



*The Mongla Port Authority
Ordinance, 1976*

And

*The Mongla Port Authority
(Amendment) Act, 1995*

AMENDED AND UPDATED UPTO 16 SEPTEMBER 1995

**The Mongla Port Authority
Ordinance, 1976**

Ordinance No. LIII of 1976

**AN
ORDINANCE**

to provide for the establishment of the Mongla Port Authority

WHEREAS it is expedient to provide for the establishment of an Authority for the management, maintenance and development of Mongla Port and for matters connected therewith or incidental thereto;

Now, THEREFORE, in pursuance of the Proclamations of the 20th August, 1975, and 8th November, 1975, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance :-

**CHAPTER-1-
PRELIMINARY**

1. Short title and commencement-(1) This Ordinance may be called the Mongla Port Authority Ordinance, 1976. (Amended Act No. 1 of 1987 on 8th march 1987 and Amended Act No. 20 of 1995 on 16th September 1995)

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

2. Definitions—In this Ordinance unless there is anything repugnant in the subject or context,-

- (a) "Authority" means the Mongla Port Authority established under section 4;
- (b) "Board" means the Board of the Authority constituted under section 6;
- (c) "Chairman" means the Chairman of the Board;
- (d) "dock" includes basins, locks, cuts, quays, wharves, warehouses, railways and other works and things appertaining to any dock;
- (e) "goods" includes wares, merchandise and container of every description; (Amended by Act No. 20 of 1995 on 16th September 1995)
- (f) "high water-mark" means a line drawn through the highest points reached by ordinary spring tides at any season of the year;
- (g) "land" includes buildings and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth and the foreshore and the bed of the river below high water-mark;
- (h) "master" when used in relation to any vessel, means any person, not being a pilot or harbour master, having for the time being command or charge of such vessel;

- (i) "member" means a member of the Board;
- (j) "owner" when used in relation to goods, includes any consignor, consignee, shipper or agent for the sale, custody, shipping, clearing or removing such goods, and when used in relation to any vessel, includes any part owner, charterer, consignee or mortgagee in possession thereof;
- (k) "pier" includes any stage, stairs, landing place jetty, floating barge or pontoon and any bridge or other work connected therewith;
- (l) "Port" means the Mongla Port as for the time being defined for the purposes of this Ordinance;
- (m) "prescribed" means prescribed by rules;
- (n) "Regulations" means regulations made under this Ordinance;
- (o) "rules" means rules made under this Ordinance;
- (p) "vessel" includes any ship, barge, boat, raft or craft or any other thing whatever, designed or used for the transport by water or passenger or goods;
- (q) "wharf" includes any bank of the river which may be improved to facilitate the loading or unloading or goods, and any foreshore used for the same and any wall enclosing or adjoining such bank or foreshore.

3. Declaration of limits of Port—(1) The Government may, by notification in the official Gazette, define the limits of Mongla Port for the purposes of this Ordinance; and may, from time to time, by a like notifica-

tion, alter such limits.

(2) Such limits may extend to any part of the navigable approaches to the port and the outer anchorage or to any part of the sea, river, shore, bank or land, and may include any dock, pier, shed or other work made on behalf of the public for the convenience of the traffic, transportation, handling of goods, for the safety of the vessels or for the improvement, maintenance or good governance of the port or river and their approaches, whether within or without high water mark, and subject to any right of private property therein, any portion of the shore, bank or land within fifty yards of high water mark. (Amended by Act No. 20 of 1995 on 16th September 1995)

CHAPTER-II

ESTABLISHMENT OF THE AUTHORITY

4. Establishment of the Authority—(1) With effect from such date as the Government may, by notification in the official Gazette, appoint, there shall be established an Authority for Mongla Port to be called the Mongla Port Authority for carrying out the purposes of this Ordinance.

(2) The Authority shall be a body corporate, having perpetual succession, and a common seal, with power, subject to the provisions of this Ordinance, to acquire, hold and dispose of by lien, mortgage, sale, alienation or otherwise property, both movable and immovable, and shall by the said name sue and be sued. (Amended by Act No. 20 of 1995 on 16th September 1995)

5. Management—(1) The general direction and management of the Authority and its affairs shall vest in a Board which may exercise all powers and do all acts and

things which may be exercised or done by the Authority.

(2) The Board in discharging its functions shall be guided on questions of policy by such directions as may be given to it, from time to time, by the Government.

6. The Board—(1) The Board of the Authority shall consist of a Chairman and not more than three other members to be appointed by the Government.

(2) The Chairman and other members shall be full-time officers of the Authority and shall hold office on such terms and conditions as may be determined by the Government.

(3) The Chairman shall be the chief executive officer of the Authority.

(4) The Chairman and other members shall perform such functions and discharge such duties as are assigned to them by or under this Ordinance.

7. Meetings—(1) The meetings of the Board shall be held as such times and places and in such manner as may be provided by regulations:

Provided that, until regulations are made in this behalf, the meetings of the Board shall be held as and when convened by the Chairman.

(2) To constitute a quorum at a meeting of the Board not less than two members shall be present.

(3) At a meeting of the Board each member shall have one vote, and in the event of equality of votes the Chairman shall have a second or casting vote.

(4) The meeting of the Board shall be presided over by

the Chairman, and in his absence, by member elected for the purpose by the members present.

(5) No act or proceeding of the Board shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of the Board.

8. Advisory Committee—The Government may, in consultation with the Authority, appoint an advisory Committee consisting of such number of persons as it may think fit for the purpose of advising the Authority in respect of such matters as may be referred to it by the Authority or by the Government.

CHAPTER-III

POWERS AND FUNCTIONS OF THE AUTHORITY

9. Functions of the Authority—The functions of the Authority shall be—

- (a) to manage, maintain, improve and develop the Port.
- (b) to provide and maintain adequate and efficient port services and facilities in the Port or the approaches to the Port;
- (c) to regulate and control berthing and movement of vessels and navigation within the Port;
- (d) to do such acts and things as may be necessary or convenient to be done in connection with or incidental or conducive to the performance of its functions under this Ordinance.

10. Powers of the Authority—(1) Subject to the other provisions of this Ordinance, the Authority may take such

measures and exercise such powers as may be necessary for carrying out the purposes of this Ordinance.

(2) Without prejudice to the generality of the powers conferred by sub-section (1) the Authority shall, in particular, have power—

- (a) to construct, maintain and operate docks, moorings, piers and bridges within the Port, with all necessary and convenient drains, arches, culverts, roads, railways, fences and approaches;
- (b) to undertake any work of or in connection with the loading, unloading and storing of goods in the Port;
- (c) to construct, maintain and operate ferry vessels to carry passengers; vehicles and goods within the Port;
- (d) to construct, maintain and operate railways, warehouses, sheds, engines, cranes, scales and other appliances for conveying, receiving, handling and storing goods to be landed or shipped or otherwise dealt with by the Authority.
- (e) to reclaim, excavate, enclose or raise any part of the bank or bed of the river;
- (f) to construct, maintain and operate dredgers and appliances for clearing, deepening and improving the bed of the river;
- (g) to construct, maintain and operate all means and appliances for berthing, loading and discharging vessels;
- (h) to construct, maintain and operate vessels for towing or rendering assistance to vessels, saving life

and property or recovering any property lost, sunk or stranded;

- (i) to supply fuel or water to vessels;
- (j) to provide fire and security services within the Port;
- (k) to acquire, hire, procure, construct, erect, manufacture, provide, operate, maintain or repair anything whatsoever required by the Authority for the purposes of this Ordinance;
- (l) to control the erection and use of docks and any other works, whether above or below the high water-mark within the Port or the approaches to the Port;
- (m) to acquire any undertaking affording or intending to afford facilities for the loading and discharging or warehousing of goods in the Port or for the bunkering of vessels;
- (mm) to regulate the custom agents licensed under the Customs Act, 1969 (IV of 1969) in the performance of their functions within the limits of Port; (Amended by Act No. 20 of 1995 on 16th September 1995)
- (n) to enter into any contract, bond or agreement of any kind whatsoever for the purposes of this Ordinance.

11. Removal of Vessels and equipment from docks, etc.—(1) The Authority may, by notice in writing, order the master or owner or agent of any vessel or equipment to remove from any dock, mooring, pier, anchor site

or any other site belonging to the Authority.

(2) If such vessel or equipment is not removed therefrom within the time specified in the notice, the Authority may charge in respect of such vessel or equipment at the rate specified by it in accordance with the provisions of section 19. (Amended by Act No. 20 of 1995 on 16th September 1995)

12. Authority to take charge of goods—

(1) The Authority shall, immediately upon the landing of any goods on its quay, wharf or pier, take charge thereof and store such of the goods as may be liable to damage or deterioration by exposure in any shed or warehouse belonging to the Authority.

(2) Subject to the provisions of this Ordinance, the responsibility of the Authority for the loss, destruction or deterioration of goods of which it has taken charge shall be that of a bailee under section 151, 152, 161 and 164 of the Contract Act, 1872 (IX of 1872) :

Provided that no responsibility under this section shall attach to the Authority after the expiry of ten days from the date of taking charge of goods by the Authority. (Amended by Act No. 20 of 1995 on 16th September 1995)

13. Accommodation for Customs Officers on docks, etc.—Where under the provisions of any law for the regulation of duties of Customs, any dock, mooring, pier or shed, provided under this Ordinance for the use of sea-going vessels, is appointed to be a dock or wharf for the landing or shipping, or a warehouse for the storing of goods within the meaning of such law, the Authority shall set apart, maintain and secure on or in such dock, moor-

ing, pier or shed such portion thereof, or place therein, or adjoining thereto, for the use of the officers of Customs as the Government may approve of or appoint in that behalf.

14. Dues at Customs docks, etc.—Notwithstanding that any dock, mooring, pier or shed or portion thereof has, under the provisions of section 13, been set apart for the use of the officers of Customs, all dues, rates, tolls, charges and rents payable under this Ordinance in respect thereof or for the use thereof or for the storage of goods therein, shall be paid and be payable to the Authority, or to such persons as it may appoint to receive the same.

15. Registration of cargo-boat traffic.—

(1) The master of every vessel entering or leaving the Port to which the provisions of the Customs Act, 1969 (IV of 1969), in regard to entering or clearing at a Customs House, do not apply shall be bound to stop at one or other of the stations established by the Authority for the registration of river-borne traffic, and forthwith to make a full and true declaration of the nature and value of the cargo at the time being carried by him on such vessel.

(2) No such master shall withdraw his vessel from any such station until he has received from the officer-in-charge of the same a pass on which the particulars of the nature and value of the cargo so being carried shall be recorded.

16. Right of the Authority to maintain pilots.—

(1) The Authority shall have the right of maintaining pilots for the navigation of vessels at the Port and shall be bound to provide a sufficient number of pilots for that purpose and all fees for pilotage shall be paid to the Authority.

Provided that no person shall be appointed to be a pilot by the Authority who is not for the time being authorised under the provisions of the Ports Act, 1908 (XV of 1908), to pilot vessels.

17. Private docks, etc. prohibited.— (1) Save as provided in section 18, no person except the Authority shall make, erect to fix below high water-mark within the Port any dock, pier, erection or mooring.

(2) Any matter or thing made, erected or fixed in contravention of sub-section (1) may be removed by the Authority and the person who has so made, erected or fixed any such matter or thing shall be punishable with fine which may extend to ten thousand taka and with a further fine which may extend to one thousand taka for every day during which such matter or thing has been permitted to remain so made, erected or fixed after notice to remove the same has been given to him, and shall also be liable to pay all expenses which may have been incurred by the Authority in removing such matter or thing.

18. Power to permit erection of private docks, etc.—The Authority may, by order in writing and subject to such conditions as may be specified therein, permit any person to make, erect or fix below high water-mark within the Port any dock, pier, erection or mooring.

19. Scales of tools, etc.— (1) The Authority shall frame—

- (a) a scale of tolls, dues, rates and charges, annual or other, to be paid by the owners of vessels plying, whether for hire or not and whether regularly or occasionally, within or partly within and partly with-

out the limits of the Port, in respect of such vessels and of persons whether in charge of or on board such vessels, and also in respect of the licensing, registration and regulation of such vessels and persons:

Provided that no such tolls, dues, rates and charges shall be chargeable in respect of vessels which are liable to port dues under the provisions of Schedule 1 to the Port Act, 1908 (XV of 1908);

- (b) a scale of tolls, dues, rates and charges—
- (i) for the landing and shipment of goods from and in sea-going vessels, and vessels not being sea-going, respectively, at such docks, piers and anchorages as belong to the Authority, or any other agency authorised by the Authority to construct such docks;
 - (ii) for the use of such docks, piers, and anchorages by such vessels;
 - (iii) for the storing and keeping of any goods stored in any premises belonging to the Authority;
 - (iv) for the removal of goods; and
 - (v) for the use of any mooring;
- (c) a scale of tolls for the use of the said docks, piers and anchorages by any such vessels, in case the Authority permits the goods to be landed or shipped by persons other than its own officers and employees; and
- (d) a scale of charges for—

- (i) any services to be performed by the Authority or its officers and employees in respect of any vessels or goods;
- (ii) the use of any works or appliances to be provided by the Authority;
- (iii) the carrying of passengers and their personal effects on vessels belonging to, or hired by, the Authority; and
- (iv) the towing of and rendering assistance to any vessels, tugs or other boats, or their equipment, within the limits of the Port or outside those limits, for the purpose of saving or protecting life or property.

(2) Every scale framed under sub section (1) shall be submitted to the Government and after approval or modification by the Government, shall be published in the official Gazette.

19A. Power of Authority to impose river dues.—The Authority may, with the previous sanction of the Government and by notification impose a river dues on all goods landed from or shipped into any seagoing vessel lying or being within the limits of the Port, whether such goods shall or shall not be so landed or shipped at any dock, wharf, quay, stage, mooring, jetty or pier belonging to the Authority or not. (Amended by Act No. 20 of 1995 on 16th September 1995)

20. Remission of tolls, etc.—The Authority may, in special cases, with the previous sanction of the Government, remit the whole or any portion of a toll, dues, rate or charge leviable according to any scale for the time

being in force under section 19 :

Provided that no sanction of the Government shall be necessary if the remission in any one case does not exceed one thousand taka or such larger sums as the Government may from time to time specify.

21. Authority's lien for tolls, etc.—For the amount of all tolls, dues, rates and charges leviable under this Ordinance in respect of any goods, the Authority shall have a lien on such goods, and shall be entitled to seize and detain the same until such tolls, dues, rates and charges are fully paid.

(2) For the amount of rent lawfully due on buildings, plinths, stacking areas and other premises which are the property of the Authority and not paid after demands therefore have been duly preferred, the Authority shall have a lien on all goods therein or thereon, and shall be entitled to seize and detain the same.

(3) Toll, dues, rates and charges in respect of goods to be landed shall become payable immediately on the landing of goods and in respect of goods to be removed from the premises of the Authority or to be shipped for export shall be payable before the goods are removed or shipped.

(4) The lien for such tolls, dues, rates and charges shall have priority over all other liens and claims, except a lien for freight, primage and general average, where such lien has been reserved in the manner hereinafter provided, and the lien for money payable to the Government under any law for the time being in force.

22. Ship owner's lien for freight.—(1) If the master or

owner of any vessel, at or before the time of landing from such vessel of any goods at any dock or pier, gives to the Authority notice in writing that such goods are to remain subject to a lien for freight, primage or average of any amount to be mentioned in such notice, such goods shall continue to be liable, after the landing thereof, to such lien.

(2) Such goods shall be retained either in the warehouses or sheds of the Authority or, with the consent of the Collector of Customs, in a public warehouse, at the risk and expense of the owner of the said goods, until the lien is discharged as hereinafter mentioned.

23. Discharge of Shipowner's lien for freight.— Upon the production to any office appointed by the Authority in that behalf of a document purporting to be a receipt for, or a release from the amount of such lien, executed by the person by or on whose behalf such notice has been given, the Authority may permit such goods to be removed without regard to such lien.

24. Recovery of tolls, etc. by sale of goods.— (1) If the tolls, dues, rates and charges payable to the Authority under this Ordinance in respect of any goods or if rents due under section 21 are not paid, or if the lien for freight, primage or general average, where such notice as mentioned in section 22 has been given, is not discharged, the Authority may and in the latter event, if required by or on behalf of the person claiming such lien for freight, primage or general average, shall at the expiration of two months from the time when the goods were placed in its custody, or seized and detained for rents due sell by public auction the said goods, or so much thereof as may be necessary to satisfy the amount hereinafter directed to be paid out of

the produce of such sale.

(2) Before making such sale at least ten days notice of the sale shall be given by publication thereof in a daily newspaper and a copy thereof shall be affixed in a conspicuous place in the office of the Authority.

(3) If the address of the consignee of the goods or of his agent has been stated on the manifest of the cargo or in any of the documents which have come into the hands of the Authority, or is otherwise known, notice shall also be given to the consignee of the goods to his agent by letter delivered at such address or sent by post; but the title of a bonafide purchaser of such goods shall not be invalidated by reason of the omission to send such notice, nor shall any such purchaser be bound to inquire whether such notice has been sent:

Provided that, if such goods are of so perishable a nature as, in the opinion of the officer appointed by the Authority in that behalf, to render early or immediate sale necessary or advisable, the Authority may, within such period being not less than twenty-four hours after the landing of the goods, as it thinks fit, sell by public auction the said goods or such portion thereof as aforesaid in which event such notice, if any, shall be given to the consignee of the goods or his agent as the urgency of the case admits of.

25. Removal of unclaimed and uncleared goods.-

(1) When delivery of goods is not claimed or effected by the owner at the expiry of thirty days from the date on which they are placed in the custody of the Authority, the Authority shall cause a notice to be served upon the owner requiring him to remove the goods :

Provided that, where all rates and charges in respect of such goods have been duly paid, such notice shall not be served till the expiration of two months from the date on which the goods were placed in the custody of the Authority. (Amended by Act No. 20 of 1995 on 16th September 1995)

(2) Such notice shall be published and served in the manner prescribed in sub sections (2) and (3) of section 24, but where the owner is not known or the notice cannot be served upon him or he does not comply with the notice, the Authority may sell the goods by public auction after the expiration of forty five days from the date on which such goods were placed in the custody of the Authority. (Amended by Act No. 20 of 1995 on 16th September 1995)

(3) The Government may, by notification in the official Gazette, exempt any goods or class of goods from the operation of this section.

26. Power to distrain vessels for non-payment of tolls, etc.-

(1) If the master of any vessel in respect of which any tolls, dues, rates, charges or penalties are payable under this Ordinance, or any regulations or orders made thereunder, refuses or neglects to pay the same or any part thereof on demand, the Authority may distrain or arrest of its own authority such, vessel, and the tackle, apparel or furniture belonging thereto, or any part thereof and detain the same until the amount so due is paid.

(2) In case any part of the said tolls, dues, rates, charges or penalties, or of the costs of the distress or arrest or of the keeping of the same, remains unpaid for a period of fifteen days next after any such distress or arrest has been so made, the Authority may cause the vessel, or

other things so distrained or arrested, to be sold, and with the proceeds of such sale may satisfy such tolls, dues, rates charges or penalties and costs of sale remaining unpaid, rendering the surplus, if any, to the master of such vessel on demand.

27. Port-clearance not to be granted till tolls, etc. paid.— If the Authority gives to the officer of Government, whose duty is to grant the port-clearance of any vessel, a notice stating that an amount therein specified is due in respect of tolls, dues, rates, charges or penalties chargeable under this Ordinance, or any regulations or orders made thereunder, 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 has been paid.

28. Alternative remedy by suit.— Notwithstanding anything contained in sections 21, 22, 23, 24, 25, 26 and 27, the Authority may recover by suit any tolls, dues, rates, charges, damages, expenses, costs, or in case of sale the balance thereof, when the proceeds of sale are insufficient, or any penalty payable to or recoverable by the Authority under this Ordinance or any regulations made thereunder.

29. Surplus of port dues to be paid to the Authority:— The surplus, if any, of the moneys credited under section 36 of the Ports Act, 1908 (XV of 1908), to the account of the port fund of the Authority, after defraying therefrom all expenses legally chargeable to the said account, shall be paid to the Authority.

30. Public landing and bathing places.—

(1) The Authority shall provide a sufficient number of landing places and bathing places within the Port from, upon or in which the public may be permitted to embark, land or bath free of charge.

(2) The Authority may occupy or remove or alter any landing place or bathing place, and prohibit the public from using such landing place or bathing place;

Provided that the Authority shall in that case provide for the use of the public some other landing places or bathing places.

CHAPTER-IV ESTABLISHMENT

31. Appointment of officers, etc.— The Authority may, from time to time, appoint such officers and other employees as it may consider necessary for the performance of its functions on such terms and conditions as may be prescribed by regulations.

32. Members, etc. to be public servants.— The Chairman, members, officers and other employees of the Authority shall when acting or purporting to act in pursuance of any of the provisions of this Ordinance, be deemed to be public servants within the meaning of section 21 of the Penal Code (XLV of 1860).

33. Indemnity.— No suit, prosecution or other legal proceeding shall lie against the Authority or against the Board or the Chairman or any member, officer or other employee of the Authority in respect of anything in good faith done or intended to be done under this Ordinance.

34. Delegation of powers to Chairman, etc.— The

Authority may, by general or special order, delegate to the Chairman or a member or an officer of the Authority any of its powers, duties or functions under this Ordinance subject to such conditions as it may think fit to impose.

CHAPTER-V FINANCE

35. Authority Fund.— (1) There shall be formed a fund to be known as the Mongla Port Authority Fund which shall vest in the Authority and shall be utilised by the Authority to meet the charges in connection with its functions under this Ordinance, including the payment of salaries and other remuneration to the Chairman, members, officers and other employees of the Authority.

(2) To the credit of the Mongla Port Authority Fund shall be placed—

- (a) grants made by the Government;
- (b) loans obtained from the Government;
- (c) grants made by local authorities;
- (d) sale proceeds of movable and immovable property and receipts for services rendered;
- (e) loans obtained by the Authority with the special or general sanction of the Government;
- (f) foreign aids and loans obtained from any source outside Bangladesh with the sanction of, and on such terms as may be approved by, the Government;
- (g) proceeds of all charges and recoveries made under the Ports Act, 1908 (XV of 1908) and the

provisions of the Ordinance; and

(h) all other sums receivable by the Authority.

36. Borrowing power.— The Authority may, with the previous approval in writing of the Government borrow money for carrying out the purposes of this Ordinance or for servicing any loan obtained by it.

37. Budget.— The Authority shall, by such date in each year as may be prescribed, submit to the Government for approval a budget in the prescribed form for each financial year showing the estimated receipts and expenditure and the sums which are likely to be required from the Government during that financial year.

38. Audit and accounts.— (1) The accounts of the Authority shall be maintained by it in such form and manner as may be prescribed by the Government.

(2) Without prejudice to the provisions of the Comptroller and Auditor-General (Additional Functions) Act, 1974 (XXIV of 1974), the accounts of the Authority shall be audited by not less than two auditors, being chartered accountants within the meaning of the Bangladesh Chartered Accountants Order, 1973 (P.O. No. 2 of 1973), who shall be appointed by the Government, on such remuneration, to be paid by the Authority, as the Government may fix.

(3) Every auditor appointed under sub-section (2) shall be given a copy of the annual balance-sheet of the Authority, and shall examine it together with the accounts and vouchers relating thereto and shall have a list delivered to him of all books kept by the Authority; and shall at all reasonable times have access to the books, accounts

and other documents of the Authority, and may in relation to such accounts examine any officer of the Authority.

(4) The auditors shall report to the Authority upon the annual balance-sheet and accounts, and in their report state whether in their opinion the balance-sheet contains all necessary particulars and is properly drawn up so as to exhibit a true and correct view of the state of the Authority's affairs, and in case they have called for any explanation or information from the Authority, whether it has been given and whether it is satisfactory.

(5) The Government may, at any time issue directions to the auditors requiring them to report to it upon the adequacy of measures taken by the Authority for the protection of the interest of the Government and of the creditors of the Authority or upon the sufficiency of their procedure in auditing the accounts of the Authority, and may, at any time, enlarge or extend the scope of the audit or direct that a different procedure in audit be adopted or that any other examination be made by the auditors if in its opinion the public interest so requires.

39. Cost of Port Police.— The Authority shall provide such sums as the Government may, from time to time, determine as a contribution for the maintenance of police employed for the protection of the port and the approaches to the Port.

CHAPTER-VI

PENALTIES AND PROCEDURE

40. Penalty.— Whoever contravenes any provision of this Ordinance or any rule or regulation made thereunder shall, if no other penalty is provided for such contravention,

be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to taka fifty thousand, or with both. (Amended by Act No. 20 of 1995 on 16th September 1995)

41. Penalty for evading tolls, etc.— Any person who removes or attempts to remove, or abets within the meaning of the Penal Code (XLV of 1860), the removal of any goods, vessel, animal or vehicle with the intention of evading payment of the tolls, dues, rates or charges lawfully payable in respect thereof shall be punishable with fine which may extend to fifty thousand taka. (Amended by Act No. 20 of 1995 on 16th September 1995)

41A. Penalty for pollution etc.— Any person who throws or allows to fall into the water, shore, bank or land within the limits of the Port any goods, ballast, ashes or any other thing whatsoever causing pollution of the water or environment shall be punishable with fine which may extend to one lakh taka. (Amended by Act No. 20 of 1995 on 16th September 1995)

42. Compensation for damage to property.— (1) In case any damage or mischief is done to any dock, pier or work of the Authority by any vessel, through the negligence of the master thereof or of any of the mariners or persons employed therein, not being in the service of the Authority, and Magistrate of the first class having jurisdiction in the Port area may, on the application of the Authority and on declaration by it that payment for such damage or mischief has been refused or has not been made on demand, issue a summons to the master or owner of such vessel, requiring him to attend on a day and at an hour named in the summons to answer touching

such damage or mischief.

(2) If, at the time appointed in the summons, and whether the person summoned appears or not, it is proved that the alleged damage was done through such negligence as aforesaid, and that the pecuniary amount of the same does not exceed five thousand taka, the Magistrate may issue his warrant of distress, under which a sufficient portion of the boats, masts, spares, ropes, cables, anchors or stores of the vessel may be seized and sold to cover the expenses of and attending the execution of the distress, and the pecuniary amount of damage as aforesaid, and such amount shall be paid to the Authority out of the proceeds of the distress:

Provided that if, at the time of the damage or mischief, the vessel was under the orders of a duly authorised officer belonging to the pilot service of the Authority, and if such damage or mischief is in any way attributable to the order, act or improper omission of such officer, the case shall not be cognizable by the Magistrate under this section.

43. Cognizance of offences.— No Court shall take cognizance of any offence punishable under this Ordinance except on a complaint in writing made by the Authority or by an officer authorised for the purpose by the Authority.

44. Recovery of dues as arrears of land revenue.— All fees and sums due on account of property for the time being vested in the Authority and all arrears of tolls, charges rates and dues imposed under this Ordinance may be recovered as arrears of land revenue, in addition to the other modes provided by this Ordinance.

CHAPTER-VII MISCELLANEOUS

45. Power of entry.— (1) It shall be lawful for the Chairman or any member, or for any person either generally or specially authorised by the Chairman in this behalf,—

- (a) to enter upon and survey, inspect or take level of any land;
- (b) to dig or bore into the sub-soil;
- (c) to set out the boundaries and intended lines of any work;
- (d) to mark such levels, boundaries and lines by placing marks and cutting trenches; and
- (e) to do all other acts necessary to be done for any of the purposes of this Ordinance or for the preparation or execution of any plan or scheme in respect of the Port.

(2) No person shall enter upon any land without previously giving the occupier of the land at least twenty-four hours notice in writing of his intention to do so.

46. Compulsory acquisition of land for the Authority.— Any land required by the Authority for carrying out the purposes of this Ordinance shall be deemed to be needed for a public purpose and such land may be requisitioned or acquired for the Authority by the Deputy Commissioner or any other officer in accordance with any law for the time being in force.

47. Submission of yearly reports and returns.— (1) The Authority shall submit to the Government, as soon as

possible after the end of every financial year but before the last day of December next following, a report on the conduct of its affairs for that year.

(2) The Government may, after giving sufficient notice to the Authority, require it to furnish the Government with—

- (a) any return, statement, estimates, statistics, or other information regarding any matter under the control of the authority;
- (b) a report on any subject with which the Authority is concerned; or
- (c) a copy of any document in the charge of the Authority;

and the Authority shall comply with every such requisition.

48. Indemnity to the Authority for acts of officers, etc.—The Authority shall not be answerable

- (a) for any mistake, mal-feasance or non-feasance of any of its officers or other employees or of any person acting under the authority or direction of any such officer or other employee; or
- (b) for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers or other things within the limits of the Port which may be used by such vessel:

Provided that nothing in this section shall protect the Authority from a suit in respect of any negligence or default on its part or of any act done by or under its express order or sanction.

49. Limitation of suits.—(1) No suit shall be instituted against the Authority or against the Chairman or any member, officer or other employee of the Authority or any person acting under their direction for anything done or purporting to be done under this Ordinance until the expiration of one month next after notice in writing has been delivered or left at the office of the Authority stating the cause of the suit and the name and place or residence of the intending plaintiff.

(2) Every such suit shall be commenced within six months next after the accrual of the right to sue and not afterwards.

50. Winding up.—No provision of law relating to the winding up of bodies corporate shall apply to the Authority and the Authority shall not be wound up save by order of the Government and in such manner as it may direct.

51. Power of Government to make rules.—The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

51A. Transfer of Officers on deputation.—Notwithstanding anything contained in this Ordinance or in any other law, rule or regulations for the time being in force, the Government may, if it considers necessary in the public interest, transfer on deputation any Officer of the Authority to Inland Water Transport Authority established under the Inland Water Transport Authority Ordinance, 1958 (E.P. Ord. LXXV of 1958) or Chittagong Port Authority established under the Chittagong Port Authority Ordinance, 1976 (LII of 1976) and any Officer of Inland Water Transport Authority to Chittagong Port Authority or Mongla Port Authority and any Officer of Chittagong Port

Authority to Inland Water Transport Authority or Mongla Port Authority. (Amended by Act No. 20 of 1995 on 16th September 1995)

52. Power of the Authority to make regulations.—(1) The Authority may, with the prior approval of the Government, make regulations for carrying out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

- (a) regulating, declaring and defining the docks, wharves, quays, stages, jetties and piers on and from which goods shall be landed from and shipped in vessels within the Port;
- (b) safe and convenient use of such docks, wharves, quays, stages, jetties and piers and of landing places, railways, warehouses, sheds, and other works in and adjoining them;
- (c) regulating the manner in which, and the conditions under which, the loading and discharging of vessels shall be carried out;
- (d) regulating the reception and removal of goods within and from the premises of the Authority and for declaring the procedure to be followed in taking charge of goods which may have been damaged before landing or may be alleged to be so damaged;
- (e) regulating the mode of payment of tolls, dues, rates and charges levied under this Ordinance;

- (f) fixing and regulating the wages and allowance for pilotage to be received by pilots;
- (g) for regulating the behaviour and conduct of pilots, whether maintained by the Authority or not;
- (h) providing water for ships and for licensing and regulating water-boats within the Port;
- (i) removal of wrecks from the Port or the river and keeping clean the Port, the river, the foreshore and the works of the Authority and for preventing filth and rubbish being thrown therein or thereon;
- (j) regulating conditions, liabilities and responsibilities for the different types of goods received or shipped from or to vessels on docks, piers, sheds, open storages and moorings;
- (k) guidance of persons employed by the Authority under this Ordinance and generally for carrying out the purpose of this Ordinance; and
- (l) any other matter required under any provision of this Ordinance to be provided or prescribed by regulations.

(3) All regulations made under this section shall be published in the official Gazette and shall come into office on such publication.

53. Transfer of assets, etc., relating to Mongla Port to the Authority.— (1) Notwithstanding anything contained in any other law for the time being in force, or in any rules, regulations or bye-laws, or in any contract or agreement, or in any conditions of service, upon the establishment of the Authority-

- (a) all assets, rights, powers, Authorities and privileges' and all properties, movable and immovable, including lands, buildings, works, workshops, machinery, leases, leaseholds, licences, fund and all other rights and interests in, or arising out of, such property of the Government relating to the Mongla Port subsisting immediately before the establishment of the Authority shall stand transferred to, and vest in the Authority.
- (b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Government relating to the Mongla Port before the establishment of the Authority shall be deemed to have been incurred, entered into or engaged to be done by, with or for the Authority;
- (c) all tolls, dues, rates, charges, fees and other sums of money due to the Government relating to the Mongla Port immediately before the establishment of the Authority shall be deemed to be due to the Authority;
- (d) all tolls, dues, rates, charges and fees levied by the Government relating to the Mongla Port shall, until they are levied by the Authority continue to be levied at the same rate at which they were levied by the Government immediately before the establishment of the Authority;
- (e) every person in the service of the Republic serving in, or in connection with the affairs of, the Mongla Port shall, notwithstanding anything contained in any law or in any terms and conditions of

service for the time being in force, become on the commencement of the Mongla Port Authority (Amendment) Ordinance, 1982, an officer or employee, as the case may be, of the Authority on such terms and conditions, not being to his disadvantage, as the Government may, in consultation with the Authority, determine and such officer or employee shall hold his office or service in the Authority and shall continue to do so unless and until his employment in the Authority is terminated:

Provided that an officer or employee may, within such time as may be specified by the Authority, exercise his option not to continue in the service of the Authority and the Authority may terminate the service of an officer or employee who exercises his option not to continue in the service of the Authority by giving him compensation equivalent to three months' remuneration in case of a permanent officer or employee and one month's remuneration in the case of temporary officer or employee.

Explanation.—The compensation to an officer or employee under the proviso shall be in addition to any pension, gratuity or other benefit to which the officer or employee may be entitled under the terms and conditions of his service; (Amended by Ordinance No. LIV of 1982 on 24th March 1982).

- (f) all suits and other legal proceedings instituted by or against the Government relating to the Mongla Port before the establishment of the Authority shall be deemed to be suits and proceedings by or against the Authority and shall be proceeded or otherwise dealt with accordingly.

(2) The Government may, for the purpose of removing any difficulty in relation to the transfer and other matters specified in sub-section (1), make such orders as it considers expedient and any such order shall be deemed to be, and given effect to us, part of this Ordinance.
