

# THE ENVIRONMENT (PROTECTION) ACT, 1986

(No. 29 of 1986)

[23th May, 1986]

*An Act to provide for the protection and improvement of environment and for matters connected therewith*

*Whereas decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment;*

And whereas it is considered necessary further to implement the decisions aforesaid in so far as they related to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property;

Be it enacted by Parliament in the Thirty-seventh year of the Republic of India as follows:

## STATEMENT OF OBJECTS AND REASONS

Concern over the State of environment has grown, the world over since the sixties. The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. The world community's resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972. Government of India Participated in the Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the Conference, the need for a general legislation further to implement the decisions of the Conference has been increasingly evident.

Although there are existing laws dealing directly or indirectly, with several environmental matters, it is necessary to have a general legislation for environmental protection. Existing laws generally focus on specific types of pollution or on specific categories of hazardous substances. Some major areas of major environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build up of hazardous substances, especially new chemicals, in the environment al are weak. Because of a multiply of regulatory agencies, there is need for an authority which can assume the lead role for studing, planning and implementing long-term requirements of environmental safety and to give direction to, and co-ordinate a system of speedy and adequate response to emergency situations threatening environment.

In view of what has been stated above, there is urgent need for the enactment of a general legislation on environmental protection which, *inter alia*, should enable co-ordination of activities of the various regulatory agencies, creation of an authority or authorities with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents, threatening environment and deterrent punishment to those who endanger human environment, safety and health.

## Comments

It is well settled that when the language of the statute is clear and admits of no ambiguity, recourse to the statement of objects and reasons for the purpose of construing a statutory provision is not permissible.

The Court must strive to so interpret the statute as to protect and advance the object and purpose of the enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The court must, therefore, keep the legislative policy in mind in applying the provisions of the Act to the facts of the case.

Interpretation of statutes – Statement of Objects and Reasons can be useful for the purpose of ascertaining the circumstances which led to the introduction of the Bill. In that view of the matter for finding out the true interpretation thereof the statement of objects and reasons cannot be taken as an aid. It is true that for the purpose of ascertaining the intention of the Legislature other provisions of the Act can be considered.

## CHAPTER 1

### Preliminary

#### 1. Short title, extend and commencement –

- (1) This Act may be called the Environment (Protection) Act, 1986.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and for different areas.

### Comment

#### Applicability of the Act –

The provisions of the Environment Act have no application in response of work undertaken in exercise of powers conferred under Sec. 11 of the Railways Act, 1989.

#### 2. Definitions –

In this Act, unless the context otherwise requires, -

- (a) “environment” includes water, air and land and the inter-relationship which exists among and between water, air and land, and property;
- (b) “environment pollutant” means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environmental;
- (c) “environmental pollution” means the presence in the environment of any environment pollutant;
- (d) “handling”, in relation to any substance, means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversation, offering for sale, transfer or the like of such substance;
- (e) “hazardous substance” means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property or the environment;
- (f) “occupier”, in relation to any factory or premises, means a 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;
- (g) “prescribed” means prescribed by rules made under this Act.

### Comments

#### Section 2 defines the various words and expressions used in the Act.

**Occupier** – The term “occupier” is defined in relation to a factory or premises and means anyone who has control over the affairs thereof and incuses in relation to any substance, the person in possession of it.

The term “Occupier” as defined in Sec. 2(f) of the Act is in relation to any factory or premises and means a person who has control over the affairs of the factory or the premises and includes in relation to any substances, the person in possession of the substance.

**Ambiguous expression** – Courts must find out the literal meaning of the expression in the task of construction. In doing so if the expressions are ambiguous then the construction that fulfils the object of the legislation must provide the key to the meaning. Courts must not make mockery of legislation and should take a constructive approach to fulfil the purpose and for that purpose, if necessary, iron out the creases.

**Interpretation of section** – The Court can merely interpret the section; it cannot re-write, re-cast or re-design the section.

## CHAPTER II

### General Powers Of The Central Government.

#### **3. Power of Central Government to take measures to protect and improve environment. –**

- (1) Subject to the provisions to this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.
- (2) In particular, and without prejudice to the generality of the provisions of subsection (1), such measures may include measures with respect to all or any of the following matters, namely :
  - (i) co-ordination of actions by the State Government, officers and other authority -
    - (a) under this Act, or the rules made thereunder; or
    - (b) under any other law for the time being in force which is relatable to the objects of this Act;
  - (ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;
  - (iii) laying down standards for the quality of environment in its various aspects;
  - (iv) laying down standards for the emission or discharge of environmental pollutants from various sources whatsoever; Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;
  - (v) restriction of areas in which any industries, operations, or processes, or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;
  - (vi) laying down procedures and safeguards of the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;
  - (vii) laying down procedure and safeguards for the handling of hazardous substances;
  - (viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;
  - (ix) carrying out and sponsoring investigations and research relating to problems of environment pollution;
  - (x) inspection of any premises, plant, equipment, machinery, manufacturing or other processing, materials, or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;
  - (xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;
  - (xii) collection and dissemination of information in respect of matters relating to environmental pollution;
  - (xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution.
  - (xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.
- (3) The Central Government may, if it, considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue direction under Sec. 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

## **Comments**

Section 3 vests power in the Central Government to take all such measures as are necessary or expedient for the purpose of protecting and improving the quality of environment and preventing, controlling or abating environmental pollution. The section also enumerates some of such measures. This section further empowers of Central Government to constitute an authority or authorities for the purpose of the legislation.

### **Environmental Guidelines issued by the Central Government – Nature of –**

The “Environmental Guidelines for Thermal Power Plants” issued by the Government of India in 1987 are of general nature applicable to proposals for thermal power stations all over the country but that, in locating a thermal power plant in a particular region, the special features of that region have to be taken into account.

### **Laying of rail line, if an industry –**

The assumption of the petitioners that the exercise undertaken by the Corporation for providing a rail line is an industry is entirely unjustified. The expression “industries, operations or processes etc.” cannot bring within its sweep the activities of providing rail line.

### **Intention of legislation –**

The construction which promotes the objective for which the enactment is intended must be adopted.

### **4. Appointment of officers and their powers and functions –**

- (1) Without prejudice to the provisions of sub-section (3) the Sec. 3 of Central Government may appoint officers with such designations as it thinks fit for the purposes of this Act and may entrust to them such of the powers and functions under this Act as it may deem fit.
- (2) The officers appointed under sub-section (1) shall be subject to the general control and direction of the Central Government or, if so directed by that Government, also of the authority or authorities, if any, constituted under sub-section (3) of Sec. 3 or of any other authority of officer.

## **Comment**

*Section 4 empowers the Central Government to appoint officers for the purpose of the legislation.*

### **5. Power to give directions –**

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

Explanation – For the avoidance of doubts, it is hereby declared that the powers 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) stoppage or regulation of the supply of electricity or water or any other service.

## **Comments**

Section 5 empowers the Central Government, in exercise of its powers and performance of its functions under the legislation, to issue directions to any person, officer or authority.

### **Opportunity of personal hearing –**

In the instance case the notice to show cause was issued to the petitioner by the Central Government before issuing direction under Sec. 5 of the Act. The grievance of the petitioner is that opportunity of personal

hearing was not afforded to him. It was held that notice was issued to the managing partner of the firm which the industrial unit is in question. Hence, there was no necessity to send a copy of the proposed direction to the occupier. Therefore, sub-rule 3(b) of rule 4 of the Environment (Protection) Rules was not attracted in the case. The procedure prescribed under rule have been duly followed in the case.

#### **Guidelines for the exercise of power under Sec. 5 –**

The guidelines for exercise of power under Sec. 5 of the Act of issuing directions are to be drawn from the nature of powers conferred on the Central Government and the nature of its functions as prescribed under the Act. Under Sec. 6 of the said Act, Central Government is empowered to make rules in respect of all or any of the matters referred to in Sec. 3. Section 3 provides for power of the Central Government to take measures to protect and improve environment. The Central Government has power to take measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment and preventing, controlling and abating environmental pollution and this power includes taking up measures for laying down standards for emission or discharge of environmental pollutants from various sources whatsoever. In the process. It may lay down different standards for emission or discharge of environmental pollutants from such sources.

#### **Pollution control and Court's power –**

Under the Motor Vehicles Act of 1998 certain provision have been made for regulating emission resulting the pollution. Transport authorities of the Delhi Administration had placed facts and figures relating to steps taken under the Act for regulating pollution. Emission checking, prosecution as also steps for canceling of registration are said to be the normal steps taken by the Administration in this behalf. The Supreme Court was however, not satisfied that the action taken in this behalf was adequate and the challenging task of pollution control could not be successfully dealt with that way. All persons using automobiles should have a fair knowledge of the baneful effect on the community including those who use effective way the appropriate attitude would not develop and co-operation for reducing pollution would not emerge. Therefore, the Supreme Court ordered a committee to be set up to look into the problem of vehicular pollution in Delhi and for devising methods of solution of the problem. The Ministry of Environment and Forests has agreed that a retired Judge of Supreme Court could act as Chairman.

#### **Balance between preservation of environment and industrialization –**

It is necessary in this case to strike a balance between the necessity to preserve the environment on the one had and the pressing need for the industrialization of this backward State. The distillery may be permitted to restart its manufacturing process with adequate safeguards in terms of the scheme.

In case it comes to light that any person has contracted any ailment the cause of which can be directly related to the effluent discharged by the distillery, the company shall have to bear all expenses of his treatment and the question of awarding suitable compensation to the victim may also be considered.

#### **Industry set up in residential area, directed to be closed –**

It is hereby declared that the change in land use in Sy. Nos. 39/1, 39/2-A and 39/2-B of Yediyur-Nagasandra Village, Bangalore, from residential to industrial is violative of the Karnataka Town and Country Planning Act, the Outline Development Plan, the Comprehensive Development Plan and the Regulations thereunder and that all consequential actions relating to such violation in land use are void and illegal. It is further declared that the licences, permissions and certificates of change in land use issued by respondents 9, 14 and 16 for location of industries by respondents 17 of 49 are also void and illegal. A mandamus is issued hereby with a direction to the Corporation of the City of Bangalore and its Health Officer to abate the pollution in Sy. Nos. 39/1, 39/2-A and 39/2-B of Yediyur-Nagasandra Village and also a direction to the Bangalore Development Authority to stop operation of the industrial units and to carry out the lay-out work in accordance with law and remove all encroachments in public land and roads in the area in question and in pay Ashoknagar to Raghavendra Swamy Brindavana in Sy. No. 39/2-B.

#### **Mass awareness –**

Directions by Supreme Court – We are in a democratic polity where dissemination of information is the foundation of the system. Keeping the citizens informed is an obligation of the Government. It is equally the responsibility of society to adequately educate very component of it that the social level is kept up. The Supreme Court therefore, accepted on principle the prayers made by the petitioner.

The court directed that respondents 1,2 and 3 shall issue appropriate directions to the State Government and Union Territories to invariably enforce as a condition of licence of all cinema halls, touring cinemas and video parlours to exhibit free of cost at least two slides/messages on environment in each show undertaken by them. The Ministry of Environment should within two months from now come out with appropriate slide material which would be brief but efficiently carry the message home on various aspects of environment and pollution. This material should be circulated directly to the Collectors who are the licensing authorities for the cinema exhibition halls under the respective State laws for compliance without any further direction and helping the cinema halls and video parlours to comply to comply with the requirements of the order. Failure to comply with the order should be treated as a ground of cancellation of the licence by the appropriate authorities. The material for the slides should be such that it would at once by impressive, striking and leave an impact on every one who sees the slide.

The Ministry of Information and Broadcasting of the Government of India should without delay start producing information films of short duration as is being done now on various aspects of environment and pollution bringing out the benefits for society on the environment being protected and the hazards involved in the environment being polluted. Mind catching aspect should be made the central theme of such short films. One such film should be shown, as far as practicable, in one show every day by the cinema halls and the Central Government and the State Governments are directed to ensure compliance of this condition from February, 1, 1992.

*Explanation* – It is now well settled that an explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision.

#### **6. Rules to regulate environmental pollution –**

- (1) The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters referred to in Sec. 3.
- (2) In particular, and without prejudice to the generally of the foregoing power, such rules may provide for all or any of the following matters, namely :
  - (a) the standards of quality of air, water or soil for various areas and purposes;
  - (b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas.
  - (c) the procedures and safeguards for the handling of hazardous substances ;
  - (d) The prohibition and restrictions on the handling of hazardous substances in different areas ;
  - (e) The prohibition and restrictions on the location of industries and the carrying on of processes and operations in different areas ;
  - (f) the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for the providing for remedial measures for such accidents.

#### **Comment**

Section 6 empowers the Central Government to make rules to carry out the purpose of the legislation in relation to matters falling within the purview of Sec. 3. The section also enumerates some of the matters on which such rules may be made.

### **CHAPTER III**

## **Prevention, control and Abatement of Environmental Pollution**

#### **7. Persons carrying on industry, operation, etc. not to allow emission or discharge of environmental pollutants in excess of the standards –**

No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed.

#### **Comment**

Section 7 prohibits carrying on of any industry, operation or process which discharges or emits any environmental pollution in excess of the standards laid down under the rules.

#### **Marginal note –**

It is now well settled that marginal note is a part of the section. It is key to open mind of the Legislature affording guidance in understanding their intendments.

#### **Chapter heading –**

Chapter heading can be used as aid for interpreting the meaning of the sections enshrined in the chapter. Same role is attributed to “chapter heading” by Cross in his Statutory Interpretation by saying that headings are appropriately consulted to resolve an ambiguity in the text.

### **8. Persons handling hazardous substances to comply with procedural safeguards –**

No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed.

#### **Comment**

Section 8 enjoins upon persons to comply with the procedures laid down and safeguards prescribed under the rules in the handling of hazardous substances.

### **9. Furnishing of information to authorities and agencies in certain cases. –**

- (1) Whereas the discharges of any environmental pollutant in excess of the prescribed standards occurs or is apprehended to occur due to any accident or other unforeseen act or event, the person responsible for such discharge and the person in charge of the place at which such discharge occurs, or is apprehended to occur shall be bound to prevent or mitigate the environmental pollution caused as a result of such discharge and shall also forthwith –
  - (a) intimate the fact of such occurrence or apprehension of such occurrence; and
  - (b) be bound, if called upon, to render all assistance, to such authorities or agencies as may be prescribed.
- (2) On receipt of information with respect to the fact or apprehension of any occurrence of the nature referred to in sub-section (1), whether through intimation under that sub-section or otherwise, the authorities or agencies referred to in sub-section (1) shall, as early as practicable, cause such remedial measures to be taken as are necessary to prevent or mitigate the environmental pollution.
- (3) The expenses, if any, incurred by any authority or agency with respect to the remedial measures referred to in sub-section (2), together with interest (at such reasonable rate as the Government may, by order, fix) from the date when a demand for the expenses is made until it is paid may be recovered by such authority or agency from the person concerned as arrears of land revenue or of public demand.

#### **Comment**

Section 9 enjoins upon the persons responsible to mitigate environmental pollution and also to intimate the fact of any occurrence or apprehension of any occurrence relating to environmental pollution to the prescribed authorities and further to assist those authorities in preventing or mitigating environmental

pollution. The expenses, if any, incurred with respect to remedial measures shall be recoverable from the persons responsible.

#### **10. Powers of entry and inspection –**

- (1) Subject to the provisions of this section, any person empowered by the Central Government 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 Central Government entrusted to him;
  - (b) for the purpose of determining whether any 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 equipment, industrial plant, record, register, document or any other material object or for conducting a search of any building 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 equipment, industrial plant, records, 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 or that such seizure is necessary to prevent or mitigate environmental pollution.
- (2) every person carrying on any industry, operation or process or handling nay hazardous substance shall be bound to render all assistance to the person empowered by the Central Government 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 guild of an offence under this Act.
- (3) If any person willfully delays or obstructs any person empowered by the Central Government under sub-section (1) in the operation of his functions, 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 provision of the said law.

#### **Comments**

Section 10 enables the officers empowered by the Central Government to enter and inspect any place for the purpose of performing nay functions entrusted under the legislation. This section also enjoins upon the persons carrying on any industry, operation or process or handling nay hazardous substance to render all assistance to the Central Government and its officers and any failure or willful delay or obstruction on the part of any such person shall be punishable under the legislation.

#### **Person –**

The word “person” has been used to made it clear that in order to exercise the powers of a Controller under the Act, the statutory functionary has to be duly appointed by the Government and that he is persona designate or designated person.

#### **11. Power to take sample and procedure to be followed in connection therewith –**

- (1) The Central government or any officer empowered by it in their behalf, shall have power to take, for the purpose of analysis, samples of air, water, soil or other substances from any factory, premises or other place in such manner as may be prescribed.
- (2) The result of any analysis of a sample 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), the person taking the sample under sub-section (1) shall –
  - (a) serve on the occupier or his agent or person in charge of the place, 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 or person, collect a sample 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 occupier or his agent or person;
  - (d) send without delay, the container or the containers to the laboratory established or recognized by the Central Government under Sec. 12.
- (4) When a sample is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent or person, a notice under Cl. (a) of sub-section (3), then, -
  - (a) In a case where the occupier, his agent or person wilfully absents himself, the person taking the sample shall collect the sample 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 or person present at the time to taking the sample refuses to sign the marked and sealed container or containers of the sample as required under Cl. (c) of sub-section (3), the marked and sealed container or containers shall be signed by the person taking the samples. and the container or containers shall be sent without delay by the person taking the sample for analysis to the laboratory established or recognized under Sec. 12 and such person shall inform the Government Analyst appointed or registered under Sec. 13 in writing, about the willful absence of the occupier or his agent or person, or, as the case may be, his refusal to sign the container or containers.

### **Comments**

Section 11 deals with the power of the Central Government and its officers to take samples of air, water, soil or substances and the procedure for taking of such samples.

#### **Lifting of samples –**

The learned Magistrate observed that as no presence was put in on behalf of the company, so the question of there being any request by the Company for dividing the samples into two parts did not arise. The conclusion of the learned Magistrate is not sustainable. The learned Magistrate did not deal with the matter on the basis of the allegations which are in the nature of the pleadings of the parties. In view of the finding that a legal representative of the company was duly present at the time when the sample was lifted. Further in view of the said pleadings of the parties it has to be taken that a demand was also made by the said representative to the official of the Board to divide the sample into two parts and to get the same analysed in accordance with law. But that request was not acceded. Thus the officials of the Board were not justified in getting the sample analysed from a laboratory only recognized by the Board instead of getting the, same analysed from the laboratory of the Delhi Administration and without complying with the requirement of law. Consequently the impugned order is bad and is liable to be set aside.

#### **12. Environmental laboratories –**

- (1) The Central Government may, by notification in the Official Gazette –
  - (a) establish one or more environmental laboratories.
  - (b) recognize one or more laboratories or institutes as environmental laboratories to carry out the functions entrusted to an environmental laboratory under this Act.
- (2) The Central Government may, by notification in the Official Gazette, make rules specifying –
  - (a) the functions of the environmental laboratory ;
  - (b) the procedure for the submission to the said laboratory of samples of air, water, soil or other substance for analysis or test, the form of the laboratory report thereon and the fees payable of such report;

(c) such other matters as may be necessary or expedient to enable that laboratory to carry out its functions.

#### **Comment**

Section 12 empowers the Central Government to establish environmental laboratories or recognise any laboratory or institute as an environmental laboratory.

#### **13. Government Analysts –**

The Central Government may, by notification in the Official Gazette, appoint or recognize such persons as it thinks fit and having the prescribed qualifications to be Government Analysts for the purpose of samples of air, water, soil or other substance sent for analysis to any environmental laboratory established or recognized under sub-section (1) of Sec. 12.

#### **Comment**

Section 13 empowers the Central Government to appoint or recognize Government Analysts for the purpose of analysis of samples of air, water, soil or any other substance.

#### **14. Reports of Government Analysts –**

Any document purporting to be a report signed by a Government Analyst may be used as evidence of the facts stated therein in any proceeding under this Act.

#### **Comment**

Section 14 lays down that any document purporting to be a report signed by the Government Analysts may be used as evidence of the facts stated therein in any proceeding under the legislation.

#### **15. Penalty for contravention of the provisions of the Act and the rules, orders and directions. –**

- (1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.
- (2) If the failure or contravention 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 may extend to seven years.

#### **Comments**

Section 15 provides for the penalty for contravention of any provisions of legislation or any rules made or orders or directions issued under the Act. The punishment provided for the first offence may extend to five years imprisonment or fine of one lakh rupees or both and in case of continuing contravention additional fine of rupees five thousand for every day and an enhanced sentence of imprisonment for a term which may extend to seven years where contravention continued beyond a period of one year after the date of conviction.

#### **Quantum of punishment –**

In *Mohammad Shabbir v. State of Maharashtra*, the accused was a young man belonging to a respectable family and had made a very candid confession before the Court in pleading guilty. It was held by the Supreme Court that any deterrent punishment was not called for.

### **Penal provision – Must be strictly construed –**

The law in its wisdom seeks to punish the guilty who commits the sin, and not an innocent. It being a penal provision in the sense that it visits the violator with punishment, it must be strictly constructed.

### **Penalty – Mens rea – Essential –**

Penalty proceedings are quasi-criminal proceedings. Before penalty can be imposed it has to be ensured that mens rea has been established.

### **16. Offences by companies –**

- (1) Where any 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 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), when an offence under this Act has been committed by a company 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 director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be also 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;
- (b) “director”, in relation to a firm, means a partner, in the firm.

### **Comments**

Section 16 fixes criminal liability also on the directors and principal officers of a company where an offence is committed by a company.

### **Offences by firms – Liability of partners –**

Regarding offences by firms every person, who was in charge of the conduct of business of the firm shall be deemed to be guilty besides the firm itself. It would not be fair to convict all the partners of the firm as all of them may not even be knowing what is really going on in the firm.

### **Rule of evidence. –**

It is well settled that a rule of evidence or a deeming fiction of the law are not to be pleaded as such. No principle warrants that either in a complaint or in a first information report the literal words of the statute must be incorporated of what is even important is that the rule of evidence what regard to burden of proof and a deeming fiction of guilt should be quoted at the foundations stage. Therefore, to require that the complaint or the first information report must inflexibly plead consent, connivance or negligence of the officers at the threshold stage is patently fallacious. Seen broadly, the deeming fiction is primarily one of the evidence and proof and not of the literal formalities of pleading, which are foreign to the criminal law, indeed, it must be noticed that in particular case the prosecution charge may be one of direct, deliberate and willful commission of the offence by the company and its officials. In such a situation, or neglect would be an absurdity and indeed destructive or contrary to the case set up.

### **17. Offences by Government Departments –**

- (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.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a 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 and shall be liable to be proceeded against and punished accordingly.

#### **Comments**

Section 17 fixes criminal liability also on the heads of the Department of Government where an offence is committed by the concerned Department and the head of the Department is not able to prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

#### **Proviso –**

A proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

### **CHAPTER IV**

#### **Miscellaneous**

#### **18. Protection of action taken in good faith –**

No suit, prosecution or other legal proceeding shall lie against the Government or any officer or other employee of the Government or nay authority constituted under this Act or any member, officer or other employee of such authority in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made or orders or directions issued thereunder.

#### **Comments**

Section 18 protects the officers and the employees of the Government from prosecution or other legal proceedings for the Acts done or intended to be done in good faith under the legislation or the rules made or orders or direction issued thereunder.

#### **Principles of natural justice – Violation of –**

Principles of natural justice are violated when the person against whom there are charge of corruption is not given opportunity to explain his conduct.

#### **19. Cognizance of offences –**

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

- (a) the Central Government or any authority or officer authorized in this behalf by that Government; or
- (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorized as aforesaid.

#### **Comments**

Section 19 lays down that no Court shall take cognizance of any offence under the legislation except on a complaint made by the Central Government or any authority or officers authorised in this behalf or by any person who has given notice of not less than sixty days of his intention to make a complaint, if within those sixty days the Government or officer has itself or himself not made the complaint and has not communicated to such person its or his refusal to make such a complaint.

#### **Court – Duty of –**

The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is used as an instrument of oppression to have an unfair advantage to the plaintiff.

#### **Standard of Proof required in PIL –**

It is true that the present proceedings are in the nature of public interest litigation and insistence on strict proof about a fact asserted by a party may not be expected from it as in an adversary litigation, yet, the present proceedings under Art. 226 of the Constitution are basically summary in character. The Court make out its own modalities for ascertaining the essential facts to make up its mind about the nature of directions which it should make. In the present case, like the cases before the Supreme Court in respect of the limestone/dolomite mines in the Doon Valley, appointment of an expert committee was considered to be the best way for ascertaining necessary facts. The committee consisted of responsible people whose bona fides could neither be nor has been assailed. The Court therefore decided to be guided by its recommendations.

#### **Write petition under Art. 226 – Maintainability –**

When a petition can be brought, under Art. 32 for the prevention of pollution by a group of social workers or journalists, a writ petition under Art. 226 of the Constitution for the preservation of free air and for the protection of environment can always be filed by the environmental activists either living in the same locality or outside.

#### **20. Information, reports or returns. –**

The Central Government may, in relation to its functions under this Act, from time to time, require any person, officer, State Government or other authority to furnish to it or any prescribed authority or officer any reports, returns, statistics, accounts and other information and such person, officer, State Government or other authority shall be bound to do so.

#### **Comment**

Section 20 empowers the Central Government to require any person, officer, State Government or other authority to furnish information, reports or returns, etc.

#### **21. Members, officers and employees of the authority constituted under Sec. 3 to be public servants. –**

All the members of the authority constituted, if any, under Sec. 3 and all officers and other employees of such authority when acting or purporting to act in pursuance of any provisions of this Act, or the rules made, or orders or directions issued thereunder, shall be deemed to be public servants within the meaning of Sec. 21 of the Indian Penal Code.

#### **Comment**

Section 21 lays down that the members of the authority under Sec. 3 and all officers and employees of the Government or such authority shall be public servants.

## **22. Bar of jurisdiction –**

No Civil Court Shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken or order or direction issued by the Central Government or any other authority of officer in pursuance of any power conferred by or in relation to its or his functions under this Act.

### **Comment**

Section 22 bars the jurisdiction of Civil to entertain any suit or proceeding in respect of anything done, action taken, or order or direction issued by the Central Government, or any other authority or officer in pursuance of any power conferred by or in relation to its or his functions under the legislation.

## **23. Power to delegate –**

Without prejudice to the provisions of sub-section (3) of Sec. 3 the Central Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act, [except the power to constitute an authority under sub-section (3) of Sec. 3 and to make rules under Sec. 25] as it may deem necessary or expedient, any officer, State Government or other authority.

### **Comment**

Section 23 empowers the Central Government to delegate all or any of its powers under the legislation to any officer. State Government or authority.

## **24. Effect of other laws –**

- (1) Subject to the provisions of sub-section (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.
- (2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.

### **Comment**

Section 24 deals with the effect of the Act on other laws.

## **25. Power to make rules –**

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
  - (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 standards in excess of which environmental pollutants shall not be discharged or emitted under Sec. 7.
    - (b) The procedure in accordance with and the safeguards in compliance with which hazardous substances shall be handled or caused to be handled under Sec. 8;
    - (c) The authorities or agencies to which intimation of the fact of occurrence or apprehension of occurrence of the discharge of any environmental pollutant in excess of the prescribed standards shall be given and to whom all assistance shall be found to be rendered under sub-section (1) of Sec. 9;
    - (d) The manner in which samples of air, water, soil or other substance for the purpose of analysis shall be taken under sub-section (1) of Sec. 11;
    - (e) The form in which notice of intention to have a sample analysed shall be served under Cl. (a) of sub-section (3) of Sec. 11;
    - (f) The functions of the environmental laboratories, the procedure for the submission to such laboratories of samples of air, water, soil and other substances for analysis or test; the

- form of laboratory report; the fees payable for such report and other matters to enable such laboratories to carry out their functions under sub-section (2) of Sec. 12;
- (g) The qualifications of Government Analyst, appointed or recognized for the purpose of analysis of samples of air, water, soil or other substance under Sec. 13;
  - (h) The manner in which notice of the offence and of the intention to make a complaint to the Central Government shall be given under Cl. (b) of Sec. 19;
  - (i) The authority or officer to whom any reports, returns, statistics, accounts and other information shall be furnished under Sec. 20;
  - (j) Any other matter which is required to be or may be, prescribed.

### **Comment**

Section 25 empowers the Central Government to make rules for carrying out the purposes of the proposed legislation.

#### **26. Rules made under this Act to be laid before Parliament. –**

Every rule made 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 session aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not 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 this rule.

### **Comment**

This section requires the rules framed under the Act to be laid before Parliament, for approval, modification or annulment.

## **THE ENVIRONMENT (PROTECTION) RULES, 1986**

S.O. 844 (E), dated the 1986 –

In exercise of powers conferred by Sec. 6 and 25 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby makes the following rules, namely :

#### **Comment**

*It is well settled in law that every subordinate law-making authority has a power to frame subordinate legislation only provided it is reasonable that very subordinate law-making authority has a power to frame subordinate legislation only provided it is reasonable and within the limits of the rule-making power of that body.*

1. Sort title and Commencement.-

(1) These rules may be called the Environment (protection) Rules, 1986.

(2) they shall come into force on the date of their publication in the Official gazette.

### **Comment**

The general power framing rules for effectuating the purpose of the Act, would plainly authorize and sanctify the framing of such a rule.

## 2. Definitions.-

In these rules, unless the context otherwise requires.-

(a) “Act” means the Environment(Protection) Act,1986(29 of 1986), the Central Government hereby makes the following rules, namely :

- (aa) “area means all areas here the hazardous substances are handled;]
- (b) “Central Board” means the Central Board for the Prevention and Control of Water Pollution constituted under Sec. 3 of the Water (Prevention and Control of Pollutant) Act, 1974 (6 of 1974);
- (c) “Form” means a Form set forth in Appendix A to these rules ;
- (d) “Government Analyst” means a person appointed or recognized as such under sec. 13;
- (e) “Person” in relation to any factory or premises means a person or occupier or his agent who has control over the affairs of the factory or premises and includes in relation to any substances, the person in possession of the substance;
- (ee) “Prohibited substance” means the substance prohibited for handling’;
- (f) “recipient system” means the part of the environment, such as, soil, water, air or other which receives the pollutants;
- (ff) “restricted substance” means the substance restricted for handling;
- (g) “section” means a section of the Act;
- (h) “Schedule” means a schedule appended to these rules;
- (i) “standards” means standards prescribed under these rules;
- (j) “State Board” means a State Board for the Prevention and Control of Water Pollution constituted under Sec. 4 of the Water (Prevention and Control of Water Pollution) Act, 1974 (6 of 1974) or State Board for the Prevention and Control of Air Pollution constituted under Sec. 5 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981).

## Comments

### Principle of interpretation of a statute –

One may state the accepted principle of interpretation of a statute that every legislation is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. The question whether a statute operates retrospectively or prospectively is one of legislative intent. If the terms of the statute are clear or unambiguous and it is manifest that the legislature intended the Act to operate retrospectively, unquestionably it must be so construed. If, however the terms of a statute do not of themselves, make an intention certain or clear, it should be presumed to operate prospectively. An act is retrospective. If it takes away or impairs any vested right acquired under an existing law or creates a new liability or obligation in respect of transactions already past or creates a new obligation or liability in respect of post transactions.

### Rules of interpretation –

It is well-known rule of construction that it is not for the Court to make the law and the law should be applied even if the law does not accord with the notions of right and wrong of the Court. These are no doubt correct rules of interpretation.

### 3. Standards for emission or discharge of environmental pollutants –

- (1) For the purposes of protecting and improving the quality of the environment and preventing and abating environment pollution, the standards for emission or discharge of environmental pollutants from the industries, operations or processes shall be as specified in [Schs. I to IV].
- (2) Notwithstanding anything contained in sub-rule (1), the Central Board or a State Board may specify more stringent standards from those provided in [Schs. I to IV] in respect of any specific industry, operation or process depending upon the quality of the recipient system and after recording reasons, therefore, in writing.
- (3) The standards for emission or discharge of environmental pollutants specified under sub-rule (1) or sub-rule (2) shall be complied with by an industry, operation or process within a period of one year of being so specified.

**(3-A)**

- (i) Notwithstanding anything contained in sub-rule(1) and (2), on and from the 1st day of January, 1994 emission or discharge of environmental pollutants from the [industries, operation or process other than those industries, operations or processes for which standards have been specified in Sch. I shall] not exceed the relevant parameters and standards specified in Sch. VI: Provided that the State Boards may specify more stringent standards for the relevant parameters with respect to specify industry or locations after recording reasons therefore in writing:
- (ii) The State Boards while enforcing the standards specified in Sch. VI follow the guidelines specified in Annexures I and II in that schedule.

**(3-B)**

Any emission or discharge of environmental pollutants from the industries, operations or processes shall not exceed the relevant concentration in ambient air as indicated and set out against each pollutant (3) to (5) of the Sch. VII.]

**(4) Notwithstanding anything contained in sub-rule (3), -**

- (a) the Central Board or a State Board, depending on the local conditions or nature of discharge of environmental pollutants, may, by order, specify a lesser period than a period specified under sub-rule (3) within which the compliance of standards shall be made by an industry, operation or process;
- (b) the central Government in respect of any specific industry, operation or process, by order, may specify any period other than a period specified under sub-rule (3) within which the compliance of standards shall be made by such industry, operation or process.
- (5) Notwithstanding anything contained in sub-rule (3), the standards for emission or discharge of environmental pollutants specified under sub-rule (1) or sub-rule (2) in respect of an industry, operation or process before the commencement of the Environment (Protection) (Amendment) Rules, 1991, shall be complied by such industry, operation or process by the 31<sup>st</sup> day of December, 1991.
- (6) Notwithstanding anything contained in sub-rule (3), an industry, operation or process which has commenced production on or before 16<sup>th</sup> May, 1981 and has shown adequate proof of at least commencement of physical work of establishment of facilities to meet the specified standards within a time-bound programme, to the satisfaction of the concerned State Pollution Control Board, shall comply with such standards latest by the 31<sup>st</sup> day of December, 1993.
- (7) Notwithstanding anything contained in sub-rule (3) or sub-rule (6) an industry, operation or process which has commenced production after the 16<sup>th</sup> day of May, 1981 but before the 31<sup>st</sup> day of December, 1991 and has shown adequate proof of at least commencement of physical work for establishment of facilities to meet the specified standards within a time-bound programme, to the satisfaction of the concerned State Pollution Control Board, shall comply with such standards latest by the 31<sup>st</sup> day of December, 1992.
- (8) On and from the 1st day of June, 2001, the following coal based thermal power plants shall use beneficiated coal with an ash content not exceeding thirty four percent, namely :-
- (a) any thermal power plant located beyond one thousand kilometers from the pit-head, and
- (b) any thermal power plant located in urban area or sensitive area or critically polluted area irrespective of their distance from pit-head except any pit-head power plant.
- Explanation – For the purpose of this rule-*
- (a) “beneficiated coal” means coal containing higher calorific value but lower ash than the original ash content in the raw coal obtained through physical separation or washing process;
- (b) “pit-head power plant” means power stations having captive transpiration system for its exclusive use for transportation of coal from the loading point at the mining end upto the unloading point at the power station without using the normal public transportation system;
- (c) “sensitive area” means an area whose ecological balance is prone to be easily disturbed;

- (d) “Critically polluted area” means the area where pollution level has reached or likely to reach to the critical level and which has been identified as such by the Central Government or Central Pollution Control Board or a State Pollution Control Board.

#### **4. Directions –**

(1) *Any direction issued under Sec. 5 shall be in writing.*

(2) *The direction shall specify the nature of action to be taken and the time within which it shall be complied with by the person, officer or the authority to whom such direction is given.*

(3-a) The person, Officer or authority to whom any direction is sought to be issued shall be served with a copy of the proposed direction and shall be given an opportunity of not less than fifteen days from the date of service of a notice to file with an officer designated in this behalf the objections, if any, to the issue of the proposed direction.

(3-b) Where the proposed direction is for the stoppage or regulation of electricity or water or any other service affecting the carrying on of any industry, operation or process and is sought to be issued to an officer or an authority, a copy of the proposed direction shall also be endorsed to the occupier with an officer designated in this behalf shall be dealt with in accordance with the procedures under sub-rule (3-a) and (4) of this rule:

Provided that no opportunity of being heard shall be given to the occupier if he had already been heard earlier and the proposed direction referred to in sub-rule (3-a) above for the stoppage or regulation of electricity or water or any other service was the resultant decision of the Central government after such earlier hearing.]

(4) The Central Government shall within a period of 45 days from the date of receipt of the objections. If any, or from the date up to which an opportunity is given to the person, officer or authority to file objections whichever is earlier, after considering the objectives. If any, received from the person, officer or authority sought to be directed and for reasons to be recorded in writing, confirm, modify, or decide not to issue the proposed direction.

(5) *In a case where the Central Government is of the Opinion that in view of the likelihood of a grave injury to the environment it is not expedient to provide an opportunity to file objections against the proposed direction, it may, for reasons to be recorded in writing, issue directions without providing such an opportunity.*

(6) Every notice or direction required to be issued under this rule shall be deemed to be duly served –

(a) where the person to be served is a company, if the document is addressed in the name of the company at its registered office or at its principal office or place of business and is either, -

(i) sent by registered post; or

(ii) delivered at its registered office or at the principal office or place of business;

(b) where the person to be served is an officer serving Government, if the document is addressed to the person and a copy thereof is endorsed to his Head of the Department and also to the Secretary to the Government, as the case may be, incharge of the Department in which for the time being the business relating to the Department in which the officer is employed is transacted and is either, -

(i) sent by registered post; or

(ii) is given or tendered to him;

(c) in any other case, if the document is addressed to the person to be served and-

(i) is given or tendered to him, or

(ii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building, if any, to which it relates, or

(iii) is sent by registered post to that person.

*Explanation* – For the purposes of this sub-rule-

- (a) “company” means any body corporate and includes a firm or other association of individuals;
- (b) “a servant” is not a member of the family.

## **Comment**

### **Person –**

The word “person” has been used to make it clear that in order to exercise the powers of a Controller under the Act, the statutory functionary has to be duly appointed by the Government and that he is persona designata or designated person.

### **Opportunity of hearing to the occupier –**

No doubt, the proviso to sub-rule (3-b) of rule 4 provides for an opportunity of hearing to the occupier, but it has to be read alongwith sub-rule (3-b) of which it is a part. The said sub-rule provides that the provision is applicable in a case where the notice is issued to an officer or an authority other than an occupier of the industry, operation or process. In the instant case the notice was issued to the managing partner of the firm. Hence, there was no necessity to send a copy of proposed direction to the occupier and sub-rule (3-b) of the rule 4 was not attracted in the case.

### **5. Prohibition and restriction on the location of industries and the carrying on of processes and operations in different areas –**

- (1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas –
  - (i) Standards for quality of environment in its various aspects laid down for an area.
  - (ii) The maximum allowable limits of concentration of various environment pollutants (including noise) for an area.
  - (iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.
  - (iv) The topographic and climatic features of an area.
  - (v) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.
  - (vi) Environmentally compatible land use.
  - (vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.
  - (viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958, or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972, or places protected under any treaty, agreement or convention with International conference, association or other body.
  - (ix) Proximity to human settlements.
  - (x) Any other factors as may be considered by the Central Government to be relevant to the protection of the environment in an area.
- (2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.
- (3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area, it may, by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.

- (b) Every notification under Cl. (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the location of the industries and carrying on of processes or operations in that area.
  - (c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under Cl. (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official gazette.
  - (d) The Central government shall, within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette, consider all the objections received against such notification and may [within [three hundred and sixty-five days] from such date of publication] impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.
- (4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under Cl. (a) of sub-rule (3).

## **Comments**

### **Prohibition of mining operations – Directions issued by the Supreme Court –**

As on today, the situation is that the mining activity in the listed mines (according to the Rajasthan Government, it has already stopped all mining activities in 54 mines specified in its application) is illegal and has to stop. May be that this will have the effect of bringing to halt the activity involving a good amount of capital and a large number of workers. But in view of the inherent illegality attaching to them, the Court has no option but to close them. They cannot be permitted to operate. If and when the Central Government recommends the plea of the State government and any of the areas already declared as protected forest are deleted with leave of the Supreme Court, can the mining activity go on in these areas. It is accordingly directed that all mining activity in the mines mentioned in Appendix-A to the report of Sri Justice M.L. Jain Committee shall stop forthwith. Similarly, the mining activity in the mines mentioned Appendix-B to the said report shall also stop forthwith in so far as they fall within the protected forest areas. The plea of the Rajasthan Government and of the mine owners shall be considered by Department of Forest and Environment of India and a report submitted to the Supreme Court within three months. Now coming to the mines located outside the protected forest areas but within the tiger reserve. It cannot be said that the very grant of mining lease/licence is itself illegal in their case unless, of course, such mining lease/licence or its renewal has been granted on or after May 7, 1992 (particulars in this behalf are not made available to the Court). The illegality has attached to these mines by virtue of the notification issued by the Central Government under Sec. 3 of the Environment (Protection) Act on May 7, 1992. In the circumstances, it is directed that the mining activity in the mines situated outside the protected forest areas but within the tiger reserve may continue for a period of four months. Within this period it shall be open to the concerned mine-owners to approach the Department of Forest and Environment, Government of India for permission to continue their mining operations. They can continue the mining operations in these mines only if the Central Government permits them and subject to the orders of the Central Government in that behalf. If no permission is obtained from the Central Government within the said period of four months, the mining activity in the entire area declared as tiger reserve shall stop and cease on the expiry of four months.

### **Restrictions and prohibitions regards constructions or setting up industries –**

In the instant case it was held that all the restrictions and prohibitions regarding construction and setting up of industries or for any other purpose contained in the notification, dated 19<sup>th</sup> February, 1991 issued by Ministry of Environment and Forest, Government of India under Cl. (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 shall be meticulously followed by all the concerned States. The activities which have been declared as prohibited within the Coastal Regulations Zone shall not be undertaken by any of the respondent-states. The regulations of permissible activities shall also be meticulously followed. The restrictions imposed by the Coastal Areas Classification and Development

Regulations contained in Annexure 1 to the notification shall also be strictly followed by the respondent State.

**Penal Provision** – Penal Provision is to be construed rigidly, and strictly.

#### **6. Procedure for taking samples –**

The Central Government or the officer empowered to take samples under Sec. 11 shall collect the sample in sufficient quantity to be divided into two uniform parts and effectively seal and suitably mark the same and permit the person from whom the sample is taken to add his own seal or mark to all or any of the portions so sealed and marked. In case where the sample is made up in containers or small volumes and is likely to deteriorate or be otherwise damaged if exposed, the central government or the officer empowered shall take two of the said samples without opening the containers and suitably seal and mark the same. The Central Government or the officer empowered shall dispose of the samples so collected as follows;

- (i) one portion shall be handed over to the person from whom the sample is taken under acknowledgment; and
- (ii) the other portion shall be sent forthwith to the environmental laboratory for analysis

#### **Comment**

Rule 6 provides about the procedure for taking samples. How the samples are taken, analysed or submitted before the Courts have been narrated in this rule.

#### **7. Service of notice –**

The Central Government or the officer empowered shall serve on the occupier or his agent or person in charge of the place a notice then and there in Form I of his intention to have the sample analysed.

#### **Comment**

Rule 7 provides mode of serving a notice on the occupier or his agent or person in charge of the place then and there in Form I of his intention to have the sample analysed by the Central Government or the Officer empowered.

#### **8. Procedure for submission of samples for analysis, and the form of laboratory report thereon. –**

- (1) samples taken for analysis shall be sent by the Central Government or the officer empowered to the environmental laboratory by registered post or through special messenger along with Form II.
- (2) Another copy of Form II together with specimen impression of seals of the officer empowered to take samples along with the seals/marks. If any, of the person from whom the sample to taken shall be sent separately in a sealed cover by registered post or through a special messenger to the environmental laboratory.
- (3) The findings shall be recorded in Form III in triplicate and signed by the Government Analyst and sent to the officer from whom the sample is received for analysis.
- (4) On receipt of the report of the findings of the Government Analyst, the officer shall sent one copy of the report to the person from whom the sample was taken for analysis, the second copy shall be retained by him for his records and the third copy shall be kept by him to be produced in the Court before which proceedings, if any, are instituted.

#### **9. Functions of environmental laboratories –**

The following shall be the functions of environmental laboratories :

- (i) to evolve standardized methods for sampling and analysis of various types of environmental pollutants;
- (ii) to analyse samples sent by the Central government or the officer empowered under sub-section (1) of Sec. 11;

- (iii) to carry out such investigations as may be directed by the Central Government to lay down standards for the quality of environment and discharge of environmental pollutants, to monitor and to enforce the standards laid down;
- (iv) to send periodical reports regarding its activities to the Central government
- (v) to carry out such other functions as may be entrusted to it by the Central Government from time to time.

#### **10. Qualifications of Government Analyst –**

A person shall not be qualified for appointment or recognized as a Government Analyst unless he is a –

- (a) Graduate in science from a recognized University with five years' experience in a laboratory engaged in environmental investigations, testing or analysis; or
- (b) Post-graduate in science or a graduate in engineering or a graduate in medicine or equivalent with two years' experience in a laboratory engaged in environmental investigations, testing or analysis; or
- (c) Post-graduate in environmental science from a recognized University with two years' experience in a laboratory engaged in environmental investigations, testing or analysis.

#### **11. Manner of giving notice –**

The manner of giving notice under Cl. (b) of Sec. 19 shall be as follows, namely –

- (1) The notice shall be in writing in Form IV.
- (2) The person giving notice may send notice to, -
  - (a) if the alleged offence has taken place in a Union Territory :
    - (A) the Central Board; and
    - (B) the Ministry of Environment and Forests (represented by the Secretary of the Government of India);
  - (b) if the alleged offence has taken place in a State;
    - (A) the State Board ; and
    - (B) the Government of State (represented by the Secretary to the State Government incharge of environment); and
    - (C) the Ministry of Environment and Forests (represented by the Secretary to the Government of India.)
- (3) The notice shall be sent by registered post-acknowledgment due; and
- (4) The period of sixty days mentioned in Cl. (b) of Sec. 19 of the Environment (Protection) Act, 1986, shall be reckoned from the date it is first received by one of the authorities mentioned above.

### **Comment**

This rule provides about the manner of giving notice registered under Cl. (b) of Sec. 19.

#### **12. Furnishing of information to authorities and agencies in certain cases. –**

Where the discharge of environmental pollutant in excess of the prescribed standards occurs, or is apprehended to occur due to any accident or other unforeseen act or event, the person in charge of the place at which such discharge occurs or is apprehended to occur shall forthwith intimate the fact of such occurrence or apprehension of such occurrence to all the following authorities or agencies, namely;

- (i) the officer-in-charge of emergency or disaster relief operations in a district or other region of a State or Union Territory specified by whatever designations, by the Government of the said State or Union Territory, and in whose jurisdiction the industry, process or operation is located.

- (ii) The central Board or a State Board, as the case may be, and its regional officer having local jurisdiction who have been delegated powers under Sec. 20, 21, 23, of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), and Sec. 24 of the Air (Prevention and Control of Pollution Act, 1981 (14 of 1981a);
- (iii) The statutory authorities or agencies specified in column 3 and relation to pleases mentioned in column 2 against thereof of [Sch. V].

### **Comment**

*This rule requires furnishing of information regarding discharge of any environmental pollutant in excess of prescribed standard or apprehension thereof to certain authorities or agencies in special circumstances.*

### **13. Prohibition and restriction on the handling of hazardous substances in different areas –**

- (1) *The Central Government may take into consideration the following factors while prohibiting or restricting the handling of hazardous substances in different areas :*
  - (i) *The hazardous nature of the substance (either in qualitative or quantitative terms) as far as may be in terms of its damage causing potential to the environmental, human beings, other living creatures, plants and property;*
  - (ii) *The substances that may be or likely to be or readily available as substitutes for the substances proposed to be prohibited or restricted ;*
  - (iii) *The indigenous availability of the substitute, or the State of technology available in the country for developing a safe substitute;*
  - (iv) *The gestation period that may be necessary for gradual introduction of a new substitute with a view to bringing about a total prohibition of the hazardous substance in question; and*
  - (v) *Any other factor as may be considered by the Central Government to be relevant to the protection of environment.*
- (2) *While prohibiting or restricting the handling of hazardous substances in an area including their imports and exports the Central Government shall follow the procedure hereinafter laid down :*
  - (i) *Whenever it appears to the Central Government that it is expedient to impose prohibition or restriction on the handling of hazardous substance in an area, it may, by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.*
  - (ii) *Every notification under Cl., (i) shall give a brief description of the hazardous substances and the geographical region or the area to which such notification pertains and also specify the reasons for the imposition of prohibition or restriction on the handling of such hazardous substance in that region or area.*
  - (iii) *Any person interested in filing an objection against the imposition of prohibition or restrictions on the handling of hazardous substances as notified under Cl. (i) may do so in writing to the Central Government within thirty days from the date of publication of the notification in the official Gazette.*

- (iv) *The Central Government shall within a period of sixty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may impose prohibition or restrictions on the handling of hazardous substances in a regions or an area.*

**14. Submission of environment [Statement] –**

*Every person carrying on an industry, operation or process requiring consent under Sec. 25 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) or under Sec. 21 of the Air (Prevention and Control of pollution) Act, 1981 (14 of 1981) or both or authorization under the Hazardous Waters (Management and Handling) Rules, 1989 issued under the Environment (Protection) Act, 1986 (29 of 1986) shall submit an environmental [Statement] for the financial year ending the 31<sup>st</sup> March in Form V to the concerned State Pollution Control Board on or before the [30<sup>th</sup> day of September] every year, beginning 1993.*