

RELEVANT LEGAL PROVISIONS UNDER MAJOR PORT TRUSTS ACT, 1963

Section 42. Performance of services by Board or other person -

- (1) Board shall have power to undertake the following services:-
 - (a) Landing, shipping or transshipping passengers and goods between vessels in the port and the wharves, piers, quays or docks belonging to or in the possession of the 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;
 - (d) receiving and delivering, transporting and booking and dispatching 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(9 of 1890);
 - (e) piloting, hauling, mooring, remooring, hooking, or measuring of vessels or any other service in respect of vessels and
 - (f) Developing and providing, subject to the previous approval of the Central Government, infrastructure facilities for ports.
- (2) 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) Without prejudice to the provisions of sub-section (3), a Board may, with the previous approval of the Central Government, enter into any agreement or other arrangement (whether by way of partnership, joint venture or in any other manner) with, anybody corporate or any other person to perform any of the services and functions assigned to the Board under this Act on such terms and conditions as may be agreed upon.
 - (a) Without prejudice to the provisions of sub-section (3), a Board may, with the previous approval of the Central Government, enter into any agreement or other arrangement (whether by way of partnership, joint venture or in any other manner) with, anybody corporate or any other person to perform any of the services and functions assigned to the Board under this Act on such terms and conditions as may be agreed upon.
- (4) No person authorized under sub-section (3) shall charge or recover for such service any sum in excess of the amount [specified by the Authority, by notification in the Official Gazette].

- (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 form as the Board may specify.
- (6) The responsibility of any such person for the loss, destruction or deterioration of goods of which he has taken charge shall, subject to the other provisions of this Act, be that of a bailee under section 151, 152 and 161 of the Indian Contract Act, 1872 (9 of 1872).
- (7) After any goods have been taken charge of and a receipt given for them under this section, 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.

Section 47A. Constitution and incorporation of Tariff Authority for Major Ports:-

- (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint there shall be constituted for the purposes of this Act an Authority to be called the Tariff Authority for Major Ports.
- (2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal and shall by the said name sue and be sued.
- (3) The head office of the Authority shall be at such place as the Central Government may decide from time to time.

The Authority shall consist of the following Members to be appointed by the Central Government, namely:-

- (a) Chairperson from amongst persons who is or who has been a Secretary to the Government of India or has held any equivalent post in the Central Government and who has experience in the management and knowledge of the functioning of the ports;
- (b) A Member from amongst economists having experience of not less than fifteen years in the field of transport or foreign trade;
- (c) A Member from amongst persons having experience of not less than fifteen years in the field of finance with special reference to investment or cost analysis in the Government or in any financial institution or industrial or services sector.

Section 47B. Term of Office, conditions of service, etc., of Chairperson and other Members:-

- (1) The Chairperson or a Member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

- (2) The salaries and allowances payable to and other conditions of service of the Chairperson and the other Members shall be such as may be prescribed by the Central Government.
- (3) Notwithstanding anything contained in sub-section (1), the Chairperson or a Member may be –
 - (a) Relinquish his office by giving in writing to the Central Government a notice of not less than three months; or
 - (b) Be removed from his office in accordance with the provisions of Section 47-D.
 - (c) If a casual vacancy occurs in the office of the Chairperson or any Member, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled up by the Central Government by making a fresh appointment and the Chairperson or the Member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.
- (4) If a casual vacancy occurs in the office of the Chairperson or any Member, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled up by the Central Government by making a fresh appointment and the Chairperson or the Member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.

Section 47C. Disqualification for the office of Chairperson and Member:-

- (a) Person shall be disqualified for being appointed as Chairperson or as a member of the Authority if he is disqualified for being chosen as a trustee under Section 6.

Section 47D. Removal, etc., of Chairperson and Members:-

- (1) The Central Government shall remove from the Authority the Chairperson or any Member; if he:-
 - (a) becomes subject to any disqualification under section 47C;
 - (b) Refuses to act or becomes incapable of acting;
 - (c) In the opinion of the Central Government has so abused his position as to render his continuance in office detrimental to the public interest; or
 - (d) Is otherwise unsuitable to continue as the Chairperson or as a Member.
- (3) The Central Government may suspend the Chairperson or any Member pending an inquiry against him.
- (4) No order of removal under this section shall be made unless the Chairperson or the Member concerned, as the case may be, has been given an opportunity to submit his explanation to the Central Government and when such order is passed, the seal of the Chairperson or Member removed shall be declared vacant.
- (5) The Chairperson or a Member who has been removed under this section shall not be eligible for re-appointment as a Chairperson or as a Member or in any other capacity under the Authority.

Section 49B. Fixation of port-dues: -

- (a) The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be specified by regulations.

Section 47F. Authentication of all orders and decisions of the Authority: -

- (a) All orders and decision of the Authority shall be authenticated by the signature of the Chairperson or any other Member authorised by the Authority in this behalf.

Section 47G. Vacancy, etc. not to invalidate proceedings of the Authority: -

- (1) No act or proceeding of the Authority shall be invalidated merely by reason of:-
 - (a) Any vacancy in, or any defect in, the constitution of the Authority; or
 - (b) Any defect in the appointment of a person acting as a Chairperson or a Member of the Authority; or
 - (c) Any irregularity in the procedure of the Authority not affecting the merits of the case.

Section 47H. Officers and employees of the Authority: -

- (1) The Authority may appoint officers and other employees as it considers necessary for the efficient discharge of its functions under this Act.
- (2) The salary and allowances payable to and other conditions of service of the officers and other employees of the Authority appointed under sub-section (1) shall be such as may be specified by regulations.

Section 48. Scale of rates for services performed by Board or other person:-

- (1) The Authority shall from time to time, by notification in the Official Gazette, frame a scale of rates at which, and a statement of conditions under which, any of the services specified hereunder shall be performed by a Board or any other person authorised under Section 42 at or in relation to the port or port approaches: -
 - (a) transshipping of passengers or goods between vessels in the port or port approaches;
 - (b) landing and shipping of passengers or goods from on 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) craning or portering of goods on any such places;
 - (d) Wharfage, storage or demurrage of goods on any such place;
 - (d) Any other service in respect of vessels, passengers or goods,
- (2) Different scales and conditions may be framed for different classes of goods and vessels.

Section 49. Scale of rates and statement of conditions for use of property belonging to Board:-

- (1) The Authority shall from time to time, by notification in the Official Gazette, 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:-
 - (a) Approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by animals or vehicles carrying passengers or goods;
 - (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;
 - (c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;
 - (d) Any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.
- (2) Different scales and conditions may be framed for different classes of goods and vessels.
- (3) Notwithstanding anything contained in sub-section (1), the Board may, by auction or by inviting tenders, lease any land or shed belonging to it or in its possession or occupation at a rate higher than that provided under sub-section (1).

Section 49B. Fixation of port-dues: -

- (a) Within any port, fees may be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels, at such rates as the Authority may fix.
- (b) The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by sub-section (1).
- (c) The Central Government may, in special cases, remit the whole or any portion of the fees chargeable under sub-section (1) or sub-section (2).

Section 49B. Fixation of port-dues: -

- (1) The Authority shall from time to time, by notification in the Official Gazette, fix port-dues on vessels entering the port.

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

Section 50. Consolidated rates for combination of services: -

The Authority may, from time to time, by notification in the Official Gazette, frame a consolidated scale of rates for any combination of service 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 or the fees to be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels as specified in Section 49-A or the port dues to be fixed on vessels entering the port and for the duration of such dues as specified in Section 49-B.

Section 50A. Port-due on vessels in ballast: -

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

Section 50B. Port-due on vessels not discharging or taking in cargo:-

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

Section 50C. Publication of orders of Authority: -

Every Notification, declaration, order and regulation of the Authority made in pursuance of this Act shall be published in the Official Gazette and a copy thereof shall be kept in the office of conservator and at the custom-house, if any, of every port to which the declaration, order or rule relates, and shall there be open at all reasonable times to the inspection of any person without payment of fee.

Section 51. Power to levy concessional rates in certain cases: -

- (1) In framing scales under any of the foregoing provisions of this chapter, the Authority may prescribe a lower rate in respect of: -
- (a) Coastal goods, that is to say, goods, other than imported goods as defined in the Customs Act, 1962 (52 of 1962), carried in a vessel from one Indian port to another Indian port;

(b) Other goods, in special cases.

Section 54. Power of Central Government to require modification or cancellation of rates: -

- (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 therefore, direct the Authority to cancel any of the scales in force or modify the same, within such period as that Government may specify in the order.
- (2) If the Authority fails or neglects to comply with the direction under sub-section (1) 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 canceling or modifying any scale the Central Government shall consider any objection or suggestion which may be made by the Authority 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.

Section 110-A. Power of Central Government to supersede the Authority: -

- (1) If the Central Government is of the opinion that the Authority is unable to perform, or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has willfully or without sufficient cause, failed to comply with any direction issued by the Central Government under Section 111, the Central Government may, by notification in the Official Gazette, supersede the Authority for such period as may be specified in the notification.
 - (a) Provided that, before issuing a notification under this sub-section, the Central Government shall give reasonable opportunity to the Authority to show cause why it should not be superseded and shall consider the explanation and objections, if any, of the Authority.
- (2) Upon the Publication of a notification under sub-section (1) superseding the Authority: -
 - (a) the Chairperson and the Members of the Authority shall, notwithstanding that their term of office has not expired as from the date of supersession, vacate their offices as such Chairperson or Members as the case may be;
 - (b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Authority shall, during the period of supersession, be exercised and performed by such person or persons as the Central Government may direct.

- (2) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may:-
- (a) extend the period of supersession for such further period as it may consider necessary; or
 - (b) reconstitute the Authority in the manner provided in Section 47-A.

Section 111. Power of Central Government to issue directions to Board: -

- (a) Without prejudice to the foregoing provisions of this Chapter, the Authority and 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 from time to time.
- (b) Provided that the Authority or the Board, as the case may be, shall be given opportunity to express its views before any direction is given under this sub-section
- (c) The decision of the Central Government whether a question is one of policy or not shall be final.

Section 112. Every person employed by the Authority of this Act to be a public servant:-

Every person employed by the Authority or by a Board under this Act shall, for the purposes of Sections 166 to 171 (both inclusive), 184, 185 and 409 of the Indian Penal Code (45 of 1860) and for the purposes of the Prevention of Corruption Act, 1988 (49 of 1988) be deemed to be a public servant within the meaning of Section 21 of the said Code.

Section 121. Protection of acts done in good faith: -

No suit or other legal proceeding shall lie against the Authority or 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 there under, 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.

Section 123A. Power of Authority to make regulations:-

- (1) The Authority may take regulations consistent with this Act for all or any of the following purposes, namely:-
 - (a) The times and places of meetings of the Authority and the procedure to be followed at such meetings under Section 47-E;

- (b) the salaries and allowances payable to and the other conditions of service of officers and other employees of the Authority under sub-section (2) of Section 47-H.

Section 132. Requirements as to publication of notifications, orders, etc., in the Official Gazette: -

- (1) Any requirement in this Act that a notification, order, rule or regulation issued or made by a Board or the Authority or the Central Government shall be published in the Official Gazette, shall, unless otherwise expressly provided in this Act, be construed as a requirement that the notification, order, rule or regulation shall:-
 - (a) Where it is issued or made by the Board, be published in the Official Gazette of the State in which the port is situated, and
- (2) Where it is issued or made by the Authority or the Central Government, be published in the Gazette of India.
- (3) Any notification, order, rule or regulation issued or made by the Authority or the Central Government shall, for general information, be also republished in the Official Gazette of the State in which the port is situated.