

PARLIAMENT OF CEYLON

1st Session 1952



Fisheries (Amendment) Act, No. 25 of 1952

Date of Assent : October 31, 1952

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AN ACT TO AMEND THE FISHERIES ORDINANCE,
No. 24 OF 1940.

[Date of Assent: October 31, 1952]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Fisheries (Amendment) Act, No. 25 of 1952. Short title.

2. Section 2 of the Fisheries Ordinance, No. 24 of 1940, (hereinafter referred to as the "principal enactment"), is hereby amended by the insertion, immediately after sub-section (4), of the following new sub-section:— Amendment of section 2 of Ordinance No. 24 of 1940.

Cap. 16 " (5) All officers (not below the rank of sub-inspector) appointed under this section are hereby declared to be peace officers within the meaning and for the purposes of the Criminal Procedure Code."

3. Section 3 of the principal enactment is hereby amended as follows:— Amendment of section 3 of the principal enactment.

(1) in sub-section (1)—

(a) by the substitution, for paragraph (b), of the following new paragraph:—

" (b) the persons for the time being holding the offices of Director of Commerce, Commissioner for the Development of Marketing, Master Attendant of the Port of Colombo, Registrar of Co-operative Societies and Deputy Director of Fisheries; "; and

(b) by the insertion, immediately after paragraph (b), of the following new paragraph:—

" (bb) two officers from the Department of Industries appointed by the Minister; and "; and

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- (2) by the insertion, immediately after sub-section (1), of the following new sub-section:—

“(1A) Any of the officers mentioned in paragraphs (a), (b) and (bb) of sub-section (1) who is unable to attend any meeting of the Board may authorise any other officer of his Department to be present on his behalf at such meeting; and the officer so authorised shall be deemed for the purposes of the meeting to be a member of the Board.”.

Insertion of
new section
14A in the
principal
enactment.

4. The following new section is hereby inserted immediately after section 14, and shall have effect as section 14A of the principal enactment:—

Prohibition
of sale, etc.
of fish
taken by
use of
poison, etc.

14A. No person shall sell, expose for sale, or transport for sale, any fish knowing or having reasonable cause to believe that such fish has been taken in contravention of any of the provisions of section 14.

Insertion of
new section
18A in the
principal
enactment.

5. The following new section is hereby inserted immediately after section 18, and shall have effect as section 18A, of the principal enactment:—

Fishing Disputes

Fishing
disputes.

18A. (1) Where any fishing dispute arises or is apprehended, the Minister may, if he considers it expedient so to do, refer the dispute for public inquiry and report to any person or to a Committee of not more than three persons appointed by him for the purpose. Where a Committee is so appointed, one of the members nominated by the Minister in that behalf shall be the Chairman.

(2) A reference made under sub-section (1) shall specify the subject-matter of the dispute to which it relates. The Minister shall publish a copy of the reference in the *Gazette*, and judicial notice shall be taken by all courts in the Island of the reference so published.

(3) It shall be the duty of the person or Committee to whom a dispute is referred under sub-section (1)—

(a) to cause notice to be published in the *Gazette*—

(i) specifying the subject-matter of the dispute;

(ii) calling upon all persons desiring so to do to make written representations relating to the dispute to the office of the Director before such date as may be specified in the notice; and

(iii) appointing a time and place for the commencement of a public inquiry into the subject-matter of the dispute; and

(b) to cause copies of the notice in Sinhalese and in Tamil to be posted at police stations, post offices and other suitable places in the area in which persons interested in the subject-matter of the dispute are believed to reside.

(4) Any person who has made representations in response to a notice published under sub-section (3) shall be entitled to be present and to tender evidence whether oral or documentary, in support of his representations, at the public inquiry into the subject-matter of the dispute.

(5) It shall be lawful for the person or Committee holding a public inquiry under this section by order to require any person to give evidence at the public inquiry and to produce thereat any document relevant to the subject-matter of the dispute which may be in the custody or possession of such person.

(6) The person or Committee holding a public inquiry under this section may in his or their discretion require that oral evidence given at the inquiry shall be given on oath.

(7) Any person who fails or refuses to comply with any order made under sub-section (5) or who gives false evidence at any public inquiry held under this section shall be guilty of an offence and shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

(8) Regulations may be made providing for the procedure to be followed at public inquiries held under this section. Subject to the provisions of any such regulation, the person or the Committee to whom a dispute is referred under sub-section (1) may determine the procedure to be followed at the public inquiry.

(9) It shall be the duty of the person or Committee to whom a dispute is referred under sub-section (1), after considering such representations as may have been made in response to the notice published under sub-section (3) and the evidence taken at the public inquiry into the subject-matter of the dispute, to prepare a report containing the findings upon the subject-matter of the dispute and such recommendations as the person or Committee may consider necessary as to the rights, restrictions or prohibitions which should be conferred or imposed with respect to the taking of fish in the waters in relation to which the dispute arose or is apprehended.

Such report shall be read out at the conclusion of the public inquiry or on a date to which the inquiry shall be adjourned for the purpose, and shall be published in the *Gazette*.

(10) Any person who has made representations in response to a notice published under sub-section (3) in respect of any dispute may, before the expiration of a period of one month from the date of the publication in the *Gazette* of the

report prepared under sub-section (9) in relation to that dispute, make representations in writing to the Minister with respect to any matter dealt with in the report.

(11) After consideration of the report published under sub-section (9) in respect of any dispute and of any such representations as may be duly made to him under sub-section (10), the Minister may make regulations for the purpose of carrying out or giving effect to any or all of the recommendations made in that behalf in the report, including regulations, for the purpose of:—

- (a) prohibiting, restricting or regulating the taking of fish in any specified part of Ceylon waters by persons not belonging to any specified group or section of persons; or
- (b) fixing different days or times during which different groups or sections of persons engaged in fishing may take fish in any specified part of Ceylon waters.

(12) Nothing in the preceding provisions of this section shall be deemed or construed to authorise the reference thereunder of any dispute in relation to the subject-matter of which any civil action or other civil proceeding is pending before any court of competent jurisdiction.

(13) Where a fishing dispute has been referred for public inquiry and report under the preceding provisions of this section, then, notwithstanding anything in any other law, no civil action or other civil proceeding shall in respect of any matter constituting or comprised in the subject-matter of the dispute be instituted or maintained in any civil court at any time before the expiration of a period of three months from the date of the publication in the *Gazette* of the report prepared under sub-section (9) in relation to that dispute.

(14) In this section "fishing dispute" means any dispute, between two or more groups or sections of persons engaged in fishing, in regard to the right to take fish, or to the time or manner of taking fish in any part of Ceylon waters.

Insertion of
new section 19A
in the principal
enactment.

6. The following new section is hereby inserted immediately after section 19, and shall have effect as section 19A, of the principal enactment:—

Power to
seize nets,
etc.

19A. (1) Any officer appointed under section 2 (1) may, if he has reason to believe that any offence under this Ordinance has been committed, seize and detain any fishing boat, or any fishing net or stake, or other equipment or instrument or any vehicle used in or in connection with the commission of the offence, or any fish taken in the course of such commission.

(2) Where any article is seized under sub-section (1), the officer by whom the article was seized shall produce that article as soon as possible before a Magistrate's Court of competent jurisdiction; and upon the production of that article, the court shall make such order as it may deem fit relating to the custody of the article pending its disposal under sub-section (3).

(3) Where any article is seized under sub-section (1) from the possession of any person—

(a) it shall be returned to that person forthwith upon the expiration of fourteen days after the seizure, unless a prosecution for the alleged offence is instituted before the end of that period; or

(b) it shall be returned to that person forthwith after the final determination of the prosecution unless it is duly declared to be forfeited to Her Majesty under sub-section (2) of section 24.

7. The following new section is hereby inserted immediately after section 21, and shall have effect as section 21A, of the principal enactment:—

Insertion of new section 21A in the principal enactment.

Presumption as to use of net in prohibited waters.

21A. Where any net, the use of which in any specified part of Ceylon waters is prohibited by any regulation made under this Ordinance, is found in the possession or under the control of any person within a distance of a quarter of a mile from such waters, then, for the purposes of any prosecution for a contravention of that regulation that person shall be presumed until the contrary is proved, to have used such net in such waters.

8. Section 22 of the principal enactment is hereby amended as follows:—

Amendment of section 22 of the principal enactment.

- (1) in sub-section (2), by the substitution, for the words "one hundred rupees." of the words "five hundred rupees.";
- (2) by the re-numbering of sub-section (3) thereof as sub-section (4); and
- (3) by the insertion, immediately after sub-section (2), of the following new sub-section:—

"(3) A person who acts in contravention of any provision of any regulation shall, in addition to any other penalty which may be imposed under sub-section (2), be liable to a fine of one hundred rupees for each day during which the contravention is continued after conviction thereof."

9. The following new sections are hereby inserted immediately after section 22, and shall have effect as sections 22A and 22B, of the principal enactment:—

Insertion of new sections 22A and 22B in the principal enactment.

Special penalties for certain offences.

22A. (1) Any person who acts in contravention of any of the provisions of section 14 shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not less than five hundred rupees or to imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment or on a second or subsequent conviction to a fine not less

than one thousand rupees or to imprisonment of either description for a term not exceeding two years or to both such fine and imprisonment.

(2) Any officer appointed under section 2 (1) who shall—

(a) be guilty of cowardice, or

(b) wilfully fail in his duty to report any offence against this Ordinance, or

(c) connive at the commission of any offence against this Ordinance,

shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one hundred rupees.

(3) The preceding provisions of this section shall have effect notwithstanding anything in section 22.

Offence
under
section
14 to be
non-
bailable.
Cap. 16.

22B. Notwithstanding anything in the First Schedule to the Criminal Procedure Code, an offence under section 14 of this Ordinance shall be a non-bailable offence within the meaning and for the purposes of that Code.

Amendment
of section
24 of the
principal
enactment.

10. Section 24 of the principal enactment is hereby amended in sub-section (2), by the substitution, for all the words from "instrument" to the end of that sub-section, of the following:—

"instrument or any vehicle used in or in connection with the commission of the offence, or any fish taken in the course of such commission shall be forfeited to Her Majesty:

Provided that in the case of a conviction of an offence under section 14, the Magistrate shall make order as aforesaid unless it is proved that the fishing boat, fishing net or stake, or other equipment or instrument or vehicle belongs to a person other than the person convicted and that the owner thereof had no knowledge

that it would be used in or in connection with the commission of the offence."

11. The following new section is hereby inserted immediately after section 25, and shall have effect as section 25A, of the principal enactment:—

Bar of actions.

25A. No action shall lie against the Government of Ceylon or against any officer appointed under section 2 (1) for damages in any civil court for any act *bona fide* done or ordered to be done in pursuance of this Ordinance; and no prosecution of any such officer and no action which may be lawfully brought against any such officer, in respect of anything done in pursuance of this Ordinance, shall be entertained by any court unless it is instituted within six months from the date of the act complained of.

Insertion of new section 25A in the principal enactment.

12. Section 26 of the principal enactment is hereby amended, in sub-section (2), as follows:—

Amendment of section 26 of the principal enactment.

(1) in paragraph (d), by the substitution, for the words "such registration," of the words "such registration (including different fees in respect of different classes of boats or boats used for different purposes or in different areas),";

(2) by the substitution, for paragraph (k), of the following new paragraph:—

"(k) the registration of fishing nets or other specified fishing equipment used in Ceylon waters or any part of such waters and of the owners thereof, including the circumstances in which such registration may be refused, the officers and servants by whom such nets or other specified fishing equipment shall be registered, the fees payable for such registration (including different fees in respect of different kinds of nets or other specified fishing equipment or of nets or other equipment used for different purposes or in different areas), and the marking of registered fishing nets or other registered fishing equipment;";

(3) by the insertion, immediately after paragraph (k), of the following new paragraph:—

“ (kk) the regulation of the kind of fishing nets or other fishing equipment to be used, and the prohibition or restriction of the possession or use of fishing nets or other fishing equipment of any specified description, for the purpose of taking fish in Ceylon waters or any part thereof;”;

and

(4) by the substitution, in paragraph (g), for the words, “ for other equipment ”, of the words “ or other equipment or any vehicle ”.

Insertion
of new
section 26A
in the
principal
enactment.

13. The following new section is hereby inserted immediately after section 26, and shall have effect as section 26A, of the principal enactment:—

Fisheries
Reward
Fund.

26A. (1) A fund to be called the Fisheries Reward Fund (hereinafter referred to as the “ Fund ”) is hereby established.

(2) There shall be paid into the Fund all fines recovered under this Ordinance and all sums of money realised by the disposal of articles forfeited under this Ordinance.

(3) The Director may, in his discretion, pay a reward to any officer appointed under section 2 (1) or informer out of the moneys in the Fund:

Provided, however, that no such reward shall exceed fifty rupees unless the Director has obtained the approval of the Permanent Secretary to the Ministry of Industries and Fisheries (hereinafter referred to as the “ Permanent Secretary ”).

(4) Where any witness incurs travelling expenses in attending court for the purpose of giving evidence at any trial in respect of an offence under this Ordinance which are not payable to him under any other law, the Director may pay to such witness out of the moneys in the Fund

such amount as may be determined by him to cover the cost of the expenses properly so incurred:

Provided that no such payment shall exceed fifty rupees unless the Director has obtained the approval of the Permanent Secretary.

(5) The Director shall be responsible for the administration of the Fund and accounts of the Fund shall be audited annually by the Auditor-General.

14. The Third Schedule to the principal enactment is hereby amended by the addition, at the end of that Schedule, of the following new item the particulars thereof being inserted in the appropriate columns:—

Amendment
of Third
Schedule
to the
principal
enactment.

The Urban
Councils
Ordinance,
No. 61 of
1939.

In section 170—

(1) sub-paragraph (e) of paragraph (10) shall be omitted; and

(2) in sub-paragraph (f) of paragraph (10), for the words "fish, game and wild birds;", there shall be substituted the words "game and wild birds;".