

**THE AIR (PREVENTION AND CONTROL OF POLLUTION)¹
ACT, 1981²
(Act No. 14 of 1981)**

[29 March, 1981]

An Act to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connecting therewith

Whereas decisions were taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972, in which India participated, to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution:

And whereas it is considered necessary to implement the decisions aforesaid in so far as they relate to the preservation of the quality of air and control of air pollution.

COMMENT

Preamble – It is established law that preamble discloses the primary intention of the statute but does not override the express provisions of the statute.³

STATEMENT OF OBJECTS AND REASONS³

1. With the increasing industrialization and the tendency of the majority of industries to congregate in area which are already heavily industrialized, the problem of air pollution has begun to be felt in the country. The problem is more acute in those heavily industrialised areas which are also densely populated. Short-term studies conducted by the National Environmental Engineering Research Institute, Nagpur, have confirmed that the cities of Calcutta, Bombay, Delhi, etc. are facing the impact of air pollution on a steadily increasing level.
2. The presence in air, beyond certain limits, of various pollutants discharged through industrial emission and from certain human activities connected with traffic, heating, use of domestic fuel, refuse, incinerations, etc, has a detrimental effect on the health of the people as also on animal life, vegetation and property.
3. In the United Nations Conference on the Human Environment held in Stockholm in June, 1972 in which India participated, decisions were taken to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution. The government has decided to implement these decisions of the said Conference in so far as they relate to the preservation of the quality of air and control of air pollution.
4. It is felt that there should be an integrated approach for tackling the environmental problems relating to pollution. It is, therefore, proposed that the Central Board for the Prevention and Control of Water Pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974, will also perform the functions of the Central Board for the Prevention and Control of Air Pollution and of a State Board for the Prevention and Control of Air Pollution in the Union Territories. It is also proposed that the State Boards constituted under that Act, separate State Boards for the Preservation and Control of Air Pollution are proposed to be constituted.

STATEMENT OF OBJECTS AND REASONS OF ACT 47 OF 1987

1. The Air (Prevention and Control of Pollution) Act, 1981, was enacted under Art. 253 of the Constitution to implement the decisions taken at the United Nations Conference on Human Environment held at Stockholm in June 1972, in which India participated.
2. The Air Act is implemented by the Central and State Governments and the Central and State Boards. Over the past few years, the implementing agencies have experienced some administrative and practical difficulties in effectively implementing the provisions of this Act and has brought these to the notice of Government. The ways and means to remove these difficulties have been thoroughly examined in consultation with the concerned Central Government departments, the State Government and the Central and State Boards. Taking into account the views expressed. Government have decided to make certain amendments to the Act in order to remove such difficulties.
3. The Bill, inter alia, seeks to make the following amendments in the Act, namely:
 - (i) The Central Board is proposed to be empowered to exercise the powers and perform the functions of a State Board in specific situations, particularly when a State Board fails to act and comply with the directions issued by the Central Board. It is also proposed to recover the cost of the exercise of such powers and the performance of such functions by the Central Board from the person or persons concerned, if the State Board is empowered to recover such costs under the provisions of the Act, as arrears of land revenue or of public demand.
 - (ii) It is proposed to make it obligatory on the part of a person to obtain the consent of the relevant Board even while establishing an industrial plant.
 - (iii) It is proposed to empower the Boards to obtain information regarding discharge of pollution in excess of specified standards by the industries operating even outside the air pollution control areas.
 - (iv) In order to prevent effectively air pollution, the punishments provided in the Act are proposed to be made stricter.
 - (v) In order to elicit public co-operation, it is proposed that any person should be able to complain to the Courts regarding violations of the provisions of the Act after giving a notice of sixty days to the Board or the officer authorized in this behalf.
 - (vi) It is proposed to omit the Schedule to the Act so as to make the Act applicable to all the industries causing air pollution.
 - (vii) It is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure or regulation of offending establishment or stoppage or regulation of supply of services such as, water and electricity.
 - (viii) It is proposed to empower the Boards to approach courts to pass orders restraining any person from causing air pollution.
 - (ix) For increasing the financial resources of the Boards, it is proposed to empower them to raise money by means of obtaining loans and issue of debentures.

COMMENT

Statement of objects and Reasons – Use of – The law is well settled, in *Narain Khamman v. Parguman Kumar Jain*,¹ the Supreme Court held that though the Statement of Objects and Reasons accompanying a legislative Bill could not used to determine the true meaning and effect of the substantive provisions of a statute, it was permissible to refer to the same for the purpose of understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy.²

4. The Bill seeks to achieve the above objects.

Be it enacted by Parliament in the Thirty-second Year of the Republic of India as follows:

CHAPTER I PRELIMINARY

1. **Short title, extent and commencement.** –

- (1) This Act may be called the Air (Prevention and Control of Pollution) Act, 1981.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date³ as the Central Government may, by notification in the Official Gazette, appoint.

2. **Definitions.** – In this Act, unless the context otherwise requires, -

- (a) “air pollutant” means any solid, liquid or gaseous substance ⁴[(including noise)] present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;
- (b) “air pollution” means the presence in the atmosphere of any air pollutant;
- (c) “approved appliance” means any equipment or gadget used for the burning of any combustible material or for generating or consuming any fume, gas or particulate matter and approved by the State Board for the purposes of this Act;
- (d) “approved fuel” means any fuel approved by the State Board for the purpose of this Act;
- (e) “automobile” means any vehicle powered either by internal combustion engine or by any method of generating power to drive such vehicle by burning fuel;
- (f) “Board” means the Central Board or a State Board.
- (g) “Central Board” means the [Central Pollution Control Board] constituted under Sec. 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (h) “chimney” includes any structure with an opening or outlet from or through which any air pollutant may be emitted;
- (i) “control equipment” means any apparatus, device, equipment or system to control the quality and manner of emission of any air pollutant and includes any device used for securing the efficient operation of any industrial plant;
- (j) “emission” means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;
- (k) “industrial plant” means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere;
- (l) “member” means a member of the Central Board or a State Board, as the case may be, and includes the Chairman thereof;
- (m) “occupier”, in relation to any factory or premises, means the person who has control over the affairs of the factory or the premises, and includes, in relation to any substance, the person in possession of the substance;
- (n) “prescribed” means prescribed by rules made under this Act by the Central Government or, as the case may be, the State Government;
- (o) “State Board” means:
 - (i) in relation to a State in which the Water (Prevention and Control of Pollution) Act, 1974, is in force and the State Government has constituted for that state a [State Pollution Control Board] under sec. 4 of that Act, the said State Board; and
 - (ii) in relation to any other State, the State Board for the Prevention and Control of Air Pollution constituted by the State Government under Sec. 5 of this Act.

COMMENTS

General principle of construction – There is one principle on which there is complete unanimity of all the Courts in the world and this is that where the words or the language used in a statute are clear and cloudless, plain, simple and explicit, unclouded and unobscured, intelligible and pointed so as to admit of no ambiguity, vagueness, uncertainty or equivocation, there is absolutely no room for deriving support from external aids. In such cases, the statute should be interpreted on the face of the language itself without adding, subtracting or omitting words therefrom. Where the language is plain, and unambiguous the Court

is not entitled to go behind the language so as to add or supply omissions and thus play the role of a political reformer or of a wise counsel to the Legislature.

Definition – Interpretation of – While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.

CHAPTER II

CENTRAL AND STATE BOARDS FOR THE PREVENTION AND CONTROL OF AIR POLLUTION

[3. Central Pollution Control Board – The Central Pollution Control Board constituted under Sec. 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), shall, without prejudice to the exercise and performance of its powers and functions under that Act, exercise the powers and perform the functions of the Central Pollution Control Board for the prevention and control of air pollution under this Act.

COMMENT

This section relates to the constitution of Central Pollution Board. It is similar to the Board constituted under Sec. 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974).

4. State Pollution Control Boards constituted under Sec.4 of Act 6 of 1974 to be State Boards under this Act. –

In any State in which the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), is in force and the State Government has constituted for that State a State Pollution Control Board under Sec. 4 of that Act, such State Board shall be deemed to be the State Board for the Prevention and Control of Air Pollution constituted under Sec. 5 of this Act, and accordingly that State Pollution Control Board shall, without prejudice to the exercise and performance of its powers and functions under that Act, exercise the powers and perform the functions of the State Board for the prevention and control of air pollution under this Act.]

5. Constitution of state boards. –

(1) In any State in which the Water (Prevention and Control of Pollution), Act 1974 (6 of 1974), is not in force or that Act is in force but the State Government has not constituted a [State Pollution Control Board] under that Act, the State Government shall, with effect from such date as it may, by notification in the Official Gazette, appoint, constitute a State Board for the Prevention and Control of Air Pollution under such name as may be specified in the notification, to exercise the powers conferred on, and perform the functions assigned to that Board under this Act.

(2) A State Board constituted under this Act shall consist of the following members, namely;

- (a) a Chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection to be nominated by the State Government: provided that the Chairman may be either whole-time or part-time as the State Government may think fit;
- (b) such number of officials, not exceeding five, as the State Government may think fit, to be nominated by the State Government to represent that Government;
- (c) such number of persons, not exceeding five, as the State Government may think fit, to be nominated by the State Government from amongst the members of the local authorities functioning within the State;

- (d) such number of non-officials, not exceeding three, as the State Government may think fit to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or labour or any other interest, which in the opinion of that Government, ought to be represented;
- (e) two persons to represent the companies or corporations owned, controlled or managed by the State Government, to be nominated by that Government;
- (f) a full-time member-secretary having such qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control as may be prescribed, to be appointed by the State Government:]

Provided that the State Government shall ensure that not less than two of the members are persons having special knowledge or practical experience in respect of matters relating to the improvement of the quality of air or the prevention, control or abatement of air pollution.

(3) Every State Board constituted under this Act shall be a body corporate with the name specified by the State Government in the notification issued under sub-section (1), having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire and dispose of property and to contract, and may be the said name sue or be sued.

COMMENTS

Section 5 of the Air Pollution Act, 1981, relates to the Constitution of State Boards.

Wrong observation against U.P. Pollution Board and District Administration, whether could be justified
 – It appears that the Chief Judicial Magistrate has virtually dismissed the petition by not taking any action. He has made a wrong observation, joined the attention of the State Government, U.P. Pollution Board and District Administration. Their rights could be controlled by the Air Pollution Act, 1981, issuing a direction that they may take action under these provisions of law. Paragraph 12 of the Order will, therefore, stand quashed and there will be no direction to the U.P. Government or U.P. Pollution board or the District Administration in the matter and the application which the learned chief Judicial Magistrate, concerned was considering shall be deemed to have been dismissed.

6. Central board to exercise the powers and perform the functions of a State Board in the union territories –

No State Board shall be constituted for a Union Territory and in relation to a Union Territory; the Central Board shall exercise the powers and perform the functions of a State Board under this Act for that Union Territory:

Provided that in relation to any Union Territory the Central Board may delegate all or any of its powers and functions under this section to such person or body of persons as the Central Government may specify.

COMMENTS

This section specifically puts the restriction on the constitution of the State Board in a Union Territory.

7. Terms and conditions of service of members –

- (1) Save as otherwise provided by or under this Act, a member of a State Board constituted under this Act, other than the member-secretary, shall hold office for a term of three years from the date on which his nomination is notified in the Official Gazette: Provided that a

member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) The terms of office of a member of a State Board constituted under this Act and nominated under CI. (b) or CI. (e) of sub-section (2) of Sec. 5 shall come to an end as soon as he ceases to hold the office under the State Government or, as the case may be, the company or corporation owned, controlled or managed by the State Government, by virtue of which he was nominated.

(3) A member of a State Board constituted under this Act, other than the member-secretary, may at any time resign his office by writing under his hand addressed –

(a) in the case of the Chairman, to the State Government; and

(b) in any other case, to the Chairman of the State Board and the seat of the Chairman or such other member shall thereupon become vacant.

(4) A member of a State Board constituted under this Act, other than the member-secretary, shall be deemed to have vacated his seat, if he is absent without reason, sufficient in the opinion of the State Board, from three consecutive meetings of the State Board or where he is nominated under CI. (c) of sub-section (2) of Sec. 5, he ceases to be a member of the local authority and such vacation of seat shall, in either case, take effect from such date as the State Government may, by notification in the Official Gazette, specify.

(5) A casual vacancy in a State Board constituted under this Act shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was nominated.

(6) A member of a State Board constituted under this Act shall be eligible for re-nomination [****]

(7) The other terms and conditions of service of the Chairman and other members (except the Member-Secretary) of a State Board constituted under this Act shall be such as may be prescribed.

COMMENTS

This section fixes the limit of re-nomination of a member of a State Board, i.e., for two terms only. Section 7, of the Air Pollution Act, 1981, relates to the vacation of seats by members of the Board.

8. Disqualifications. –

(1) No person shall be a member of a State Board constituted under this Act, who –

(a) is, or at any time has been adjudged insolvent, or

(b) is of unsound mind and has been so declared by a competent Court, or

(c) is, or has been convicted of an offence which, in the opinion of the State Government, involves moral turpitudes, or

(d) is, or at any time has been convicted of an offence under this Act, or

(e) has directly or indirectly by himself or by any partner, any share or interest in any firm or company carrying on the business of manufacture, sale, or hire of machinery, industrial plant, control equipment or any other apparatus for the improvement of the quality of air or for the prevention, control or abatement of air pollution, or

(f) is a director or a secretary, manager or other, salaried officer or employee of any company or firm having any contract with the Board, or with the Government constitution the Board or with a local authority in the State, or with a company or corporation owned, controlled or managed by the Government, for the carrying out of programmes for the improvement of the quality of air or for the prevention, control, or abatement of air pollution, or

(g) has so abused, in the opinion of the State Government, his position as a member, as to render his continuance or the State Board detrimental to the interests of the general public.

(2) The State Government shall, by order in writing, remove any member who is, or has become, subject to any disqualification mentioned in sub-section (1): Provided that no order of removal shall

be made by the State Government under this section unless the member concerned has been given a reasonable opportunity of showing cause against the same.

- (3) Notwithstanding anything contained in sub-section (1) of sub-section (6) of Sec. 7, a member who has been removed under this section shall not be eligible to continue to hold office until his successor enters upon his office, or, as the case may be, for re-nomination as a member.

COMMENTS

Section 8 of the Air Pollution Act, 1981, relates to the disqualification's at members to be appointed in the Board.

Sub-section (2) embodies the principle of natural justice that the member of the Board before his removal on the ground of disqualification must be afforded a reasonable opportunity of being heard.

Proviso – In *Abdul Jabar Butt v. State of Jammu and Kashmir*, it was held that proviso must be considered with relation to the principal matter to which it stands as a proviso.

9. Vacation of seats by members –

If a member of a State Board constituted under this Act becomes subject to any of the disqualification specified in Sec. 8, his seat shall become vacant.

COMMENT

Section 9 of the Air (Prevention and Control of Pollution) Act, 1981, relates to the vacation of seats by members of the Board.

10. Meetings of Board –

(1) For the purposes of this Act, a Board shall meet at least once in every three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed Provided that if, in the opinion of the Chairman, any business of an urgent nature is to be transacted, he may convene a meeting of the Board at such time as he thinks fit for the aforesaid purpose.

(2) Copies of the minutes of the meetings under sub-section (1) shall forwarded to the Central Board and to the State Government concerned.

COMMENTS

Section 10 of the Air (Prevention and Control of Pollution) Act, 1981, relates to the meetings of Board.

Section 10 empowers the Chairman to convene the meeting at any time for the purpose of the Act.

11. Constitution of Committees. –

(1) A board may constitute as many committees consisting wholly of members or partly of members and partly of other persons and for such purpose or purposes as it may think fit.

(2) A committee constituted under this section shall meet at such time at such place, and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

(3) The members of a committee other than the members of the Board shall be paid such fees and allowances, for attending its meetings and for attending to any other work of the Board as may be prescribed.

COMMENTS

The committees constituted under this section may consist wholly of members or partly of members and partly of other persons.

Section 11 of the Air (Prevention and Control of Pollution) Act, 1981, relates to the constitution of committees.

12. Temporary association of persons with Board for particular purposes. –

- 1) A Board may associate, with itself in such manner, and for such purposes, as may be prescribed, any person whose assistance or advice it may desire to obtain in performing any of its functions under this Act.
- 2) A person associated with the Board under sub-section (1) for any purpose shall have a right to take part in the discussions of the Board relevant to that purpose, but shall not have a right to vote at a meeting of the Board and shall not be a member of the Board for any other purpose.
- 3) A person associated with a Board under sub-section (1) shall be entitled to receive such fees and allowances as may be prescribed.

COMMENT

Section 12 of the Air Pollution Act, 1981, relates to the temporary association of persons with Board for particular purposes.

13. Vacancy in Board not to invalidate acts or proceedings. –

No act or proceeding of a Board or any committee thereof shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board or such committee, as the case may be.

COMMENT

Section 13 of the Air Pollution Act, 1981, provides that the vacancy in Board shall not invalidate acts or proceedings

14. Member-secretary and officers and other employees of State Boards. –

- (1) The terms and conditions of a service of the member-secretary of a State Board constituted under this Act shall be such as may be prescribed.
- (2) The member-secretary of a State Board, whether constituted under this Act or not, shall exercise such powers and perform such duties as may be prescribed, or as may, from time to time, be delegated to him by the State Board or its Chairman.
- (3) Subject to such rules as may be made by the State Government in this behalf, a State Board, whether constituted under this Act or not, may appoint such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.
- (4) This method of appointment, the conditions of service and the scales of pay of the officers (other than the member-secretary) and other employees of a State Board appointed under sub-section (3) shall be such as may be determined by regulations made by the State Board under this Act.
- (5) Subject to such conditions as may be prescribed, a State Board constituted under this Act may from time to time appoint any qualified person to be a consultant to the Board and pay him such salary and allowances or fees, as it thinks fit.

COMMENT

Section 14 of the Air Pollution Act, 1981, relates to the member-secretary and officers and other employees of the board.

15. Delegation of powers –

A State Board may, by general or special order, delegate to the Chairman or the member-secretary or any other officer of the Board subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Act as it may deem necessary

COMMENT

Section 15 of the Air Pollution Act, 1981, relates to the delegation of powers, Section 23 of the Environment (Protection) Act, 1986, provides the same power.

Deemed – Meaning of – The word “deemed” always means to be treated “as if it were.”

CHAPTER III

POWERS AND FUNCTIONS OF BOARDS

16. Functions of Central Board –

- (1) Subject to the provisions of this Act, and without prejudice to the performance of its functions under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), the main functions of the Central Board shall be to improve the quality of air and to prevent, control or abate air pollution in the country.
- (2) In particular and without prejudice to the generality of the foregoing functions, the Central Board may
 - (a) advise the Central Government on any matter concerning the improvement of the quality of air and the prevention, control or abatement of air pollution;
 - (b) plan and cause to be executed a nation-wide programme for the prevention, control or abatement of air pollution;
 - (c) co-ordination the activities of the State Board and resolve disputes among them;
 - (d) provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of air pollution and prevention, control or abatement of air pollution;
 - (dd) perform such of the functions of any State Board as may be specified in an order made under subsection (2) of Sec. 18;
 - (e) plan and organize the training of person engaged or to engaged in programmes for the prevention, control or abatement of air pollution on such terms and conditions as the Central Board may specify;
 - (f) organize through mass media a comprehensive programme regarding the prevention, control or abatement of air pollution;
 - (g) collect, compile and publish technical and statistical data relating to air pollution and the measures devised for its effective prevention, control or abatement and prepare manuals, codes or guides relating to prevention, control or abatement of air pollution;
 - (h) lay down standards for the quality of air;
 - (i) collect and disseminate information in respect of matters relating to air pollution;
 - (j) perform such other function as may be prescribed.
- (3) The Central Board may establish or recognize a laboratory or laboratories to enable the Central Board to perform its functions under this section efficiently.
- (4) The Central Board may -
 - (a) delegate any of its functions under this Act generally or specially to any of the Committees appointed by it;
 - (b) do such other things and perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

COMMENTS

Section 16 of the Air Pollution Act relates to the functions of Central Board.

Sub-section (4) empowers the Central Board to delegate any of its functions to any of the committees appointed by it.

17. Functions of State Boards –

- (1) Subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), the functions of a State Board shall be: -
 - (a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;
 - (b) to advise the State Government on any matter concerning the prevention, control or abatement of air pollution;
 - (c) to collect and disseminate information relating to air pollution;
 - (d) to collaborate with the Central Board in organizing the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organize mass-education programme relating thereto;
 - (e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;
 - (f) to inspect air pollution control areas to such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;
 - (g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft;
Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quality and composition of emission of air pollutions into the atmosphere from such industrial plants;
 - (h) to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;
 - (i) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;
 - (j) to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purpose of this Act.
- (2) A State Board may establish or recognize a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently.

COMMENT

Section 17 of the Air Pollution Act relates to the functions of State Board.

No noise pollution in using the horn-type loudspeakers. –

The final report filed by the Kerala State Pollution Control Board was very specific to Guruvayur and was based on filed observations. The use of horn-type loudspeaker is preferable for public announcement and speeches, especially in open areas, for the following reasons:

A cone-type loudspeaker (otherwise known as box-type loudspeaker) is able to faithfully reproduce sound in a very wide range of frequencies. In other words it can reproduce very shrill (high frequency) to very high bass (low frequency) sounds. The efficiency of a horn-type loudspeakers on the other hand, is limited to human speech frequencies. Therefore a horn-type loudspeakers is more preferable for human speech amplification.

Box-type loudspeakers are not suitable for prolonged use in the open as they do not withstand the vagaries of nature. The horn-type loudspeaker is rugged in construction and therefore better suited for outside use. Horn-type loudspeaker is more directional and therefore the sound can be better focused towards the intended audience. Cone/Box-type loudspeakers are suitable for use in areas such as music/conference halls or theatres where the audibility can be restricted to a confined area or audience and where we require faithful reproduction of a wide range of frequencies: -

The only restriction stated is that these loudspeakers should be maintained at a height of 3 metres above the ground level. Thus from the above reports, it is clear that there will be no noise pollution in using the horn-type loudspeakers so far as Guruvayur temple premises is concerned. Therefore, the Guruvayur Devaswam is allowed to use horn-type amplifiers in and around the Sree Krishna Temple Premises as required by them. If any permission is needed from the police authorities, the police authorities are directed to give sanction to the Managing Committee to erect the horn-type loudspeakers.

18. Power to give directions. –

(1) In the performance of its functions under this Act, -

- (a) the Central Board shall be bound by such directions in writing as the Central Government may give to it; and
- (b) every State Board shall be bound by such direction in writing as the Central Board or the State Government may give to it:

Provided that where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision

- (2) Where the Central Government is of the opinion that any State Board has defaulted in complying with any directions given by the Central Board under sub-section (1) and as a result of such default a grave emergency has arisen and it is necessary or expedient so to do in the public interest, it may, by order, direct the Central Board to perform any of the functions of the State Board in relation to such area, for such period and for such purposes, as may be specified in the order.
- (3) Where the Central Board performs any of the functions of the State Board in pursuance of a direction under sub-section (2), the expenses, if any, incurred by the Central Board with respect to the performance of such functions may, if the State Board is empowered to recover such expenses, be recovered by the Central Board with interest (at such reasonable rate as the Central Government may, by order, fix) from the date when a demand for such expenses is made until it is paid from the person or persons concerned as arrears of land revenue or of public demand.
- (4) For the removal of doubts, it is hereby declared that any directions to perform the functions of any State Board given under sub-section (2) in respect of any area would not preclude the State Board from performing such functions in any other area in the State or any of its other functions in that area.

COMMENTS

Section 18 of the Air (Prevention and Control of Pollution) Act, 1981, relates to the power of giving directions. Similar power has been given under Sec. 5 of the Environment (Protection) Act, 1986 and Sec. 18 of the Water (Prevention and Control of Pollution) Act, 1974.

The word “shall” – meaning of – It has been laid down consistently by the Supreme Court that the mere use of the word “shall” by itself in the statute does not make the provisions mandatory, but it is the duty of the Courts of the justice to try to get at the real intention of the Legislature. In each case, one has to look to the subject-matter, consider the importance of the provisions and decide whether the enactment is mandatory or only directory.

Interpretation of the word “shall” – The word “shall” cannot be interpreted as “may”. Where the situation and the context warrants it, the word “shall” used in a section or rule of a statute has to be construed as “may”. The power of the Court, however, to ascertain the real intention of the Legislature by carefully examining the scope of the statute, to find out whether the provision is directory or mandatory remains unimpaired.

CHAPTER IV

PREVENTION AND CONTROL OF AIR POLLUTION

19. Power to declare air pollution control areas. –

- (1) The State Government may, after consultation with the State Board, by notification in the Official Gazette, declare in such manner as may be prescribed, any area or areas within the State as air pollution control area or areas for the purposes of this Act.
- (2) The State Government may, after consultation with the State Board, by notification in the Official Gazette, -
 - (a) after any air pollution control area whether by way of extension or reduction;
 - (b) declare a new air pollution control area in which may be merged one or more existing air pollution control areas of any part or parts thereof.
- (3) If the State Government, after consultation with the State Board, is of opinion that the use of any fuel, other than an approved fuel, in any air pollution control area or part thereof, may cause or is likely to cause air pollution, it may, by notification in the Official Gazette, prohibit the use of such fuel in such area or part thereof with effect from such date (being not less months from the date of publication of the notification) as may be specified in the notification.
- (4) The State Government may, after consultation with the State Board, by notification in the Official Gazette, direct that with effect from such date as may be specified therein, no appliance, other than an approved appliance, shall be used in the premises situated in an air pollution control area provided that different dates may be specified for different parts of an air pollution control area or for the use of different appliances.
- (5) If the State Government after consultation with the State Board, is of opinion that the burning of any material (not being fuel) in any air pollution control area or part thereof may cause or is likely to cause air pollution, it may, by notification in the Official Gazette, prohibit the burning of such material in such area or part thereof.

COMMENTS

Section 19 of the Air Pollution Act, 1981, relates to the applicability of the Act to certain areas.

Sub-section (5) empowers the State Government after consultation with the state Board to prohibit the burning of any material (not being fuel) in any air pollution control area or part thereof, which may cause or likely to cause air pollution.

20. Power to give instructions for ensuring standards for emission from automobiles –

With a view to ensuring that the standards for emission of air pollutions from automobiles laid down by the State Board under Cl. (g) of sub-section (1) of Sec. 17 are complied with, the State Government shall, in consultation with the State Board, give such instructions as may be deemed necessary to the concerned authority in charge of registration of motor vehicles under the Motor Vehicles Act (4 of 1939) and such authority shall, notwithstanding anything contained in that Act or the rules made thereunder be bound to comply with such instructions.

21. Restrictions on use of certain industrial plants. –

- (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of Sec. 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.

- (2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

Provided that where any person, immediately before the declaration not any area as an air pollution control area, operates in such area any industrial plant. Such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

- (3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

- (4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, [and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:] Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refused further consent after such expiry if the conditions subject to which such consent as has been granted are not fulfilled: Provided further that before canceling a consent or refusing a further consent under the first proviso, reasonable opportunity of being heard shall be given to the person concerned.

- (5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely:

- (i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;
- (ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;
- (iii) the control equipment referred to in CI. (i) or CI. (ii) shall be kept at all times in goods running conditions;
- (iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises;
- (v) such other conditions as the State Board may specify in this behalf; and
- (vi) the conditions referred to in CIs.(i), (ii), and (iv) shall be complied with within such period as the State Board may specify in this behalf.

Provided that in the case of a person operating any industrial plant in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months:

Provided further that –

- (a) after the installation of any control equipment in accordance with the specifications under CI. (i) or,
 - (b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under CI. (ii), or
 - (c) after the alteration or re-erection of any chimney under CI. (iv), no control equipment of chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the previous approval of the State Board.
- (6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment either in whole or in part,) the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions and thereupon such person shall be bound to comply with the conditions as so varied.
- (7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

COMMENTS

Compliance of the Section. –

So far as compliance with the provisions of the Air Act, is concerned, the Central Government in consultation with the Central Board issued a notification under Sec. 19 (1) of the Air Act, notifying certain areas in the Union Territory of Delhi as air pollution control areas. The plants of Shriram are admittedly situated in the air pollution control area and the industries carried on by Shriram also fall within the schedule of industries specified in the Air Act. Shriram was, therefore, required to apply for a consent order from the Central Board under Sec. 21 of the Air Act. A consent order was issued by the Central Board on 13th June, 1985 authorizing Shriram to operate their plants in the air pollution control area, subject to the conditions set out in the consent order. But, if the Central Board finds at any time that the conditions in the consent order relating to the power plant are not being complied with and the particular matter emitted by the stacks of the boilers more than 150 mg. Nm² it will be open to the Central Board to take whatever action is appropriate under the law.

Natural of offences under sub-sections (1) and (2) –

It is to be noted that in the instant case the prosecution is not for violation of Sec. 21 (1), for operating any industries plant without the previous consent. When an industrial plant is operated without the previous consent, in violation of Sec. 21 (1) the offence continues so long as the operation continues without consent. The offence comes to an end only when operation ceases or when the consent is obtained unlike an offence under Sec. 21

(1), the offence under Sec. 21 (2) is committed on the expiry of the six months period provide under Rules 7 (2) for applying for consent. When the six months period expires, the offence is committed once and for all. Failure to apply for consent without the six months period, is not a continuing offence. The offence under Sec. 21 (2) is not continuing offence.

Scope and object of the Act –

The Act is designed to prevent, control and abatement of air pollution; the provisions relate to preservation of quality of air and control of pollution. The “remedial measures” contemplated must be understood as such measures which mitigate the emission of air pollutions. Therefore, the harsh step of prohibiting the working of the factory is neither warranted nor has it the legal sanctity.

Having considered the facts, circumstances, nature of the allegations and the long history of enmity and animosity the Supreme Court is of the opinion that prima facie of provisions of the relevant Act, namely the Air Pollution Control Act have been complied with and there is no conduct which is attributable to respondent NO. 3 herein leading to pollution of air or ecological imbalances calling for interference by the Court.

Discrimination and violation of Art. 14 of the constitution –

By preventing the petitioner from further polluting the area, public interest being served in preference to individual interest and as such, there is no question of any discrimination.

Applicability of principle of natural justice –

The petitioner shall be given a person hearing regarding grant of consent order under Sec. 21 of the Act. Personal hearing would also include local inspection.

Application for given consent order rejected by the Board though manufacturing work going on – Order liable to be set aside –

On the facts and circumstances of the present case it is admitted that the application for consent order under sec. 21 has not been allowed, but in view of the order (sic) the High Court, the manufacturing works is going on. High Court directed the appropriate authority i.e. Board, to consider the question of giving consent order to the petitioners. If they are satisfied that such physical work has been started, then if there is no other bar, by any other provisions of law, they are bound to grant such consent. However, if there is any provision which is not complied with or if the Board is not satisfied to that effect, the Board shall be entitled to reject such application.

Rice milling plant – Is an industrial plant – cannot be operated except with the consent of the State Pollution Board –

In the present case, admittedly the 8th respondent has not obtained any consent from the Pollution Board. Therefore, the said rice milling plant is an “industrial plant” within the meaning of the Air (Prevention and Control of Pollution) Act, 1981 and same cannot be operated, except with the consent of the State Pollution Board as envisaged under Sec. 21 of the Air (Prevention and Control of Pollution) Act, 1981.

22. Persons carrying on industry, etc, not to allow emission of air pollutants in excess of the standards laid down by state Board –

No person operating any industrial plant, in any air pollution control area shall discharge or cause or permit to be discharged the emission of any air pollution in excess of the standards laid down by the State Board under Cl. (g) of sub-section (1) of Sec. 17.

COMMENT

Removal of the factory – justification of – It is not the intent of law that the community as a whole or a large number of complaints come forward to lodge their complaint or protest against the nuisance, that does not require any particular number of complainants. A mere reading of Sec. 133 (1), Cr. P.C., would go to show that the jurisdiction of the Sub-Divisional Magistrate can be invoked on receiving a report of police officer or other information, and on taking such evidence if any, as he thinks fit. These words are important. The nuisance to the community at large is not by mere installation of the boiler but also by the factory itself. In such circumstances while affirming the order passed by the lower Revisional Court the original order passed by the Sub-divisional Magistrate was modified deserves to be restored and it is accordingly restored without any modification confirming the same.

22.A. Power of board to make application to Court for restraining persons from causing air pollution –

- (1) Where it is apprehended by a Board that emission of any air pollutant, in excess of the standards laid down by the State Board under Cl. (g) of sub-section (1) of Sec. 17, is likely to occur by reason of any person operating an industrial plant or otherwise in any air pollution control area, the Board may make an application to a Court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class for restraining such person from emitting such air pollutant.
- (2) On receipt of the application under sub-section (1), the Court may make such order as it deems fit.
- (3) Where under sub-section (2), the Court makes an order restraining any person from discharging or causing or permitting to be discharged the emission of any air pollutant, it may, in that order, -
 - (a) direct such person to desist from taking such action as is likely to cause emission;
 - (b) authorize the Board, if the direction under Cl. (a) is not complied with by the person to whom such direction is issued, to implement the direction in such manner as may be specified by the Court.
- (4) All expenses incurred by the Board in implementing the directions of the Court under Cl. (b) of sub-section (3) shall be recoverable from the person concerned as arrears of land revenue or of public demand.

23. Furnishing of information to State Board and other agencies in certain cases. –

- (1) Where in any area the emission of any air pollutant into the atmosphere in excess of the standards laid down by the State Board occurs or is apprehended to occur due to accident or other unforeseen act or event, the person in charge of the premises from where such emission occurs or is apprehended to occur shall forthwith intimate the fact of such occurrence or the apprehension of such occurrence to the State Board and to such authorities or agencies as may be prescribed.
- (2) On receipt of information with respect to the fact or the apprehension of any occurrence of the nature referred to in sub-section (1), whether through intimation under that sub-section or otherwise, the State Board and the authorities as are necessary to mitigate the emission of such air pollutants.
- (3) Expenses, if any, incurred by the State Board, authority or agency with respect to the remedial measures referred to in sub-section (2) together with interest (at such reasonable rate, as the State Government may, by order, fix from the date when a demand for the expenses is made until it is paid, may be recovered by that Board, authority or agency from the person concerned, as arrears of land revenue, or of public demand.

COMMENTS

Section 23 of the Air Pollution Act, 1981, deals with furnishing of information to State Board and other agencies in certain cases. Similar provisions are contained in Sec. 9 of the Environment (Protection) Act, 1986 and Sec. 31 of the Water Pollution Act, 1974.

Section 23 requires the person in charge of the premises to give information of the emission of any air pollutant into the atmosphere in excess of the standards laid down by the State Board, due to accident or other unforeseen act or event.

24. Power of entry and inspection –

- (1) Subject to the provisions of this section, any person empowered by a State Board in this behalf shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place –
 - (a) for the purpose of performing any of the functions of the State Board entrusted to him;
 - (b) for the purpose of determining whether and if so in what manner, any such functions are to be performed or whether any provisions of this Act or the rules made thereunder or any notice, order, direction or authorization served, made, given or granted under this Act is being or has been complied with.
 - (c) For the purpose of examining and testing any control equipment, industrial plant, record, register, document or any other material object or for conducting a search of any place in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed and for seizing any such control equipment, industrial plant, record, register, document or other material object if he has reasons to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder.
- (2) Every person operating any control equipment or any industrial plant, in an air pollution control area shall be bound to render all assistance to the person empowered by the State Board under sub-section (1) for carrying out the functions under that sub-section and if he fails to do so without any reasonable cause or excuse, he shall be guilty of an offence under this Act.
- (3) If any person willfully delays or obstructs any person empowered by the State Board under sub-section (1) in the discharge of his duties he shall be guilty of an offence under this Act.
- (4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), or, in relation to the State of Jammu and Kashmir, or any area in which that Code is not in force, the provisions of any corresponding law in force in that State or area, shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under Sec. 94 of the said Code or, as the case may be, under the corresponding provisions of the said law.

COMMENTS

Section 24 of the Air Pollution Act, 1981, relates to the powers of entry and inspection. Similar provision is provided under Sec. 10 of the Environment (Protection) Act, 1986 and Section 23 of the Water Pollution Act, 1974.

To inspect – meaning of – *Oxford Concise Dictionary*: The meaning of “search” in the same dictionary is given as “look or feel or go over” (person or his face or pockets, receptacle, place, book) for what can be found or to find something of which presence is suspected, probe, look for, seek out.

“Seize” – meaning of – The word “seize” means “take possession of contrary to the wishes of the owner of property”. No doubt, in cases where a delivery is effected by an owner of the goods in pursuance of a demand under legal right, whether oral or backed by a warrant, it would certainly be a case of seizure but the idea that it is the unilateral act of the person seizing is the very essence of the concept.

Search – necessity of recording of reasons –

In Gopi Kishan Agarwal v. R.N. Sen, it has been held that the procedure prescribed under Sec. 165 (1) (new) of the code of Criminal Procedure for search is not applicable in Sec. 105 (2) of the Customs Act

inasmuch as the two sections are intended to meet totally different situations, recording of reasons in writing by the Assistant Collector is not necessary.

Respectable – The word “respectable” does not connote any particular status or wealth or anything of that kind. Any person is entitled to claim respectability provided he is not disreputable in any way, that is, if he is not a thief or a criminal of some kind or a person perhaps of grossly immoral habits. To have given evidence in police prosecutions is not sufficient to deprive one of one’s title to respectability. A respectable person is one who would be impartial and on whom the owner or occupier of the place searched can *prima facie* rely. Men of modest means or belonging to communities which are not considered to be very high are respectable all the same.

Respectable witnesses of locality –

In *sunder Singh v. state of Uttar Pardesh*, the witnesses who were said to have witnessed the seizure were two *rickshawallas*. It was held that assuming that witnesses were not respectable inhabitants of the locality the circumstances would not invalidate search. It would effect the weight of the evidence in support of the search and recovery.

Search by Magistrate –

A Magistrate competent to issue a search-warrant is also competent himself to conduct the search. Section 165 (new) Cr. P.C., speaks of a search by a police officer. A Magistrate cannot conduct a search under this section, he can act only under Sec. 103 (Sec. 105, old), Cr. P.C.

Search of police party and search witnesses. –

The law lays down that persons of search witnesses and of the police party must be searched before they are allowed to enter the house so that the owner would not have reasonable growing for suspecting that one of the search party had planted something surreptitiously in the house.

Two or more witnesses –

If there are more persons it is better, but the officers generally take two persons. If no such persons are available, some evidence to that effect must be given at the trial. The police officers are competent witnesses and their evidence cannot be rejected merely because they are police officers. Where, it is not possible to make a search in the presence of the *panchas* or when property is found without a search being made, or where under the law it is not obligatory to make a *panchnama*, it would be open to the Court to convict the accused, if after examining police evidence carefully the Court feels satisfied that it is true. It is essential that *panch* witnesses should be independent witnesses, unbiased and without being in any way under the control of the police. Primarily it is for the Magistrate to come to the conclusion whether a *panch* witness suffers from the infirmity. The Court of Appeal must be vigilant in seeing that convictions are not based upon the evidence of *panch* witnesses whose evidence should not be accepted as suffering from the infirmity. It is true that the mere fact that a man has acted on several occasions as a *panch* witness should not be sufficient by itself to lead to the inference that the man is a police agent.

Search of the motor-car –

A motor-car is not a place within the meaning of Sec. 100, Cr. P.C. (Secs. 102 and 103 of the Code, 1898). The provisions relating to searches have therefore no application and in making a search of a motor vehicle. Even though the statute does not make it obligatory, the police officers wisely carry out the search, if it is possible for them to secure the presence of respectable witnesses, in their presence. This is a healthy practice which leads to clear investigation and is guarantee against the oft-repeated charge against police officer of planting articles.

Search by unauthorized person –

Under Sec. 105 of the Customs Act, 1962, the Assistant Collector of Customs is given the power to authorize any officer of Customs to search when he has reason to believe that goods liable to confiscation

are secreted in a particular place. Search by a person authorized under Sec. 108 of the Customs Act is illegal.

Search of a women –

The search of a woman is to be conducted as provided for under Sec. 51 (2) (Sec. 52 old), Cr. P.C., which says whenever it is necessary to cause a female to be searched, the searches shall be made by another female, with strict regard to decency.

If the men had actually left the hall during the search even then it will not be an extraordinary circumstance that one or all of them should have seen the currency note being taken out from under the blouse of the female accused.

25. Power to obtain information –

For the purposes of carrying out the functions entrusted to it, the State Board or any officer empowered by it in that behalf may call for any information (including information regarding the types of air pollutants emitted into the atmosphere and the level of the emission of such air pollutants) from the occupier or any other person carrying on any industry or operating any control equipment or industrial plant and for the purpose of verifying the correctness of such information, the State Board or such officer shall have the right to inspect the premises where such industry, control equipment or industrial plant is being carried on or operated.

COMMENT

Section 25 of Air Pollution Act, 1981 relates to the power to obtain information. Similar provision is contained in Sec. 20 of the Environment (Protection) Act, 1986. Sec. 20 of the Water Pollution Act, 1974.

26. Power to take samples of air or emission and procedure to be followed in connection therewith –

- (1) A State Board or any officer empowered by it in this behalf shall have power to take, for the purpose of analysis, samples of air or emission from any chimney, flue or duct or any other outlet in such manner as may be prescribed.
- (2) The result of any analysis of a sample of emission taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3) and (4) are complied with.
- (3) Subject to the provisions of sub-section (4), when a sample of emission is taken for analysis under sub-section (1), the person taking the sample shall -
 - (a) serve on the occupier or his agent, a notice, then and there, in such form as may be prescribed, of his intention to have it so analysed;
 - (b) in the presence of the occupier or his agent, collect a sample of emission for analysis;
 - (c) cause the sample to be placed in a container or containers which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;
 - (d) send, without delay, the container or containers to the laboratory established or recognized by the State Board under Sec. 17 or, if a request in that behalf is made by the occupier or his agent when the notice is served on him under Cl. (a), to the laboratory established or specified under sub-section (1) of Sec. 28.
- (4) When a sample of emission is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under Cl. (a) of sub-section (3) then, -
 - (a) in a case where the occupier or his agent willfully absents himself, the person taking the sample shall collect the sample of emission for analysis to be placed in a container or containers which shall be marked and sealed and shall also be signed by the person taking the sample, and
 - (b) in a case where the occupier or his agent is present at the time of taking the sample but refuses to sign the marked and sealed container or containers of the sample of emission as required under Cl. (c) of sub-section (3), the marked and sealed container or containers shall be signed by the person taking the sample, and the container or containers shall be sent without delay by the person taking the sample for analysis to the laboratory established or specified under sub-section (1) of Sec. 28 and such person shall inform the Government Analyst appointed under sub-section (1) of Sec. 29,

in writing about the willful absence of the occupier or his agent, or, as the case may be, his refusal to sign the container or containers.

COMMENTS

Sub-section (3) requires the person taking sample of emission for analysis to serve a notice of his intention on the occupier of the premises or his agent than and there.

Section 26 of the Air Pollution Act, 1981 relates to the power of taking samples and procedure to be followed in connection therewith. Similar provision has been provided in Sec. 11 of the Environment (Protection) Act, 1986, and Sec, 21 of the Water Pollution Act, 1974.

27. Reports of the result of analysis on samples taken under Sec. 26 –

(1) Where a sample of emission has been sent for analysis to the laboratory established or recognized by the State Board, the Board Analyst appointed under sub-section (2) of sec. 29 shall analyse the sample and submit a report in the prescribed form of such analysis in triplicate to the State Board.

(2) On receipt of the report under sub-section (1), one copy of the report shall be sent by the State Board to the occupier or his agent referred to in Sec. 26, another copy shall be preserved for production before the Court in case any legal proceedings are taken against him and the other copy shall be kept by the State Board.

(3) Where a sample has been sent for analysis under Cl. (d) of sub-section (3) or sub-section (4) of Sec. 26, to any laboratory mentioned therein, the Government Analyst referred to in the said sub-section (4) shall analyse the sample and submit a report in the prescribed form of the result of the analysis in triplicate to the State Board which shall comply with the provisions of sub-section (2).

(4) Any cost incurred in getting any sample analysed at the request of the occupier or his agent as provided in Cl. (d) of sub-section (3) of Sec. 26 or when he willfully absents himself or refuses to sign the marked and sealed container or containers of sample fo emission under sub-section (4) of that section, shall be payable by such occupier or his agent and in case of default the same shall be recoverable from his as arrears of land revenue or of public demand.

COMMENTS

According to sub-section (4) the occupier shall bear the cost incurred in the sample analysed at his request.

Section 27 of the Air Pollution Act, 1981 deals with report of the analysis on samples taken. Similar provision is contained in Sec. 15 of the Environment (Protection) Act, 1986 and Sec. 22 of the Water Pollution Act, 1974.

28. State air laboratory –

(1) The State Government may, by notification in the Official Gazette, -

(a) establish one or more State Air Laboratories; or

(b) specify one or more laboratories or institutes as State Air Laboratories to carry out the functions entrusted to the State Air Laboratory under this Act.

(2) The State Government may, after consultation with the State Board, make rules prescribing –

(a) the functions of the State Air Laboratory;

- (b) the procedure for the submission to the said laboratory of samples of air or emission for analysis or tests, the form of the Laboratory's report thereon and the fees payable in respect of such report;
- (c) such other matters as may be necessary or expedient to enable that laboratory to carry out its functions.

COMMENTS

Section 28 relates to State Air Laboratory. Section 12 of the Environment (Protection) Act, 1986, deals with "Environmental laboratories" while Sec. 52 of the Water Pollution Act, 1974, deals with State Water Laboratory.

29. Analysis –

- (1) The State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit and having the prescribed qualifications to be Government Analysts for the purpose of analysis of samples of air or emission sent for analysis to any laboratory established or specified under sub-section (1) of Sec. 28.
- (2) Without prejudice to the provisions of Sec. 14 the State Board may, by notification in the Official Gazette, and without the approval of the State Government, appoint such persons as it thinks fit and having the prescribed qualifications to be Board Analysts for the purpose of analysis of samples of air or emission sent for analysis to laboratory established or recognized under Sec. 17.

COMMENT

Section 29 of the Air Pollution Act, 1981 and Sec. 53 of the Water Pollution Act, 1974, relate to Analysts. Section 13 of the Environment (Protection) Act, 1986 also deals with Government Analysis.

30. Reports of analysts –

Any document purporting to be a report signed by a Government Analyst or, as the case may be, a State Board Analyst may be used as evidence of the facts stated therein in any proceedings under this Act.

COMMENTS

This section declares the evidentiary value of the report signed by Government Analyst. Section 30 of the Air Pollution Act, 1981 relates to report of analyst. The report of Government Analysts has also been provided in Sec. 14 of the Environment (Protection) Act, 1986 and Sec. 54 of the Water Pollution Act, 1974.

31. Appeals –

- (1) Any person aggrieved by an order made by the State Board under this Act may, within thirty days from the date on which the order is communicated to him prefer an appeal to such authority (hereinafter referred to as the Appellate Authority) as the State Government may think fit to constitute. Provided that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
- (2) The Appellate Authority shall consist of a single person or three persons as the State Government may think fit to be appointed by the State Government.
- (3) The form and the manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the Appellate Authority shall be such as may be prescribed.
- (4) On receipt of an appeal preferred under sub-section (1), the appellate Authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

COMMENTS

Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 provides for appeal.

Under sub-section (1) the Appellate Authority is empowered to entertain the appeal even after the expiry of the period of limitation, i.e. thirty days, on the ground of sufficient cause for not preferring the appeal in time.

31-A. Power to give directions –

Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, shall be bound to comply with such directions.

Explanation – For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct –

- (a) the closure, prohibition or regulation of any industry, operation or process; or
- (b) the stoppage or regulation of supply of electricity, water or any other service.

COMMENTS

Scope – Section 31-A does not give a blanket power to pass any and every order as it may like to do. In the instant case no record produced before the Court to show how the Board arrived at this finding before issuing Annexure-6. The whole action of the authority appears to be arbitrary and highhanded exercise of power accordingly impugned order vide annexure quashed.

Necessary instructions and the directions issued by the State Government or the Court – Must be complied strictly –

The problem of pollution in the city of Gwalior is merely on account of plying of indiscriminate number of vehicles using unauthorized fuel causing emitting smoke injurious to health. In the present case the Madhya Pradesh High Court founds that the checked staff was not fully equipped to check the cause of pollution on the spot. The necessary compliance of Sec. 20 of the Air Pollution Act and rule 116 of the Central Motor Vehicles Rules and not being made. NO efforts are being made for strict observing the provisions of Rule 116 of the Central Motor Vehicles Rules. The necessary instructions issued in this regard by the State government are not being strictly complied with by the concerned authorities and increase of pollution within the city of Gwalior is certainly causing health hazards to its inhabitants. There can be no doubt that the human life is more importance than the vehicle and traffic. The law and the rules are framed in his respect to ensure environment cleanliness and the authorities are under statutory obligation to maintain the atmosphere pollution free and to take necessary measures in this respect as provided under the statutes.

CHAPTER V

FUND, ACCOUNTS AND AUDIT

32. Contribution by Central Government. –

The Central Government may, after due appropriation made by Parliament by law in this behalf, make in each financial year such contributions to the State Boards as it may think necessary to enable the State Board to perform their functions under this Act.

Provided that nothing in this section shall apply to any [State Pollution Control Board] constituted under Sec. 4 of the Water (Prevention and Control of Pollution) Act, 1974(6 of 1974), which is empowered by that Act to expend money from its fund thereunder also for performing its functions, under any law for the time being in force relating to the prevention, control, or abatement of air pollution.

COMMENT

Section 32 of the Air Pollution Act, 1981, relates to the contributions by the Central Government.

33. Fund of Board –

- (1) Every State Board shall have its own fund for the purposes of the is Act and all sums which may, from time to time, be paid to it by the Central Government and all other receipts (by way of contributions, if any, from the State Government, free, gifts, grants, donations, benefactions or otherwise) of that Board shall be carried to the fund of the Board and all payments by the Board shall be made therefrom.
- (2) Every State Board may expend such sums as it thinks fit for performing its functions under this Act and such sums shall be treated as expenditure payable out of the fund of that Board.

- (3) Nothing in this section shall apply to any [State Pollution Control Board] constituted under Sec. 4 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) which is empowered by that Act to expend money from its fund thereunder also for performing its functions, under any law for the time being in force relating to the prevention, control or abatement of air pollution.

COMMENTS

Section 33 of the Air Pollution Act, 1981, relates to the fund of State Board.

Sub-section (2) confers the discretion on the State Board to expend the sum fit for performing its functions under the Act.

33-A Borrowing powers of Board –

A board may, with the consent of, or in accordance with the terms of any general or special authority given to it by the Central Government or, as the case may be, the State Government, borrow money from any source by way of loans or issue of bonds, debentures or such other instruments, as it may deem fit, for discharging all or any of its functions under this Act.

COMMENT

Exercise of power –

The only interpretation that can be made of Sec. 33-A is that the Board can issue any directions in exercise of its powers and performances of its functions under the Act but such direction must be subject to any directions which the Central Government may give in this behalf. Where the Central Government has not given any direction the power of the State Board is unfettered and where the Central Government has given any direction, then the direction of the State Board is subject to such direction.

34. Budget –

The Central Board, or as the case may be, the State Board shall, during each financial year, prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipt and expenditure under this Act, and copies thereof shall be forwarded to the Central Government or, as the case may be, the State Government.

COMMENT

Section 34 of the Air Pollution Act, 1981, relates to the Budget.

35. Annual report –

- (1) The Central Board shall, during each financial year, prepare, in such form as may be prescribed, an annual report giving full account of its activities under this Act during the previous financial year and copies thereof shall be forwarded to the Central

Government within four months from the last date of the previous financial year and that Government shall cause every such report to be laid before both Houses of Parliament within nine months of the last date of the previous financial year.

- (2) Every State Board shall, during each financial year, prepare, in such form as may be prescribed, an annual report giving full account of its activities under this Act during the previous financial year and copies thereof shall be forwarded to the State Government within four months from the last date of previous financial year and that Government shall cause every such report to be laid before the State Legislature within a period of nine months from the last date of the previous financial year.

COMMENT

Section 35 of the Air Pollution Act, 1981, relates to the Annual Report.

36. Account and audit –

- (1) Every Board shall, in relation to its functions under this Act, maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government or, as the case may be, the State Government.
- (2) The accounts of the Board shall be audited by an auditor duly qualified to act as an auditor of companies under Sec. 226 of the Companies Act, 1956 (1 to 1956).
- (3) The said auditor shall be appointed by the Central Government or, as the case may be, the State Government on the advice of the Comptroller and Auditor-General of India.
- (4) Every auditor appointed to audit the accounts of the Board under this Act shall have the right to demand the production of books, accounts, connected vouchers and other documents and paper and to inspect any of the offices of the Board.
- (5) Every such auditor shall send a copy of his report together with an audited copy of accounts to the Central Government or, as the case may be, the State Government.
- (6) The Central Government shall, as soon as may be after the receipt of audit report under sub-section (5), cause the same to be laid before both Houses of Parliament.
- (7) The State Government shall, as soon as may be after the receipt of the audit report under sub-section (5), cause the same to be laid before the State Legislature.

COMMENT

Section 36 of the Air Pollution Act, 1981, relates to “accounts and audit”.

CHAPTER VI

PENALTIES AND PROCEDURE

37. Failure to comply with the provisions of Sec. 21 or Sec. 22 or with the directions issued under Sec. 31-A –

- (1) Whoever fails to comply with the provisions of Sec. 21 or Sec. 22 or directions issued under Sec. 31-A, shall, in respect of each such failure, be punishable with imprisonment for a term which shall not be less than one year and six months but

- which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.
- (2) If the failure referred to in sub-section (1), continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.

COMMENT

Section 37 of the Air Pollution Act, 1981, is the penal provision and is based on the same footing. The provision relating to penalty has been provided in Sec. 15 of the Environment (Protection) Act, 1986 and Sec. 41 of the Water Pollution Act, 1974.

38. Penalties for certain acts. – Whoever –

- (a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or
- (b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or
- (c) damages any works or property belonging to the Board, or
- (d) fails to furnish to the Board or any officer or other employee of the Board any information required by the Board or such officer or other employee for the purpose of this Act, or
- (e) fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board or the apprehension of such occurrence, to the State Board and other prescribed authorities or agencies as required under sub-section (1) of Sec. 23, or
- (f) in giving any information which he is required to give under this Act, makes a statement which is false in any material particular, or
- (g) for the purpose of obtaining any consent under Sec. 21, makes a statement which is false in any material particular, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to [ten thousand rupees] or with both.

COMMENT

Section 38 of the Air Pollution Act, 1981, provides penalty for certain acts.

39. Penalty for contravention of certain provisions of this Act –

Whoever contravenes any of the provisions of this Act or any order or directions issued thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of continuing contravention, with an additional fine which may extend to five thousand rupees for

every day during which such contravention continues after conviction for the first such contravention.

40. Offences by companies –

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

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

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

Explanation – For the purposes of this section, -

- (a) “company” means any body corporate, and includes a firm or other association of individuals; and
- (b) “director” in relation to a firm, means a partner in the firm.

COMMENTS

It is imperative to prove the fact of consent or consent or connivance of, in order to hold the director, manager or secretary guilty of offence under the Act.

Section 40 of the Air Pollution Act, 1981, deals with offences by companies. Similar provision is contained in Sec. 16 of the Environment (Protection) Act, 1986 and Sec. 47 of the Water Pollution Act, 1974.

Whether Chairman and Deputy Chairman can be prosecuted under Sec. 40 for the offence committed by the company –

A bare reading of this provision shows that every person who at the time the offence was committed, was directly, in charge of and responsible to the company for the conduct of the business of the company, would also be liable to be punished for the said offence. The words “directly in charge of” are significant in this regard and exclude persons who are indirectly responsible for the business of the company. It is, therefore, possible to hold that the Chairman and Deputy Chairman of the Company by virtue of office held by them

cannot be prosecuted for offences committed by the company as they are not the persons directly in charge of, and responsible to the company as they are not the persons directly in charge of, and responsible to the company for the conduct of the business of the company. It is, therefore, possible to hold that the Chairman and Deputy Chairman of the Company by virtue of office held by them cannot be prosecuted for offences committed by the company as they are not the persons directly in charge of, and responsible to the company for the conduct of its business as required under Sec. 40 of the Act. The broad language of Sec. 482 of the Code of Criminal Procedure, would also justify that view and suggest that High Court has all the powers to prevent misuse of the process of the Court or secure ends of justice. Prosecution of Chairman and Deputy. Chairman quashed in exercise of the powers under Sec. 482 of the Code of Criminal Procedure.

Recourse to Art. 142 not to be taken to inflict punishment –

A fine is to be imposed upon the person who is found guilty of having contravened any of the provisions of the Act. He has to be tried for the specific offence and then on being found guilty, he may be punished either by sentencing him to undergo imprisonment for the period contemplated by the Act or with fine or with both. But recourse cannot be taken to Art. 142 to inflict upon him this punishment.

41. Offences by Government department –

- (1) Where an offence under this Act has been committed by any department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
- (3) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by the Department of Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence shall be liable to be proceeded against and punished accordingly.

COMMENT

Section 41 of the Air (Prevention and Control of Pollution) Act, 1981, deals with offences by Government departments. It has also been provided in Sec. 17 of the Environment (Protection) Act, 1986 and Sec. 48 of the Water (Prevention and Control of Pollution) Act, 1974.

42. Protection of action taken in good faith –

No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government or any member or any officer or other employee of the Board

in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made thereunder.

COMMENTS

Section 42 of the Air (Prevention and Control of Pollution) Act, 1981 and Sec. 59 of the Water (Prevention and Control of Pollution) Act, 1974 provides protection of action taken in good faith. Section 18 of the Environment (Protection) Act, 1986, also provides the same protection.

This section seeks to grant exemption to the Government, officers of the Government, the members and employees of the Board from the legal proceedings in respect of the actions taken in good faith.

43. Cognizance of offences –

(1) No Court shall take cognizance of any offence under this Act except on a complaint made by –

(a) a Board or any officer authorized in this behalf by it; or

(b) any person who has given notice and of his intention to make a manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or officer authorized as aforesaid, and no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try and offence punishable under this Act.

(2) Where a complaint has been made under Cl. (b) of sub-section (1), the Board shall on demand by such person, make available the relevant reports in its possession to that person:

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.

COMMENT

Section 43 of the Air Pollution Act, 1981, deals with cognizance of offences. It is also provided in Sec. 19 of the Environment (Protection) Act, 1986 and Sec. 49 of the Water Pollution Act, 1974.

44. Members, officers and employees of board to be public servants –

All the members and all officers and other employees of a Board when acting or purporting to act in pursuance of any of the provisions of this Act or the rules made thereunder shall be deemed to be public servants within the meaning of Sec. 21 of the Indian Penal Code (45 of 1860).

COMMENT

Section 44 of the Air Pollution Act, 1981 and Sec. 50 of the Water Pollution Act, 1974, provides that members, officers of the Board to be public servant within the meaning of Sec. 21 of the Indian Penal Code, Sec. 21 of the Environment (Protection) Act, 1986 are based on the above Act.

45. Repots and returns –

The Central Board shall, in relation to its functions under this Act, furnish to the Central Government and a State Board shall, in relation to its functions under this Act, furnish to the State Government and to Central Board such reports, returns, statistics, accounts and other information as that Government, or, as the case may be, the Central Board may, from time to time, require.

46. Bar of jurisdiction –

No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Appellate Authority constituted under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

COMMENTS

Section 58 of the Water Pollution Act, 1974, Sec. 46 of the Air Pollution Act, 1981 bars the jurisdiction of Civil Court relating to pollution cases and Sec. 22 of the Environment (Protection) Act, 1986 also bar the jurisdiction of Civil Court.

Scope – Section 46 of the Act simply bars the jurisdiction of Civil Courts to entertain nay suit or proceeding in respect of any matter which in Appellate Authority consitituted under the Air (Prevention and Control of Pollution) Act is empowered by or under this Act to determine. This bar of jurisdiction does not apply to criminal Courts.

CHAPTER VII MISCELLANEOUS

47. Power of State Government to supersede State Board –

- (1) If at any time the State Government is of opinion –
- (a) that a State Board constituted under this Act has persistently made default in the performance of the functions imposed on it by or under this Act, or
 - (b) that circumstances exist which render it necessary in the public interest so to do, the State Government may, by notification in the Official Gazette, supersede the State Board for such period, not exceeding six months, as may be specified in the notification:
- provided that before issuing a notification under this sub-section for the reasons mentioned in Cl. (a), the State Government shall give a reasonable opportunity to the State Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the State Board.

- (2) Upon the publication of a notification under this sub-section (1) superseding the State Board:-
- (a) all the members shall, as from the date of supersession, vacate their offices as such;
 - (b) all the powers functions and duties which may, by or under this Act, be exercised, performed or discharged by the State Board shall, until the State Board is reconstituted under sub-section (3), be exercised, performed or discharged by such person or persons as the State Government may direct;
 - (c) all property owned or controlled by the State Board shall, until the Board is reconstituted under sub-section (3), vest in the State Government.
- (3) On the expiration of the Period of supersession specified in the notification issued under sub-section (1), the State Government may –
- (a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary; or
 - (b) reconstitute the State Board by a fresh nomination or appointment, as the case may be, and in such case any person who vacated his office under CI. (a) of sub-section (2) shall also be eligible for nomination or appointment:
- Provided that the State Government may at any time before the expiration of the period of supersession, whether originally specified under sub-section (1) or as extended under this sub-section, take action under CI. (b) of this sub-section.

COMMENTS

The total period of supersession of the State Board by the State Government should not exceed one year.

Section 47 of the Air Pollution Act, 1981, empowers the State Government to supersede the State Board in certain cases.

Power under Sec. 47 (1) (b) of the Air (Prevention and Control of Pollution) Act, 1981

The power under Sec. 47 (1) (b) of the Air (Prevention and Control of Pollution) Act, 1981 and Sec. 62 (1) (b) of the Water (Prevention & Control of Pollution) Act, 1974, has been exercised on the basis of a fact finding inquiry got conducted by the Government through one of its officers. Therefore, it is not possible to hold that the Government had no material before it on the basis which it could form opinion about the desirability of supersending the Board. It cannot also be said that the material on the basis of which the opinion was formed was extraneous or irrelevant. The mere fact that the formation of opinion by the Government is based on a report, prepared in the context of the complaints received from various quarters cannot give rise to an inference that the impugned action is punitive in character. Therefore, the formation of opinion by the Government regarding the existence of circumstances necessitating the supersession of the Board is not vitiated due to malice in fact or malice in law.

48. Special provision in the case of supersession of the Central Board or the State Board constituted under the Water (Prevention and Control of Pollution) Act, 1974

Where the Central Board or any State Board constituted under the Water (Prevention and Control of Pollution) Act, 1947 (6 of 1974), is superseded by the Central Government or the State Government as the case may be, under that Act, all the powers, functions and duties of the Central Board or such State Board under this Act shall be exercised, performed or discharged during the period of such supersession by the person or persons, exercising, performing or discharging the powers, functions and duties of the Central Board or such State Board under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), during such period.

COMMENT

Section 48 of the Air Pollution Act, 1981, empowers the Central Government to supersede the Central Board or the State Board in certain cases.

49. Dissolution of State Board constituted under the Act –

- (1) As and when the Water (Prevention and Control of Pollution) Act, 1974, (6 of 1974), comes into force in any State and the State Government constitutes a [State Pollution Control Board] under that Act, the State Board constituted by the State Government under this Act shall stand dissolved and the Board first-mentioned shall exercise the powers and perform the functions of the Board second-mentioned in that State.
- (2) On the dissolution of the State Board constituted under this, Act –
 - (a) all the members shall vacate their offices as such;
 - (b) all moneys and other property of whatever kind (including the fund of the State Board) owned by, or vested in the State Board, immediately before such dissolution, shall stand transferred to and vest in the [State Pollution Control Board].
 - (c) Every officer and other employees serving under the State Board immediately before such dissolution shall be transferred to and become an officer or other employee of the [State Pollution Control Board] and hold office by the same tenure and at the same terms and conditions of service as he would have held the same if the State Board constituted under this Act had not been dissolved and shall continue to do so unless and until such tenure, remuneration and terms and conditions of service are duly altered by the [State Pollution Control Board]:
Provided that the tenure, remuneration and terms and conditions of service of any such officer or other employee shall not be altered to his disadvantage without the previous sanction of the State Government;
 - (d) All liabilities and obligations of the State Board of whatever kind immediately before such dissolution, shall be deemed to be the liabilities or, obligations, as the case may be, of the [State Pollution Control Board] and any proceeding or cause of action, pending or existing immediately before such dissolution by or against the State Board constituted under this Act in relation to such liability or obligation may be continued and enforced by or against the Board for the Prevention and Control of Water Pollution.

50. Power to amend the Schedule

51. Maintenance of register –

- (1) Every State Board shall maintain a register containing particulars of the persons to whom consent has been granted under Sec. 21, the standards for emission laid down by it in relation to each such consent and such other particulars as may be prescribed.
- (2) *The register maintained under sub-section (1) shall be open to inspection at all reasonable hours by any person interested in or affected by such standards for emission or by any other person authorized by such person in this behalf.*

52. Effect of other laws –

Save as otherwise provided by or under the Atomic Energy Act, 1962 (33 of 1962), in relation to radioactive air pollution the provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

COMMENTS

Section 52 of the Air Pollution Act, 1981, deals with overriding effects of the Act. Section 60 of the Water Pollution Act, 1974 and Sec. 24 of the Environment (Protection) Act, 1986 also provide the effect of other laws.

No inconsistency with Sec. 133, Cr. P.C., provisions compared –

In relation to public nuisance by air pollution, the provisions of the Code of Criminal Procedure, 1973, are wider in application and more effective and are intended primarily to remove public nuisance and prevent its recurrence. The Air (Prevention and Control of Pollution) Act, 1981, is limited in its operation to certain areas and to certain kinds of pollutants, and is primarily intended to control on scientific lines, certain types of air pollution and penalize the offender. There is no inconsistency relevant provisions of the Code by virtue the overriding provision contained in Sec. 52 of the Air Act. The two legislations are complementary to each other, and are intended to function side by side in their own parallel channels. They do not even overlap. The provisions of Chapter X-B of the Code relating to public nuisance arising out of air pollution cannot be taken to be impliedly repealed by the Air (Prevention and Control of Pollution) Act, 1981.

Power of Magistrate not affected –

The argument that the Pollution Control Board alone has got the right and the sub-Divisional Magistrate has no power relating to air and water pollution cannot be entertained. It is only the Sub-Divisional Magistrate that is entitled to take action under Sec. 133, Cr. P.C., in case of removal of nuisance, if any, brought to his notice either by a report from any police officer or any other information. The Magistrate is certainly empowered to take in evidence any other particulars that is required for passing of the final order in the same shape or in the modified form, after giving an opportunity to the party concerned. The appreciation certificate has to be obtained from the Pollution Control Board and the Board, if the conditions are satisfied, will not hesitate in issuing the certificate. The non-production of the certificate strengthens the view taken by the Sub-Divisions Magistrate in passing the final order under Sec. 136, Cr.P.C. The conditions laid down by the Sub-Divisional Magistrate in requiring the party concerned to produce the certificate cannot be said to be without jurisdiction or that the Magistrate exceeded his jurisdiction.

Public nuisance described – Sections 133 to 143 of the Code of Criminal Procedure, 1973 (2 of 1974), relate to public nuisance as distinguished from private nuisances. Public nuisance is defined in Sec. 268, I.P.C. It is clear from a perusal of Sec. 133, Cr. P., that in order to attract its applicability there must be an imminent danger to the health or the physical comfort of the community in the locality in which the trade or occupation is conducted. Without such imminent danger jurisdiction under this section cannot be exercised. The danger should be such that if the Magistrate does not take immediate action and directs the public to take ordinary recourses of law, irreparable damage would ensue. In conformity with the principal of natural justice regarding hearing before an adverse order, the section, at the initial stage, contemplates only conditional order.

53. Power of Central Government to make rules. –

- (1) The Central Government may, in consultation with the Central Board by notification in the Official Gazette, make rules in respect of the following matters, namely:
 - (a) the intervals and the time and place at which meetings of the Central Board or any committee thereof shall be held and the procedure to be followed at such meetings, including the quorum necessary for the transaction of business thereat, under sub-section (1) of sec. 10 and under sub-section (2) of Sec. 11;
 - (b) the fees and allowances to be paid to the members of a committee of the Central Board, not being members of the Board, under sub-section (3) of Sec. 11;

- (c) the manner in which and the purposes for which persons may be associated with the Central Board under sub-section (1) of Sec. 12;
 - (d) the fees and allowances to be paid under sub-section (3) of Sec. 12 to persons associated with the Central Board under sub-section (1) of Sec. 12;
 - (e) the functions to be performed by the Central Board under Cl. (f) of sub-section (2) of Sec. 16;
 - (f) the form in which and the time within which the budget of the Central Board may be prepared and forwarded to the Central Government under Sec. 34;
 - (ff) the form in which the annual report of the Central Board may be prepared under Sec. 35;
 - (g) the form in which the accounts of the Central Board may be maintained under sub-section (1) of Sec. 36.
- (2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

COMMENTS

Section 53 of the Air Pollution Act, 1981, empowers the Central Government to make rules. Section 63 of the Water Pollution Act, 1974 and Sec. 25 of the Environment (Protection) Act, 1986 also provided the same powers to Central Government.

Sub-section (2) of this section lays down that every rule shall be laid before the Parliament for approval.

Rules – Power of framing – The general power of framing rule for effectuating the purposes of the Act would plainly authorize and sanctify the framing of such a rule.

Rules, whether validly framed – The question whether rules are validly framed to carry out the purposes of the Act can be determined on the analysis of the provisions of the Act.

54. Power of State Government to make rules –

- (1) Subject to the provisions of sub-section (3), the State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act in respect of matters not falling within the purview of Sec. 53.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:
 - (a) the qualification, knowledge and experience of scientific, engineering or management aspects of pollution control required for appointment as Member-Secretary of a State Board constituted under the Act;
 - (aa) The terms and conditions of service of the Chairman and other members (other than the Member-Secretary) of the State Board constituted under this Act under sub-section (7) of sec. 7;
 - (b) the intervals and the time and place at which meetings of the State Board or any committee thereof shall be held and the procedure to be followed at such meetings, including the quorum necessary for the transaction of business thereat, under sub-section (1) of Sec. 10 and under sub-section (2) of Sec. 11;
 - (c) the fees and allowances to be paid to the members of a committee of State Board, not being members of the Board under sub-section (3) of Sec. 11;
 - (d) the manner in which and the purposes for which persons may be associated with the State Board under sub-section (1) of Sec. 12;
 - (e) the fees and allowances to be paid under sub-section (3) of Sec. 12 to persons associated with the State Board under sub-section (1) of sec. 14;

- (f) the terms and conditions of service of the member-secretary of a State Board constituted under this Act under sub-section (1) of Sec. 14,
 - (g) the powers and duties to be exercised and discharged by the member-secretary of a State Board under sub-section (2) of Sec. 14;
 - (h) the conditions subject to which a State Board may appoint such officers and other employees as it considers necessary for the efficient performance of its functions under sub-section (3) of Sec. 14;
 - (i) the conditions subject to which a State Board may appoint a Consultant under sub-section (5) of Sec. 14;
 - (j) the functions to be performed by the State Board under Cl. (i) of sub-section (1) of sec. 17;
 - (k) the manner in which any area or areas may be declared as air pollution control area or area under sub-section (1) of Sec. 19;
 - (l) the form of application for the consent of the State Board, the fees payable therefore, the period within which such application shall be made and the particulars it may contain, under sub-section (2) of Sec. 21;
 - (m) the procedure to be followed in respect of an inquiry under sub-section (3) of Sec. 21;
 - (n) the authorities or agencies to whom information under sub-section (1) of Sec. 23 shall be furnished;
 - (o) the manner in which sample of air or emission may be taken under sub-section (1) of Sec. 26;
 - (p) the form of the notice referred to in sub-section (3) of Sec. 26;
 - (q) the form of the report of the State Board Analyst under sub-section (1) of sec. 27;
 - (r) the form of the report of the Government Analyst under sub-section (3) of sec. 27;
 - (s) the functions of the State Air Laboratory, the procedure for the submission to the said laboratory of samples of air or emission for analysis or tests, the form of Laboratory's report thereon, the fees payable in respect of such report and other matters as may be necessary or expedient to enable that laboratory to carry out its functions, under sub-section (2) of Sec. 28;
 - (t) the qualifications required for Government Analysts under sub-section (1) of Sec. 29;
 - (u) the qualifications required for State Board Analysts under sub-section (2) of Sec. 29;
 - (v) the form and the manner in which appeals may be preferred, the fees payable in respect of such appeals and the procedure to be followed by the Appellate Authority in disposing of the appeals under sub-section (3) of Sec. 31;
 - (w) the term in which and the time within which the budget of the State Board may be prepared and forwarded to the State Government under Sec. 34;
 - (ww) the form in which the annual report of the State Board may be prepared under Sec. 35;
 - (x) the form in which the accounts of the State Board may be maintained under sub-section (1) of Sec. 36;
 - (xx) the manner in which notice of intention to make a complaint shall be given under Sec. 43;
 - (y) the particulars which the register maintained under Sec. 51 may contain;
 - (z) any other matter which has to be, or may be, prescribed.
- (3) After the first Constitution of the State Board, no rule with respect to any of the matters referred to in sub-section (2) [other than those referred to [in Cl. (aa)] thereof], shall be made, varied, amended or repealed without consulting that Board.

COMMENT

Section 64 of the Water Pollution Act, 1974 (6 of 1974), empowers the State Government to make rules:

[THE SCHEDULE]

Omitted by the Air (Prevention and Control of Pollution) Amendment Act, 1987., w.e.f. 1.4.1988.