Chairman, if the Central Government deems fit to appoint one; and

(c) such number of other Trustees, not exceeding twenty-two, as that Government may deem expedient, to be appointed by that Government from amongst persons who are in its opinion capable of representing,—

(i) labour employed in the port;

(ii) Government of the State in which the port is situated;

(iii) Government departments specified in sub-clauses (ii), (iii), (v) and (vi) of clause (c) of sub-section (1) of section 3; and

(iv) such other interests as, in the opinion of the Central Government, ought to be represented on the Board.

(2) Subject to the provisions of sub-section (3), the persons appointed as Trustees under sub-section (1) shall hold office during the pleasure of the Central Government.

(3) On the constitution of the Board under section 3, the first Board of Trustees shall cease to exist. * * * *

Board to be
body cor-
porate.

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

5

* * * * *

Disqualifi-
cation for
office of
Trustee.

6. A person shall be disqualified for being chosen as a Trustee, if he—

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) holds any office of profit under the Board:

Provided that this disqualification shall not apply to the Chairman or Deputy Chairman;

15

(d) has, directly or indirectly, any share or interest in any work done by order of the Board, or in any contract or employment, with, by, or on behalf of the Board:

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

(i) having a share in any company or firm which may contract with or be employed by or on behalf of the Board, or

(ii) having a share or interest in any newspaper in which any advertisement relating to the affairs of the Board may be inserted, or

(iii) being interested in any loan of money to the Board, or

(iv) having a share or interest in any lease, sale, exchange or purchase of immovable property or any agreement for the same, or

(v) having a share or interest in any licence by the Board, or right by agreement or otherwise with the Board to the sole or preferential use of any railway siding or any berth for vessels in the docks belonging to the Board, or

(vi) having a share or interest in the occasional sale to the Board, to a value not exceeding ten thousand rupees in any one financial year, of any article in which he trades.

7. (1) The Chairman and the Deputy Chairman shall hold office during the pleasure of the Central Government. Term of office of Trustees.

(2) Subject to the provisions of this Act,—

5 (a) every person elected or appointed by name to be a Trustee shall hold office to which he is elected or so appointed, for a term of two years commencing on the 1st day of April next following his election or appointment, as the case may be:

10 Provided that the term of office of a member elected to represent any body of persons shall come to an end as soon as he ceases to be a member of that body;

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

15 8. (1) The Central Government shall remove a Trustee if he— Vacation of office of Trustees.
(a) becomes subject to any of the disqualifications mentioned in section 6; or

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

20 (c) is, without the permission of the Board previously obtained, absent from six consecutive ordinary meetings of the Board; or

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

(e) acts in contravention of the provisions of section 19.

25 (2) A Trustee may resign his office by giving notice in writing to the Chairman who shall forward the same to the Central Government, and on such resignation being accepted by that Government he shall be deemed to have vacated his office.

30 9. Any person ceasing to be a Trustee shall, unless disqualified under section 6, be eligible for re-appointment or re-election. Eligibility of Trustee for re-appointment or re-election.

10. (1) In the case of a vacancy in the office of a Trustee appointed by name or an elective Trustee caused by the expiration of the term of office of such Trustee, the appointment to fill such vacancy shall be made or an election to fill such vacancy shall be completed, Filling of vacancies in office of Trustee.

as the case may be, within two months immediately preceding the date of expiration of such term.

(2) In the case of a vacancy in the office of a Trustee appointed by the Central Government by virtue of an office, the appointment to fill such vacancy shall be made within one month of the occurrence of such vacancy. 5

(3) In the case of a casual vacancy in the office of a Trustee appointed by name or an elective Trustee caused by the death of such Trustee or by virtue of the provisions of section 8, such vacancy shall be filled within one month of the occurrence thereof by appointment 10 or election, as the case may be, in the manner hereinbefore specified:

Provided that the Trustee so appointed or elected shall retain his office so long only as the vacating Trustee shall have retained the same if such vacancy had not occurred: 5

Provided further that no such casual vacancy occurring within 15 three months of the date of expiry of the normal term of office of the vacating trustee shall be filled up under this sub-section.

11. Nothing in the foregoing provisions shall prevent a person being appointed by the Central Government to fill any vacancy in the office of a Trustee appointed by the Central Government after 20 the expiration of the period specified in section 10, if for any reason it has not been possible for the Central Government to make the appointment within the said period.

12. (1) If the Central Government is satisfied that an electing body has failed to elect a Trustee within the period specified therefor 25 in sub-section (4) of section 3 or section 10 for reasons beyond its control, the Central Government may, by notification in the Official Gazette, direct that the election shall be held on or before such date as may be specified in the notification.

(2) In the event of default being made in electing any Trustee 30 within the period specified therefor under sub-section (4) of section 3 or under section 10, or as the case may be, on or before the date specified in the notification issued under sub-section (1), it shall be lawful for the Central Government to appoint a person by notification in the Official Gazette and the person so appointed shall be 35 deemed to be an elective Trustee.

13. Where a Trustee is appointed under section 11 or under sub-section (2) of section 12 or elected in pursuance of a direction issued under sub-section (1) of section 12, the term of office of such Trustee

Term of office in case of certain Trustees.

Saving provision for appointment of Trustee by Central Government after prescribed period.

Power of Central Government to extend time for election or appoint Trustees in default of election.

shall commence on the date on which his appointment or election, as the case may be, is notified in the Official Gazette and shall expire on the date on which his term of office would have expired if his appointment or election had been made within the period specified under * * * * section 10, or, as the case may be, under sub-section (4) of section 3.

14. If the Chairman or the Deputy Chairman is, by infirmity or otherwise, rendered incapable of carrying out his duties or is absent on leave or otherwise, in circumstances not involving the vacation of his appointment, or is sent on deputation outside India for any of the purposes of this Act, the Central Government may appoint another person to act in his place during his absence:

Absence of
Chairman
and Deputy
Chairman.

Provided that the Chairman or the Deputy Chairman, while on deputation outside India may, if the Central Government by order so directs and subject to such conditions and restrictions as may be specified in that order, exercise such of the powers and perform such of the duties conferred or imposed on the Chairman or the Deputy Chairman, as the case may be, by or under this Act as he may deem necessary, and the Chairman or Deputy Chairman while exercising such powers and performing such duties shall be deemed to be a Trustee notwithstanding anything to the contrary contained in this Act.

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

Conditions
of service
of Chairman
and Deputy
Chairman.

16. (1) A Board shall meet at such times and places and shall, subject to the provisions of sub-sections (2), (3) and (4), observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by rules made under this Act.

Meetings of
Board.

(2) The Chairman or, in his absence, the Deputy Chairman, and in the absence of both, any person chosen by the Trustees present from among themselves, shall preside at meetings of the Board.

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

(4) No business shall be transacted at any meeting of the Board unless not less than five Trustees are present throughout such meeting.

Committees
of Board.

17. (1) A Board may, from time to time, constitute from amongst the Trustees one or more committees, each consisting of such number as the Board may consider necessary, for the purpose of discharging such of its functions as may be delegated to such committee or committees by the Board.

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(2) A committee constituted under this section shall meet at such times and at such places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum) as may be provided by regulations made under this Act.

10

Fees and
allowances
payable to
Trustees.

18. The Trustees shall be paid by the Board such fees and allowances for attending the meetings of the Board or of any of its committees and for attending to any other work of the Board as may be provided by rules made under this Act:

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

15

Restriction
of power of
Trustees
to vote in
certain cases.

19. No Trustee shall vote or take part in the discussion of any matter coming up for consideration at a meeting of the Board or any of its committees if the matter is one in which he has any direct or indirect pecuniary interest by himself or his partner, or in which he is interested professionally on behalf of a client or as agent for any person other than the Government or a local authority or a trade union registered under the Indian Trade Unions Act, 1926.

20

16 of 1926.

Defects in
appointments
or election not
to invalidate
acts, etc.

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

25

(a) any vacancy therein or any defect in the constitution thereof, or

(b) any defect in the election or appointment of a person as a member thereof, or

(c) any Trustee having acted or taken part in any proceedings in contravention of section 19, or

30

(d) any irregularity in its procedure not affecting the merits of the case.

Delegation
of powers.

21. A Board may, with the approval of the Central Government, specify—

35

(a) the powers and duties conferred or imposed upon the Board by or under this Act, which may also be exercised or performed by the Chairman; and

(b) the powers and duties conferred or imposed on the Chairman by or under this Act, which may also be exercised or performed by the Deputy Chairman or any officer of the Board and the conditions and restrictions, if any, subject to which such powers and duties may be exercised and performed:

Provided that any powers and duties conferred or imposed upon the Deputy Chairman or any officer of the Board under clause (b) shall be exercised and performed by him subject to the supervision and control of the Chairman.

22. (1) It shall be the duty of the Chairman and the Deputy Chairman to attend every meeting of the Board unless prevented by sickness or other reasonable cause.

Duties of Chairman and Deputy Chairman.

(2) The Chairman shall, as soon as possible, transmit to the Central Government a copy of the minutes of every meeting of the Board and shall furnish to that Government such reports, returns, documents or other information as it may, from time to time, call for.

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

CHAPTER III

STAFF OF THE BOARD

23. A Board shall, from time to time, prepare and sanction a Schedule of the employees of the Board whom it deems necessary and proper to maintain for the purposes of this Act and such Schedule shall indicate therein the designations and grades of employees and the salaries, fees and allowances which are proposed to be paid to them.

Schedule of Board's staff.

24. (1) Subject to the provisions of the Schedule for the time being in force sanctioned by a Board under section 23, the power of appointing any person to any post, whether temporary or permanent, shall—

Power to make appointments.

(a) in the case of a post the incumbent of which is to be regarded as the Head of a department, be exercisable by the Central Government after consultation with the Chairman;

(b) in the case of * * * * * a post [other than a post referred to in clause (a)] the maximum of the pay-scale for which (exclusive of allowances) exceeds such amount as the Central Government may, from time

(c) to the Chairman, in any other case:

5 | Provided that where the person who passed the order becomes, by virtue of his subsequent appointment as the Chairman, the appellate authority in respect of the appeal against the order, such person shall forward the appeal to the Board and the Board in relation to that appeal shall be deemed to be the appellate authority for the purposes of this section.

10 | 26. A Board may appoint any person as Consulting Engineer to the Board otherwise than on the basis of payment of a monthly salary, but every such appointment shall be subject to the sanction of the Central Government. Consulting Engineer to Board.

15 | 27. Notwithstanding anything contained in section 23, no post other than a post referred to in clause (c) of sub-section (1) of section 24 shall be created except with the sanction of the Central Government. Sanction of Central Government necessary in case of creation of certain posts.

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

(a) the appointment, promotion, suspension, removal and dismissal of its employees;

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

25 | (c) the terms and conditions of service of persons who become employees of the Board under clause (f) of sub-section (1) of section 29;

(d) the time and manner in which appeals may be preferred under sub-section (2) of section 25 and the procedure for deciding such appeals;

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

CHAPTER IV

PROPERTY AND CONTRACTS

35 | 29. (1) As from the appointed day in relation to any port— Transfer of assets and liabilities of Central Government, etc., to Board.

(a) all property, assets and funds vested in the Central Government or, as the case may be, any other authority for the purposes of the port immediately before such day, shall vest in the 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 Central Government or, as the case may be, the other authority immediately before such day, for or in connection with the purposes of the port, shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Board;

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

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

(e) all suits and other legal proceedings instituted * * * *** by or against the Central Government or, as the case may be, the other authority immediately before such day for any matter in relation to the port may be continued *** by or against the Board;

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

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

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

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

Existing rates, etc., to continue until altered by Board.

31. A Board shall repay, at such intervals and on such terms and conditions as the Central Government may determine, the amount of capital provided under clause (c) of sub-section (1) of section 29 with interest at such rate as may be fixed by that Government and such repayment of capital or payment of interest shall be deemed to be part of the expenditure of the Board.

Repayment of capital with interest.

32. Whenever any immovable property which is required for the purposes of the Board cannot be acquired by agreement, the Central Government may, at the request of the Board, procure the acquisition thereof under the provisions of the Land Acquisition Act, 1894, 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.

Procedure when immovable property cannot be acquired by agreement.

33. Subject to the provisions of section 34, a Board shall be competent to enter into and perform any contract necessary for the performance of its functions under this Act.

Contracts by Board.

34. (1) Every contract shall, on behalf of a Board, be made by the Chairman and shall be sealed with the common seal of the Board:

Mode of executing contracts on behalf of Board.

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

Provided further that no contract for the acquisition or sale of immovable property or for the lease of any such property for a term exceeding thirty years, and no other contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf, shall be made unless it has been previously approved by the Central Government.

(2) Subject to the provisions of sub-section (1), the form and manner in which any contract shall be made under this Act shall be such as may be prescribed by regulations made in this behalf.

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

CHAPTER V

WORKS AND SERVICES TO BE PROVIDED AT PORTS

Power of Board to execute works and provide appliances.

35. (1) A Board may execute such works within or without the limits of the port and provide such appliances as it may deem necessary or expedient. 5

(2) Such works and appliances may include—

(a) wharves, quays, docks, stages, jetties, piers and other works within the port or port approaches or on the foreshore of the port or port approaches, with all such convenient arches, drains, landing places, stairs, fences, roads, railways, bridges, tunnels and approaches and buildings required for the residence of the employees of the Board as the Board may consider necessary; 10

(b) buses, railways, locomotives, rolling stock, sheds, hotels, warehouses and other accommodation for passengers and goods and other appliances for carrying passengers and for conveying, receiving and storing goods landed, or to be shipped or otherwise; 15

(c) moorings and cranes, scales and all other necessary means and appliances for loading and unloading vessels; 20

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

(e) such breakwaters and other works as may be expedient for the protection of the port; 25

(f) dredgers and other machines for cleaning, deepening and improving any portion of the port or port approaches or of the foreshore of the port or port approaches;

(g) lighthouses, lightships, beacons, buoys, pilot boats and other appliances necessary for the safe navigation of the port and of the port approaches; 30

(h) vessels, tugs or other boats for use within the limits of the port or beyond those limits, whether in territorial waters or otherwise, for the purpose of towing or rendering assistance to any vessel, whether entering or leaving the port or bound elsewhere, and for the purpose of saving or protecting life or property and for the purpose of landing, shipping or transhipping passengers or goods under section 42; 35

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

5 (j) engines and other appliances necessary for the extinguishing of fires.

36. A 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. Power of Board to undertake certain works.

10 37. (1) When any dock, berth, wharf, quay, stage, jetty or pier erected at any port or port approaches under the provisions of this Act has been completed with sufficient warehouses, sheds and appliances for receiving, landing or shipping goods or passengers from and upon sea-going vessels, the Board may, after obtaining the Power of Board to order sea-going vessels to use docks, wharves, etc.
15 approval of the Collector of Customs and by notification published in three consecutive issues of the Official Gazette, declare that such dock, berth, wharf, quay, stage, jetty or pier is ready for receiving, landing and shipping or for landing or for shipping goods or passengers from and upon sea-going vessels.

20 (2) As from the date of the publication of such notification for the third time, it shall be lawful for the Board, from time to time, when there is room at such dock, berth, wharf, quay, stage, jetty or pier, to order to come alongside of such dock, berth, wharf, quay, stage, jetty or pier for the purpose of landing and shipping goods or
25 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:

30 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 or pier:

35 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.

If accommoda-
tion suffi-
cient, all
sea-going
vessels com-
pelled to use
docks,
wharves,
etc.

38. When a 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 of the Collector of Customs and by notification published in three consecutive issues of the Official Gazette, direct that no goods or passengers shall be landed or shipped from or upon any sea-going vessel within the port or port approaches otherwise than at such docks, berths, wharves, quays, stages, jetties or piers, except with the sanction of the Board and in accordance with such conditions as the Board may specify.

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

39. Any officer appointed by the Board in this behalf may, in cases of emergency or for any reason which appears to him sufficient, by notice in writing, order the master or owner or agent of any sea-going vessel not to bring such vessel alongside of, or to remove such vessel from, any dock, berth, wharf, quay, stage, jetty or pier 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 one 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 or pier:

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

Power of
Central
Government
to exempt
from obliga-
tion to use
docks, whar-
ves, etc.

40. Notwithstanding anything contained in sections 37 and 38, the Central 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 Central Government may think fit.

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

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

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

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

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

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

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

(3) If after the publication of such order, any such vessel shall, while within the limits so specified, 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.

42. (1) A Board shall have power to undertake * * * the following services:—

Performanc
of services
by Board o
other perso:

(a) landing, shipping or transshipping passengers and goods between vessels in the port and the wharves, piers, quays or docks belonging to or in the possession of the Board;

(b) receiving, removing, shifting, transporting, storing or delivering goods brought within the Board's premises;

(c) carrying passengers by rail or by other means within the limits of the port or port approaches, subject to such restrictions and conditions as the Central Government may think fit to impose; and

(d) receiving and delivering, transporting and booking and despatching goods originating in the vessels in the port and intended for carriage by the neighbouring railways, or *vice versa*, as a railway administration under the Indian Railways Act, 1890.

(2) A 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, with the previous sanction of the Central Government, 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 section 48 or section 49 or section 50.

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

(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. 10 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 transhipped. 15

Responsibility of any Board for loss, etc., of goods. 43. (1) Subject to the provisions of this Act the responsibility of any Board for the loss, destruction or deterioration of goods of which it has taken charge shall,— 20

(i) in the case of goods received for carriage by railway, be governed by the provisions of the Indian Railways Act, 1890; and 9 of 1890.

(ii) in other cases, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872, omitting the words "in the absence of any special contract" in section 152 of that Act: 25 9 of 1872.

Provided that no responsibility under this section shall attach to the Board until a receipt mentioned in sub-section (2) of section 42 is given by the Board.

(2) A Board shall not be in any way responsible for the loss, destruction or deterioration of, or damage to, goods of which it has taken charge, unless notice of such loss or damage has been given within such period as may be prescribed by regulations made in this behalf from the date of the receipt given for the goods under sub-section (2) of section 42. 30

Accommodation to be provided for customs officers in wharves, etc., appointed under Customs Act. 44. Where the Collector of Customs has, under the provisions of any Act for the levy of duties of customs, appointed any dock, berth, wharf, quay, stage, jetty, pier, warehouse or shed or a portion of any warehouse or shed provided at any port under the provisions of this Act for the use of sea-going vessels to be an approved place for the landing or shipping of goods or a warehouse for the storing of dutiable goods on the first importation thereof without payment of duty. 35 40

within the meaning of the first-mentioned Act, the Board shall set apart and maintain such place on or adjoining such dock, wharf, quay, stage, jetty or pier, or in such warehouse or shed or portion thereof, for the use of officers of customs as may be necessary.

5 45. Notwithstanding that any dock, berth, wharf, quay, stage, jetty, pier, warehouse or shed or portion thereof at any port has, under the provisions of section 44, 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
10 therein, shall be payable to the Board, or to such person or persons as may be appointed by the Board to receive the same.

Dues at customs wharves, etc.

15 46. (1) No person shall make, erect or fix within the limits of a port or port approaches any wharf, dock, quay, stage, jetty, pier, erection or mooring except with the previous permission in writing of the Board and, subject to such conditions, if any, as the Board may specify.

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

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

25 47. (1) Where, as a result of an order published under section 38 or section 41, the use of any wharf, dock, berth, quay, stage, jetty or pier, * * * * 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 or pier, * * * or permit the use thereof to such person on payment of such * * rates and charges as the
30 Board may, with the previous sanction of the Central Government, determine.

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

(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
35 sub-section (1).

(3) If it is proved to the satisfaction of the Board that any such wharf, dock, berth, quay, stage, jetty or pier, * * * * was made, fixed or erected by any person with the previous permission of the authority competent to grant such permission, he shall be
40 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 or pier * * * provided by the Board; 5

(b) the amount of compensation shall be calculated with reference to the cost of construction of such wharf, dock, berth, quay, stage, jetty or pier; * * * 10

(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 Central Government shall appoint as arbitrator, a person who is, or has been, or is qualified for appointment as, a Judge of a High Court; 15

(e) the Central 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; 20

(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; 25

(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; 30

(h) where there is a dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof among such persons; 35

(i) nothing in the Arbitration Act, 1940 shall apply to arbitrations under this section; 10 of 194

(j) the arbitrator appointed under this section, while holding arbitration proceedings under this Act, shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely:— 40 5 of 1908.

(i) summoning and enforcing the attendance of any person and examining him on oath; 45

(ii) requiring the discovery and production of documents;

(iii) receiving evidence on affidavits;

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

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

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

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

CHAPTER VI

IMPOSITION AND RECOVERY OF RATES AT PORTS

20 48. (1) Every Board shall from time to time frame a scale of rates at which, and a statement of the conditions under which, any of the services specified hereunder shall be performed by itself or any person authorised under section 42 at or in relation to the port or port approaches—

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

25 (a) transhipping of passengers or goods between vessels in the port or port approaches;

30 (b) landing and shipping of passengers or goods from or to such vessels to or from any wharf, quay, jetty, pier, dock, berth, mooring, stage or erection, land or building in the possession or occupation of the Board or at any place within the limits of the port or port approaches;

(c) crantage or portorage of goods on any such place;

(d) wharfage, storage or demurrage of goods on any such place;

35 (e) any other service in respect of vessels, passengers or goods, excepting the services in respect of vessels for which fees are chargeable under the Indian Ports Act.

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

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

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

5

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

(b) entering upon or plying for hire at or on any wharf, quay, pier, dock, land, building, road, bridge or place as aforesaid by animals or vehicles carrying passengers or goods;

10

(c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;

(d) any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.

15

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

Consolidated rates for combination of services.

50. A Board may, from time to time, frame a consolidated scale of rates for any combination of the services specified in section 48 or for any combination of such service or services with any user or permission to use any property belonging to or in the possession or occupation of the Board, as specified in section 49.

20

Power to levy concessional rates in certain cases.

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

25

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

52 of 1962

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

30

(b) other goods, in special cases.

Prior sanction of Central Government to rates and conditions.

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

35

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

Exemption from, and remission of, rates or charges.

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

Power of Central Government to require modification or cancellation of rates.

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

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

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

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

Refund of overcharges.

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

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

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

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

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

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

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

Board not to lease rates without sanction. 57. A Board shall not lease, farm, sell or alienate any power vested in it under this Act of levying rates without the prior sanction of the Central Government. 5

Time for payment rates on goods. 58. Rates in respect of goods to be landed shall be payable immediately on the landing of the goods and rates in respect of goods to be removed from the premises of a Board, or to be shipped for export, or to be transhipped, shall be payable before the goods are so removed or shipped or transhipped. 10

Board's lien for rates. 59. (1) For the amount of all rates leviable by a Board under this Act in respect of any goods, and for the rent due to the Board for any buildings, plinths, stacking 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 and rents are fully paid. 15

(2) Such lien shall have priority over all other liens and claims, except for general average and for the ship-owner's lien upon the said goods for freight and other charges where such lien exists and has been preserved in the manner provided in sub-section (1) of section 60, and for money payable to the Central Government under any law for the time being in force. 20

Ship-owner's lien for freight and other charges. 60. (1) If the master or owner of any vessel or his agent, at or before the time of landing from such vessel any goods at any deck, wharf, quay, stage, jetty, berth, mooring or pier belonging to or in the occupation of a Board, gives to the Board a notice in writing that such goods are to remain subject to a lien for freight or other charges payable to the shipowner, to an amount to be mentioned in such notice, such goods shall continue to be liable to such lien to such amount. 25 30

(2) The goods shall be retained in the custody of the Board at the risk and expense of the owners of the goods until such lien is discharged as hereinafter mentioned; and godown or storage rent shall be payable by the party entitled to such goods for the time during which they may be so retained. 35

(3) Upon the production before any officer appointed by the Board in that behalf of a document purporting to be a receipt for, or release from, the amount of such lien, executed by the person by 40

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.

5 61. (1) A Board may, after the expiry of two months from the time when any goods have passed into its custody, or in the case of animals and perishable or hazardous goods after the expiry of such shorter period not being less than twenty-four hours after the landing of the animals or goods as the Board may think fit, sell by public auction such goods or so much thereof as, in the opinion of the Board, may be necessary—

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

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

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

20 (c) if any lien of any shipowner 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 to the Board an application for such sale.

(2) Before making such sale, the Board shall give ten days' notice of the same by publication thereof in the Official Gazette and also in at least one of the principal local daily newspapers:

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

30 (3) If the address of the owner of the goods has been stated on the manifest of the goods 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 him by letter delivered at such address, or sent by post, but the title of a *bona fide* purchaser of such goods shall not be invalidated by reason of the omission to send such notice, nor shall any such purchaser be bound to inquire whether such notice has been sent.

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

Explanation.—In this section and section 62—

(a) "arms and ammunition" have the meanings respectively assigned to them in the Arms Act, 1959;

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.

5 61. (1) A Board may, after the expiry of two months from the time when any goods have passed into its custody, or in the case of animals and perishable or hazardous goods after the expiry of such shorter period not being less than twenty-four hours after the land-
 10 auction such goods or so much thereof as, in the opinion of the Board, may be necessary—

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

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

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

20 (c) if any lien of any shipowner 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 to the Board an application for such sale.

(2) Before making such sale, the Board shall give ten days' notice of the same by publication thereof in the Official Gazette and also in at least one of the principal local daily newspapers:

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

30 (3) If the address of the owner of the goods has been stated on the manifest of the goods 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 him by letter delivered at such address, or sent by post, but the title of a *bona fide* purchaser of such goods shall not be invalidated by reason of the omission to send such notice, nor shall any such purchaser be bound to inquire whether such notice has been sent.

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

Explanation.—In this section and section 62—

(a) "arms and ammunition" have the meanings respectively assigned to them in the Arms Act, 1959;

(b) "controlled goods" means goods the price or disposal of which is regulated under any law for the time being in force.

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

62. (1) Notwithstanding anything contained in this Act, where any goods placed in the custody of the Board upon the landing thereof are not removed by the owner or other person entitled thereto from the premises of the Board within one month from the date on which such goods were placed in their custody, the Board may, if the address of such owner or person is known, cause a notice to be served upon him by letter delivered at such address or sent by post, or if the notice cannot be so served upon him or his address is not known, cause a notice to be published in the Official Gazette and also in at least one of the principal local daily newspapers, requiring him to remove the goods forthwith and stating that in default of compliance therewith the goods are liable to be sold by public auction:

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

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

(3) If such owner or person does not comply with the requisition in the notice served upon him or published under sub-section (1), the Board may, at any time after the expiration of two months from the date on which such goods were placed in its custody, sell the goods by public auction after giving notice of the sale in the manner specified in sub-sections (2) and (3) of section 61.

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

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

(b) arms and ammunition and controlled goods may be sold in accordance with the provisions of sub-section (4) of section 61.

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

63. (1) The proceeds of every sale under section 61 or section 62 shall be applied in the following order— Application of sale proceeds.

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

5 (b) in payment, according to their respective priorities, of the liens and claims excepted in sub-section (2) of section 59 from the priority of the lien of the Board;

(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;

10 * * * * *

(2) The surplus, if any, shall * * * * * be paid on demand to the importer, owner or consignee of the goods, or to his agents.

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

(2) In case any part of the said rates or penalties, or of the cost of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest has been so made, the Board may cause the vessel or other thing so distrained or arrested to be sold, and, with the proceeds of such sale, shall satisfy such rates or penalties and costs, including the costs of sale remaining unpaid, rendering the surplus (if any) to the master of such vessel on demand.

65. If a Board gives to the officer of the Central Government whose duty it is to grant the port-clearance of any vessel at the port, a notice stating that an amount therein specified is due in respect of rates, fines, penalties or expenses chargeable under this Act or under any regulations or orders made in pursuance thereof, against such vessel, or by the owner or master of such vessel in respect thereof, or against or in respect of any goods on board such vessel, such officer shall not grant such port-clearance until the amount so chargeable or due has been paid. Grant of port-clearance after payment of rate.

CHAPTER VII

BORROWING POWERS OF BOARD

Power to
raise loans.

66. (1) A Board may, with the previous sanction of the Central Government and after due notification in the Official Gazette, raise loans for the purposes of this Act: 5

Provided that no such notification shall be necessary if a loan is obtained from the Central Government or a State Government.

(2) Loans may be raised by a Board in the open market on Port Trust securities issued by it or may be obtained from the Central Government or a State Government. 10

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

Port Trust
securities.

67. (1) A Board may, with the sanction of the Central Government, prescribe the form in which Port Trust securities shall be issued by it and the mode in which, and the conditions subject to 15 which, they may be transferred.

(2) The holder of any Port Trust security in any form may obtain in exchange therefor, upon such terms as the Board may from time to time determine, a Port Trust security in any other form prescribed by regulations.*** 20

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

Right of
survivors of
joint or
several
payees of
securities.

68. (1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872— 25 9 of 187

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

(b) when any such security is payable to two or more per- 30 sons severally and either or any of them dies, the security shall be payable to the survivor or survivors of those persons, or to the representatives of the deceased, or to any of them.

(2) This section shall apply whether such death occurred or occurs before or after the appointed day. 35

(3) Nothing herein contained shall affect any claim which any representative of a deceased person may have against the survivor

or survivors under or in respect of any security to which sub-section (1) applies.

1 of 1956. (4) For the purposes of this section, a body incorporated or
2 of 1912. 5 deemed to be incorporated under the Companies Act, 1956, or the Co-
operative Societies Act, 1912 or any other enactment for the time
being in force, whether within or without India, shall be deemed to
die when it is dissolved.

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

26 of 1881. 70. Notwithstanding anything in section 15 of the Negotiable Instruments Act, 1881, no indorsement of a Port Trust security, which is transferable by indorsement, shall be valid unless made by the signature of the holder inscribed on the back of the security itself. Indorsements to be made on security itself.

26 of 1881. 71. Notwithstanding anything in the Negotiable Instruments Act, 1881, a person shall not by reason only of his having indorsed any Port Trust security be liable to pay any money due, either as principal or as interest, thereunder. Indorser of security not liable for amount thereof.

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

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

30 73. (1) When any Port Trust security is alleged to have been lost, stolen or destroyed either wholly or in part, and a person claims to be the person to whom but for the loss, theft or destruction it would be payable, he may, on application to the Board and on producing proof to its satisfaction of the loss, theft or destruction and of the justice of the claim and on payment of such fee, if any, as may be prescribed by regulations, obtain from the Board an order 35 for—

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

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

(2) An order shall not be passed under sub-section (1) until after the issue by the Board of the prescribed notification of the loss, theft or destruction.

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

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

Issue of converted, etc., securities.

74. (1) A Board may, subject to such conditions as it may prescribe, on the application of a person claiming to be entitled to a Port Trust security or securities issued by it, on being satisfied of the justice of the claim and on delivery of the security or securities received in such manner and on payment of such fee, if any, as it may prescribe, convert, consolidate or sub-divide the security or securities, and issue to the applicant a new security or securities accordingly.

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

Discharge in certain cases.

75. Notwithstanding anything contained in the Indian Limitation Act, 1908—

9 of 1908

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

(ii) when a duplicate security has been issued under section 73, or

(iii) when a new security or securities has or have been issued upon conversion, consolidation or sub-division under section 74,

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

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

(b) in the case of a duplicate security—after the lapse of six years from the date of the publication under sub-section (3) of section 73 of the list in which the security is first mentioned or from the date of the last payment of interest on the original security, whichever date is later;

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

76. A Board may, from time to time, make regulations to provide
5 for all or any of the following matters, namely:—

Power of
Board to
make regula-
tions.

(a) the person, if any, authorised to sign, and the mode of affixing the corporate seal and of attestation of documents relating to Port Trust securities issued or to be issued by the Board;

10 (b) the manner in which payment of interest in respect of such Port Trust securities is to be made, recorded and acknowledged;

(c) the circumstances and the manner in which such Port Trust securities may be renewed;

15 (d) the circumstances in which such securities must be renewed before further payment of interest thereon can be claimed;

(e) the form in which such securities delivered for renewal, conversion, consolidation or sub-division are to be receipted;

20 (f) the proof which is to be produced by a person applying for duplicate securities;

(g) the form and manner of publication of the notification mentioned in sub-section (2) of section 73 and the manner of publication of the list mentioned in sub-section (3) of that section;

25 (h) the nature and amount of indemnity to be given by a person applying for the payment of interest on Port Trust securities alleged to have been wholly or partly lost, stolen or destroyed, or for the issue of duplicate Port Trust securities;

30 (i) the conditions subject to which Port Trust securities may be converted, consolidated or sub-divided;

(j) the amounts for which stock certificate may be issued;

35 (k) generally, all matters connected with the grant of duplicate, renewed, converted, consolidated and sub-divided securities;

(l) the fees to be paid in respect of the issue of duplicate securities and of the renewal, conversion, consolidation and sub-division of Port Trust securities;

40 (m) the fees to be levied in respect of the issue of stock certificates.

Place and currency of loans raised by Board. 77. All loans contracted by a Board under this Act shall be raised in India, and in Indian currency, unless the Central Government, by notification in the Official Gazette, otherwise directs.

Security for loans taken out by Board. 78. All loans raised by a Board under this Act shall be a first charge on— 5

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

(b) the rates leviable by the Board under this Act. 10

Remedies of Government in respect of loans made to Boards. 79. (1) The Central Government or a State Government shall have in respect of loans made by it to a Board, or of loans made to any other authority for the repayment of which the Board is legally liable, the same remedies as holders of Port Trust securities issued by the Board; and such Government shall not be deemed to possess any prior or greater rights in respect of such loans than holders of such Port Trust securities: 15

Provided that where the terms of any such loan made before the appointed day expressly provide that the loan shall have priority over all other loans in the matter of repayment by the Board, such loan shall have priority. 20

Power of Board to repay loans before due date. 80. A Board may, with the previous sanction of the Central Government, apply any sums, out of moneys which may come into its hands under the provisions of this Act and which can be so applied without prejudicing the security of the other holders of Port Trust securities, in repaying to the Government any sum which may remain due to it in respect of the principal of any loan although the time fixed for the repayment of the same may not have arrived: 25

Provided that no such repayment shall be made of any sum less than ten thousand rupees; and that, if such repayment is made, the amount of interest in each succeeding instalment shall be so adjusted as to represent exactly the interest due on the outstanding principal. 30

Establishment of sinking fund. 81. (1) In respect of every loan raised by a Board under this Act, which is not repayable before the expiration of one year from the date of the loan, the Board shall set apart half-yearly out of its income as a sinking fund a sum sufficient to liquidate the loan within a period which shall not in any case, unless the previous consent of the Central Government has been obtained, exceed thirty 40

years; but the maximum period shall not in any case exceed sixty years:

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

(2) Where any sinking fund has, before the appointed day, been established by any authority in respect of a loan raised by it for which loan the Board is liable under this Act, the sinking fund so established by that authority shall be deemed to have been established by the Board under this section.

82. (1) The sums so set apart by a Board under sub-section (1) of section 81 and the sums forming part of any sinking fund referred to in sub-section (2) of that section shall be invested in public securities or in such other securities as the Central Government may approve in this behalf, and shall be held in trust for the purposes of this Act by two Trustees, one being the Board and the other a person appointed by the Central Government.

Investment and application of sinking fund.

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

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

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

Examination of sinking fund.

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

(3) If the cash and the current market value of the securities at the credit of a sinking fund are in excess of the amount which should be at its credit, the person appointed under sub-section (1)

shall certify the amount of this excess, and the Board may, with the previous sanction of the Central Government,—

(a) withdraw the whole or any part of the certified excess in which case the Trustees in whose names the sinking fund is invested under sub-section (1) of section 82, shall forthwith 5 transfer securities of the requisite current market value, or cash and securities of the requisite current market value, to the Board, or

(b) reduce or discontinue the half-yearly contributions to the sinking fund required under section 81, or 10

(c) adopt a combination of these measures.

Power of Board to raise loans on short-term bills.

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

9 of 1914.

Power of Board to take temporary loans or overdrafts.

85. Notwithstanding anything contained in this Act, a Board 15 may borrow moneys by means of temporary overdraft or otherwise by pledging the securities held by the Board in its reserve funds or on the security of the fixed deposits of the Board in its banks:

Provided that such temporary overdrafts or other loans—

(a) shall not at any time have a longer currency than six 20 months; and

(b) shall not be taken, without the previous sanction of the Central Government, if at any time in any year the amount of such overdrafts or other loans exceeds such amount not exceeding ten lakhs of rupees, as the Central Government may fix in 25 this behalf:

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

Power of Board to borrow money from International Bank for Reconstruction and Development or other foreign institutions.

86. Notwithstanding anything contained in this Act or any other 30 law for the time being in force, a Board may, with the previous sanction of the Central Government and on such terms and conditions as may be approved by that Government, raise for the purposes of this Act loans in any currency or currencies from the International Bank for Reconstruction and Development or from any 35 other bank or institution in any country outside India; and no other provision of this Chapter shall apply to or in relation to any such loan unless the terms and conditions of the loan or the approval thereof by the Central Government otherwise provide.

CHAPTER VIII

REVENUE AND EXPENDITURE

of 1908. 87. All moneys received by or on behalf of a Board under the provisions of this Act, and all moneys received by it as the Conservator of the port and of the port approaches or as the body appointed under sub-section (1) of section 36 of the Indian Ports Act excluding all fees and all fines and penalties creditable to the pilotage account of the port under sub-section (5a) of that section, shall be credited to a fund called the general account of the port. the General account of Port.

10 88. (1) The moneys credited to the general account under section 87, shall, subject to the provisions of section 89 of this Act and of section 36 of the Indian Ports Act, be applied by the Board in payment of the following charges, namely:— Application of moneys in general account.

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

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

20 (i) the Chairman, Deputy Chairman and other Trustees;

(ii) the employees of the Board; and

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

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

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

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

35 (f) any charges for which the Board may be liable under section 108 or section 109;

(g) such sums as may, from time to time, be agreed upon by the Board and a State Government as a reasonable contribution payable by the Board towards the expenses in connection

with the watch and ward functions of the police force which the State Government may establish and maintain for the protection of the port and the docks, warehouses and other property of the Board;

(h) the cost of repairs and maintenance of the property belonging to or vested in the Board and all charges upon the same and all working expenses; 5

(i) the cost of the execution and provision of any new work or appliance specified in section 35 which the Board may determine to charge to revenue; 10

(j) any expenditure incurred under section 36;

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

(l) any other charge which may on the application of the Board be specially sanctioned by the Central Government or for which the Board may be legally liable. 15

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

(a) be deposited in the State Bank of India or in such scheduled bank or banks, and subject to such conditions as may, from time to time, be specified by the Central Government; or 20

(b) be invested in public securities or in such other securities as the Central Government may approve in this behalf; and the said securities shall be held in trust by the Board for the purposes of this Act. 25

Power to transfer moneys from general account to pilotage account and vice versa.

89. A Board may, with the previous sanction of the Central Government, apply any sum out of the moneys credited to the general account of the port towards meeting deficits, if any, in the pilotage account of the port maintained under section 36 of the Indian Ports Act or transfer the whole or part of any surplus funds in such pilotage account to the general account of the port. 30

Establishment of reserve funds.

90. (1) A Board may, from time to time, set apart such sums out of its surplus income as it thinks fit, as a reserve fund or funds for the purpose of expanding existing facilities or creating new facilities at the port or for the purpose of providing against any temporary decrease of revenue or increase of expenditure from transient causes or for purposes of replacement or for meeting expenditure arising from loss or damage from fire, cyclones, shipwreck or other accident or for any other emergency arising in the ordinary conduct of its work under this Act: 40

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

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

10 91. (1) For the purposes of any investment which a Board is authorised to make by this Act, it shall be lawful for every Board to reserve and set apart any securities to be issued by it on account of any loan to which the consent of the Central Government has been given, provided that the intention to so reserve and set apart such securities has been notified as a condition to the issue of the loan.

Power to reserve Port Trust securities for Board's own investments.

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

20 (3) The purchase by a Board, or the transfer, assignment or indorsement to a Board or to the Trustees of the sinking fund set up by a Board, of any security issued by the Board, shall not operate to extinguish or cancel any such security but the same shall be valid and negotiable in the same manner and to the same extent as if held by, or transferred or assigned or indorsed to, any other person.

- 25 92. (1) No expenditure shall be charged by a Board to capital without the previous sanction of the Central Government:

Prior sanction of Central Government to charge expenditure to capital.

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

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

40 93. (1) No new work or appliance, the estimated cost of which exceeds such amount as may be fixed by the Central Government in this behalf, shall be commenced or provided by a Board, nor shall any contract be entered into by a Board in respect of any such new

Works requiring sanction of Board or Central Government.

work or appliance until a plan of, and estimate for, such work or appliance has been submitted to, and approved by, the Board; and, in case the estimated cost of any such new work or appliance exceeds such amount as may, from time to time, be fixed by the Central Government in this behalf, the sanction of the Central Government to the plan and estimate shall be obtained before such work is commenced or appliance provided. 5

(2) Nothing in sub-section (1) shall be deemed to require the further sanction of the Central Government in any case where the actual expenditure incurred does not exceed by more than ten per cent., the estimated cost so sanctioned. 10

Powers of Chairman as to execution of works. 94. Notwithstanding anything contained in section 93, the Chairman may direct the execution of any work the cost of which does not exceed such maximum limit as may be fixed by the Central Government in this behalf, and may enter into contracts for the execution of such works but in every such case the Chairman shall, as soon as possible, make a report to the Board of any such directions given or contracts entered into by him. 15

Power of Board to compound or compromise claims. 95. Every Board may compound or compromise any claim or demand or any action or suit instituted by or against it for such sum of money or other compensation as it deems sufficient: 20

Provided that no settlement shall be made under this section without the previous sanction of the Central Government if such settlement involves the payment by the Board of a sum exceeding such amount as may be specified by the Central Government in this behalf. 25

Writing off of losses. 96. (1) Subject to such conditions as may be specified by the Central Government, where a Board is of opinion that any amount due to or any loss, whether of money or of property, incurred by, the Board is irrecoverable, the Board may, with the previous approval of the Central Government, sanction the writing off finally of the said amount or loss: 30

Provided that no such approval of the Central Government shall be necessary where such irrecoverable amount or loss does not exceed, in any individual case, five thousand rupees or in the aggregate in any year, one lakh of rupees. 35

(2) Notwithstanding anything contained in sub-section (1), where the Chairman is of opinion that any amount due to, or any loss, whether of money or of property, incurred by the Board is irrecoverable, the Chairman may sanction the writing off finally of such amount or loss provided that such amount or loss does not 40

exceed, in any individual case, one thousand rupees or in the aggregate in any one year, twenty thousand rupees; and in every such case the Chairman shall make a report to the Board giving reasons for such sanction.

97. All the powers, authorities and restrictions contained in this Act in respect of the works * * * by this Act authorised, shall apply to the works which may be executed by the Board as the Conservator of the port or as the body appointed under sub-section (1) of section 36 of the Indian Ports Act, not being works the cost of which is chargeable to the pilotage account of the port under sub-section (5b) of that section, and also to the sanction of such works, the estimates therefore, and the expenditure thereunder.

Powers, etc.,
of Board as
Conservator
or Body ap-
pointed
under sec-
tion 36 of
Indian
Ports Act.

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

Budget esti-
mates.

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

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

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

(5) The Central Government may sanction the estimate or may return it with remarks and may call for such additional information as it may deem necessary.

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

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

(8) Where any such estimate is not sanctioned by the Central Government before the commencement of the financial year to which it relates, the Central Government may authorise the Board to incur

such expenditure as may be necessary in the opinion of the Central Government until such time as the approval of the estimate by the Central Government is communicated to the Board.

Preparation of supplemental estimate. 99. A Board may in the course of any year for which an estimate has been sanctioned by the Central Government cause one or more supplemental estimates for the residue of such year to be prepared, and the provisions of section 98 shall, so far as may be, apply to such estimate as if it were an original annual estimate. 5

Re-appropriation of amounts in estimate. 100. Subject to any directions which the Central Government may give in this behalf, any sum of money or part thereof of which the expenditure has been authorised in an estimate for the time being in force sanctioned by the Central Government and which has not been so spent, may at any time be reappropriated by the Board to meet any excess in any other expenditure authorised in the said estimate. 15

Provided that no such reappropriation shall be made from one major head of expenditure to another such head without the previous sanction of the Central Government.

Adherence to estimate except in emergency. 101. (1) Subject to the provisions of section 100, no sum exceeding such amount as the Central Government may fix in this behalf shall, save in cases of pressing emergency, be expended by, or on behalf of, any Board unless such sum is included in some estimate of the Board at the time in force which has been finally sanctioned by the Central Government. 20

(2) If any sum exceeding such limit as may have been fixed in this behalf under sub-section (1) is so expended by any Board on a pressing emergency, the circumstances shall be forthwith reported by the Chairman to the Central Government, together with an explanation of the way in which it is proposed by the Board to cover such extra expenditure. 30

Accounts and audit. 102. (1) A Board shall maintain proper accounts and other relevant records and prepare the annual statement of accounts including the balance-sheet in such form as may be specified by the Central Government in consultation with the Comptroller and Auditor-General of India. 35

(2) The accounts of the Board shall be audited once in every year by the Comptroller and Auditor-General of India or such other persons as may be appointed by him in this behalf and he shall in respect of such audit be paid by the Board such amount as the Central Government may determine and such amount shall be debitable to the general account of the Board. 40

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

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

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

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

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

CHAPTER IX

30 SUPERVISION AND CONTROL OF CENTRAL GOVERNMENT

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

Submission
of statements
of income
and expendi-
ture to
Central
Govern-
ment.

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

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

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

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

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

109. If, at any time, any Board—

(a) allows any work or appliance constructed or provided by, or vested in, the Board to fall into disrepair; or

(b) does not, within a reasonable time, complete any work commenced by the Board or included in any estimate sanctioned by the Central Government; or

(c) 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 the Central Government for the purposes of this Act,

the Central Government may cause such work to be restored or completed or carried out, or such repairs to be carried out or such appliance to be provided, and the cost of any such restoration, completion, construction, repair or provision shall be paid by the Board from and out of the moneys credited to the general account of the port.

Power of
Central
Government
to supersede
Board.

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

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

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

default, the financial position of the Board or the administration of the port has greatly deteriorated,

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

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

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

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

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

(c) all property vested in the Board shall, until the Board is reconstituted under clause (b) or clause (c) of sub-section (3), vest in the Central Government.

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

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

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

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

Provided that the Central Government may, at any time before the expiration of the period of supersession, whether as originally specified under sub-section (1) or as extended under this sub-section, take action under clause (b) or clause (c) of this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest possible opportunity. 5

Power of Central Government to issue directions to Board.

111. (1) Without prejudice to the foregoing provisions of this Chapter, every Board shall, in the discharge of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time. 10

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

(2) The decision of the Central Government whether a question is one of policy or not shall be final. 15

CHAPTER X

PENALTIES

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

112. Every person employed by a Board under this Act shall, for the purposes of sections 161 to 171 (both inclusive), 184, 185 and 409 of the Indian Penal Code and for the purposes of the Prevention of Corruption Act, 1947 be deemed to be a public servant within the meaning of section 21 of the said Code. 20 45 of 1 2 of 10

Penalty for contravention of sections 37, 38, 40 and 41.

113. Whoever contravenes the provisions of any order issued under section 37 or section 38 or section 41 or fails to comply with any condition imposed under section 40 shall be punishable with fine which may extend to one thousand rupees, and where the contravention or failure is a continuing one, with further fine which may extend to one hundred rupees for every day after the first during which such contravention or failure continues. 25 30

Penalty for setting up wharves, quays, without permission.

114. Any person who contravenes the provisions of section 46 shall be punishable with fine which may extend to one thousand rupees for the first contravention, and with a further fine which may extend to one hundred rupees for every day after the first during which the contravention continues. 35

115. Any person who, with the intention of evading payment of ^{Penalty for} the rates lawfully due, in respect of any goods or vessel carrying any ^{evading} goods, to the Board— ^{rates, etc.}

5 (a) understates or incorrectly gives the weight, quantity, value or description of such goods or the tonnage of such vessel in any document presented to any employee of the Board for the purpose of enabling him to determine such rates; or

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

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

116. If, through the negligence of any person having the guidance or command of any vessel, or of any of the mariners or persons ^{Recovery of value of} employed on such vessel, any damage is caused to any dock, wharf, ^{damage to} quay, mooring, stage, jetty, pier or other work in the possession of ^{property of} any Board, the amount of such damage shall, on the application of ^{Board.} the Board be recoverable, together with the cost of such recovery, by distress and sale, under a Magistrate's warrant, of a sufficient portion of the boats, masts, spares, ropes, cables, anchors or stores ²⁰ belonging to such vessel:

Provided that no Magistrate shall issue such a warrant until the master of the vessel has been duly summoned to appear before him and, if he appears, until he has been heard; and provided also that no such warrant shall issue if the vessel was at the time under the ²⁵ orders of a duly authorised employee of the Board and the damage caused was attributable to the order, act or improper omission of such employee.

117. Any person who contravenes any of the provisions of this Act or of any rule, regulation or order made thereunder, for the ^{Other offences.} ³⁰ contravention of which no penalty is expressly provided thereunder, shall be punishable with fine which may extend to two hundred rupees.

118. No court inferior to that of a magistrate of the first class ^{Cognizance of offences.} shall try any offence punishable under this Act or any rule or ³⁵ regulation made thereunder.

119. (1) If the person committing an offence under this Act is a ^{Offences by} company, every person who, at the time the offence was committed ^{companies.} was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be

deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

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

Explanation.—For the purposes of this section,—

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

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

CHAPTER XI

MISCELLANEOUS

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

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

Protection of acts done in good faith.

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

Power of Central Government to make rules.

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

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

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

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

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

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

123. Without prejudice to any power to make regulations contained elsewhere in this Act, a Board may make regulations consistent with this Act for, all or any of the following purposes, namely:—

General power of Board to make regulations.

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

25 (b) for the form and manner in which contracts shall be made by the Board;

(c) for the form of receipt to be given under sub-section (2) of section 42;

30 (d) for the period within which notice may be given under sub-section (2) of section 43;

(e) for the guidance of persons employed by the Board under this Act;

(f) for the safe and convenient use of the docks, wharves, quays, jetties, sheds, warehouses, railways, tramways and other works constructed by or vested in the Board under this Act;

35

(g) for the reception, portorage, storage and removal of goods brought within the premises of the Board, for the exclusive conduct of these operations by the Board or persons employed by the Board; and for declaring the procedure to be

followed for taking charge of goods which may have been damaged before landing, or may be alleged to have been so damaged;

(h) for keeping clean the port, river or basins or the bank of the river and the works of the Board, and for preventing filth or rubbish being thrown therein or thereon; 5

(i) for the mode of payment of rates leviable by the Board under this Act;

(j) for regulating, declaring and defining the docks, wharves, quays, jetties, stages and piers vested in the Board on which goods shall be landed from vessels and shipped on board vessels; 10

(k) for regulating the manner in which and the conditions under which, the loading and unloading of all vessels within the port or port approaches shall be carried out;

(l) for regulating the lighterage of cargo between ships or between ships and shore or between shore and ships; 15

(m) for the exclusion from the premises of the Board of disorderly or other undesirable persons and of trespassers;

(n) for ensuring the safety of the port;

(o) generally, for the efficient and proper administration of the port. 20

Provisions
with respect
to regula-
tions.

124. (1) No regulation made by the Board under this Act shall have effect until it has been approved by the Central Government and until such approval has been published in the Official Gazette.

(2) No such regulation * * * * * 25
shall be approved by the Central Government until the same has been published by the Board for two weeks successively in the Official Gazette and until fourteen days have expired from the date on which the same had been first published in that Gazette.

(3) Any regulation made under this Act other than a regulation made under section 28 may provide that a breach thereof shall be punishable with fine which may extend to two hundred rupees, and where the breach is a continuing one, with further fine which may extend to fifty rupees for every day after the first during which such breach continues. 30

125. (1) Whenever the Central Government considers necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefor, direct any Board to make any regulations for all or any of the matters specified in section 28 or section 76 or section 123 or to amend any regulations, * * * * within such period as the Central Government may specify in this behalf:

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

Provided that the Central Government may extend the period specified by it by such period or periods as it may consider necessary.

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

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

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

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

Power of Central Government to make first regulations.

127. The text of the regulations made under clauses (e) to (n) of section 123 and the scale of rates together with a statement of conditions framed by any Board under Chapter VI shall be prominently posted by the Board in English, in Hindi and in the regional language on special boards to be maintained for the purpose at the wharves, docks, piers and other convenient places on the premises of the Board.

Posting of certain regulations, etc.

128. Nothing in this Act shall affect—

(1) the right of the Central Government to collect customs duties or of any municipality to collect town duties at any dock, berth, wharf, quay, stage, jetty or pier in the possession of a Board, or

Saving of right of Central Government and municipalities to use wharves, etc., for

collecting
duties and
of power of
Customs
Officers.

Application
of certain
provisions
of the Act
to aircraft.

Power to
evict certain
persons from
the premises
of Board.

(2) any power or authority vested in the customs authorities under any law for the time being in force.

129. The provisions of sections 35, 37, 38, 39, 40, 41, 42, 48, 49, 54, 64, 65, 115, 121, 123 and 124 shall apply in relation to all aircraft making use of any port while on water as they apply in relation to vessels. 5

130. (1) Notwithstanding anything contained in any other law for the time being in force, if a Board in exercise of the powers conferred on it by regulations made under this Act cancel the allotment of any premises made to any employee of the Board, the Board 10 may, by notice in writing, order such allottee or any other person who may be in occupation of the whole or any part of the premises to surrender or deliver possession thereof to the Board or a person appointed by the Board in that behalf within such period as may be specified in the notice. 15

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

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

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof; and 20

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

(2) If any allottee or other person refuses or fails to comply with an order made under sub-section (1), any magistrate of the first class may, on application made by or on behalf of the Board, order 25 any police officer, with proper assistance, to enter into the premises and evict any person from, and take possession of, the premises and to deliver the same to the Board or a person appointed by the Board in that behalf and the police officer may, for the purpose, use such 30 force as may be necessary.

(3) Any such notice as is referred to in sub-section (1) may be served—

(a) by delivering or tendering it to the allottee or any other person who may be in occupation of the whole or any part of 35 the premises, or

(b) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises, or

(c) by registered post. 40

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

132. (1) Any requirement in this Act that a notification, order, rule or regulation issued or made by a Board or by the Central Government shall be published in the Official Gazette, shall, unless otherwise expressly provided in this Act, be construed as a requirement
 10 that the notification, order, rule or regulation shall—

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

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

15 (b) where it is issued or made by the Central Government, be published in the Gazette of India.

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

133. (1) On the application of this Act to the port of Kandla, the Repeal.
 Bombay Landing and Wharfage Fees Act, 1882 shall cease to have force in relation to that port.

Bombay Act of 1882.

(2) On the application of this Act to the ports of Cochin and
 25 Vishakhapatnam, the Madras Outports Landing and Shipping Fees Act, 1885 shall cease to have force in relation to those ports.

Madras Act of 1885.

(3) If immediately before the application of this Act to any other port, there is in force in that port any law which corresponds to this Act or to any provision thereof, that corresponding law shall, on
 30 such application, cease to have force in relation to that port.

134. If any difficulty arises in giving effect to the provisions of
 this Act, particularly in relation to the transition from the enactments repealed by this Act to the provisions of this Act, the Central Government may, by general or special order, do anything not in-
 35 consistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty. Power to remove difficulties.

APPENDIX I

(Vide para 2 of the Report)

Motion in Lok Sabha for reference of the Bill to Select Committee

“That the Bill to make provision for the constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith be referred to a Select Committee consisting of the following 21 members, namely:—

1. Shri Tridib Kumar Chaudhuri
2. Shri Sudhansu Bhushan Das
3. Shri Shivajirao S. Deshmukh
4. Dr. P. D. Gaitonde
5. Shri V. B. Gandhi
6. Shri Indrajit Gupta
7. Shri Himmatsinhji
8. Shri P. G. Karuthiruman
9. Shri Lahri Singh
10. Shri Rama Chandra Mallick
11. Shri Niranjan Lall
12. Shri Raghunath Singh
13. Shri Raj Bahadur
14. Shri C. R. Raja
15. Shri M. Thirumala Rao
16. Shri S. V. Krishnamoorthy Rao
17. Shri H. Siddananjappa
18. Dr. L. M. Singhvi
19. Shri Ravindra Varma
20. Shri Vishram Prasad
21. Shri Jagjivan Ram

with instructions to report by the first day of the next session.

APPENDIX II

(Vid: para 6 of the Report)

Statement of Memoranda/representations received by the Select Committee

Sl. No.	Nature of document	From whom received	Action taken
1.	Memorandum	The Visakhapatnam Harbour and Port Workers Union, Visakhapatnam.	Circulated to Members and evidence of the Union taken on the 30th March 1963.
2.	Do	The Vizagapatam Port Non-Gazetted Officers's Association, Visakhapatnam.	Circulated to Members and evidence of the Association taken on the 30th March 1963.
3.	Do	All India Port & Dock Workers' Federation, Calcutta.	Circulated to Members and evidence of the Federation taken on the 30th March, 1963.
4.	Do	Bombay Port Trust, Bombay	Circulated to Members and evidence of the Port Trust taken on the 4th June, 1963.
5.	Do	The Indian National Steamship Owners' Association, Bombay.	Circulated to Members.
6.	Do	Government of Kerala Public Works Department, Trivandrum.	Do
7.	Do	Calcutta Port and Dock Workers' Union, Calcutta.	Do
8.	Representation	The All India Manufacturers' Organisation, Bombay.	Placed in the Parliament Library and Members informed.
9.	Do	Insurance Association of India, Bombay.	Do
10.	Do	The Indian Merchants' Chamber, Bombay.	Do

APPENDIX III

(Vide *para 7 of the Report*)

List of Associations who gave evidence before the Select Committee

Sl. No.	Names of Association	Date on which evidence was taken
1.	The Visakhapatnam Harbour and Port Workers Union, Visakhapatnam.	30-3-1963
2.	The Vizagapatam Port Non-Gazetted Officers' Association, Visakhapatnam.	30-3-1963
3.	All India Port & Dock Workers' Federation, Calcutta.	30-3-1963
4.	Bombay Port Trust, Bombay	4-6-1963

APPENDIX IV

MINUTES OF THE SITTINGS OF THE SELECT COMMITTEE ON THE MAJOR PORT TRUSTS BILL, 1962

I

First Sitting

The Committee met on Wednesday, the 12th December, 1962 from 11.03 to 11.25 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

2. Shri Tridib Kumar Chaudhuri
3. Shri Sudhansu Bhushan Das
4. Dr. P. D. Gaitonde
5. Shri V. B. Gandhi
6. Shri Indrajit Gupta
7. Shri Himmatsinhji
8. Shri Ram Chandra Mallick
9. Shri Niranjan Lall
10. Shri Raghunath Singh
11. Shri Raj Bahadur
12. Shri C. R. Raja
13. Shri M. Thirumala Rao
14. Shri H. Siddananjappa
15. Shri Ravindra Varma
16. Shri Vishram Prasad
17. Shri Jagjivan Ram

DRAFTSMEN

1. Shri G. R. Bal, *Additional Draftsman, Ministry of Law.*
2. Shri N. L. Vaidyanathan, *Assistant Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri K. Ranganathan, *Deputy Secretary, Ministry of Transport and Communications.*
2. Shri R. Rangarajan, *Under Secretary, Ministry of Transport and Communications.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee considered whether any evidence should be taken by them and whether a press communique might be issued advising interested parties to submit written memoranda on the Bill for consideration of the Committee.

3. The Committee decided that a press communique might be issued advising associations, public bodies and individuals who are desirous of presenting their suggestions or views or giving evidence before the Committee in respect of the Bill to send written memoranda thereon to the Lok Sabha Secretariat by the 15th January, 1963.

4. The Committee authorised the Chairman to decide after examining the memoranda which of the associations etc. might be called to give oral evidence before the Committee.

5. The Committee desired that a comparative statement of the provisions of the Bill with those of the various Port Trusts Acts might be circulated to the members of the Committee.

6. The Committee decided to sit from the 28th January, 1963 for hearing oral evidence, if any.

7. The Committee then adjourned to meet again on Monday, the 28th January, 1963 at 15.00 hours.

. **II** .

Second Sitting

The Committee met on Friday, the 25th January, 1963 from 16.05 to 16.30 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

2. Shri Tridib Kumar Chaudhuri

3. Shri Sudhansu Bhushan Das
4. Shri Shivajirao S. Deshmukh
5. Dr. P. D. Gaitonde
6. Shri V. B. Gandhi
7. Shri Indrajit Gupta
8. Shri P. C. Karuthiruman
9. Shri Rama Chandra Mallick
10. Shri Niranjan Lall
11. Shri Raghunath Singh
12. Shri Raj Bahadur
13. Shri C. R. Raja
14. Shri M. Thirumala Rao
15. Shri H. Siddananjappa
16. Dr. L. M. Singhvi
17. Shri Ravindra Varma

DRAFTSMAN

Shri G. R. Bal, *Additonal Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri K. Ranganathan, *Deputy Secretary, Ministry of Transport and Communications.*
2. Shri R. Rangarajan, *Under Secretary, Ministry of Transport and Communications.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Chairman informed the Committee that certain associations/bodies had requested for extension of time for submission of memoranda to the Committee and that he had extended the time upto the 31st January, 1963. After some discussion, the Committee decided that the time for receipt of memoranda might be further extended upto the 15th February, 1963 and a press communique issued to that effect.

3. The Committee decided to ask for extension of time for the presentation of their Report upto the first day of the Fifth Session of Lok Sabha and authorised the Chairman and, in his absence, Dr. L. M. Singhvi to move the necessary motion in the House.

4. Some members suggested that the Committee might undertake an on-the-spot study tour of some of the Ports to acquaint themselves with their working. The Chairman observed that he would discuss the matter with the Speaker, and if the permission is given he will select the ports to be visited.

5. The Committee authorised the Chairman to fix their next sitting during the next session of Lok Sabha.

6. The Committee then adjourned.

III

Third Sitting

The Committee met on Saturday, the 30th March, 1963 from 10.07 to 11.43 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

2. Shri Sudhansu Bhushan Das
3. Shri Shivajirao S. Deshmukh
4. Dr. P. D. Gaitonde
5. Shri V. B. Gandhi
6. Shri Indrajit Gupta
7. Shri P. G. Karuthiruman
8. Shri Niranjan Lall
9. Shri Raj Bahadur
10. Shri H. Siddananjappa
11. Dr. L. M. Singhvi
12. Shri Ravindra Varma
13. Shri Jagjivan Ram

DRAFTSMAN

Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri G. Venkateswara Ayyar, *Secretary, Department of Transport, Ministry of Transport and Communications.*
2. Shri K. Ranganathan, *Deputy Secretary, Ministry of Transport and Communications.*

3. Shri R. Rangarajan, *Under Secretary, Ministry of Transport and Communications.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES

I. *The Visakhapatnam Harbour and Port Workers Union, Visakhapatnam*

1. Shri M. V. Bhadram
2. Shri S. Ammoru

II. *The Vizagapatam Port Non-Gazetted Officers' Association, Visakhapatnam*

1. Shri B. Dharmarao
2. Shri N. S. Prakasarao
3. Shri V. S. N. Murthy

III. *All India Port and Dock Workers' Federation, Calcutta.*

1. Shri S. R. Kulkarni
2. Shri Makhan Chatterjee

2. The Committee heard the evidence given by the representatives of the Associations named above.

3. A verbatim record of the evidence given was taken.

4. The Committee decided that the evidence given before them might be laid on the Table of the House and the memoranda submitted by the Associations who gave evidence might be placed in the Parliament Library for reference by Members.

5. The Chairman informed the Committee that the Speaker had not given permission for the Committee undertaking an on-the-spot study tour of the Ports.

6. The Chairman directed that notices of amendments to the Bill might be sent to the Lok Sabha Secretariat before their next sitting.

7. The Committee then adjourned to meet again on Tuesday, the 4th June, 1963 at 09.00 hours.

IV

Fourth Sitting

The Committee met on Tuesday, the 4th June, 1963 from 09.08 to 10.50 hours.

PRESENT

Shri V. B. Gandhi—*in the Chair.*

MEMBERS

2. Shri Tridib Kumar Chaudhuri
3. Shri Sudhansu Bhushan Das
4. Shri Shivajirao S. Deshmukh
5. Shri Indrajit Gupta
6. Shri P. G. Karuthiruman
7. Shri Rama Chandra Mallick
8. Shri Raghunath Singh
9. Shri Raj Bahadur
10. Shri C. R. Raja
11. Shri H. Siddananjappa
12. Shri Ravindra Varma
13. Shri Vishram Prasad
14. Shri Jagjivan Ram

DRAFTSMAN

Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri G. Venkateswara Ayyar, *Secretary, Department of Transport, Ministry of Transport and Communications.*
2. Shri K. Ranganathan, *Deputy Secretary, Ministry of Transport and Communications.*
3. Shri R. Rangarajan, *Under Secretary, Ministry of Transport and Communications.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES

Bombay Port Trust, Bombay

1. Shri A. L. Dias
2. Dr. S. G. Patel
3. Shri Devji Rattansey
4. Shri F. Rozario
5. Shri S. Nariman

2. In the absence of Shri S. V. Krishnamoorthy Rao, Chairman of the Committee, Shri V. B. Gandhi was elected Chairman for the sitting.

3. The Committee heard the evidence given by the representatives of the Port Trust named above.

4. A verbatim record of the evidence given was taken.

5. The Committee then took up clause by clause consideration of the Bill.

6. *Clause 2.*—The following amendments were accepted:—

(1) Page 2, for lines 3 and 4, *substitute*—

“(d) ‘Collector of Customs’ has the same meaning as in the Customs Act 1962”.

(2) Page 2, line 17,

for “means” *substitute* “includes livestock and”.

(3) Page 3, line 35,

Omit “by the Board”.

The clause, as amended, was adopted.

7. *Clause 3.*—The Committee desired that Government might reconsider the maximum number of persons to be appointed or elected to a Board of Trustees under parts (c) and (d) of sub-clause (1) of the clause.

Subject to the above, the clause was adopted without amendment.

8. *Clause 4.*—The following amendment was accepted:—

Page 5, line 37,

Omit “and stand dissolved”.

The clause, as amended, was adopted.

9. *Clause 5.*—The following amendment was accepted:—

Page 6,

Omit lines 5 to 8.

The clause, as amended, was adopted.

10. *Clauses 6 and 7.*—The clauses were adopted without amendment.

11. *Clause 8.*—The following amendment was accepted:—

Page 7, lines 28-29,

for 'writing under his hand addressed' substitute 'giving notice in writing to the Chairman who shall forward the same'.

The clause, as amended, was adopted.

12. *Clause 9.*—The clause was adopted without amendment.

13. *Clause 10.*—The following amendment was accepted:—

Page 8, after line 12, insert—

"Provided further that no such casual vacancy occurring within three months of the date of expiry of the normal term of office of the vacating trustees shall be filled up under this sub-section."

The clause, as amended, was adopted.

14. *Clauses 11 and 12.*—The clauses were adopted without amendment.

15. *Clause 13.*—The following amendment was accepted:—

Page 8, line 39,

Omit "sub-section (1) of".

The clause, as amended, was adopted.

16. *Clauses 14 to 20.*—The clauses were adopted without amendment.

17. *Clause 21.*—The following amendments were accepted:—

(1) Page 10, line 30,

after "may" insert "also" and for "and" substitute "or".

(2) Page 10, line 33,

after "may" insert "also".

The clause, as amended, was adopted.

18. *Clause 22.*—The following amendment was accepted:—

Page 11, line 14,

for “any” substitute “in”.

The clause, as amended, was adopted.

19. *Clause 23.*—The clause was adopted without amendment.

20. *Clause 24.*—The following amendments were accepted:—

(1) Page 11, line 26,

for “the employees of the Board to any posts” substitute “any person to any post”.

(2) Page 11, line 28,

for “Heads of departments,” substitute “a post the incumbent of which is to be regarded as the Head of a department”.

(3) Page 11, lines 30-31;

for “an employee (other than the Head of a department) where the appointment relates to a post” substitute “a post [other than a post referred to in clause (a)]”.

The clause, as amended, was adopted.

21. *Clause 25.*—Consideration of the clause was taken up but further discussion thereon was postponed.

22. *Clauses 26 and 27.*—The clauses were adopted without amendment.

23. *Clause 28.*—The following amendment was accepted:—

Page 13, after line 4, insert,—

“(bb) the terms and conditions of service of persons who become employees of the Board under clause (f) of subsection (1) of Section 29”.

The clause, as amended, was adopted.

24. The Committee then adjourned to meet again on Wednesday, the 5th June, 1963 at 15.30 hours.

Fifth Sitting

The Committee met on Wednesday, the 5th June, 1963 from 15.32 to 17.15 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

2. Shri Tridib Kumar Chaudhuri
3. Shri Sudhansu Bhushan Das
4. Shri Shivrajirao S. Deshmukh
5. Shri V. B. Gandhi
6. Shri Indrajit Gupta
7. Shri P. G. Karuthiruman
8. Shri Rama Chandra Mallick
9. Shri Rangunath Singh
10. Shri Raj Bahadur.
11. Shri C. R. Raja
12. Shri M. Thirumala Rao
13. Shri H. Siddananjappa.
14. Shri Ravindra Varma
15. Shri Vishram Prasad.

DRAFTSMAN

Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri G. Venkateswara Ayyar, *Secretary, Department of Transport, Ministry of Transport and Communications.*
2. Shri K. Ranganathan, *Deputy Secretary, Ministry of Transport and Communications.*
3. Shri R. Rangarajan, *Under Secretary, Ministry of Transport and Communications.*

SECRETARIAT

Shri A. L. Rai, *Deputy Secretary.*

2. The Committee resumed clause by clause consideration of the Bill.

3. Clause 29.—The following amendments were accepted:—

(1) Page 13, line 10, after “29” insert “(1)”.

(2) Page 13, lines 32-33,

Omit “or which might have been instituted”.

(3) Page 14, line 2, *omit* “or instituted”.

(4) Page 14, line 5,

after “solely”, *insert* “or mainly”

(5) Page 14, *after* line 16, *insert* the following:—

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

The clause, as amended, was adopted.

4. Clauses 30 to 36.—The clauses were adopted without amendment.

5. Clause 37.—The following amendment was accepted:—

Page 16, line 34.

for “Chief Customs Officer”, *substitute* “Collector of Customs”.

The clause, as amended, was adopted.

6. Clause 38.—The following amendment was accepted:—

Page 17, line 20,

for “Chief Customs Officer”, *substitute* “Collector of Customs”.

The clause, as amended, was adopted.

7. Clauses 39 and 40.—The clauses were adopted without amendment.

8. Clause 41.—The following amendment was accepted:—

Page 18, line 13,

for “Chief Customs Officer”, *substitute* “Collector of Customs”.

The clause, as amended, was adopted.

9. *Clause 42.*—The following amendments were accepted:—

(i) Page 18, line 36, *omit* “or provide”.

(ii) Page 19, *after* line 16, *insert*:—

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

(5) No person authorised under sub-section (4) shall charge or recover for such service any sum in excess of the amount leviable according to the scale framed under section 48, section 49 or section 50.

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

(7) 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.

The clause, as amended, was adopted.

10. *Clause 43.*—The clause was adopted without amendment.

11. *Clause 44.*—The following amendments were accepted:—

(1) Page 19, line 34,
for “Chief Customs Officer”, *substitute* “Collector of Customs”.

(2) Page 19, line 38,
for “a wharf” *substitute* “an approved place”.

The clause, as amended, was adopted.

12. *Clause 45.*—The following amendment was accepted:—

Page 20, line 8, *omit* “tolls”.

The clause, as amended, was adopted.

13. *Clause 46.*—The clause was adopted without amendment:—

14. *Clause 47.*—The following amendments were accepted.

- (1) Page 20, lines 24, 27-28 and 36,
after "dock", *insert* "berth" and *after* "jetty" *insert* "or".
- (2) Page 20, lines 25, 28 and 36, *omit* "erection or mooring".
- (3) Page 20, line 43, *omit* "tolls, dues" and *after* "or" *insert* "other".
- (4) Page 21, lines 1, and 4-5,
after "wharf", *insert* "dock, berth" *after* "jetty", *insert* "or".
- (5) Page 21, lines 2 and 5,
omit "erection or mooring".
- (6) Page 21, line 14,
for "arbitration" *substitute* "arbitrator".
- (7) Page 22,
renumber clause (k) and clause (1) as clause (1) and clause (k), respectively.

The clause, as amended, was adopted.

15. *Clause 48.*—The following amendment was accepted:—

Page 22, line 21,

after "performed by itself", *insert* "or any person authorised under section 42".

The clause, as amended, was adopted.

16. *Clauses 49 and 50.*—The clauses were adopted without amendment.

17. *Clause 51.*—The following amendments were accepted:—

- (1) Page 23, lines 24 and 30,
omit "of charges".
- (2) Page 23, line 26, *after* "coastal goods" *insert*, "that is to say, goods, other than imported goods as defined in the Customs Act, 1962".

The clause, as amended, was adopted.

18. *Clause 52.*—The clause was adopted without amendment.

19. *Clause 53.*—The following amendments were accepted:

- (1) Page 24, line 2, *after* "goods or", *insert* "vessels or".

- (2) Page 24, line 3, *after* "goods", *insert* "or vessels", and for "thereon", *substitute* "in respect thereof".

The clause, as amended, was adopted.

20. *Clauses 54 to 60.*—The clauses were adopted without amendment.

21. *Clause 61.*—The following amendment was accepted:—

Page 26, line 25,

after "shorter notice", *insert* "and in such manner".

The clause, as amended, was adopted.

22. *Clause 62.*—The following amendment was accepted:—

Page 27, lines 32 and 33,

for "give such shorter notice under any of those sub-sections", *substitute* "give notice of removal of such goods although the period of one month, or, as the case may be, of two months specified in sub-section (1) has not expired or give such shorter notice of sale and in such manner".

The clause, as amended, was adopted.

23. *Clause 63.*—The following amendments were accepted:—

(1) Page 28, *omit* lines 10—12.

(2) Page 28, lines 13-14,

Omit "except in the case of goods confiscated under any law relating to Customs".

The clause, as amended, was adopted.

24. *Clauses 64 to 67.*—The clauses were adopted without amendment.

25. *Clause 68.*—The following amendment was accepted:—

Page 30, line 3,

after "incorporated", *insert* "or deemed to be incorporated".

The clause, as amended, was adopted.

26. *Clauses 69 to 85.*—The clauses were adopted without amendments.

27. *Clause 86.*—The Draftsman was directed to examine whether the words "in any country" were not restrictive and therefore should be omitted from the clause.

Subject to this, the clause was adopted without amendment.

28. *Clause 87 to 96.*—The clauses were adopted without amendment.

29. *Clause 97.*—The following amendment was accepted:—

Page 40, line 6, *omit* “of a Board”.

The clause, as amended, was adopted.

30. *Clause 98.*—The clause was adopted without amendment.

31. *Clause 99.*—The following amendment was accepted:—

Page 41, line 8,

after “original”, *insert* “annual”.

The clause, as amended, was adopted.

32. *Clause 100.*—The clause was adopted without amendment.

33. The Committee then adjourned to meet again on Friday, the 7th June, 1963 at 09.00 hours.

VI

SIXTH SITTING

The Committee met on Friday, the 7th June, 1963 from 09.00 to 09.55 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

2. Shri Tridib Kumar Chaudhuri
3. Shri Sudhansu Bhushan Das.
4. Shri Shivajirao S. Deshmukh
5. Shri V. B. Gandhi.
6. Shri Indrajit Gupta
7. Shri Ram Chandra Mallick
8. Shri Raj Bahadur
9. Shri C. R. Raja.
10. Shri M. Thirumala Rao.
11. Shri H. Siddananjappa

12. Shri Ravindra Varma
13. Shri Jagjivan Ram.

DRAFTSMAN

Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri G. Venkateswara Ayyar, *Secretary, Department of Transport, Ministry of Transport and Communications.*
2. Shri K. Ranganathan, *Deputy Secretary, Ministry of Transport and Communications.*
3. Shri R. Rangarajan, *Under Secretary, Ministry of Transport and Communications.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee resumed clause by clause consideration of the Bill.

3. *Clauses 101 to 103.*—The clauses were adopted without amendment.

4. *Clause 104.*— The following amendments were accepted:—

(i) Page 42, line 19,

for “pass such orders” substitute “take such action”.

(ii) Page 42, lines 20 and 21,

for “action taken by the Board”, substitute “action so taken”.

The clause, as amended, was adopted.

5. *Clauses 105 to 114.*—The clauses were adopted without amendment.

6. *Clause 115.*—The following clause was adopted in place of the existing clause 115:—

Page 46, for lines 1-5, substitute,—

“115. Any person who, with the intention of evading payment of the rates lawfully due, in respect of any goods or vessel carrying any goods, to the Board—

- (a) understates or incorrectly gives the weight, quantity, value or description of such goods or the tonnage of

such vessel in any document presented to any employee of the Board for the purpose of enabling him to determine such rates; or

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

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

7. *Clauses 116 to 119.*—The clauses were adopted without amendment.

8. *Clause 120.*—The following amendment was accepted:—

Page 47, line 17,

after “or any”, insert “member or”.

The clause, as amended, was adopted.

9. *Clause 121.*—The following amendment was accepted:—

Page 47, line 23,

after “any”, insert “member or”.

The clause, as amended, was adopted.

10. *Clause 122.*—The following amendments were accepted:—

(i) Page 47, for lines 31 and 32, substitute:

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

(ii) Page 47, after line 34, insert:—

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

The clause, as amended, was adopted.

11. *Clause 123.*—The following amendment was accepted:—

Page 48, for lines 11 and 12, substitute:

“(a) for the times and places of the meetings of its Committees and for the procedure to be followed for the transaction of business at such meetings”;

The clause, as amended, was adopted.

12. *Clause 124.*—The following amendments were accepted:—

- (i) Page 49, line 11,
after “made”, insert “by the Board”.
- (ii) Page 49, for line 14, substitute “No such regulation”.
- (iii) Page 49, line 19,
after “regulation”, insert—
“other than a regulation made under section 28”.

The clause, as amended, was adopted.

13. *Clause 125.*—The following amendments were accepted:—

- (1) Page 49, lines 28-29,
omit “made by the Board”.
- (2) Page 49, after line 30, insert—
“provided that the Central Government may extend the
period specified by it by such period or periods as it
may consider necessary”.
- (3) Page 49, line 33,
for “within the specified period, the Central”, substitute
“within the period allowed under sub-section (1), that”.
- (4) Page 49, line 35,
omit “made by the Board”.

The clause, as amended, was adopted.

14. *Clause 126.*—The clause was adopted without amendment.

15. *Clause 127.*—The following amendment was adopted:—

- Page 50, line 8,
for “(m)”, substitute “(n)”.

The clause, as amended, was adopted.

16. *Clauses 128 and 129.*—The clauses were adopted without amendment.

17. *Clause 130.*—The following amendment was accepted:—

- Page 50, lines 30 and 31,
for “vacate them and deliver the same”, substitute “surrender
or deliver possession thereof”.

The clause, as amended, was adopted.

18. *Clauses 131 to 134.*—The clauses were adopted without amendment.

19. *Clause 3.*—(*Vide* para 7 of the minutes, dated the 4th June, 1963). The following amendment was accepted:—

Page 4, line 34,

for “fifteen”, substitute “twelve”.

The clause, as amended, was adopted.

20. *Clause 4.*—Discussion on the clause was re-opened and the following further amendment was accepted:—

Page 5, line 21,

for “twenty-five”, substitute “twenty-two.”

The clause, as further amended, was adopted.

21. *Clause 24.*—Discussion on the clause was reopened and the following further amendment was accepted:—

Page 11, lines 37 and 38,

for “the Chairman”, substitute “such authority as may be prescribed by regulations”.

The clause, as further amended, was adopted.

22. *Clause 25 (Continued)* (*Vide* para 21 of the minutes, dated the 4th June, 1963). The following amendment was accepted:—

(i) Page 12,

for lines 15—21, substitute,—

“(a) in the case of a Head of a Department or in the case of an employee holding a post referred to in clause (b) of sub-section (1) of section 24, by the Board;

(b) in any other case, by such authority as may be prescribed by regulations:

Provided that no such order, so far as the same involves extension of service, suspension, reduction in rank, removal or dismissal of a Head of a department, shall have effect until it is approved by the Central Government.”

(ii) Page 12,

after line 21, insert,—

“(2) Any employee of a Board (not being a Head of a department) 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—

(a) to the Central Government, where such order is passed by the Board;

(b) to the Board where such order is passed by the Chairman;

(c) to the Chairman, in any other case.”

The clause, as amended, was adopted.

23. *Clause 28.*—Discussion on the clause was reopened and the following further amendment was accepted:—

Page 13, after line 4, insert—

(bbb) the time and manner in which appeals may be preferred under sub-section (2) of section 25 and the procedure for deciding such appeals.”

The clause, as further amended, was adopted.

24. *Clause 86.*—(Vide para 27 of the minutes, dated the 5th June, 1963). The Committee decided that it was not necessary to omit the words “in any country” from the clause.

25. *Clause 1.*—The following amendment was accepted:—

Page 1, line 5,

for “1962” substitute “1963”.

The clause, as amended, was adopted.

26. *Enacting Formula.*—The following amendment was accepted:—

Page 1, line 1,

for “Thirteenth” substitute “Fourteenth”.

The Enacting Formula, as amended, was adopted.

27. The Title was adopted without amendment.

28. The Draftsman was directed to correct patent errors and to carry out amendments of consequential nature.

29. The Committee decided to consider the draft Report and the Bill as amended at their next sitting.

30. The Committee then adjourned to meet again on Friday, the 9th August, 1963 at 15.00 hours.

VII

SEVENTH SITTING

The Committee met on Friday, the 9th August, 1963 from 15.05 to 15.10 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

2. Shri Sudhansu Bhushan Das
3. Shri V. B. Gandhi
4. Shri Indrajit Gupta
5. Shri P. G. Karuthiruman
6. Shri Rama Chandra Mallick
7. Shri Niranjan Lall
8. Shri Raghunath Singh
9. Shri Raj Bahadur
10. Shri M. Thirumala Rao
11. Shri H. Siddananjappa
12. Shri Ravindra Varma
13. Shri Jagjivan Ram.

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3. Shri R. Rangarajan, *Under Secretary, Ministry of Transport and Communications.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee took up consideration of the Bill as amended and adopted the same with the following amendment:

Clause 25—

Page 12,

after sub-clause (2) (c) as amended, add—

“Provided that where the person who passed the order becomes, by virtue of his subsequent appointment as the Chairman, the appellate authority in respect of the appeal against the order, such person shall forward the appeal to the Board and the Board in relation to that appeal shall be deemed to be the appellate authority for the purposes of this section.”

3. The Committee, thereafter, considered and adopted the draft Report.

4. The Chairman announced that the minutes of dissent, if any, might be sent to the Lok Sabha Secretariat so as to reach them by 10.15 hours on Tuesday, the 13th August, 1963.

5. The Committee authorised the Chairman and, in his absence, Shri Raghunath Singh to present the Report on their behalf and to lay the evidence on the Table of the House after the presentation of the Report.

6. The Chairman announced that the Report would be presented to Lok Sabha on the 13th August, 1963.

7. The Committee then adjourned.

LOK SABHA
SELECT COMMITTEE
ON THE
MAJOR PORT TRUSTS BILL,
1962

EVIDENCE



LOK SABHA SECRETARIAT
NEW DELHI

August, 1963/Sravana, 1885 (Saka)

Price: 50 nP.

WITNESSES EXAMINED

Dates of
hearing Page

CORRIGENDA

Select Committee on the Major Port Trust
Bill, 1962

30.3.1963 1

(Evidence)

1. Page 9, column 1, line 6,

for 'authoritits' read 'authorities'.

2. Page 21, column 2,

(i) line 9, *for 'head' read 'heads';*

(ii) line 10, *for 'Trust' read 'Trusts'.*

30.3.1963 1

3. Page 23, column 1, line 26,

for 'is' read 'are'.

4. Page 25, column 2, line 19 from bottom,

*for 'vision follows more or less the
pro-' read 'vision in the
Madras Port Act. In'*

30.3.1963 12

416-LSRP- 8-8-63/900.

4.6.1963 19

2. Shri S. G. Patel
3. Shri Devji Rattansey
4. Shri F. Rozario
5. Shri S. Nariman

WITNESSES EXAMINED

Sl. No.	Names of Associations and their spokesmen	Dates of hearing	Page
I.	VISAKHAPATNAM HARBOUR AND PORT WORKERS UNION, VISAKHAPATNAM	30.3.1963	I
	<i>Spokesmen :</i>		
	1. Shri M. V. Bhadram		
	2. Shri S. Ammoru		
II.	VIZAGAPATAM PORT NON-GAZETTED OFFICERS' ASSOCIATION, VISAKHAPATNAM	30.3.1963	I
	<i>Spokesmen :</i>		
	1. Shri B. Dharmarao		
	2. Shri N. S. Prakasarao		
	3. Shri V. S. N. Murthy		
III.	ALL-INDIA PORT AND DOCK WORKERS' FEDERATION, CALCUTTA	30.3.1963	12
	<i>Spokesmen :</i>		
	1. Shri S. R. Kulkarni		
	2. Shri Makhan Chatterjee		
V.	BOMBAY PORT TRUST, BOMBAY	4.6.1963	19
	<i>Spokesmen :</i>		
	1. Shri A. L. Dias		
	2. Shri S. G. Patel		
	3. Shri Devji Rattansey		
	4. Shri F. Rozario		
	5. Shri S. Nariman		

SELECT COMMITTEE ON THE MAJOR PORT TRUSTS BILL, 1962
MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE MAJOR PORT
TRUSTS BILL, 1962
Saturday, the 30th March, 1963 at 10.07 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

2. Shri Sudhansu Bhusan Das
3. Shri Shivajirao S. Deshmukh
4. Dr. P. D. Gaitonde
5. Shri V. B. Gandhi
6. Shri Indrajit Gupta
7. Shri P. G. Karuthiruman
8. Shri Niranjan Lall
9. Shri Raj Bahadur
10. Shri H. Siddananjappa
11. Dr. L. M. Singhvi
12. Shri Ravindra Varma
13. Shri Jagjivan Ram

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SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES EXAMINED

I. THE VISAKHAPATNAM HARBOUR & PORT WORKERS UNION, VISAKHAPATNAM

1. Shri M. V. Bhadrani
2. Shri S. Ammoru

II. THE VIZAGAPATAM PORT NON-GAZETTED OFFICERS' ASSOCIATION, VISAKHAPATNAM

1. Shri B. Dharmarao
2. Shri N. S. Prakasarao
3. Shri V. S. N. Murthy

III. ALL INDIA PORT & DOCK WORKERS' FEDERATION, CALCUTTA

1. Shri S. R. Kulkarni
2. Shri Makhan Chatterjee

I. VISAKHAPATNAM HARBOUR AND PORT WORKERS UNION, VISAKHAPATNAM

Spokesmen:

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Spokesmen:

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2. Shri N. S. Prakasarao
3. Shri V. S. N. Murthy

SELECT COMMITTEE ON THE MAJOR PORT TRUSTS BILL, 1962
MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE MAJOR PORT
TRUSTS BILL, 1962
Saturday, the 30th March, 1963 at 10.07 hours.

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Spokesmen:

1. Shri B. Dharmarao
2. Shri N. S. Prakasarao
3. Shri V. S. N. Murthy

Mr. Chairman: We will call the spokesmen of Items I and II together. They have submitted a Joint memorandum,

(Witnesses were called in and they took their seats)

You have presented a joint memorandum. The joint memorandum has been circulated to all the Members of the Committee. Whatever evidence you give here is likely to be published unless you express a desire to have it treated as confidential. Even in the latter case it is liable to be made available to the Members of Parliament and distributed to Members. If you want to say anything more than what is contained in your memorandum, you may say about that. If you want to stress any points, you may stress those points here.

Shri M. V. Bhadram: We would like to stress one important aspect. From the earlier times right up till now the administrative control of the Port has been changed ten times. The transfer that is going to take place will be for the tenth time. At every stage of transfer, the service conditions of the employees have been very many times affected adversely. This question has been agitating our minds. This question has been agitating the minds of the employees so many times. I would like to bring to your notice one or two points. The administrative control of the Port was transferred from that of the Railways to the Ministry of Transport in October, 1956. What happened was this. The employees who came before 1-10-1956 were governed by certain set of rules regarding leave, privilege passes and other facilities and employees coming subsequent to 1-10-1956 were governed by a different set of rules. I will take you back to 1936 and 1946. During that period, the Port was not under the administrative control of Railways, but other than Railways, under the Central Government and various departments. The Services were not taken into consideration at all. It took very long time for us to get that conceded for purposes of gratuity and other things.

Our minds were agitating and we wanted guarantee of the existing privileges in spite of the transfer that is going to take place in future.

Apart from that, we would like to point out one or two salient points. One point relates to Section 3 relating to the Constitution of the Board. There, the number of each interest is not specified as it has been done in the Bombay Act and Calcutta Act. We would like to stress that each interest and the number should be specified in respect of labour and in respect of various other interests. As far as labour representation is concerned, it has been stated that this will cover employees in the port. We find some difficulty about this. There is the Harbour Construction Workers' Union. They deal with construction of the four berths. Though the labour employed by the company "Steel Creet" are not the Port Employees as such, yet, the labour is employed within the port premises engaged in construction work. It may mean employees in the port as far as we understand the language there. We should specifically include people employed by the port and that would be more apt. Probably that was the intention of the bill also.

Similarly, in the present Bill the Chief Executive Officer of the Municipality is not there. Please see Section 3(1) (c) (vii). In the Calcutta and Bombay Act, the Chief Executive Officer is one of the nominated trustees in the Board. In Bombay and Calcutta Act also the State Government as well as municipalities have been given choice to select their own representatives while this Act does not provide for such a contingency. It is only nomination of the Government. Municipality is not at all specified in the Act. Section 3(1) (c) (vii) says that such other interests as, in the opinion of the Central Government, ought to be represented on the Board, will be represented. In the Bombay Act and Calcutta Act, the Chief Executive Officer is there but there is no provision at all here for electing the councillors to be on the Board of Trustees. This has been provided in

the Bombay Act and Calcutta Act. In both cases, the position is this. There is one from Calcutta Corporation and one from Howrah municipality. In respect of Bombay, two are represented from the Bombay Corporation.

Similar provision should also be incorporated in the Bill. Coming to Clause 4.....

Mr. Chairman: Clause 3(d) says:

“not more than fifteen persons to be elected by such State or local bodies representing commercial, shipping or local interests as the Central Government may, from time to time, by notification in the Official Gazette, specify”.

That, I think, will cover your point.

Shri Jagjivan Ram: This Bill is intended to apply to so many ports, not to any particular port.

Mr. Chairman: It is a general Bill. Further, in Clause 3(d), there is a provision for representing local interests.

Shri M. V. Bhadram: Everywhere municipality may not be there.

Mr. Chairman: If the municipality is not there, some other local body may be there.

Shri M. V. Bhadram: So far as my knowledge goes, this Bill is going to affect three Ports. None of these are in any municipality. Vizag port is only by the side of the municipality. It is not within the municipality. Same thing applies to Cochin also. It is between the Ernakulam Municipality and the Mattanchery Municipality....

Mr. Chairman: There may be a Taluk Board or a District Board or a panchayat.

Shri M. V. Bhadram: As far as Vizag is concerned, it has neither a municipality nor any panchayat.

Shri Raj Bahadur: In the existing Act it is the Municipal Commissioner who is nominated *ex officio*. It is not

as if the representatives of the municipalities are elected. It is a nomination. But here we have to take into account the subsequent developments. There are, for instance, zila parishads which are equally interested in the local affairs. They were not there before. It may be desirable to have representatives nominated from other local interests such as zila parishads also.

Shri Jagjivan Ram: In other words, the Bill is flexible.

Shri M. V. Bhadram: We are not excluding zila parishad representatives being nominated.

Shri Raj Bahadur: Therefore, we have framed it on that basis. Local interests may be local municipalities or zila parishads or development boards. For instance, in Kandla port Board Gandhidham township has to be represented.

Shri M. V. Bhadram: It is better to provide specifically for municipal representatives.

Mr. Chairman: This has to apply even to ports where there is no municipality.

Shri M. V. Bhadram: Our suggestion is that we should provide for municipality or adjoining municipality.

Shri Jagjivan Ram: How is it possible?

Shri M. V. Bhadram: As far as Vizag is concerned, it is practically within the city itself. But unfortunately, for various reasons, it is outside the municipality.

Mr. Chairman: This generic term 'local interests' may cover municipality, taluk board and district development board. You are looking at it only from the point of view of Vizag port. We have to frame a Bill for the whole country.

Shri M. Y. Bhadram: But our experience is.....

Mr. Chairman: You need have no fear about it. If Vizag municipality is there, it will certainly be represented.

Shri V. B. Gandhi: You want a specific provision to be made to cover that aspect. This is a Bill which is going to apply to ports in general, not to one port alone. Therefore, some flexibility must be there.

Shri M. V. Bhadram: Even then some provision should be made to this effect.

Mr. Chairman: We will take note of it.

Shri V. S. N. Murthy: We thought that the term was exclusively intended to cover private undertakings like Chambers of Commerce, and so on. Now I understand that it will include local self-government also. Can we understand it like that?

Shri Raj Bahadur: Yes. The term used is "local bodies representing commercial, shipping or local interests". Chambers of Commerce will come under commercial interests.

Shri N. S. Prakasarao: There are local bodies representing commerce.

Shri Jagjivan Ram: I do not think Vizag municipality will not be represented. But at the same time it is difficult to provide for it in this Bill.

Shri V. S. N. Murthy: Our impression was that local self-government would not be covered. That is why we have made this suggestion.

Shri M. V. Bhadram: Coming to Clause 3(1)(d), we strongly plead that the number of seats representing each of the interests should be specified. If it is simply laid down that not more than ten persons will be appointed, it may lead to some difficulties. After that you have given or specified six interests. Sometimes it may be one, sometimes two or three. It will vary. Sometimes some interests may be adversely affected. So, we strongly

plead that the number may be specified as it was done in the Bombay, Calcutta and Madras Acts.

Mr. Chairman: These Acts deal with particular ports, whereas this is a general Bill.

Shri M. V. Bhadram: Even if it is so, it may be better if the number is specified.

Shri Jagjivan Ram: Sometimes we have to provide for defence services in certain ports. Sometimes it may be one whereas at another port it may be two.

Shri Venkateswara Ayyar: Even that condition may change from time to time.

Shri Indrajit Gupta: Are you apprehensive that in some particular case no representative at all may be allotted for labour?

Shri M. V. Bhadram: That contingency is not there. At least one will be allotted.

Mr. Chairman: Not necessarily. For Kandla there may not be any representative for defence services. In Cochin there is a naval station and there may be a representative from there. You should give some discretion to the Government. It is flexible, as I said already. You cannot fix quota for each. It will vary from port to port.

Shri V. S. N. Murthy: The total number of representatives of labour should be fixed. Otherwise, there may be encroachment on that quota.

Shri Raj Bahadur: There will be no encroachment by commercial interests as they are provided for elsewhere. These six categories and the seventh saving category are in order to cover others.

Shri Jagjivan Ram: Encroachment, if any, may be only by various Government departments. These are all Government departments.

Shri M. V. Bhadram: We will leave it to Legislatures and the Parliament.

Mr. Chairman: Please go to the next point.

Shri M. V. Bhadram: Regarding the constitution of the first Board, the procedure that is stipulated in clause 3 has been done away with. That means, the Government will appoint the first Board without reference to any local interests, or whatever it may be. I think, when we are thinking of democratic decentralisation and so on, it is better to consult others before the Board is constituted. It may take the Government a few months to have the procedure completed. In case it is not possible to have the Board constituted according to the procedure laid down in clause 3, then the interests concerned may be consulted in the matter of allocation of seats for them. That must be provided in clause 4. Now without consulting any body, the Central Government have got the power to say that "so and so will be the representative of so and so". They can straightway do it. We say that instead of this provision, there must be a provision at least for consultation.

Shri Raj Bahadur: This is to cover the period of transition or interregnum, before the Act comes into force and the actual functioning of the Board of Trustees. So, naturally, some step must be taken. This is an interim arrangement in order to avoid all possible difficulties.

Shri M. V. Bhadram: We are not disputing the interim arrangements. Even then, a procedure can be followed in case it is not possible to follow the procedure mentioned in the clause.

Shri Raj Bahadur: If all the procedure is followed in advance (which is not possible) then there would be no necessity for interim arrangement.

Shri Jagjivan Ram: It may be that after a port comes into being we may

constitute a Board of Trustees under clause 3. But, in some contingencies it may not be possible to constitute it immediately; so, this is provided for.

Shri M. V. Bhadram: The interests concerned must be consulted.

Shri V. S. N. Murthy: The choice must be given to the interests concerned.

Shri Jagjivan Ram: Then we can as well delete 4.

Shri Raj Bahadur: There may be practical difficulties. Sometimes, the Labour Minister has to verify whether a particular union can be recognised and consulted or not. Unless and until all these procedures are gone through, how can we consult a particular union? It must have a representative character. Unless and until it has a representative character, we cannot consult it.

Shri M. V. Bhadram: I was referring to registered unions.

Shri Raj Bahadur: Even in regard to registered unions we have to ask the Labour Ministry "do you think this is a union which can be consulted?". It may be a registered union, but registration does not mean anything in this context.

Mr. Chairman: We will consider that point.

Shri V. S. N. Murthy: We feel that the nominated representatives of labour must have an overall majority than the private members provided for in sub-clause (d). In the initial stages at least, Government must have controlling number.

Mr. Chairman: We will consider that.

Dr. L. M. Singhvi: I do not want to put a question at this stage, but I would like to know one thing. What is being suggested by the witnesses is that there should be a specific instrument of instruction when the first

Board is to be constituted. Do you really think it is necessary to provide, as you have proposed, that these various interests should be consulted? Do you not think this is more a matter for the Government to keep in view rather than to enjoin upon them statutorily? Do you not think that consultation is something which should be undertaken by Government and it need not be provided for in the statute itself, so far as the constitution of the first Board is concerned?

Shri M. V. Bhadram: To be more specific, what we mean is that under clause 3(1)(d) there is a procedure of election. It will take some time to conduct the election.

Dr. L. M. Singhvi: I am talking of the first Board.

Shri M. V. Bhadram: I am also referring to the first Board. If it is not possible for Government to specify which are the interests to be given representation in the election procedure to be followed, those interests may be also consulted before actually specifying the persons to be put on the Board.

Dr. L. M. Singhvi: The concern of the administration is that there may be delay if it has to resort to any detailed procedure of consultation, as envisaged in the statute. This is an interim measure. Do you not think that, so far as the first Board is concerned, it is not of enduring importance to the interests concerned?

Mr. Chairman: We will discuss it to our suggestions?

Dr. L. M. Singhvi: I am eliciting their views in the matter. They are tendering evidence. Are we not supposed to ask them for their reactions to our suggestions?

Mr. Chairman: They have expressed their views. It is for the Committee to come to a conclusion. We need not argue now.

Dr. L. M. Singhvi: I am not arguing with them. I want to know their view in view of this argument. They have not expressed their view on that. If we are not permitted to elicit their views on this point....

Mr. Chairman: They have suggested that particular interests should be consulted. It is their suggestion. We have to consider it in the committee.

Dr. L. M. Singhvi: Though it may be for the committee to consider, it is for them to say what their reaction is, in view of the fact that it is an interim measure.

Mr. Chairman: They know this is an interim provision.

Dr. L. M. Singhvi: All the same, they can give their reaction to this argument.

Mr. Chairman: Now, what is the next point?

Shri M. V. Bhadram: Clause 28, which relates to service conditions of employees, states that the Board is competent to make regulations not inconsistent with the provisions of the Act. As we have already stated in our memorandum, regulations would be framed in accordance with the Industrial Employment Standing Orders Act. But Government have exempted from the purview of the provisions of this Act Vizag port, because it is covered by the Civil Services (Classification, Control and Appeal) Rules. So, when it is becoming an autonomous or statutory corporate body, it may be, as they have done in the case of Port Trusts of Madras, Bombay and Calcutta *Regulations would be framed in

*The General Secretary, The Visakhapatnam Harbour and Port Workers Union, Visakhapatnam in his letter dated the 9th April, 1963, submitted as follows:

"Our representative while giving evidence before the Select Committee made an inaccurate statement regarding the applicability of the Industrial Employment Standing Orders Act, 1946 to the ports of Calcutta, Madras

accordance with that Act. So, the regulations contemplated under clause 28 should be drafted in accordance with the Industrial Employment Standing Orders Act where the employees will have an opportunity to discuss these things before they are certified by the certifying officer.

There is another point. As far as the Visakhapatnam port is concerned, right from its construction, we have been Government servants. There should be some proviso that as and when the service conditions of the Government employees in general are changed—for example, like the implementation of the Second Pay Commission—they should automatically be applicable to these employees also because, even though legally the status of these employees may be changed from tomorrow, they have been Government servants continuously. As such, those facilities should be extended to these people. For that purpose, a proviso should be added to clause 28.

Shri Raj Bahadur: The intention is clear. These regulations will cover the service conditions generally. Bombay, Calcutta and Madras port trusts cannot be brought in here. In the present enactment, you might have seen, there is a sufficient safety valve provided in the interests of staff and in the interests of workers.

Shri M. V. Bhadram: I am not speaking about the powers of Government.

Shri Raj Bahadur: Then, you were talking about the standing orders. The provisions of clause 28 and of the existing provision of the standing orders are not mutually exclusive. It means that whatever enactments are there, they will be taken due note of.

Shri M. V. Bhadram: That provision is not here.

Shri Jagjivan Ram: It is not necessary to provide that here.

Shri Raj Bahadur: If this section said "Notwithstanding the provisions contained in the Industrial Employment (Standing Orders) Act" etc., it would have been excluded then. But we have not said that.

Shri M. V. Bhadram: There is one difficulty. The Government has got the power to exempt.

Shri Raj Bahadur: That power cannot be abrogated.

Shri M. V. Bhadram: So, we are only positively providing that these regulations be in accordance with the provisions of the Industrial Employment (Standing Orders) Act.

Shri Raj Bahadur: If a particular enactment is in force, it has to be enforced unless by some valid enactment it is excluded. The provisions of the enactment you are referring to are not excluded by the provisions of this clause.

Shri Indrajit Gupta: Has it been excluded from the provisions of the Act by notification? If so, how long ago?

Shri M. V. Bhadram: Yes, in 1949 or so. Now we are governed by the Central Government Classification, Control and Appeal Rules and Government Servants' Conduct Rules.

Shri Jagjivan Ram: Industrial Employment Rules themselves provide that where the conditions are better, it will be exempt from that.

and Bombay. After coming over here he checked up the statement with the material available with us; he found that the Bombay port was exempted from the provisions of the Act subject to certain conditions. The Standing Orders for the Port of Madras do not specifically speak so on the question of exemption. Regarding Calcutta we have no material to check up. But the rules in the case of Bombay and Madras were made more or less on the basis of the Model Standing Orders."

Vizag Port is subject to Government Servants' Conduct Rules and all the Government rules and regulations apply. So, they are exempt from that at present. But I do not think that when it is declared a major port and comes under the Port Commissioner, it will automatically be exempt unless it is found that the service conditions are such that the enforcement of that Act is not necessary. It may be advisable to exempt it or, on the contrary, it may not be advisable to exempt it. That will have to be taken into consideration. But we cannot provide that in the Act.

Shri V. S. N. Murthy: That means that as soon as the Port Trust is established the exemption is superseded.

Shri Jagjivan Ram: No, I do not say that. It will be a point to consider whether to continue it or to terminate it.

Shri V. S. N. Murthy: So, the Trustees may proceed ignoring this exemption from the Industrial Employment (Standing Orders) Act.

Shri Jagjivan Ram: The Trustees cannot exempt. It will be for the Central Government to consider.

Mr. Chairman: Every regulation made by the Trustees has to be approved of by the Central Government. So, that safety is always there. You can approach the Government.

Shri M. V. Bhadram: Vizag and Cochin are governed by the Government Servants' Conduct Rules. Bombay, Madras and Calcutta are having their own separate standing orders. Even after making these ports trust ports, continuation of the Government Servants' Conduct Rules tantamounts to a differential treatment between Calcutta and Vizag or between Madras and Vizag.

Shri Jagjivan Ram: You want both the things. In the first place you said that your service conditions should not be changed. Now you say that the Government Servants' Conduct Rules should not apply.

Shri M. V. Bhadram: What we say is that whatever rules are going to govern the employees they should be framed in such a way that the employees shall have an opportunity to give their views.

Shri Indrajit Gupta: At the moment you are not concerned with the actual merits or demerits of the regulations, but what you are wanting is that the advantage which is at present available to the employees of the ports of Calcutta, Madras and Bombay under the Industrial Employment (Standing Orders) Act, namely, that before the rules are certified and finalised the employees have a chance of expressing their opinion, should be available to you also. That advantage of procedure you want. Is that your point?

Shri M. V. Bhadram: The employees should be consulted before the rules are finalised.

Then under clause 29, sub-clause (f) there is a proviso which says:—

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

Mr. Chairman: You have got protection there.

Shri M. V. Bhadram: We want more protection. It says that they should not be altered to the disadvantage of the employee without the previous sanction of the Central Government. That means that they can be altered with the sanction of the Central Government.

Mr. Chairman: You want that this should be removed.

Shri M. V. Bhadram: Yes.

Shri Raj Bahadur: There are occasions when there is a demand from the employees of the various ports. For example, the employees of Calcutta Port want that they should be

brought on par with employees of Bombay Port. I am just taking a hypothetical case. Now it often happens that with the common consent of the representatives of labour and the Port authorities a particular *via media* is found. That may confer some advantages on labour of a particular port and may detract from some of the advantages enjoyed by the employees of another port. But it may be that those who suffer in one respect may have a benefit in another form. So, by common consent it happens and the consent of the Central Government works as a safety valve.

Shri M. V. Bhadram: That is a very remote possibility.

Shri Raj Bahadur: No. Today the demand that employees in one port should be brought on par with Bombay or Calcutta is a very much rampant demand. Such rationalisations will become impossible if you want to abrogate these words. There have been different sets of rules and service conditions in different ports. If you want some sort of a modicum of uniformity in these rules or service conditions, you have to provide for such possibilities.

Shri M. V. Bhadram: I may draw your attention to the Jeejeebhoy Committee recommendations very recently. The classification and categorisation was done without prejudice to the service conditions of the employees concerned. Wherever the Jeejeebhoy Committee prescribed a lower scale, permission was given to continue the existing higher scale even for future incumbents.

Shri Raj Bahadur: That only proves what I am saying.

Mr. Chairman: The Committee will consider it.

Shri B. Dharmarao: The section 29 of the Bill deals with existing employees; it is not for the future employees.

Shri Raj Bahadur: You are aware that there are pre-1931 employees and

there are post-1931 employees in Government and there are special arrangements for them. There are old rules and there are new rules. Then, it is left to the option of the workers to opt for the new rules or the old ones. You mean to say, all the service conditions should be made available *ipso facto* to all the future generations or series of employees coming hereafter. That cannot be done. We cannot cover the future.

Shri M. V. Bhadram: I go back again to section 25.

Shri Raj Bahadur: I do not think you have mentioned it in your memorandum. If you like, you may say what you want to say.

Shri M. V. Bhadram: I have not specifically mentioned it. Here, the powers have been vested with the Chairman to take disciplinary action in respect of employees referred to in section 24(1)(c). There may be a possible misuse of powers. Some sort of a check may be put on the arbitrary decisions of the Chairman.

Shri Jagjivan Ram: The appointing authority is the disciplinary authority.

Shri B. Dharmarao: There should be some appellate authority.

Shri Raj Bahadur: In making appointments?

Shri B. Dharmarao: In the matter of disciplinary action.

Shri Raj Bahadur: Is there any such provision in any one of the existing Acts?

Shri V. S. N. Murthy: Under the existing CSS rules, the appellate authority is provided. Here, our contention is that there may be an occasion when the Chairman, in his good faith, may.....

Shri Jagjivan Ram: The Chairman will not *suo motu* deal with the cases of employees. He will deal with the cases of officers. In the case of employees, you will have the Chairman as an appellate authority.

Shri V. S. N. Murthy: The Chairman is the disciplinary authority being the appointing authority.

Shri Jagjivan Ram: He will not be the disciplinary authority for Class III and Class IV employees. He will delegate the powers.

Shri Raj Bahadur: Section 25 says, "Subject to any regulations made under section 28, . . ." Section 28 provides for making regulations for any or more of the following matters, namely, the appointment, promotion, suspension, removal and dismissal of its employees; etc.

Shri V. S. N. Murthy: We may be assured that the rules would provide for an appellate authority.

Shri Venkateswara Ayyar: If the Board makes regulations, as we expect, they could be subject to the sanction of the Government. Under section 28, it can provide for delegation of certain powers exercised by the Chairman to the Heads of Departments or the people down below.

Shri Raj Bahadur: Their main concern is about the appellate authority. Will the regulations provide?

Shri Venkateswara Ayyar: I think the regulations can provide for a second examination of the case.

Shri V. S. N. Murthy: We want to be assured of that. The rules made under section 28 should not be inconsistent with the Act.

Shri Raj Bahadur: What is the position in respect of the other departments, I mean in the case of Class III and Class IV employees?

Shri V. S. N. Murthy: In respect of Class III employees, the head of the department is the only disciplinary authority and the Government is the appellate authority; in the case of Class IV employees it is the department concerned.

Shri Jagjivan Ram: That will be provided.

Shri V. S. N. Murthy: Whatever rules are made here, under section 28, should not be inconsistent with the main provisions of the Act. Here, the only provision that is made is that the Chairman can exercise powers in respect of promotions, extensions of service, suspensions and various other things.

Shri Jagjivan Ram: It requires examination.

Shri G. R. Bal: When you say, subject to any regulations, that means if any regulations are made under section 28, they cannot be in conflict with section 25 naturally and section 25 will be read subject to them to the extent that any regulations that may be made. The regulations made under section 28 are to that extent part of section 25.

Shri Indrajit Gupta: The point that you want to make is, on the merits of a particular case whether there should be an appellate authority or not. Is that your point? That is what I understand. The procedure, I think, is not the point here. As far as I can understand your point, it is this. There may be a particular case of action taken under section 25—it may be suspending, reducing, removing or dismissing or of disposing of any other question relating to the services of any employee—in relation to which you may say whether the action taken is justified or not and you are asking whether there should be an appellate authority or not. Here the Chairman is the ultimate authority.

Shri G. R. Bal: Chairman or the Board as the case may be.

Shri Indrajit Gupta: Here the Board does not come in.

Shri Jagjivan Ram: There will be an appellate authority for different categories of employees. It is quite obvious.

Shri Indrajit Gupta: His main point is who would be the highest authority?

Shri Raj Bahadur: There is section 28(c). The Board may make regulations, not inconsistent with this Act, to provide for any other matter which is incidental to, or necessary for, the purpose of regulating the appointment and conditions of service of its employees. Now, the conditions of service include conditions under which an employee may be suspended, may be removed from service and other allied matters. This also means, an appellate authority is provided for even under the present conditions of service. Section 28(c) will take care of that. No additional provision is necessary. What is necessary is the making of regulations and when they are made they will be properly scrutinised by the Central Government.

Shri Jagjivan Ram: That will come in regulations. Appellate authority will have to be provided for.

Shri V. S. N. Murthy: Including the reduction in rank.

Shri Raj Bahadur: All these things. Conditions of service include everything. Section 28(a) provides for the appointment, promotion, suspension, removal and dismissal of its employees. The reduction in rank also forms a part of service conditions.

Shri V. S. N. Murthy: That is conspicuously omitted.

Shri Raj Bahadur: Clause 28(c) is relevant here.

Shri M. V. Bhadram: Under clause 24(c), the appointing authority in the case of any other post is the Chairman. Under clause 25(a) the disciplinary authority is also the Chairman. Under these clauses read along with clause 28, there is no possibility of any appeal, as we understand the clauses.

Shri Raj Bahadur: First of all, disciplinary action cannot be initiated by the Chairman himself. The Chairman will delegate authority to somebody in respect of class III and IV employees and he will recommend. Whatever orders are passed, they will be appeal-

able to the Chairman. It will be the Chairman who will pass the final orders.

Mr. Chairman: We will examine.

Shri M. V. Bhadram: I would suggest to the Committee that in order to better appreciate our representation, the Committee may visit the Visakhapatnam port.

Mr. Chairman: What for?

Shri M. V. Bhadram: To better appreciate all the aspects.

Mr. Chairman: How can it enable the committee to appreciate the conditions of employment?

Shri M. V. Bhadram: I am only making a submission. It is left to the Chairman to consider. I am only making a request.

Shri V. S. N. Murthy: Then about clause 29(f) about continuance of existing privileges. This clause provides for the continuance of the existing privileges in respect of staff on the date immediately preceding the change over from the Government to the Port Trust authority. They will continue until such time till they are altered or dispensed with by the Board. Of course, if they are altered to their disadvantage, the Central Government's sanction is required. At least in the case of the employees who are existing on the date of the change over, this right should continue perpetually.

Shri Jagjivan Ram: You have not given full thought to what you are saying.

Shri V. S. N. Murthy: They will continue until they think it necessary to alter.

Shri Raj Bahadur: This is the biggest testimonial we could give to the Port trust. You admit that you are satisfied with whatever terms and conditions obtain for the port employees. So, despite all that has been said hitherto they are quite good according to your admission.

Shri V. S. N. Murthy: To their disadvantage . . .

Shri Jagjivan Ram: You have not given full thought. It may be necessary to alter it to your advantage.

Shri V. S. N. Murthy: Alteration, we are not disputing. It is dispensing with the privilege.

Shri Jagjivan Ram: It is not said to your advantage or disadvantage. If it is terminated or altered: alteration may be to advantage.

Mr. Chairman: “. . . shall not be altered to his disadvantage without the previous sanction of the Central Government”: that we have taken care.

Shri V. S. N. Murthy: We have only suggested a proviso:

“Provided further that all matters or representations of staff pending settlement on the appointed date by the Central Government or the other authority as the case may be shall be decided by the said authority.”

Shri Raj Bahadur: You want to have the Act and yet you do not want to give that right. You want to deny to the new authority the privilege to decide pending matters and you want the old authority to continue.

Shri V. S. N. Murthy: We feel it will be decided in our favour provided it is left to them.

Mr. Chairman: If it is decided against, it will come to the Central Government. Nothing will be altered to your disadvantage without the sanction of the Central Government.

Shri M. V. Bhadram: There are some anomalies with reference to the recommendations of the Central Pay Commission. The recommendations have not been completely implemented.

Mr. Chairman: The Central Government is there to take care of your interest. Don't bother.

Shri V. S. N. Murthy: Are you sure that all matters pending on that date will not be left to their decision?

Shri Raj Bahadur: It is rather extraordinary.

Shri V. S. N. Murthy: All assets and liabilities become the assets and liabilities of the future administrators. Our apprehension is that whatever is pending consideration of the Government, which we hope will be favourably considered, if it is transferred as a liability to the future administrators, they may decide otherwise. That is the apprehension with which we have asked for the proviso.

Mr. Chairman: Any other point? (None) Thank you.

Shri V. S. N. Murthy: We thank you, Sir. We feel that our interests will be safe in your hands. We thank you for the opportunity, for the first time, you have given to us.

(The witnesses then withdrew)

III. ALL-INDIA PORT AND DOCK WORKERS' FEDERATION, CALCUTTA
Spokesmen:

1. Shri S. R. Kulkarni
2. Shri Makhan Chatterjee.

(Witnesses were called in and they took seats)

Mr. Chairman: Your evidence will be treated as public and it is liable to be published unless you desire that all or any part of the evidence tendered by you is to be treated as confidential. Your evidence, even though confidential, is liable to be made available to Members of Parliament.

Shri Makhan Chatterjee: No.

Mr. Chairman: Shri Anthony Pillai is not coming?

Shri Makhan Chatterjee: He is indisposed.

Mr. Chairman: Your memorandum has been distributed to all the Members. If you want to stress any point or make out any new point, you may. This does not apply to Calcutta. Why do you bother?

Shri Makhan Chatterjee: Ours is a federation. Secondly, we think that this enactment may reflect the latest thought on Port Trusts by Parliament. Therefore, we think it may have some bearing on other ports also eventually if not immediately.

Mr. Chairman: All right. Go ahead.

Shri Makhan Chatterjee: Apart from what we have stated in our memorandum, we would like to state the following in regard to clause 111 which deals with the power of the Central Government to issue directions on questions of policy.

We feel that this clause curtails the autonomy of the proposed Port Trust to a considerable extent. From the experience that has been gathered from the working of the existing ports and also from the opinions expressed by experts on the working of the ports, we find that considerable stress is always laid on the autonomy of the Port Trusts, particularly in regard to the administration of the ports, their day-to-day functioning etc. If the Port Trusts are not given sufficient powers to carry out their day-to-day business and if what will ultimately be regarded as policy by Government is not defined, that may not enable the board to function efficiently.

So, we feel that the autonomy of the boards should be safeguarded. In this view of ours, we are supported by various authorities on the subject. We may quote for instance the United Nations Technical Assistance Expert, Mr. B. Nagoraski. He has dealt with this question of ports administration. If I may be permitted, I would like

to read out from his report entitled "The Administration of the Ideal port". He states there:

"The most essential condition for an efficient port administration is as high as possible a degree of independence from general public administration services. A maritime port is well-defined and a very complex unit, the development and well-being of which requires a settled long-range policy and prompt decisions in day-to-day life. Its management should be entirely independent of political trends in general government administration. It should be in the hands of personnel selected in accordance with the professional skill and managerial abilities of the individuals concerned and not with their political affiliations. This basic principle has been recognised for a long time and it became an accepted practice in most countries to form autonomous bodies generally known as port authorities for the purpose of administration and development of more important maritime ports."

We recognise that there is a need of general control and direction by the Central Government for conducting the affairs of the port. But that control and direction should be of a broad nature.

Mr. Chairman: It is only on questions of policy that directions can be given by the Central Government. They do not interfere with the day-to-day administration.

Shri Makhan Chatterjee: What a policy matter is will have to be defined.

Mr. Chairman: That has to be left to Government to decide. Can you give any instance where interference by Government has worked to the detriment of the freedom of the port authorities?

Shri V. B. Gandhi: I have been a member of the Port Trust of Bombay for eight years, and I do not think we

have come across any conflict on such vital issues of policies. Besides, after all there is this proviso that the board shall be given opportunity to express its views before any direction is given under this sub-section. Thirdly, we do not know the Constitution of the New York port authorities, to which the witness was referring.

Shri Jagjivan Ram: What he has read out is about administration. It does not say anything about policy.

Shri Makhan Chatterjee: As far as policy is concerned, we have also said that we feel that there is need for broad direction and control.

Shri Jagjivan Ram: So, there is agreement between us on that point.

Shri Makhan Chatterjee: The reason why we have stated this is this. For instance, take clause 122 (1) (a) which deals with the procedure to be followed for the transaction of business at the meetings of a Board. Under the existing Port Trust Acts, the Acts themselves provide how and at what intervals the meetings should be held.....

Mr. Chairman: Your submission on clause 111 is over? There is no difference of opinion between Government and yourself; on matters of policy they must have the power to issue directions.

Shri Makhan Chatterjee: As far as the general control is concerned, there is no disagreement.

Mr. Chairman: They do not want even general control. It is only on questions of policy that Government will issue directions, and the Port Trusts also will be given an opportunity to express their views before such directions are issued, and the proviso is there for this purpose. It is only on questions of policy that Government will step in.

Shri Raj Bahadur: They would themselves like us off and on to give

directions. For instance, decasualisation of labour is a matter of policy. Then, the Jeejeebhoy Committee was also a matter of policy. If you want, I may quote some other instances too.

Shri Jagjivan Ram: In fact, they want our interference even in matters of administration.

Shri Makhan Chatterjee: That becomes necessary at times, of course.

Shri Raj Bahadur: It is necessary to mention this also. Otherwise, you can be bound down by your own evidence.

Shri Makhan Chatterjee: In the case of the Port Trusts of Bombay, Madras or Calcutta, there is no similar provision.

Mr. Chairman: Shri V. B. Gandhi who has been a member of the Bombay Port Trust for the last eight years says that there has been no interference by Government and there has been no conflict.

Shri Makhan Chatterjee: That has been our experience too. We have not said that there has been any interference on any issue between the Government and the port authorities so far. What I said was that in the existing Port Trust Acts governing Bombay, Calcutta and Madras, there is no similar provision.

Shri Indrajit Gupta: You mean that there is no specific proposal in the existing Acts.

Shri Raj Bahadur: If we had that provision, the Bombay modernisation scheme would have come much earlier, and the question of the so-called minimum scheme of development also would not have been hanging fire for a number of years.

Shri Jagjivan Ram: We can quote greater number of examples to show that our interference would have been more helpful to the boards.

Shri Raj Bahadur: Besides, much water has flowed down the Hooghly since those Port Trusts came into being.

Shri Jagjivan Ram: So, you agree that from certain angles it is necessary.

Shri Raj Bahadur: It is necessary to mention this also. Otherwise, your statement would give a different intention or complexion to the whole matter. So, you also agree that this is necessary.

Shri Makhan Chatterjee: Coming to clause 122, we feel that sub-clause 1 (a) is not necessary, because that amounts to curtailing the powers of the board to decide even how the meetings of the board should be conducted.

Shri Jagjivan Ram: The distinction is this. At present, we have specific Acts for individual ports. Now, it is going to be an omnibus Act to be applied as and when necessary, when a minor port becomes a major port. So this has to be done so that there is some uniformity. In the existing Act, rules are provided in the Act itself.

Shri Makhan Chatterjee: They have said at what intervals meetings should be held, what should be the quorum etc.

Mr. Chairman: Now it will be made in the rules.

Shri Jagjivan Ram: It will be delegated legislation. We have to place the rules before Parliament. So there is nothing contradictory between the existing Act and this.

Mr. Chairman: Sub-clause (3) provides for Parliament's scrutiny.

Shri Jagjivan Ram: Because now the Act will cover more than one port, it is not desirable to put it in Act itself. But Parliament's scrutiny will be there.

Mr. Chairman: If any rule goes against the Constitution, the Subordinate Legislation Committee will point it out. So it is a healthy provision.

Shri Makhan Chatterjee: These are the two matters we wanted to raise.

Shri Jagjivan Ram: On both you are satisfied.

Shri Makhan Chatterjee: We now come to our memorandum. The first point is about section 3—Deputy Chairman. Here we would like to lay special emphasis for this reason that ports have to deal with very highly complicated technical problems. To have the Chairman is all right; he is more concerned with policy matters; he executes broad policies and principles. But we feel that the pattern of General Manager would be more suitable than Deputy Chairman. This is the pattern particularly in European ports. They have a General Manager responsible for carrying out the day to day business of a technical nature. In the port of London or any other port in Great Britain, that is the general pattern. These general managers are normally people drawn from the port services with long experience in port working etc. In our considered opinion, if we adopt a similar method here, that would decidedly add to the efficiency of our ports. In the Railway Board, for instance, they are mostly people drawn from the services.

Mr. Chairman: You do not want a Deputy Chairman.

Shri Makhan Chatterjee: We think he is really redundant.

Mr. Chairman: Instead, you want a General Manager.

Shri Makhan Chatterjee: Yes.

Shri Jagjivan Ram: What is the distinction between the two?

Shri Makhan Chatterjee: We do not mind if he is called 'Deputy Chairman'; it is really a question of functions. We want an executive head.

Shri Raj Bahadur: We have not debarred the Port authorities from that under the present Act. If the port body so desires, it may think over it.

Mr. Chairman: The provision is, 'if the Central Government deems fit to appoint one'. It is not compulsory.

Shri Jagjivan Ram: The Chairman is the executive head.

Shri Makhan Chatterjee: If we have one chief executive, then he is responsible for administering the port.

Mr. Chairman: Suppose the Chairman is absent for any reason?

Shri Makhan Chatterjee: Then the next man carries it out. But then both may be absent also.

Shri Jagjivan Ram: Then some departmental head will be there.

Mr. Chairman: We will see about that.

Shri Raj Bahadur: It is the same as in the existing Act.

Shri Makhan Chatterjee: But from our experience, we feel that in such matters it would possibly be more appropriate to consult the Board also.

Shri Raj Bahadur: Do you want the Board to be made responsible for executive functions? It is a policy-making body.

Shri Jagjivan Ram: Specially for appointments, if you have to consult 20 people, you know what happens.

Shri Makhan Chatterjee: Any proposal is always initiated by the Chairman.

Shri Jagjivan Ram: If there are 20 people to decide?

Shri S. R. Kulkarni: Why not the UPSC? Or as they have the Railway Service Commission in Railways, why not some sort of Port Service Commission which can interview candidates?

Mr. Chairman: It is an autonomous body.

Shri Jagjivan Ram: Here we are considering appointment of heads of departments, not staff.

Shri Raj Bahadur: We are talking about people selected from the ranks, not fresh appointments.

Shri Makhan Chatterjee: From outside also appointments are made to the post of head of department.

Mr. Chairman: If you leave it to the Board, each member will make his own suggestion.

Shri Raj Bahadur: This is not a fresh selection where the UPSC could come in.

Shri Makhan Chatterjee: Outsiders are also appointed.

Shri Jagjivan Ram: It is an appointment of serving or retired officers of the State Government or the Central Government.

Shri Makhan Chatterjee: We are looking at it from the port's efficiency point of view only.

Mr. Chairman: We will consider it.

Shri Makhan Chatterjee: Coming to clause 29(f), the terms and conditions of the employees should not be altered.

Mr. Chairman: To their disadvantage. But if it is for their betterment?

Shri Makhan Chatterjee: That, of course, is welcome.

Shri Jagjivan Ram: It may be to their disadvantage in certain respects, but out of that some advantage may flow. If the proviso is not there, even that will be ruled out. The Central Government will go into that and decide.

Shri Makhan Chatterjee: We are saying this because we had an assurance once from the Prime Minister that our existing benefits should not be reduced.

Mr. Chairman: The Central Government will take care of you. It is an advantage.

Shri Makhan Chatterjee: Coming to clause 28 about the framing of rules, we think there should be protection that nothing in this Act would work to the prejudice of the provisions of the Industrial Employment (Standing Orders) Act or the Industrial Disputes Act, because I feel the Port-Trust Acts have specific objectives. For instance, in the present Calcutta Port Act, section 2(5) it is stated that nothing in the Act or the powers conferred under the Act on the trustees would infringe the fundamental rights of any private citizen.

Mr. Chairman: Since it is not specifically excluded by this Act, every fundamental right is protected. Every citizen whose rights have been violated can go to the court. Why should we provide it here? The Constitution gives you that right.

Shri Makhan Chatterjee: Some time back the port authorities thought they would formulate conduct rules for the port employees. In doing so, they decided to adopt the Government Servants Conduct Rules *in toto*, but Government servants and port employees do not stand on the same footing. Government servants have certain protection provided in the Constitution itself, but the port employees do not enjoy that.

Shri Jagjivan Ram: You will be satisfied if that protection is given to you also?

Shri Makhan Chatterjee: I think it would be much better, considering the nature and character of the port trusts, if they are treated on a par with the employees in other industrial establishments.

Shri Indrajit Gupta: Would you prefer the rules and regulations made by industrial establishments to the Central Government rules?

Shri Makhan Chatterjee: The rules are framed by the authorities and submitted to the Labour Commissioner. He is the certifying authority. So, the Ministry of Labour have laid down the broad provisions.

Shri Indrajit Gupta: The Calcutta port labour is not covered by the Industrial Employment (Standing Orders) Act?

Shri Makhan Chatterjee: No, nor Bombay, nor Madras. They have been exempted.

Shri Jagjivan Ram: Where the regulations are better, they are exempted under the Standing Orders Act itself.

Shri Indrajit Gupta: In that case, labour gets a chance of discussing the rules and regulations.

Shri Jagjivan Ram: Here it is not ruled out. Whether a particular establishment should be exempted from that or not is another matter, but the clause as it stands does not rule the Industrial Disputes Act or the Industrial Employment (Standing Orders) Act.

Shri Raj Bahadur: Unless it has been excluded, there is no danger. It remains there, and it can be taken advantage of.

Shri Makhan Chatterjee: They have been excluded by an executive order, not under the Act itself.

Shri Jagjivan Ram: Yes, but the Act gives the authority for that.

Shri S. R. Kulkarni: I would like to make some observations regarding Clause 111 as otherwise there would be some misunderstanding about what the Federation has said. The particular provision about questions of policy is likely also to affecting the existing Acts in Madras, Calcutta and Bombay. It is stated here that the decision of the Central Government whether a question is one of policy shall be final. To my mind, this is contrary to what is laid down in our Five Year Plan policy with regard to autonomous bodies. At page 267 of the Third Five Year Plan, it is stated:

"Far greater delegation of authority and flexibility of operation is necessary to enable the

management of the enterprise to produce results. If an enterprise does not have real autonomy, it is not likely to be effective."

So, if we do not define what a policy matter is and if everything is going to rest with the Central Government, then many things will be covered by that broad term of policy.

Mr. Chairman: It is only the Central Government that can decide. It is responsible to Parliament, and ultimately it is Parliament that decides it. It should be left to the Central Government. Who do you want should decide what is policy?

Shri S. R. Kulkarni: Could it not be incorporated in the body of this Act itself as to what constitutes policy?

Mr. Chairman: That is provided here in the Bill. You cannot define policy. Each question has to be decided on its own merits. You must leave it to the Government to decide what is policy and what is not policy. Government is answerable to Parliament.

Shri Raj Bahadur: Parliament is answerable to the people.

Shri Indrajit Gupta: You are not pressing your proposals in regard to section 3 on page 2 of your memorandum.

Shri Raj Bahadur: That is not their proposal; that is the proposal of the other federation.

Shri Makhan Chatterjee: It is our proposal. We have stated that the number of representatives of labour should not be less than two. We are very particular about it. Since we have stated it in the memorandum, we do not want to repeat it. But that does not mean that we are not particular about it.

Mr. Chairman: Whatever you have said in the memorandum will be taken into consideration by us. Thank you.

(The witnesses then withdrew)

The Committee then adjourned.

SELECT COMMITTEE ON THE MAJOR PORT TRUSTS BILL, 1962
MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE MAJOR PORT
TRUSTS BILL, 1962

Tuesday, the 4th June, 1963 at 09.08 hours.

PRESENT

Shri V. B. Gandhi *in the Chair*

MEMBERS

2. Shri Tridib Kumar Chaudhuri
3. Shri Sudhansu Bhusan Das
4. Shri Shivajirao S. Deshmukh
5. Shri Indrajit Gupta
6. Shri P. G. Karuthiruman
7. Shri Rama Chandra Mallick
8. Shri Raghunath Singh
9. Shri Raj Bahadur
10. Shri C. R. Raja
11. Shri H. Siddananjappa
12. Shri Ravindra Varma
13. Shri Vishram Prasad
14. Shri Jagjivan Rana

DRAFTSMAN

Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri G. Venkateswara Ayyar, *Secretary, Department of Transport, Ministry of Transport and Communications.*
2. Shri K. Ranganathan, *Deputy Secretary, Ministry of Transport and Communications.*
3. Shri R. Rangarajan, *Under Secretary, Ministry of Transport and Communications.*

SECRETARY

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES EXAMINED

Bombay Port Trust, Bombay

1. Shri A. L. Dias
2. Dr. S. G. Patel
3. Shri Devji Rattansey
4. Shri F. Rozario
5. Shri S. Nariman

(Shri V. B. Gandhi *in the Chair*).

BOMBAY PORT TRUST, BOMBAY:

Spokesmen:—

- (1) Shri A. L. Dias
- (2) Dr. S. G. Patel
- (3) Shri Devji Rattansey
- (4) Shri F. Rozario
- (5) Shri S. Nariman

(Witnesses were called in and they took their seats)

Mr. Chairman: Before we proceed there is one thing that I would like to point out. The evidence that you will give here will be treated as public and is liable to be published unless it is desired by you specifically that all or any part of the evidence tendered by you has to be treated as confidential. Even then, such evidence will be made available to Members of Parliament. This is the position in the light of which you will please proceed to give your evidence.

Now, members of the Committee have all read your memorandum. So, now you can emphasize such points as you like and also add any further information that you desire.

Shri A. L. Dias: The point of view of the Bombay Port Trust with regard to clause 111 has already been set out in the memorandum which we have submitted to the Select Committee. A statement was made by the Minister of Shipping in Parliament that the present Bill might form the pattern of amending all the existing Port Trust Acts, and it is in that context that the trustees sought this opportunity for placing their views before the Select Committee.

The point that they particularly wanted to emphasize was that ever since the establishment of the Bombay Port Trust, its development has proceeded apace without the necessity being felt by the Government for this provision which, they feel, does constitute a serious infringement of the autonomy of the port. A distinction has to be drawn between the powers which the Government has under the Act itself and the present blanket provision proposed to be provided in the Bill, because they feel that a blanket provision of this sort is likely to erode into the autonomy and the sense of responsibility of the Port Trust. That particularly is the point which the trustees would like to place before the Committee.

Shri Indrajit Gupta: Since in the memorandum you have used the words "constitutes a serious abridgment of the autonomy of the Board", I would like to know whether from your own experience you feel or you have an apprehension that this kind of provision, though definitely a new provision, might in fact be used in a way which would affect the autonomy of the port in a harmful way.

Shri A. L. Dias: At the moment there may not be any apprehension, but the apprehension is how in future that power will be used.

Shri Indrajit Gupta: Do you think it will be possible to define more precisely the matters in which the Government might issue its directives?

Shri A. L. Dias: Under the Bombay Port Trusts Act as it is, I think, the Government has a very wide range of control over all important matters. Therefore I personally do not see that there is any scope for further enlargement of those powers. On the contrary a greater degree of flexibility is necessary which has been provided in the matter of rules regarding sanctioning of contracts, appointments and so on. The rigid limits which are laid down in the Act are proposed to be made more flexible and in that way it is a step in the right direction. I do not think it is possible to define more precisely the matters on which Government can issue a directive.

Shri Devji Rattansey: The Bombay Port Trust Act as well as this Bill provides for certain supervision by the Government. We have the experience of the working of the Bombay Port Trust Act. Even the leases and tenders that we grant are subject to the approval of the Government. On the question of the power to issue directives, maybe, an assurance may be coming but what we fear is that a time may come when the Port Trusts will be reduced to departments of the Government if every now and then.

a directive is given. I do not think it is clear in anybody's mind as to what the directive will be, but a directive itself is a thing which creates doubts in the minds of the autonomous bodies. The power to issue a directive to autonomous bodies is not entirely desirable. That is what I think.

The second thing which I would like to say is this. We are bringing under the provisions of this Bill Cochin, Visakhapatnam and Kandla as major ports. I do not know about Calcutta and Madras Ports as to what their feelings are but about the Bombay Port I should like to say that it may not be told to us at any future date or it may not be presumed that because we have agreed to this in certain cases it can be made applicable to Bombay also. This is what we pray and would like to say with due deference.

Shri C. R. Raja: You say that the feeling of the people of the Bombay Port Trust is like this, but people in the Calcutta or Madras Port Trust are not feeling the same thing.

Shri A. L. Dias: I believe, Calcutta Port Trust has also sent a memorandum regarding this.

Shri Raj Bahadur: They have not sent anything to the Select Committee. I may invite the attention of the witnesses to the provision contained in clause 111 which says:—

“Without prejudice to the foregoing provisions of this Chapter, every Board shall, in the discharge of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

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

This is confined entirely to questions of policy and an opportunity is given to the Port Trust to express its views about it. I would like to know whether in the experience of the working of these Port Trusts during the post-independence period they have or have not found it necessary to consult each other mutually, namely, the head of the six major Port Trust meeting together to decide common questions of policy; whether they have not found it necessary to consult the Central Government in regard to such matters of policy as those affecting labour, developmental schemes, tariffs and so many other vital questions; whether they have not felt the need, in view of the common policy of development envisaged in our successive Plans, for us to evolve what may be called a Port policy, that is, a policy concerning the development and the operational efficiency of ports. I would really be enlightened to know if they have not found it so.

Shri A. L. Dias: The co-ordination and consultation between the Ports has been on a voluntary basis. Even when we have sought the advice of Government, it has been so to speak on a voluntary basis. It is something different from a directive being issued. I think, a distinction can be made between there being a need for co-ordination and general supervision and control by Government. The Trustees feel with regard to the issuing of directives that they may range over a very wide list of subjects.

Shri Raj Bahadur: I think, a question of policy is usually quite clear. Policy is something quite different from day-to-day working or administration. It is a question of evolving some sort of a uniform and harmonious, a reasonable and rational policy in regard to Ports and in regard to their administration and development. I would like to know whether it has not been found necessary even by the

Port Trust of Bombay itself, even in regard to its own developmental schemes, to bank upon the advice of the Central Government and finally to get over an insurmountable difficulty which it was confronted with in the matter of minimum development scheme which was hanging fire for a number of years to the detriment of the Port of Bombay. Then we had to come to some sort of a decision because the Central Government had to step in. These are matters which are of vital concern not only to the port and its economy itself but to the economy of all the ports and of the country. After all, ports like Bombay and Calcutta are the gateways of our trade; they are the outlets and the inlets for our merchandise.

Then, there is the question of labour disputes. These are matters in which the Central Government has got to evolve a policy which has to be implemented.

I would be grateful to the witnesses if they could point out whether such powers exist with the Government in the present Port Trusts Act and whether they could exercise this particular function efficiently and discharge their duties to the Ports and to the country. Are there any powers like that in the present Port Trusts Act?

Shri S. G. Patel: It cannot be denied—rather it is to be welcomed—that there has to be some coordination at the national level. The question or the issue involved here is, what sort of coordination it should be, whether it should be in the form of directive or it should be in the form of consultation and persuasion. We believe that in the present context, and, particularly, in the democratic context, the better way of functioning would be of consultation and persuasion. There has been no instance to the best of my knowledge

as far as Bombay port is concerned, where the Government has given a certain advice emphatically on a certain point and that has not been carried out. As regards labour disputes, I would submit with utmost respect that there is a Government machinery through the Ministry of Labour. If that is allowed to function in its own way as it functions in the private enterprise probably these problems that arise in the field of labour could be settled. There is a provision existing in the government, in the Central Statute, which provides for such labour disputes.

Sir, in this connection, I may also invite your attention to the present enquiry conducted in the United Kingdom and there has been a report called Rochdale Report. That Committee went into this aspect as to whether the Government should have its control and powers in the particular ministry. They came to the conclusion that it may not be advisable to have all these powers vested in the Government itself. It might be in another form. That is a different point. One of the reasons, if I may say so, is this.

Shri Raj Bahadur: That will lead us to the question of details. You have referred to the U.K. Rochdale Committee report. I have underlined the expression that clause 111 refers a question of policy only which would be decided after due consultation with the Board itself, with the Trust itself. The question of policy is something different. I would like in this context to remind the witnesses of one particular point. I would like to know whether they are taking into consideration the fact that we are instrumental in the development of ports, that we have persuaded the World Bank to offer credits and developmental loans for different ports. Is it not open to the Union Government, to the Central Government, to lay down certain yardsticks which may

be called policies for the full utilisation and efficient utilisation of those loans and also of the repayment of those loans? All these matters are of vital importance. For instance, if the Port takes a different view which is not consistent with the policy for the government in regard to the repayment of those loans, in regard to the taking of those loans, etc., a directive may have to be issued. Has this point been taken into consideration by you or not?

Shri Tridib Kumar Chaudhuri: I would like to put one question to the witness. What happens when a conflict of regional disparity and regional interest takes place and there are instances like that in the administration of different ports and I would like to know how that is settled? Who is to settle that? The Calcutta Port Trust is having one interest. There is the regional trade interest. The commercial interests of Calcutta and its adjoining areas is bound to be reflected in the administration of the Calcutta Port Trust. The same case would be applicable in the case of the Bombay Port Trust also. If any complaint arises, if any difference of opinion arises, how is that settled? What is the opinion of the witnesses as to the best method of solving these disputes if they arise?

Shri A. L. Dias: I do not recollect any instance where there was conflict of interest between the major ports, Calcutta, Bombay or Madras.

Shri Raj Bahadur: May I just say that there had been and there is still some sort of dispute whether Haldia or Paradip should be developed as major port of use for the exports of iron ore or for other purposes? Who shall decide it? There is a dispute already which has come to the fore now, namely which port should be developed for the export of iron ore, whether it should be Madras or it should be Goa or Mangalore or Bombay. Who shall decide that?

Shri Vishram Prasad: What are the difficulties which the witnesses wish to point out? What are the difficulties which arise in Government making a unified policy for all the ports, in respect of labour disputes, in respect of taking loans from the world bank etc.? What are the difficulties which come in the way for which this particular matter is being opposed by them? Let us take the case of development of the ports in which the Government should come in and take decision in regard to a uniform policy. May I know from the witnesses why they think that the Government should not come in?

Shri A. L. Dias: The point that I stated at the outset was that that would be an inroad into the autonomy of the Board. The hon. Minister of Shipping mentioned with regard to iron ore. Certainly these matters could be decided in a conference. There are other ways in which the Government could exercise influence.

Shri Jagjivan Ram: You mean indirect pressure. I would not like that. Suppose some trustee becomes recalcitrant. What authority have you under the present Act to bring him to order and set right matters? There is no provision.

Shri Indrajit Gupta: I would like to know, from their own experience, whether the witnesses have found it necessary in the past, in order to overcome some difficulty, on their own initiative, to approach the Government, to give a directive or to settle a matter which could not be otherwise settled.

Shri Jagjivan Ram: By indirect pressure.

Shri A. L. Dias: There have been instances where we have approached the Government for advice. We have not asked for a directive; advice we have asked.

Shri Jagjivan Ram: There was no authority to issue a directive; so, for the exercise of indirect pressure.

Shri Indrajit Gupta: Can we take it that the witnesses would have no objection in a case of directives of this type which are envisaged here, limited to matters which are inter-port matters, and their apprehension is that it would affect their internal working in the sense of autonomy of internal administration?

Shri Raj Bahadur: It will not be possible to give an exhaustive list of all matters.

Shri Jagjivan Ram: It must be clearly understood that so far as day-to-day administration is concerned, there is no intention to interfere. It is only on such wider questions of policy that such a directive can be issued. It is not a novel provision. We have so many autonomous corporations. I know of two or three myself where we have taken this power. For example, in the Air Corporations Act, we have such powers. You may remember that in several of our Corporations, we have this power for the Government. This is not a novel provision.

Shri Devji Rattansey: That is a special case. It may not be used for day-to-day administration. As far as development is concerned.....

Shri Raj Bahadur: It is rule of law. If we transgress a law, no court will excuse us.

Shri Jagjivan Ram: Parliament is there.

Shri Devji Rattansey: The question of maximum or minimum development for the Bombay port we need not go into. In fact, ultimately we came to you and wanted your blessing. You gave your blessing. We are thankful to you.

Shri Jagjivan Ram: What is being sought to be done is this. Whatever the Chairman might have requested the Government to perform by indirect pressure, should have the sanction of legislation. The Chairman

has agreed that there have been cases where our assistance has been sought. I would like that indirect pressure to be a direct thing having the sanction of Parliament.

Shri Raj Bahadur: Conversely interpreted, this particular clause does not purport to interfere with the day-to-day administration. Really autonomy is being more or less guaranteed by this clause. It defines the class of cases in which the Government can rightly intervene, to decide questions of policy. Apart from other things that may be there, autonomy is more or less defined.

Shri S. G. Patel: In that connection, I would invite attention to sub-clause 2 which says that the decision of the Central Government whether a question is one of policy or not shall be final.

Shri Raj Bahadur: That means, it shall not be justiciable. We do not have to take it to a court to determine whether a particular question is a question of policy or not.

Shri S. G. Patel: I submit it could also be something connected with the internal administration, if the Government comes to that conclusion.

Shri Raj Bahadur: Firstly, for the exercise of that power under 111, it will have to be a question of policy. Whether a question is a question of policy or not, who shall be the final judge for that? It is the Central Government. Will you at all like to leave it to a court to decide that? Will you leave it to a shipper or a shipping company, to say or claim when there this is a question of rates, that this question has been wrongly decided, it is not a matter of policy. It is a matter of day-to-day administration. The whole rigmarole of arguments will go on like that.

Shri S. G. Patel: It is in that context that I am repeating again. The present provisions in the Bombay and Calcutta Acts provide, let us take

freights, the rates have to be sanctioned by the Government. Whatever rates we may adopt, if the Government does not sanction, we cannot implement the rates.

Shri Jagjivan Ram: The Government sanction a certain rate. But you may not implement that. You may recommend the same rate. The Government decides. You again repeat that. What is the authority we have here?

Shri A. L. Dias: In the existing Act, the Government have the authority so far as the rates are concerned.

Shri Raj Bahadur: The question is whether we should leave it to a Judge to decide whether it is a matter of policy. As the hon. Minister pointed, we have taken the existing pattern from the D.V.C., Air Corporations, L.I.C. and several other corporations. I think that such a provision is necessary keeping in view the context of the development of the country. It is also necessary, firstly, in the interests of providing some sort of uniform policy in the pattern of development; secondly, in regard to the satisfaction of the labour demands and good industrial relations; and thirdly, in respect generally of a clean and efficient discharge of functions by the ports all over the country.

Shri S. G. Patel: It mainly boils down to this: whether it should be in the form of a directive or it should be in the form of an indirect pressure or persuasion.

Shri Jagjivan Ram: Supposing we fail to persuade the Port Trusts, then what happens?

Shri S. G. Patel: I am sure that that situation has not arisen so far, and it will not arise in the future.

Shri Jagjivan Ram: In other words, your point is that we should not have this provision, but there should

be some indirect pressure or persuasion. I know that Government are strong enough to see that they are persuaded, but I personally would not like that kind of thing.

Shri S. G. Patel: I would go further and say that Government should desire that things are settled by consultation and persuasion rather than by the issuing of directives, because that will not be a happy state of affairs.

Shri F. Rozario: I only feel that this clause implies that the authority of the trustees of the port is reduced to some extent. Admittedly, this new Bill which is now being enacted is not to be applied to the existing major ports or to the existing Port Trusts. But it is felt that in due course, when the time comes, due consideration might be given to the existing autonomy enjoyed by the port trusts.

Shri Raj Bahadur: Autonomy is a very wide and vague term. If I may describe it properly, autonomy does not mean complete independence. Everybody recognises that. The question is what exactly should be the area of restriction of that independence, so that "autonomy" may be contained within that area; broadly speaking, that restriction can be defined by the expression 'policy'. So, it is only on questions of policy that the autonomy is restricted. Therefore, the autonomy remains. Within the limits of overall national policy of port development, the autonomy is not encroached upon. That is all.

Shri F. Rozario: Your earlier remark really scared me as a representative of shipping interests, when you said that we might decide to increase the rates and say that this is final.

Shri Raj Bahadur: You have yourself said that that power is already vested in Government. I only mentioned it in the larger context of the entire port administration of the country, that if something is going to

be done in the matter of having a uniform wage policy and so on, then it should be possible to do that.

Shri S. G. Patel: At present also, there is a forum called the National Harbour Board, I believe, which takes up certain issues. I do not know whether its duties are defined.

Shri Raj Bahadur: That is an advisory board. That does not replace the Government.

Shri S. G. Patel: It could be suitably modified. That is all that I can say.

Shri Jagjivan Ram: You want that it should be made an executive board?

Shri S. G. Patel: That may be done, if necessary.

Shri A. L. Dias: There are two or three other minor suggestions that we have made. One of the suggestions is that in the major port trusts, the labour trustees should not be less than two, because labour represents a very large section of the port. But that, I presume, will depend upon the size of the board. In a smaller board, probably, one would be sufficient.

Shri Jagjivan Ram: That has been purposely kept flexible.

Shri A. L. Dias: My next suggestion is in regard to clause 43 (2) of the Bill. No period has been prescribed there for fixing the liability of the board with regard to the goods which are entrusted to it. Under the Bombay Port Trust Act, a period of seven days has been prescribed after which the board is not liable for any loss or destruction of goods entrusted to its charge.

Shri Raj Bahadur: We have kept the period flexible because that will vary from port to port. In Calcutta, the period is five days; in Cochin, it is four days. This is known as the free period. That is kept flexible, and that is why we have not defined it in the body of this Bill as to what the exact period should be.

Shri A. L. Dias: But I think that under this Bill, the board is not absolved of the liability after a certain period of time. Under the Bombay Port Trust Act, a period of seven days is prescribed after which the board is not liable, that is, seven days after the date of landing.

Shri Raj Bahadur: In Calcutta, it is five days, in Cochin it is four days and so on, after which the board is not liable. So, we decided that no specific period should be laid down in the Bill.

Shri A. L. Dias: The period referred to in that clause is with regard to the period after the giving of notice, and not on the question of liability.

Shri F. Rozario: In the Bombay port, it is a question of clearance. If the goods are not cleared within seven days, then the port trust is not liable. But under this Bill, it is a question of giving due notice of loss etc. If due notice of loss etc. is not given within a specified period, then the board of the particular port will not be liable. That is the distinction between the existing Act and the proposed Bill.

Shri G. R. Bal: That is the existing provision. I think that this provision follows more or less the provision follows more or less the provision in Calcutta, a certain period is given. So, it depends on how exactly you put it. If notice is to be given within one month, then obviously, the liability comes to one month. In Madras, the period is one month. So, it is really a question of what the period should be. In Bombay, the period is seven days, in Calcutta, it is five days, and in Madras, it is one month.

Here, because this Bill applies to more than one major port, the position has been kept flexible, so that the period can be stated in accordance with the requirements of the port.

Shri A. L. Dias: Does it mean that the period will be reckoned from the date of giving notice?

Shri G. R. Bal: Naturally, the period will start only from the date of receipt given. If you do not give notice of damage, then how can the liability arise?

Shri Raj Bahadur: The intention is that the period of notice should be determined by the Port Trust itself, because it is likely to vary from port to port. The period of notice can be provided for in the regulations as has been mentioned already in clause 43 (2), which says:

"...unless notice of such loss or damage has been given within such period as may be prescribed by regulations made in this behalf from the date of the receipt given for the goods under subsection (2) of section 42."

Shri A. L. Dias: Suppose a period of seven days is prescribed.

Shri G. R. Bal: Then, it is liability for seven days. In other words, if notice of loss etc. is not given within seven days, the board is not liable. Indirectly, it comes to the same thing.

Shri A. L. Dias: My third suggestion is in regard to the imposition of penalty on under-stating the quantity of goods imported.

Shri G. R. Bal: There again, so far as I know, there is no similar provision in the Calcutta Port Act.

Shri A. L. Dias: There is such a provision in the Bombay Port Trust Act.

Shri G. R. Bal: We shall examine that point further. The only thing that I would like to mention is that even in the absence of any specific provision to this effect in the Calcutta Act, the port trust concerned has not found it difficult to meet this particular situation.

Shri Raj Bahadur: The amount of Rs. 50 as the maximum penalty even in the case of evasion was considered

to be inadequate. The penalty for evasion should be much more than that. So that a sum of Rs. 50 has been made the minimum, and the amount of penalty may be prescribed subject to that, and the provision made in the relevant clause of the Bill would cover the purposes of sections 82 and 83 of the Bombay Port Trust Act and sections 105 and 106 of the Madras Act.

Shri A. L. Dias: I am not sure whether it would cover it. For, here is a specific issue regarding the under-stating of the quantity. I do not think that there is any penalty prescribed for that.

Shri Jagjivan Ram: We shall have it examined further.

Shri Indrajit Gupta: If this suggestion is accepted, would it not act as an additional check along with the normal checks by the customs authorities on the practice of under-invoicing etc.?

Shri G. R. Bal: I think that even under the Indian Ports Act, they have got to declare the tonnage and so on. So, there are independent provisions regarding the matters which are being raised now. For instance, there is a provision in the Bombay Act which refers to the tonnage also. In the Indian Ports Act, there is already a provision in this behalf; if wrong tonnage is declared, then it is made punishable. So, there are independent provisions to cover such a case. Probably, that is why in the Calcutta Act, a provision such as is contained in the Bombay Act was not found necessary.

Shri Jagjivan Ram: We shall have it examined.

(The witness then withdrew)

The Committee then took up clause by clause consideration of the Bill.

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