

OBSTRUCTIONS IN FAIRWAYS ACT, 1881

16 of 1881

[15th March, 1881]

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STATEMENT OF OBJECTS AND REASONS "The object of this Bill is to empower the Government to remove obstructions to navigation which may exist in fairways situate in seas adjacent to British India, and to prohibit the creation of such obstructions for the future. The advantages of having such a law have been impressed upon the Government by certain recent cases. In one of these a question has been raised as to the power of the Government to remove the fishing stakes which are annually placed during the fine season in the sea off the port of Bombay, and which, having recently been advanced into the approach to the harbour, are now a source of serious danger to vessels frequenting that port. In

another case which related to the deposit of ballast by shipkaster, at the mouth of the Rangoon river, a practice which, if permitted might cause serious impediment and danger to the navigation of the approaches to the port of Rangoon the need for some further preventive powers than those which Government now possesses, has been made apparent. There can be no doubt that it is extremely desirable that the powers of Government officer and the procedure to be followed by them in relation to matters of this nature should be clearly defined, and as the Indian Statute Book, as it now stands, does not deal adequately with the subject the present Bill has been prepared. A precedent for such legislation will be found in the Imperial Statutes 40 and 41 Vic., c. 16 (the Removal of Wrecks Act, 1877). The Bill, while following generally the lines of the statute, goes beyond it in two material aspects. The power to remove obstructions conferred by it is not confined, as in the statute to the case of obstructions caused by wrecks, but extends also to fishing stakes, ballast and any other thing which may form an obstruction or danger to navigation. The other point in which the Bill goes beyond the statute is that in addition to giving power to remove existing obstructions, it enables the Government to prevent the wilful creation of obstructions in the future. With this object the Governor-General in Council is empowered (S. 7) to make rules to regulate or prohibit in any fairway the placing of fishing stakes, the casting of ballast, or the doing of any other act which will, in his opinion, cause or be likely to cause danger or obstruction to navigation." -Gazette of India, 1881, Part V. page 3.

1. Short title :-

This Act may be called The Obstructions in Fairways Act, 1881; ¹[* * *] But nothing herein contained shall apply to vessels ²[belonging to, or hired by a contracts made on behalf of, the ³ [Government].]

1. The words 'and it shall come into force at once' were omitted by the Repealing and Amending Act. 1914(10 of 1914), S. 3 and Schedule II.

2. Substituted for the words 'belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council', by A.O., 1937 (1-4-1937).

3. Substituted for the word 'Crown' by A.L.O.. 1950.

2. Central Government empowered to remove or destroy obstructions in fairway :-

Whenever, in any fairway leading to any port in ¹[the territories

which, immediately before the 1st November, 1956, were comprised in Part A States and Part C States, any vessel is sunk, stranded or abandoned, or any fishing-stake, timber or other thing is placed or left, ²[the Central Government] may, if in its opinion such thing is, or is likely to become an obstruction or danger to navigation,-

(a) cause such thing or any part thereof to be removed; or

(b) if such thing is of such a description or so situate that, ³ [in the opinion of the Central Government], it is not worth removing, cause the same or any part thereof to be destroyed.

1. Substituted for the words 'a Part A State and a Part C State, 'by 2 A.L.O., 1956 (1-11-1956).

2. Substituted for the words 'the Local Government of the part of British India in which such port is situate' by A.O., 1937(1-4-1937).

3. Substituted for the words 'in the opinion of the Local Government', by A.O., 1937(1-4-1937).

3. Central Government entitled to expenses incurred in removing obstruction :-

Whenever anything is removed under S. 2, ¹ [the Central Government] shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

1. Substituted for the words 'the Local Government' by A.O., 1937 (1-4-1937).

4. Notice of removal to be given by Central Government :-

The ¹ [Central Government] shall, whenever anything is removed under S. 2, publish in the [Official Gazette] a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

1. Substituted for the words 'the Local Government' by A.O., 1937 (1-4-1937).

5. Things removed may, in certain cases, be sold :-

If, after publishing such notification, such thing is unclaimed, or if the person claiming the same fails to pay the amount due for the said expenses and any customs duties or other charges properly incurred by the ¹[Central Government] in respect thereof, the ¹ [Central Government] may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such

notification as aforesaid.

1. Substituted for the words 'the Local Government' by A.O., 1937 (1-4-1937).

6. Proceeds how applied :-

On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same : Provided that he makes the claim within one year from the date of the sale.

7. "Vessel" to include tackle, cargo, etc :-

For the purposes of this Act, the term 'vessel' shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

8. Power to make rules to regulate and prohibit the placing of obstructions in fairways :-

The ¹[Central Government] may, from time to time, by notification in the ²[Official Gazette], make rules to regulate or prohibit, in any fairway leading to a port in ³[the territories which, immediately before the 1st November, 1956, were comprised in Part A States and Part C States] the placing of fishing-stakes, the casting or throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will in ⁴ [its] opinion, cause, or be likely to cause, obstruction or danger to navigation.

1. Substituted for the words "Governor-General in Council' by A.O. 1937.

2. Substituted for the words 'Local Official Gazette'. by A.O., 1937(1-4-1937).

3. Substituted for the words 'a Part A State or a Part C State' by 2 A.L.O., 1956(1-11-1956). For the names of Parts A and C States, see foot-note (a) under Preamble.

4. Substituted for the word 'his' by A.O., 1937 (1-4-1937).

9. Penalty for breach of such rules :-

Whoever is guilty of any act or omission in contravention of the

rules made under S. 8, may be tried for such offence in any district or presidency- town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

10. Compensation payable in certain cases for damage caused under this Act :-

Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under S. 2, or its creation is regulated or prohibited under S. 8; any person-having a right to maintain or create such obstruction shall be entitled to receive from the ¹ [Central Government] reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition. Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the presidency-town or district in which the port to which such fairway leads is situate.

1. Substituted for the words 'Secretary of State for India in Council' by A.O., 1937(1-4-1937).

11. Certain action of the Government previous to passing of this Act to be deemed to have been taken hereunder :-

Whenever any obstruction in a fairway leading to a port in ¹[the territories which, immediately before the 1st November, 1956, were comprised in Part A States and Part C States] has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the ²[Central Government] or a ³ [State Government], previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

1. Substituted for the words 'a Part A State or a Part C States' by 2 A.L.O., 1956 (1-11-1956). For the names of Part A and Part C States, see foot-note (a) under Preamble.

2. Substituted for the words 'Governor-General in Council' by A.O., 1937.

3. Substituted for the words 'Provincial Government' by A. L.O., 1950.

12. Saving of other powers possessed by Central Government :-

Nothing herein contained shall be deemed to prevent the exercise by ¹ [the Central Government] of any other powers possessed by it in this behalf.

1. Substituted for the words 'the Government' by A.O., 1937 (1-4-1937).

13. Application to fairways in inland waterways :-

All references in this Act to the Central Government shall, in relation to fairways in inland waterways, be construed as references to the ¹ [State Government]].

1. Substituted for the words "the Government of a Part A State or a Part C State" by 2 A.L.O., 1956(1-11-1956).