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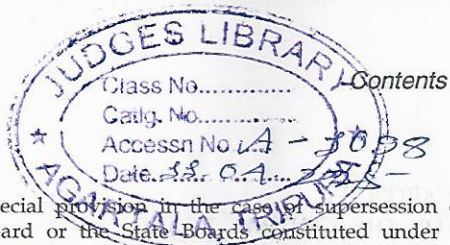
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IMPORTANT

ALL AMENDMENTS HAVE BEEN INCORPORATED IN THE MAIN ACT AT APPROPRIATE PLACES.
THE TEXT OF AMENDING ACT IS REPRODUCED BELOW FOR REFERENCE.

AMENDMENTS TO
THE AIR (PREVENTION AND CONTROL
OF POLLUTION) ACT, 1981

(14 of 1981)

BY
THE JAN VISHWAS (AMENDMENT OF
PROVISIONS) ACT, 2023¹

(18 of 2023)

[11th August, 2023]

AN ACT to amend certain enactments for decriminalising and rationalising offences to further enhance trust-based governance for ease of living and doing business.

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as follows:—

1. Short title and commencement.—(1) This Act may be called the *Jan Vishwas (Amendment of Provisions) Act, 2023*.

(2) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for amendments relating to different enactments mentioned in the Schedule.

2. Amendment of certain enactments.—The enactments mentioned in column (4) of the Schedule are hereby amended to the extent and in the manner mentioned in column (5) thereof.

3. Revision of fines and penalties.—The fines and penalties provided under various provisions in the enactments mentioned in the Schedule shall be increased by ten per cent. of the minimum amount of fine or penalty, as the case may be, prescribed therefor, after the expiry of every three years from the date of commencement of this Act.

4. Savings.—The amendment or repeal by this Act of any enactment shall not affect any other enactment in which the amended or repealed enactment has been applied, incorporated or referred to;

and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceeding in respect thereof, or any release or discharge of, or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that

1. Published in the Gazette of India, Extra., Pt. II, Sec. 1, No. 21, dated 11th August, 2023.

2. Came into force on 1-4-2024, vide S.O. 757(E), dated 18th October, 2023, Published in the Gazette of India, Extra., Pt. II, sec. 3(ii), No. 603, dated 18th October, 2023.

the same respectively may have been in any manner affirmed, or recognised or derived by, in or from any enactment hereby amended or repealed;

nor shall the amendment or repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

THE SCHEDULE

(See section 2)

Sl. No	Year	No.	Short title	Amendments
(1)	(2)	(3)	(4)	(5)
21.	1981	14	The Air (Prevention and Control of Pollution) Act, 1981	<p>(A) In section 21, for sub-section (1), the following shall be substituted, namely:—</p> <p>“(1) No person shall establish or operate any industrial plant in an air pollution control area unless the previous consent of the State Board has been obtained in pursuance of an application made by such person in accordance with the provisions of this section:</p> <p>Provided that the Central Government may in consultation with the Central Pollution Control Board, by notification in the Official Gazette, exempt certain categories of industrial plants from the application of the provisions of this sub-section.”.</p> <p>(B) After section 21, the following section shall be inserted, namely:—</p> <p>“21A. Power to issue guidelines.—(1) Notwithstanding anything contained in this Act, the Central Government in consultation with the Central Board, may, by notification in the Official Gazette, issue guidelines on the matters relating to the grant, refusal or cancellation of consent by any State Board to establish or operate any industrial plant in an air pollution control area, including the mechanism for time bound disposal of the application made under section 21 or validity period of such consent.</p> <p>(2) Every State Board, in discharge of its functions for the purposes of grant, refusal or cancellation of consent under section 21 shall act in accordance with the guidelines issued under sub-section (1).”.</p>

*Amendments to the Air (Prevention and Control of
Pollution) Act, 1981 (14 of 1981) by the Jan Vishwas
(Amendment of Provisions) Act, 2023*

(1)	(2)	(3)	(4)	(5)
				<p>(C) For sections 37 to 41, the following sections shall be substituted, namely:—</p> <p>‘37. Failure to comply with provisions of section 22 or directions issued under section 31A.—(1) Whoever contravenes or does not comply with the provisions of section 22 or directions issued under section 31A, shall, in respect of each such contravention, be liable to penalty which shall not be less than ten thousand rupees, but which may extend to fifteen lakh rupees.</p> <p>(2) Where any person continues contravention under sub-section (1), he shall be liable to additional penalty of ten thousand rupees for every day during which such contravention continues.</p> <p>38. Penalties for certain acts.—(1) Whoever—</p> <p>(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;</p> <p>(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act;</p> <p>(c) damages any works or property belonging to the Board;</p> <p>(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 purposes of this Act;</p> <p>(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 section 23;</p> <p>(f) fails in giving any information which he is required to give under this Act, makes a statement which is false in any material particular,</p>

(1)	(2)	(3)	(4)	(5)
				<p>shall be liable to penalty which shall not be less than ten thousand rupees, but which may extend to fifteen lakh rupees.</p> <p>(2) Where any person continues contravention under sub-section (1), he shall be liable to additional penalty of ten thousand rupees for every day during which such contravention continues.</p> <p>38A. Penalty for contravention by Government Department.—(1) Where contravention of any provision of this Act has been committed by any Department of the Central Government or the State Government, the Head of the Department shall be liable to penalty equal to one month of his basic salary:</p> <p>Provided that he shall not be liable for such contravention, if he proves that the contravention was committed without his knowledge or instructions or that he exercised all due diligence to prevent such contravention.</p> <p>(2) Where any contravention under sub-section (1) is attributable to any neglect on the part of, any officer, other than the Head of the Department, the officer shall be liable to penalty equal to one month of his basic salary:</p> <p>Provided that he shall not be liable for the contravention, if he proves that he exercised all due diligence to avoid such contravention.</p> <p>39. Penalties for contravention of certain provisions of this Act.—If any person contravenes any of the provisions of this Act or any order or direction issued thereunder, for which no penalty has been provided for in this Act, shall be liable to penalty which shall not be less than ten thousand rupees, but which may extend to fifteen lakh rupees, and where such contravention continues, he shall be liable to additional penalty which may extend to ten thousand rupees for every day during which such contravention continues.</p>

*Amendments to the Air (Prevention and Control of
Pollution) Act, 1981 (14 of 1981) by the Jan Vishwas
(Amendment of Provisions) Act, 2023*

(1)	(2)	(3)	(4)	(5)
				<p>39A. Adjudicating officer.—(1) The Central Government, for the purposes of determining the penalties under sections 37, 38, 38A and section 39, shall appoint an officer not below the rank of Joint Secretary to the Government of India or a Secretary to the State Government to be the adjudicating officer, to hold an inquiry and to impose the penalty in the manner, as may be prescribed:</p> <p>Provided that the Central Government may appoint as many adjudicating officers as may be required.</p> <p>(2) The adjudicating officer may summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person concerned has contravened the provisions of this Act, he may determine such penalty as he thinks fit under the provisions of sections 37, 38, 38A or 39, as the case may be:</p> <p>Provided that no such penalty shall be imposed without giving the person concerned a reasonable opportunity of being heard.</p> <p>(3) The amount of penalty imposed under the provisions of sections 37, 38, 38A and 39, shall be in addition to the liability to pay relief or compensation under section 15 read with section 17 of the National Green Tribunal Act, 2010 (19 of 2010).</p> <p>39B. Appeal.—(1) Whoever aggrieved by the order passed by the adjudicating officer under sections 37, 38, 38A or 39, may prefer an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010 (19 of 2010).</p> <p>(2) Every appeal under sub-section (1) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person.</p>

(1)	(2)	(3)	(4)	(5)
				<p>(3) The Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.</p> <p>(4) Where an appeal is preferred against any order of the adjudicating officer under sub-section (1), it shall not be entertained by the Tribunal unless the person has deposited with the Tribunal ten per cent. of the amount of the penalty imposed by the adjudicating officer.</p> <p>39C. Penalty amount to be credited to Environmental Protection Fund.—Where an adjudicating officer imposes penalty or additional penalty, as the case may be, under sections 37, 38, 38A or 39, the amount of such penalty shall be credited to the Environmental Protection Fund established under section 16 of the Environment (Protection) Act, 1986 (29 of 1986).</p> <p>39D. Offences for failure to comply with provisions of section 21 and for failure to pay penalty.—(1) Whoever fails to comply with the provisions of section 21, 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 fifty thousand rupees for every day during which such failure continues after the conviction for the first such failure.</p> <p>(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.</p> <p>(3) Where any person fails to pay the penalty or the additional penalty, as the case may be, imposed under the provisions of this Act within ninety days of such imposition, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to twice the amount of the penalty or additional penalty so imposed or with both.</p>

*Amendments to the Air (Prevention and Control of
Pollution) Act, 1981 (14 of 1981) by the Jan Vishwas
(Amendment of Provisions) Act, 2023*

(1)	(2)	(3)	(4)	(5)
				<p>(4) Where any offence under sub-section (1) or sub-section (2) or sub-section (3) 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 such offence and he shall be liable to be proceeded against and punished accordingly:</p> <p>Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in sub-section (1) or sub-section (2) or sub-section (3), 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.</p> <p>(5) Notwithstanding anything contained in sub-section (4), where an offence 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 also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.</p> <p><i>Explanation.</i>—For the purposes of this section,—</p> <p>(a) “company” includes body corporate, firm, trust, society and any other association of individuals;</p> <p>(b) “director” includes director of the company, partner of the firm, members of the society or trust or member of any association of individuals, as the case may be.</p> <p>(D) In section 43, in sub-section (1), after clause (a), the following clause shall be inserted, namely:—</p> <p>“(aa) the adjudicating officer or any officer authorised by him in this behalf; or”.</p>
				<p>(E) In section 53, in sub-section (1), after clause (g), the following clause shall be inserted, namely:—</p> <p>“(h) the manner of holding inquiry and imposing penalties by the adjudicating officer under sub-section (1) of section 39A.”.</p>

THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

INTRODUCTION

With the increasing industrialisation and the tendency of the majority of industries to congregate in areas which are already heavily industrialised, the problem of air pollution had begun to be felt in the country. The various pollutants discharged from certain human activities connected with traffic, heating, use of domestic fuel, refuse, incinerations, etc., also have detrimental effects on the health of the people as also on animal life, vegetation and property. In June, 1972, at the United Nations Conference on the Human Environment held in Stockholm wherein India also 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. Keeping in view the decisions taken at the said Conference the Government decided to implement those decisions in so far as they related to the preservation of the quality of air and control of air pollution. Accordingly the Air (Prevention and Control of Pollution) Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS¹

1. With the increasing industrialisation and the tendency of the majority of industries to congregate in areas which are already heavily industrialised, 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 emissions 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 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

1. Gazette of India, Extra., Pt. II, Sec. 2, p. 1029, dated 24th November, 1980.

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 the said Act will also perform the functions of State Boards in respect of prevention, control and abatement of air pollution. However, in those States in which State Boards for the Prevention and Control of Water Pollution have not been constituted under that Act, separate State Boards for the Prevention and Control of Air Pollution are proposed to be constituted.

ACT 14 OF 1981

The Air (Prevention and Control of Pollution) Bill having been passed by both the Houses of Parliament received the assent of the President on 29th March, 1981. It came into force on the 16th day of May, 1981 as THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 (14 OF 1981) (*Came into force on 16-5-1981*).

LIST OF AMENDING ACTS

1. The Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987) (w.e.f. 1-4-1988; except clause (ii) and (iv) of section 2, section 3, clause (i) of section 4 and section 15).
2. The National Green Tribunal Act, 2010 (19 of 2010) (w.e.f. 18-10-2010).
3. The *Jan Vishwas* (Amendment of Provisions) Act, 2023 (18 of 2023) (w.e.f. 1-4-2024).

THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

(14 of 1981)

[29th 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 connected 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;

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

COMMENTS

Statute mandates Board to inspect air pollution control areas at intervals, assess quality of air therein and take steps for prevention, control and abatement of air pollution in such areas; *New Era High School v. State of Bihar*, AIR 2013 Pat 70.

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 date¹ 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 substance² [(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 purposes of this Act;

1. Came into force on 16-5-1981, vide G.S.R. 351(E), dated 15th May, 1981, published in the Gazette of India, Extra., Pt. II, Sec. 3(i), p. 944.

2. Ins. by Act 47 of 1987, sec. 2 (w.e.f. 1-4-1988).

- (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 ¹[Central Pollution Control Board] constituted under section 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;
- ²(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 (6 of 1974), is in force and the State Government has constituted for that State a ³[State Pollution Control Board] under section 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 section 5 of this Act.

COMMENTS

Air Pollution

The Supreme Court in a case of leakage of Oleum gas from the Caustic Chlorine plant affecting several persons due to air pollution directed the management to resume production on compliance of specific stringent conditions. It is pertinent to mention that this was a public interest litigation and the Supreme Court held that but for this case there would have been no improvement in the design, structure and quality of the machinery and equipment in the Caustic Chlorine plant nor would any proper and adequate safety devices and instruments have been installed nor would there have been any pressure on the management to observe safety standards and procedures. In token appreciation of the work done by the petitioner the Supreme Court directed the respondent to pay Rs. 10,000 by way of costs to the petitioner; *M.C. Mehta v. Union of India*, AIR 1987 SC 965.

Noise Pollution

The disturbance produced in our environment by the undesirable sound of various kind is 'Noise Pollution'; *In re: Noise Pollution – Implementation of Laws for Restricting use of Loudspeakers and High Volume Producing Sound Systems*, AIR 2005 SC 3136.

1. Subs. by Act 47 of 1987, sec. 2, for "Central Board for the Prevention and Control of Water Pollution" [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India].
2. Subs. by Act 47 of 1987, sec. 2, for clause (m) (w.e.f. 1-4-1988).
3. Subs. by Act 47 of 1987, sec. 2, for "State Board for the Prevention and Control of Water Pollution" [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India].

CHAPTER II

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

1[3. Central Pollution Control Board.—The Central Pollution Control Board constituted under section 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.

4. State Pollution Control Boards constituted under section 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 section 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 section 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 ²[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 ²[State Pollution Control Board] 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;

1. Subs. by Act 47 of 1987, sec. 3, for sections 3 and 4 [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India]. Section 3 and 4, before substitution, stood as under:

"3. *Central Board for the prevention and control of Air pollution.*—The Central Board for the Prevention and control of Water Pollution constituted under section 3 of the Water (Prevention and Control Pollution) Act, 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 Board for the Prevention and Control of Air Pollution under this Act.

4. *State Boards for the Prevention and Control of Water Pollution to be State Boards for the Prevention and Control of Air Pollution.*—In any 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 Board for the Prevention and Control of Water Pollution under section 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 section 5 of this Act and accordingly that State Board for the Prevention and Control of Water Pollution 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."

2. Subs. by Act 47 of 1987, sec. 4, for "State Board for the Prevention and Control of Water Pollution" [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India].



- (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;
- ¹[(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 by the said name sue or be sued.

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.

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 term of office of a member of a State Board constituted under this Act and nominated under clause (b) or clause (e) of sub-section (2) of section 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.

1. Subs. by Act 47 of 1987, sec. 4, for clause (f) (w.e.f. 1-4-1988).

(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 clause (c) of sub-section (2) of section 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 ¹[***].

(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.

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 turpitude, 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 constituting 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

1. The words "but not for more than two terms" omitted by Act 47 of 1987, sec. 5 (w.e.f. 1-4-1988).

(g) has so abused, in the opinion of the State Government, his position as a member, as to render his continuance on 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) or sub-section (6) of section 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.

9. Vacation of seats by members.—If a member of a State Board constituted under this Act becomes subject to any of the disqualifications specified in section 8, his seat shall become vacant.

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 be forwarded to the Central Board and to the State Government concerned.

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 and 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.

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.

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.

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

(1) The terms and conditions of service of the member-secretary of a State Board constituted under this Act shall be such as may be prescribed.

¹[(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) The 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.

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.

COMMENTS

Act of delegation

The delegating authority, by the mere act of delegation, does not completely denude itself of its powers; *Ram Sevak Singh v. State of Bihar*, 1979 BLJR 496.

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;

1. Subs. by Act 47 of 1987, sec. 6, for sub-section (2) (w.e.f. 1-4-1988).

- (c) co-ordinate the activities of the State Boards 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;
 - ¹[dd) perform such of the functions of any State Board as may be specified in an order made under sub-section (2) of section 18;]
 - (e) plan and organise the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of air pollution on such terms and conditions as the Central Board may specify;
 - (f) organise 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 functions as may be prescribed.
- (3) The Central Board may establish or recognise 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.

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 organising the training of persons engaged or to be engaged in programmes relating to prevention, control, or abatement of air pollution and to organise mass education programme relating thereto;

1. Ins. by Act 47 of 1987, sec. 7 (w.e.f. 1-4-1988).

- (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 at 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 emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollution 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 quantity and composition of emission of air pollutants 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 purposes of this Act.

(2) A State Board may establish or recognise a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently.

COMMENTS

Closure of quarries

(i) The Supreme Court ordered the closure of limestone quarries which were causing imbalance to ecology and hazard to public health and environment. However, in order to mitigate the hardship caused by such closure to the lessee, Government of India and State of U.P. were directed to give priority and send intimation whenever any other area was allotted for grant of limestone or dolomite quarrying to the displaced lessees; *Rural Litigation and Entitlement Kendra Dehradun v. State of U.P.*, AIR 1985 SC 651.

(ii) Order of Appellate Authority staying closure of brick kiln and directing relocation became final for not being challenged. It cannot be challenged subsequently by petitioner after one year after reaping benefit under it. More so when petitioner failed to carry out undertakings given to appellate authority and no changed circumstances shown for reconsideration of matter; *Adarsh Brick Kiln Industry v. Chairman, Pollution and Control of Water*, AIR 2004 All 58.

Functions of State Board

State Board under the Act is authorized to take steps for prevention, control or abatement of air pollution and is also entitled to do all such other things and to perform all such other acts, as it may think necessary for the proper function and discharge of its functions and it cannot be held that Board could not issue guidelines; *Bihar State Pollution Control Board v. Hiranand Stone Works*, AIR 2005 Pat 62.

18. Power to give directions.—¹[(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

1. Section 18 re-numbered as sub-section (1) thereof by Act 47 of 1987, sec. 8 (w.e.f. 1-4-1988).

(b) every State Board shall be bound by such directions 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.

¹[(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.]

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) alter 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 or 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 than three months from the date of publication of the notification) as may be specified in the notification.

1. Ins. by Act 47 of 1987, sec. 8 (w.e.f. 1-4-1988).

(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

Power of authority, when not to cease

The power which vests in an authority would not cease to exist simply for the reason that the rules have not been framed or the manner of exercise of the power has not been prescribed; *Orissa State Prevention and Control of Pollution Board v. Orient Paper Mills*, AIR 2003 SC 1966.

20. Power to give instructions for ensuring standards for emission from automobiles.—With a view to ensuring that the standards for emission of air pollutants from automobiles laid down by the State Board under clause (g) of sub-section (1) of section 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, 1939 (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.

COMMENTS

Control of air pollution from automobiles

The Motor Vehicles Act, 1988, *inter alia*, provides for prevention and control of air pollution from automobiles which constitute a major source of pollution everywhere, especially in the congested metropolis. Sub-section (1) of section 110 of the said Act *inter alia* lays down that the Central Government may make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to all or any of the following matters:—

- (i) the emission of smoke, visible vapour, sparks, ashes, grit or oil;
- (ii) the reduction of noise emitted by or caused by vehicles;
- (iii) standards for emission of air pollutants.

21. Restrictions on use of certain industrial plants.—¹[(1) No person shall establish or operate any industrial plant in an air pollution control area unless the

*. See now the Motor Vehicles Act, 1988 (59 of 1988).

1. Subs. by the *Jan Vishwas* (Amendment of Provisions) Act, 2023 (18 of 2023), sec. 2 and The Schedule, Sl. No. 21(A), for sub-section (1) [w.e.f. 1-4-2024, vide S.O. 757(E), dated 18th October, 2023]. Earlier sub-section (1) was amended by Act 47 of 1987, sec. 9 (w.e.f. 1-4-1988). Before substitution, sub-section (1) stood as under:

"(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 section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 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."

previous consent of the State Board has been obtained in pursuance of an application made by such person in accordance with the provisions of this section:

Provided that the Central Government may in consultation with the Central Pollution Control Board, by notification in the Official Gazette, exempt certain categories of industrial plants from the application of the provisions of this sub-section.]

(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 of any area as an air pollution control area, operates in such area any industrial plant, ¹[***] 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, ²[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:]

³[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 refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:]

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a 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 clause (i) or clause (ii) shall be kept at all times in good running condition;
- (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

1. The words "for the purpose of any industry specified in the Schedule" omitted by Act 47 of 1987, sec. 9 (w.e.f. 1-4-1988).

2. Subs. by Act 47 of 1987, sec. 9, for certain words (w.e.f. 1-4-1988).

3. Ins. by Act 47 of 1987, sec. 9 (w.e.f. 1-4-1988).

(vi) the conditions referred to in clauses (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 ¹***] 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 clause (i), or
 (b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or
 (c) after the erection or re-erection of any chimney under clause (iv),
 no control equipment or 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 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

Requirement of environmental clearance

(i) Where a notification was issued under section 19(1) of the Act by the Central Government in consultation with the Central Board placing the Union territory of Delhi within the control area of air pollution, any plant if established has to take permission from the Central Board. In the present case the *Sriram Plants of Delhi* fell under the schedule of the industries specified in the Act, and had to obtain consent order under section 21 thereof. Accordingly if the Central Board at any stage found that the conditions in the consent order relating to power plant were not complied with and the particular matter emitted by the stacks of the boilers was more than 150 mg/Nm³ it could take whatever action as was warranted by law; *M.C. Mehta v. Union of India*, (1986) 2 SCC 176.

(ii) It is not disputed that the petitioner has invested more than Rs. 80 crores and has already erected, set up and commissioned the plant. However, it is not clear whether the place where captive power plant has been set up by petitioner is within the radius of 25 kms. of reserve forest or critically polluted area or not and thereby requires environmental clearance from Central Government; *D.L.F. Power Ltd. v. State of Jharkhand*, AIR 2004 Jhar 85.

(iii) Carrying of mining operation of stones on the border of Rajasthan & U.P. without obtaining necessary permission from competent authority was held to be illegal and persons were restrained from carrying out mining activities; *M.C. Mehta v. Union of India*, 2003 (7) Scale 475.

1. The words "for the purpose of any industry specified in the Schedule" omitted by Act 47 of 1987, sec. 9 (w.e.f. 1-4-1988).

¹[21A. Power to issue guidelines.—(1) Notwithstanding anything contained in this Act, the Central Government in consultation with the Central Board, may, by notification in the Official Gazette, issue guidelines on the matters relating to the grant, refusal or cancellation of consent by any State Board to establish or operate any industrial plant in an air pollution control area, including the mechanism for time bound disposal of the application made under section 21 or validity period of such consent.

(2) Every State Board, in discharge of its functions for the purposes of grant, refusal or cancellation of consent under section 21 shall act in accordance with the guidelines issued under sub-section (1).]

22. Persons carrying on industry, etc., not to allow emission of air pollutants in excess of the standards laid down by State Board.—No person² operating any industrial plant, in any air pollution control area shall discharge or cause or permit to be discharged the emission of any air pollutant in excess of the standards laid down by the State Board under clause (g) of sub-section (1) of section 17.

COMMENTS

When polluting plant to be removed

It has been held that manufacturing of medicines by installing a boiler in a residential area which causes emission of smoke is detrimental to the physical comfort and health of the public at large. In such a case removal of factory ordered by the SDM was valid; *Krishna Gopal v. State of Uttar Pradesh*, 1986 Cr LR 11 (MP).

Imposition of stringent conditions

The Supreme Court has held that since chlorine gas is dangerous to the life and health of the general public after any leakage from a storage tank, cylinder or any other point during its production, the health and welfare of the workers and public at large living in surrounding areas may be put to risk. Accordingly the Foods & Fertilizer Industries were imposed stringent conditions to carry on such production so that such an eventuality may be prevented; *M.C. Mehta v. Union of India*, AIR 1987 SC 965.

³[22A. 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 clause (g) of sub-section (1) of section 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) authorise the Board, if the direction under clause (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.

1. Ins. by the Jan Vishwas (Amendment of Provisions) Act, 2023 (18 of 2023), sec. 2 and The Schedule, Sl. No. 21(B) [w.e.f. 1-4-2024, vide S.O. 757(E), dated 18th October, 2023].

2. The words "carrying on any industry specified in the Schedule or" omitted by Act 47 of 1987, sec. 10 (w.e.f. 1-4-1988).

3. Ins. by Act 47 of 1987, sec. 11 (w.e.f. 1-4-1988).

(4) All expenses incurred by the Board in implementing the directions of the court under clause (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 ¹[***] 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 or agencies shall, as early as practicable cause such remedial measures to be taken 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

Scope

The measures envisaged in the Act are preventive in the case of industries yet to be established and remedial in case of industries already in existence. The duty of the Board is to mitigate the emission of air pollutants and action may be taken on violation thereof but the drastic measure of closing down industry is neither warranted nor has the legal sanctity as paralysing the industry would render a number of persons unemployed and the consequences may be more hazardous than air pollution; *Chaitanya Pulverising Industry v. Karnataka State Pollution Control Board*, AIR 1987 Kant 82.

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 authorisation 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

1. The words "air pollution control" omitted by Act 47 of 1987, sec. 12 (w.e.f. 1-4-1988).

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 ¹[***] 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 wilfully 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 section 94 of the said Code or, as the case may be, under the corresponding provisions of the said law.

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 of 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.

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;

1. The words "carrying on any industry specified in the Schedule and every person" omitted by Act 47 of 1987, sec. 13 (w.e.f. 1-4-1988).

container or containers of sample of 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 him as arrears of land revenue or of public demand.

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.

29. Analysts.—(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 section 28.

(2) Without prejudice to the provisions of section 14, the State Board may, by notification in the Official Gazette, and with 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 any laboratory established or recognised under section 17.

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 proceeding under this Act.

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.

¹[31A. **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, 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 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

The Powers under section 31A are in addition to section 17. Section 17 of the Act is not exhaustive, therefore, the general powers to issue directions were also conferred upon the Board; *Bihar State Pollution Control Board v. Hiranand Stone Works*, AIR 2005 Pat 62.

²[31B. **Appeal to National Green Tribunal.**—Any person aggrieved by an order or decision of the Appellate Authority under section 31, made on or after the commencement of the National Green Tribunal Act, 2010*, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.]

CHAPTER V

FUND, ACCOUNTS AND AUDIT

32. Contributions 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 Boards to perform their functions under this Act:

Provided that nothing in this section shall apply to any ³[State Pollution Control Board] constituted under section 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.

33. Fund of Board.—(1) Every State Board shall have its own fund for the purposes of this 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, fees, 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 ³[State Pollution Control Board] constituted under section 4 of the Water (Prevention and Control of Pollution)

1. Ins. by Act 47 of 1987, sec. 14 (w.e.f. 1-4-1988).

2. Ins. by Act 19 of 2010, sec. 36 and Sch. (w.e.f. 18-10-2010).

* Date of commencement 18-10-2010, vide S.O. 2569(E), dated 18th October, 2010.

3. Subs. by Act 47 of 1987, sec. 15, for "State Board for the Prevention and Control of Water Pollution" [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India].



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.

¹[33A. **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.]

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.

²[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 the 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.]

36. Accounts 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 section 226 of the Companies Act, 1956 (1 of 1956).

(3) The said auditor shall be appointed by 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 papers 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 the accounts to the Central Government or, as the case may be, the State Government.

1. Ins. by Act 47 of 1987, sec. 16 (w.e.f. 1-4-1988).

2. Subs. by Act 47 of 1987, sec. 17, for section 35 (w.e.f. 1-4-1988).

(6) The Central 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 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.

CHAPTER VI

PENALTIES AND PROCEDURE

¹[37. Failure to comply with provisions of section 22 or directions issued under section 31A.—(1) Whoever contravenes or does not comply with the provisions of section 22 or directions issued under section 31A, shall, in respect of each such contravention, be liable to penalty which shall not be less than ten thousand rupees, but which may extend to fifteen lakh rupees.

1. Subs. by the *Jan Vishwas* (Amendment of Provisions) Act, 2023 (18 of 2023), sec. 2 and the Schedule, Sl. No. 21(C), for sections 37 to 41 [w.e.f. 1-4-2024, vide S.O. 757(E), dated 18th October, 2023]. Earlier sections 37 to 41 were amended by Act 47 of 1987, sec. 18, 19 and 20 (w.e.f. 1-4-1988). Before substitution, sections 37 to 41 stood as under:

"37. Failure to comply with the provisions of section 21 or section 22 or with the directions issued under section 31A.—(1) Whoever fails to comply with the provisions of section 21 or section 22 or directions issued under section 31A, 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.

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 section 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 section 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 2[twenty thousand rupees] or with both.

39. Penalty for contravention of certain provisions of the Act.—Whoever contravenes any of the provisions of this Act or any order or direction 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:

(Footnote Contd.)

(2) Where any person continues contravention under sub-section (1), he shall be liable to additional penalty of ten thousand rupees for every day during which such contravention continues.

38. Penalties for certain acts.—(1) 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;
 - (b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act;
 - (c) damages any works or property belonging to the Board;
 - (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 purposes of this Act;
 - (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 section 23;
 - (f) fails in giving any information which he is required to give under this Act, makes a statement which is false in any material particular,
- shall be liable to penalty which shall not be less than ten thousand rupees, but which may extend to fifteen lakh rupees.

(2) Where any person continues contravention under sub-section (1), he shall be liable to additional penalty of ten thousand rupees for every day during which such contravention continues.

38A. Penalty for contravention by Government Department.—(1) Where contravention of any provision of this Act has been committed by any Department

(Footnote Contd.)

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 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 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."

41. 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."

of the Central Government or the State Government, the Head of the Department shall be liable to penalty equal to one month of his basic salary:

Provided that he shall not be liable for such contravention, if he proves that the contravention was committed without his knowledge or instructions or that he exercised all due diligence to prevent such contravention.

(2) Where any contravention under sub-section (1) is attributable to any neglect on the part of, any officer, other than the Head of the Department, the officer shall be liable to penalty equal to one month of his basic salary:

Provided that he shall not be liable for the contravention, if he proves that he exercised all due diligence to avoid such contravention.

39. Penalties for contravention of certain provisions of this Act.—If any person contravenes any of the provisions of this Act or any order or direction issued thereunder, for which no penalty has been provided for in this Act, shall be liable to penalty which shall not be less than ten thousand rupees, but which may extend to fifteen lakh rupees, and where such contravention continues, he shall be liable to additional penalty which may extend to ten thousand rupees for every day during which such contravention continues.

39A. Adjudicating officer.—(1) The Central Government, for the purposes of determining the penalties under sections 37, 38, 38A and section 39, shall appoint an officer not below the rank of Joint Secretary to the Government of India or a Secretary to the State Government to be the adjudicating officer, to hold an inquiry and to impose the penalty in the manner, as may be prescribed:

Provided that the Central Government may appoint as many adjudicating officers as may be required.

(2) The adjudicating officer may summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person concerned has contravened the provisions of this Act, he may determine such penalty as he thinks fit under the provisions of sections 37, 38, 38A or 39, as the case may be:

Provided that no such penalty shall be imposed without giving the person concerned a reasonable opportunity of being heard.

(3) The amount of penalty imposed under the provisions of sections 37, 38, 38A and 39, shall be in addition to the liability to pay relief or compensation under section 15 read with section 17 of the National Green Tribunal Act, 2010 (19 of 2010).

39B. Appeal.—(1) Whoever aggrieved by the order passed by the adjudicating officer under sections 37, 38, 38A or 39, may prefer an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010 (19 of 2010).

(2) Every appeal under sub-section (1) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person.

(3) The Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) Where an appeal is preferred against any order of the adjudicating officer under sub-section (1), it shall not be entertained by the Tribunal unless the person has deposited with the Tribunal ten per cent. of the amount of the penalty imposed by the adjudicating officer.

39C. Penalty amount to be credited to Environmental Protection Fund.—

Where an adjudicating officer imposes penalty or additional penalty, as the case may be, under sections 37, 38, 38A or 39, the amount of such penalty shall be credited to the Environmental Protection Fund established under section 16 of the Environment (Protection) Act, 1986 (29 of 1986).

39D. Offences for failure to comply with provisions of section 21 and for failure to pay penalty.—(1) Whoever fails to comply with the provisions of section 21, 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 fifty 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.

(3) Where any person fails to pay the penalty or the additional penalty, as the case may be, imposed under the provisions of this Act within ninety days of such imposition, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to twice the amount of the penalty or additional penalty so imposed or with both.

(4) Where any offence under sub-section (1) or sub-section (2) or sub-section (3) 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 such offence and he 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 sub-section (1) or sub-section (2) or sub-section (3), 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.

(5) Notwithstanding anything contained in sub-section (4), where an offence 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 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” includes body corporate, firm, trust, society and any other association of individuals;

(b) “director” includes director of the company, partner of the firm, members of the society or trust or member of any association of individuals, as the case may be.]

40. ¹[***]41. ¹[***]

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.

²[**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 authorised in this behalf by it; or

³[(aa) the adjudicating officer or any officer authorised by him in this behalf; 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 Board or officer authorised as aforesaid,

and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) Where a complaint has been made under clause (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.]

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 section 21 of the Indian Penal Code (45 of 1860).

45. Reports 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 the 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

In respect of any matter which an Appellate Authority is empowered, civil court has no jurisdiction to entertain any suit and no injunction shall be granted in respect of any action taken or to be taken by the Authority concerned; *A.R. Ponnusamy v. Thoppalam*, AIR 2004 Mad 147.

1. Sections 37, 38, 38A, 39, 39A, 39B, 39C and 39D substituted for sections 37 to 41, by the *Jan Vishwas* (Amendment of Provisions) Act, 2023 (18 of 2023), sec. 2 and the Schedule, Sl. No. 21(C) [w.e.f. 1-4-2024, vide S.O. 757(E), dated 18th October, 2023]. Refer, footnote to Section 37 for details.
2. Subs. by Act 47 of 1987, sec. 21, for section 43 (w.e.f. 1-4-1988).
3. Ins. by the *Jan Vishwas* (Amendment of Provisions) Act, 2023 (18 of 2023), sec. 2 and The Schedule, Sl. No. 21(D) [w.e.f. 1-4-2024, vide S.O. 757(E), dated 18th October, 2023].

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 clause (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 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 clause (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 clause (b) of this sub-section.

48. Special provision in the case of supersession of the Central Board or the State Boards 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, 1974 (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, preforming 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.

49. Dissolution of State Boards 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 ¹[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 ¹[State Pollution Control Board];
- (c) every officer and other employee serving under the State Board immediately before such dissolution shall be transferred to and become an officer or other employee of the ¹[State Pollution Control Board] and hold office by the same tenure and at the same remuneration and on the same terms and conditions of service as he would have held the same if the State Board constituted under this Act has 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 ¹[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 ¹[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 ¹[State Pollution Control Board].

50. Power to amend the Schedule.—[Rep. by the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), sec. 22 (w.e.f. 1-4-1988)].

51. Maintenance of register.—(1) Every State Board shall maintain a register containing particulars of the persons to whom consent has been granted under section 21, the standards for emission laid down by it in relation to each such consent and such other particulars as may be prescribed.

1. Subs. by Act 47 of 1987, sec. 15, for "State Board for the Prevention and Control of Water Pollution" [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India].

(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 authorised 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 provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

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 section 10 and under sub-section (2) of section 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 section 11;
- (c) the manner in which and the purposes for which persons may be associated with the Central Board under sub-section (1) of section 12;
- (d) the fees and allowances to be paid under sub-section (3) of section 12 to persons associated with the Central Board under sub-section (1) of section 12;
- (e) the functions to be performed by the Central Board under clause (j) of sub-section (2) of section 16;
- ¹[(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 section 34;
- (ff) the form in which the annual report of the Central Board may be prepared under section 35;]
- (g) the form in which the accounts of the Central Board may be maintained under sub-section (1) of section 36;
- ²[(h) the manner of holding inquiry and imposing penalties by the adjudicating officer under sub-section (1) of section 39A.]

(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 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 that rule.

1. Subs. by Act 47 of 1987, sec. 23, for clause (f) (w.e.f. 1-4-1988).

2. Ins. by the *Jan Vishwas* (Amendment of Provisions) Act, 2023 (18 of 2023), sec. 2 and The Schedule, Sl. No. 21(E) [w.e.f. 1-4-2024, vide S.O. 757(E), dated 18th October, 2023].

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 section 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:—

- ¹[(a) the qualifications, 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;]
- ²[(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 section 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 section 10 and under sub-section (2) of section 11;
- (c) the fees and allowances to be paid to the members of a committee of the State Board, not being members of the Board under sub-section (3) of section 11;
- (d) the manner in which and the purposes for which persons may be associated with the State Board under sub-section (1) of section 12;
- (e) the fees and allowances to be paid under sub-section (3) of section 12 to persons associated with the State Board under sub-section (1) of section 12;
- (f) the terms and conditions of service of the member-secretary of a State Board constituted under this Act under sub-section (1) of section 14;
- (g) the powers and duties to be exercised and discharged by the member-secretary of a State Board under sub-section (2) of section 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 section 14;
- (i) the conditions subject to which a State Board may appoint a consultant under sub-section (5) of section 14;
- (j) the functions to be performed by the State Board under clause (i) of sub-section (1) of section 17;
- (k) the manner in which any area or areas may be declared as air pollution control area or areas under sub-section (1) of section 19;
- (l) the form of application for the consent of the State Board, the fees payable therefor, the period within which such application shall be

1. Ins. by Act 47 of 1987, sec. 24 (w.e.f. 1-4-1988).

2. Clause (a) renumbered as clause (aa) by Act 47 of 1987, sec. 24 (w.e.f. 1-4-1988).

- made and the particulars it may contain, under sub-section (2) of section 21;
- (m) the procedure to be followed in respect of an inquiry under sub-section (3) of section 21;
 - (n) the authorities or agencies to whom information under sub-section (1) of section 23 shall be furnished;
 - (o) the manner in which samples of air or emission may be taken under sub-section (1) of section 26;
 - (p) the form of the notice referred to in sub-section (3) of section 26;
 - (q) the form of the report of the State Board analyst under sub-section (1) of section 27;
 - (r) the form of the report of the Government analyst under sub-section (3) of section 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 section 28;
 - (t) the qualifications required for Government analysts under sub-section (1) of section 29;
 - (u) the qualifications required for State Board analysts under sub-section (2) of section 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 section 31;
 - ¹[(w) the form in which and the time within which the budget of the State Board may be prepared and forwarded to the State Government under section 34;
 - (ww) the form in which the annual report of the State Board may be prepared under section 35;]
 - (x) the form in which the accounts of the State Board may be maintained under sub-section (1) of section 36;
 - ²[(xx) the manner in which notice of intention to make a complaint shall be given under section 43;]
 - (y) the particulars which the register maintained under section 51 may contain;
 - (z) any other matter which has to be, or may be, prescribed.

1. Subs. by Act 47 of 1987, sec. 24, for clause (w) (w.e.f. 1-4-1988).

2. Ins. by Act 47 of 1987, sec. 24 (w.e.f. 1-4-1988).

(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 to¹ [in clause (aa)] thereof), shall be made, varied, amended or repealed without consulting that Board.

THE SCHEDULE

[Rep. by the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987) sec. 25 (w.e.f. 1-4-1988).]

1. Subs. by Act 47 of 1987, sec. 24, for "in clause (a)" (w.e.f. 1-4-1988).