

**THE WATER (PREVENTION AND CONTROL OF POLLUTION)
ACT, 1974
(Act No.6 of 1974)**

[23rd March, 1974]

An Act to provide for prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith

Whereas it is expedient to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution and for conferring on and assigning to such Boards powers and functions relating thereto;

And whereas Parliament has no power to make laws for the States with respect to any of the matters aforesaid except as provided in Arts. 249 and 250 of the Constitution;

And whereas in pursuance of Cl. (1) of Art. 252 of the Constitution resolutions have been passed by all the Houses of the Legislatures of the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal to the effect that the matters aforesaid should be regulated in those States by Parliament by law.

Be it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:

COMMENT

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

Where the language of the Act is dear, the preamble cannot be a guide, but where the object or meaning of the provisions of the Act is not clear then an aid from the preamble can be taken into consideration, for the purpose of explaining the provisions of the Act.²

STATEMENT OF OBJECTS AND REASONS

1. The problem of pollution of rivers and streams has assumed considerable importance and urgency in recent years as a result of the growth of industries and the increasing tendency to urbanisation. It is, therefore, essential to ensure that the domestic and industrial effluents are not allowed to be discharged into the water courses without adequate treatment as such discharges would render the water unsuitable as source of drinking water as well as for supporting fish life and for use in irrigation. Pollution of rivers and streams also causes increasing damage to the country's economy.

2. A Committee was set up in 1962 to draw a draft enactment for the prevention of water pollution. The report of the Committee was circulated to the State Governments and was also considered by the Central Council of Local Self-Government in September, 1963. This Council resolved that a single law regarding measures to deal with water pollution control, both at the Centre and at the State levels, may be enacted by the Union Parliament. A Draft Bill was accordingly prepared and put up for consideration at a joint session of the Central Council of Local Self-Government and the Fifth Conference of the State Ministers of Town and Country Planning held in 1965. In pursuance of the decision of the joint session, the Draft Bill was considered subsequently in detail by a Committee of Ministers of Local Self-Government from the States of Bihar, Madras, Maharashtra, Rajasthan, Haryana and West Bengal.

3. Having considered the relevant local provisions existing in the country and recommendations of the aforesaid Committees, the Government came to the conclusion that the existing local provisions are neither adequate nor satisfactory. There is, therefore, an urgent need for introducing a comprehensive legislation which would establish unitary agencies in the Centre and States to provide for the prevention, abatement and control of pollution of rivers and streams, for maintaining or restoring wholesomeness of such water courses and for controlling the existing and new discharges of domestic and industrial wastes.

4. The Bill follows the recommendations of the aforesaid Committees and seeks to-

- (i) establish at the Centre as well as in the State Water Pollution Prevention Boards with the necessary complement of technical and administrative staff and to confer on them such powers as are necessary to deal effectively with the problem of water pollution in the country;
- (ii) provide penalties for contravention of the provisions of the Act; and
- (iii) establish, Central and State water testing laboratories to enable the Boards to assess the extent of pollution, lay down standards and establish guilt or default.

5. Legislation in respect of the aforesaid subject-matter is relatable to entry 17 read with entry 6 of List II in the Seventh Schedule to the Constitution and Parliament has no power to make a law in the States (apart from the provisions of Arts. 249 and 250 of the Constitution) unless the Legislatures of two or more States pass a resolution in pursuance of Art. 252 of the Constitution empowering Parliament to pass the necessary legislation on the subject. The Legislatures of the States of Gujarat, Jammu and Kashmir, Kerala, Haryana and Mysore have passed such resolutions. The Bill is intended to give effect to the resolutions passed by the Legislatures of the aforesaid States."

COMMENT

Interpretation of statutes.-Statements of objects and reasons can be useful for the purpose of ascertaining the circumstances, which led to the introduction of the Bill. For finding out the true interpretation of statutes the statement of objects and reasons cannot be taken as an aid. For the purpose of ascertaining the intention of the Legislature other provisions of Act can be considered.

1. Short title, application and commencement.-(1) This Act may be called the Water (Prevention and Control of Pollution) Act, 1974.

(2) It applies in the first instance to the whole of the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal and Union Territories; and it shall apply to such other State which adopts this Act by resolution passed in that behalf under Cl. (1) of Art. 252 of the Constitution.

(3) It shall come into force, at once in States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura, and West Bengal and in the Union Territories, and in any other State which adopts this Act under Cl. (1) Art. 252 of the Constitution on the date of such adoption and any reference in this Act to the commencement of this Act shall, in relation to any State or Union Territory, mean the date on which this Act comes into force in such State or Union Territory.

COMMENTS

Redundant words-Canon of interpretation.-It is well-settled canon of interpretation that Legislature does not use redundant words and make redundant provisions in a statute.

Amending Act.- The argument that the amending Acts are colourable pieces of legislation, cannot be accepted, because it is not the case other petitioners that the Legislature has no legislative competence to enact the amending Acts.²

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

(a) "Board" means the Central Board or a State Board;

[(b) "Central Board" means the Central Pollution Control Board constituted under Sec:3;]

(c) "member" means a member of a Board and includes the Chairman thereof;

[(d) "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;]

[(dd) "outlet" includes any conduit pipe or channel, open or closed, carrying sewage or trade effluent or any other holding arrangement which causes, or is likely to cause, pollution;]

(e) "pollution" means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to,

create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms;

(f) "prescribed" means prescribed by rules made under this Act by the Central Government or, as the case may be, the State Government;

(g) "sewage effluent" means effluent from any sewerage system or sewage disposal works and includes sullage from open drains; .

[(gg) "sewer" means any conduit pipe or channel, open or closed, carrying sewage or trade effluent;]

[(h) "State Board" means a State Pollution Control Board constituted under Sec. 4;]

(i) "State Government" in relation to a Union Territory means the Administrator thereof appointed under Art. 239 of the Constitution;

(j) "stream" includes

(i) river;

(ii) water course (whether flowing or for the time being dry);

(iii) inland water (whether natural or artificial);

(iv) sub-terranean waters;

(v) sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf;

(k) "trade effluent" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any [industry, operation or process or treatment and disposal system] other than domestic sewage.

COMMENTS

According to Sec. 2 (c) of the Act, 'member' means a member of a Board and includes the Chairman thereof and under Sec. 2 (a) of the Act, "Board" means the Central Board or State Board.⁴

General principle of construction.- There is one principle on which there is complete unanimity of all the Courts in the world and this is that where the words or the language used in a statute are clear and cloudless, plain, simple and explicit, unclouded and unabsconded, intelligible and pointed so as to admit of no ambiguity, vagueness, uncertainty or equivocation, there is absolutely no room for deriving support from external aids. In such cases, the statute should be interpreted on the face of the language itself without adding, subtracting or omitting words therefrom, where the language is plain, and unambiguous the Court is not entitled to go behind the language so as to add to or supply omissions and thus play the role of a political reformer or of a wise counsel to the Legislature.

Stream-Definition of - The definition of "stream" includes river, water course, inland water and sub-terranean water. So the discharge of the trade effluent will either mix with the sub-terranean water or inland water or shall go to some stream or river. Even if it is allowed to remain stagnant, it will mix with sub-terranean water and that will be included in the definition of "stream".

Where no definition provided-Reference to dictionary not always safe.-It is well settled that where no definition is provided in the statute itself, for ascertaining the correct meaning of a fiscal entry reference to a dictionary is not always safe. The correct guide, it appears in such a case, is the context and the trade meaning.

CHAPTER II THE CENTRAL AND STATE BOARDS FOR PREVENTION AND CONTROL OF WATER POLLUTION

3. Constitution of Central Board.-(1) The Central Government shall, with effect from such date (being a date not later than six months of the commencement of this Act in the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal and in the Union Territories) as it may, by notification in the Official Gazette, appoint, constitute a Central Board to be called the 3[Central Pollution Control Board] to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

(2) The Central Board shall consist of the following members, namely : -

(a) a full-time Chairman, being a person having special knowledge or practical experience in respect of [matters relating to environmental protection] or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the Central Government;

(b) [such number of officials, not exceeding five] to be nominated by the Central Government to represent that Government;

(c) such number of persons, not exceeding five, to be nominated by the Central Government, from amongst the members of the State Boards, of whom not exceeding two shall be from those referred to in Cl. (c) of sub-section (2) of Sec. 4;

(d) [such number of non-officials, not exceeding three] to be nominated by the Central Government, to represent the interests of agriculture, fishery or industry or trade or any other interest which, in the opinion of the Central Government, ought to be represented ;

(e) two persons to represent the companies or corporations owned, controlled or managed by the Central Government, to be nominated by that Government;

[(f) a full-time Member-Secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government.]

(3) The Central Board shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and may, by the aforesaid name, sue or be sued.

COMMENT

This section relates to the Constitution of Central Board. It is similar to the Board constituted under Sec. 3 of the Air Pollution Act, 1981 (14 of 1981).

4. Constitution Of State Boards.-(1) The State Government shall, with effect from such date [** *] as it may, by notification in the Official Gazette, appoint, constitute a [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 shall consist of the following members namely:

(a) [* **] Chairman, being a person having special knowledge or practical experience in respect of 3[matter relating to environmental protection] or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, 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], to be nominated by the State Government to represent that Government;

(c) [such number of persons, not exceeding five], 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], to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or any other interests which, in the opinion of the State 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 the Government;

[(f) a full-time Member-Secretary possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the State Government.]

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

(4) Notwithstanding anything contained in this section, 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 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 sub-section to such person or body of persons as the Central Government may specify.

Comments

Section 4 of the Water Pollution Act, 1974, relates to the Constitution of State Boards.

Scope and applicability.- The reading of Sec. 4 clearly shows that it is obligatory on the Government for the proper discharge of function and exercise of powers under the Act. to constitute a Board as a legal Corporate Entity consisting of all its components mentioned in sub-section (2) representing various interests and under sub-section (1) of Sec. 4 a notification in Official Gazette is required to be issued only for appointing a day with effect from which such a Board is to function. The powers and functions that are referred to in the Act at various places are the powers and functions to be exercised and performed by such a Board as required to be constituted under sub-section (2). Since the section itself makes such a Board a body corporate, it only means that all the elements and/or components of the Board as mentioned in sub-section (2) taken together and not individually would alone constitute a Board as contemplated under the Act!

Proviso.- It is well-settled principle of construction that unless clearly indicated, a proviso would not take away substantive rights given by the section.

5. Terms and conditions of services of members.-(1) Save as otherwise provided by or under this Act, a member of a Board, other than a member-secretary, shall hold office for a term of three years from the date of his nomination:

Provided that 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 Board nominated under Cl. (b) or Cl. (e), of sub-section (2) of Sec. 3 or Cl. (b) or Cl. (e) of sub-section (2) of Sec. 4 shall come to an end as soon as he ceases to hold the office under the Central Government or the State Government or, as the case may be, the company or corporation owned, controlled or managed by the Central Government or the State Government, by virtue of which he was nominated.]

(3) The Central Government or, as the case may be, the State Government may, if it thinks fit, remove any member of a Board before the expiry of his term of office, after giving, him a reasonable opportunity of showing cause against the same.

(4) A member of a Board, 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 Central Government or as the case may be, the State Government; and

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

(5) A member of the Board 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 Board, from three consecutive meetings of the Board, 1[or where he is nominated under Cl. (c) or Cl. (e) of sub-section (2) of Sec. 3 or under Cl. (c) or Cl. (e) of subsection (2) of Sec. 1, ' if he ceases to be a member of the State Board or of the local authority or, as the case may be, of the company or corporation owned, controlled or managed by the Central Government or the State Government and such vacation of seat shall, in either case, take effect from such date as the Central Government or, as the case may be, the State Government may, by notification in the Official Gazette, specify].

(6) A casual vacancy in a Board shall be filled by afresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the Member in whose place he was nominated.

(7) A Member of a Board 2[shall be eligible for renomination].

(8) The other terms and conditions of service of a member of a Board, other than the Chairman and member-secretary, shall be such as may be prescribed.

(9) The other terms and conditions of service of the Chairman shall be such as may be prescribed.

Comments

Section 5 of the Water Pollution Act, 1974, relates to the terms and conditions of service of member of a Board, Rule 5 of the Water (Prevention and Control of Pollution) Rules, 1975, provides for the payment of allowances to non-official members of the Central Board.

The member of the Board can be removed by the Central Government or State Government at any time before the expiry of his term of office.

Government servant on deputation ceases to be so on retirement from Government service on attainment of age of superannuation.- Section 5 (1) which stipulates terms and conditions of service of members says that save as otherwise provided by or under this Act a member of the Board, other than a member-secretary, shall hold office for a term of three years from the date of his nomination. This subsection will apply only to a normal case of nomination but not a case of deputation like the appellant. Where, therefore, the appellant is on deputation and he holds the lien in Government service on his ceasing to be the Government servant, he has to lay down the office as Chairman.

Under Sec. 5 (3) of the Act, the State' Government is empowered to remove the Chairman before the expiry of his term of office if it thinks fit, after affording him reasonable opportunity of showing cause against the same.

6. Disqualifications – (1) No person shall be a member of a Board, who –

(a) is, or at any time has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or

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

(c) is, or has been convicted of an offence which, in the opinion of the Central Government or, as the case may be, of the State Government, involves moral turpitude, or

(d) is, or at any time has been, convicted of an offence under this Act, or interest in any firm or company carrying on the business of manufacture, sale or hire of machinery, plant, equipment, apparatus or fittings for the treatment of a sewage or trade effluents, 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 the by the Government, for the carrying out of sewerage scheme or, for the installation of plants for the treatment of sewage or trade effluents, or

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

(2) No order of removal shall be made by the Central Government or the State Government, as the case may be 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) and (7) of Sec. 5 a member who has been removed under this section shall not be eligible for renomination as a member.

Comments

Section 6 of the Water Pollution Act, 1974, relates to the disqualifications of members to be appointed in the Board.

This section embodies the principle of the natural justice that the member of the Board before his removal by the Central or State Government must be given the reasonable opportunity of being heard.

Removal of Chairman.--- The petitioner was appointed as Chairman of the Board under Order No. 11/2/88-STE (Pt.), dated 16th October, 1996 on honorary capacity until further orders. Again under Order No. 11/2/88-STE (Pt.), dated 28th October, 1997, in super session of the previous order, another order was issued appointing his as Chairman of the Board on contract basis for a period of 3 years with effect from the date of his initial appointment which was made on honorary capacity. Thereafter vide notification dated 18th January, 1998 the petitioner was removed from the Chairmanship of the Board. It was held that the impugned order of removal of the petitioner from the Chairmanship of the Board was passed after giving him reasonable opportunity of showing cause against the proposed action.

Action taken under Sec. (3) can never be treated to be an action under Sec. 6.—if the object of the respondents was to remove the petitioner from office for any disqualification, it was open to the respondents was to remove the petitioner from office for the Act. By no stretch of imagination it can be said that the action under Sec. O of the Act. By no stretch of imagination it can be said that the action taken under sub-section (3) of Sec. 5 of the Act is in effect an action taken under Sec. 6 of the Act. There is absolutely no basis for such an assumption.

7. Vacation of seat by member.—If Member of Board, becomes subject to any of the disqualification specified in Sec. 6 his seat shall become vacant.

Comments

Section 7 of the Water Pollution Act, 1974, relates to the vacation or seats by members of the Board.

Interpretation of the word “shall”.— “Shall” cannot be interpreted as “may” section of a statute has to be construed “may”.

The power of the Court, however, to ascertain the real intention of the Legislature by carefully examining the scope of the statute to find out whether the provision is directory or mandatory remains unimpaired.

8. Meeting of Board.—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.

Comments

Section 8 of the Water Pollution Act, 1974, relates to the meeting of Board. The Chairman is empowered to convene the meeting of the Board at any time.

9. Constitution of committees. --- (1) A Board may constitute as many committees consisting wholly of members or wholly of other persons or partly of members and partly of other persons, and for such purpose or purpose 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 meeting, as may be prescribed.

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

Comments

Section 9 of the Water Pollution Act, 1974, related to the constitution of committees. Rule 6 of the Water (Prevention and Control of Pollution) Rules, 1975, deals with fees and allowances to be paid to such members of a Committee of the Central Board as are not members of the Board under sub-section (3) of Sec. 9 of the Water Pollution Act, 1974. Rule 11 of the Water Pollution (Procedure for Transaction of Business) Rules, 1975, deals with procedure for transaction of business of committees constituted by the Board under Sec. 9 of the Water Pollution Act, 1974.

10. 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 function 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 discussion of the Board relevant, and shall not be a member for any other work of the Board, as may be prescribed.]

Comments

Section 10 of the Water Pollution Act, 1974, relates to the temporary association of persons with Board for particular purposes. Rule 10 of the Water (Prevention and Control of Pollution) Rules, 1975 specifies the manner and purposes of association of persons with Central Board and allowances to be paid to them.

11. Vacancy in Board not to invalidate acts or proceedings.—No act or proceeding of a Board or any committee there of 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.

Comments

Sec. 11 of the Water pollution Act, 1974 provides that vacancy in Board shall not invalidate act or proceedings.

Combined scope of Secs. 4 and 11.—Section 11 initially speaks about the act of the Board. Reading Secs. 4 and 11 together, it is clear that before any act would be said to be an act of the Board or its Committee, a Board as contemplated under sub-section (2) of Sec. 4 with all its component must be constituted and should exist. Therefore, the vacancies in the Board, as is contemplated under Sec. 11 of the Act could be a vacancy that may be caused only after the Board, as contemplated under Sec.4 was constituted and has started functioning.

[11-A. Delegation of powers to Chairman.— The Chairman of a Board 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 Board.]

Comments

Section 11-A of the Water Pollution Act, 1974, relates to the delegation of powers. Section 23 of the Environment (Protection) Act, 1986, provided the same powers.

Scope.—Section 11-A is widely worded. Therefore, the Chairman will be in a position to exercise any power and perform any duty prescribed under the Act on passing of the Resolution by the Board without any classification or reservation and there cannot be any distinction as a special power and general power. There is no such concept as any distinction as a special power and general power. There is no such concept provided in the Act. Section 11-A speaks of delegation of power. There is no such concept provided in the Act. Section 11-A speaks of delegation of powers and duties without any categorization. The distinction of special power under Sec. 49 does not satisfy the test of reasoning as it is only a power of sanctioning the prosecution which, in turn is for the effective implementation of provisions of the Act for the purpose of control of pollution.

12. Member-Secretary and officers and other employees of Board.—(1) The terms and conditions of service of the member-secretary shall be such as may be prescribed.

(2) The member-secretary 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 Board or its Chairman.

(3) Subject to such rules as may be made by the Central Government or, as the case may be, the State Government in this behalf, a Board may appoint such officers and employees as it considers necessary for efficient performance of his functions.

[(3-A) The method of recruitment and the terms and conditions of service (including the scale of pay), of the officer (other than the member-secretary) and other employees of the Central Board or a State Board shall be such as may be determined by regulations made by the Central Board or, as the case may be, by the State Board:

Provided that no regulation made under this sub-section shall take effect unless,—

(a) in the case of regulation made by the State Board, it is approved by the State Government.]

[(3-B) The Board may, by general or special order, and subject to such conditions and limitations, if any, as may be specified in the order, delegate to any officer of the Board such of its powers and functions under this Act as it may deem necessary.]

(4) Subject to such conditions as may be prescribed, a Board may from time to time appoint any qualified person to be consulting engineer to the Board and pay him such salaries and allowances and subject him to such other terms and conditions of service as it thinks fit.

Comments

Section 12 of the water Pollution Act, 1974, relates to the members-secretary and officers and other employees of the Board. Rule 4 of the Water (Prevention and Control of Pollution) Rules, 1975, deals with salaries, allowance and other conditions of service of member-secretary.

CHAPTER III
JOINT BOARDS

13. Constitution of Joint Boards.—(1) Notwithstanding anything contained in this Act, an agreement may be entered into—

- (a) by two or more Governments of contiguous States, or
 - (b) by the Central Government (in respect of one or more Union Territories) and one or more Government of State contiguous to such Union Territory or Union Territories, to be in force for such period and to be subject to renewal for such further period, if any, as may be specified in the agreement to provide for the constitution of a joint Board.—
- (i) in a case referred to in Cl. (a), for all the participating States, and
(ii) in a case referred to in Cl. (b), for the participating Union Territory or Union Territories and the State or States,

(2) An agreement under this section may,-

(a) provide, in a case referred to in Cl. (a) of sub-section (1), for the apportionment between the participating States and in a case referred to in Cl. (b) of that sub-section for the apportionment between the Central Government and the participating State Government, or State Governments of the expenditure in connection with the Joint Board;

(b) determine, in a case referred to in Cl. (a) of sub-section (1) which of the participating State Governments and in case referred to in Cl. (b) of that sub-section, whether the Central Government or the participating State Government (if there are more than one participating State, also which of the participating State Governments) shall exercise and perform the several powers and functions of the State Government under this Act and references in this Act to the State Government shall be construed accordingly;

(c) provide for consultation, in a case referred to in Cl. (a) of sub-section (1), between the participating State Governments and the case referred to in Cl. (b) of that sub-section between the Central Government and the participating State Government or State Governments either generally or with reference to particular matter arising under this Act;

(d) make such incidental and ancillary provisions, not inconsistent with the Act, as may be deemed necessary or expedient for giving effect to the agreement.

(3) An agreement under this section shall be published, in a case referred to in Cl. (a) of sub-section (1), in the Official Gazette of the participating State and in a case referred to in Cl. (b) of that sub-section in the Official Gazette of the participating Union Territory or Union Territories and the participating State or States.

14. Composition of Joint Boards. -(1) A Joint Board constituted in pursuance of an agreement entered into under Cl. (a) of sub-section (1) of Sec. 13 shall consist of the following members, namely:

(a) a full-time Chairman, being a person having special knowledge or practical experience in respect of 1 [matters relating to environmental protection] or person having knowledge and experience in administering institutions, dealing with the matters aforesaid, to be nominated, by the Central Government;

(b) two officials from each of the participating States to be nominated by the concerned participating State Governments to represent that Government;

(c) one person to be nominated by each of the participating State Governments from amongst the members of the local authorities functioning with the State concerned;

(d) one non-official to be nominated by each of the participating State Governments to represent the interests of agriculture, fishery or industry or trade in the State concerned or any other interest which, in the opinion of the participating State Governments, is to be represented;

(e) two persons to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by the participating State Governments;

[f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government.]

(2) A Joint Board constituted in pursuance of an agreement entered into under Cl. (b) of sub-section (1) of Sec. 13 shall consist of the following members; namely:

(a) a full-time Chairman, being a person having special knowledge or practical experience in respect of [matters relating to environmental protection] or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by Central Government;

(b) two officials to be nominated by the Central Government from the participating Union Territory or each of the participating Union Territories, as the case may be, and two officials to be nominated, from the participating State or each of the participating States, as the case may be, by the concerned participating State Government;

(c) one person to be nominated by the Central Government from amongst the members of the local authorities functioning within the participating Union Territory or each of the participating Union Territories, as the case may be, and one person to be nominated from amongst the members of the local authorities functioning within the participating State or each of the participating States, as the case may be, by the concerned participating State Government;

(d) one non-official to be nominated by the Central Government and one person to be nominated by the participating State Government or State Governments to represent the interests of agriculture, fishery or industry or trade in the Union Territory or in each of the Union Territories or the State or in each of the States, as the case may be, or any other interest which in the opinion of the Central Government or, as the case may be of the State Government is to be represented;

(e) two persons to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by the Central

Government and situate in the participating Union Territory or Territories and two persons to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by the participating State Governments;

[(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government.]

(3) When a Joint Board is constituted in pursuance of an agreement under Cl. (b) of sub-section (1) of Sec. 13 the provisions of sub-section (4) of Sec. 4 shall cease to apply in relation to the Union Territory for which the Joint Board is constituted.

(4) Subject to the provisions of sub-section (3), the provisions of sub-section (3) of Sec. 4 and Sec. 5 to 12 (inclusive) shall apply relation to the Joint Board and. its member-secretary as they apply in relation to a State Board and its member-secretary. .

(5) Any reference in this Act to the State Board shall, unless the context otherwise requires, be construed as including a Joint Board.

15. *Special provisions relating to giving of directions.*-Notwithstanding anything contained in this Act where any Joint Board is constituted under Sec. 13,

(a) the Government of the State for which the Joint Board is constituted shall be competent to give any direction under this Act only in cases where such direction relates to a matter within the exclusive territorial jurisdiction of the State;

(b) the Central Government alone shall be competent to give are direction under this Act where such direction relates to a matter within the territorial jurisdiction of two or more States or pertaining to a Union Territory.

CHAPTER IV

POWERS AND FUNCTIONS OF BOARDS

16. *Functions of Central Board.*-(1) Subject to the provisions of this Act, the main function of the Central Board shall be to promote cleanliness of streams and wells in different areas of the States.

(2) In particular and without prejudice to the generality of the foregoing function, the Central Board may perform all or any of the following functions, namely: -

(a) advise the Central Government on any matter concerning the prevention and control of water pollution;

(b) co-ordinate the activities of the State Boards and resolve disputes among them;

(c) provide technical assistance and guidance to the State Boards, carrying out and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;

(d) plan and organise the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of water pollution on such terms, and conditions as the Central Board may

specify;

(e) organise through mass media a comprehensive programme regarding the prevention and control of water pollution; .

[(ee) perform such of the functions of any State Board as may be specified in an order made under sub-section (2) of Sec. 18;]

(f) collect, compile and publish technical and. statistical data relating to water pollution and the measures devised for its effective prevention and control and prepare manuals, codes or guides relating to treatment and disposal of sewage and trade effluents and disseminate information connected therewith;

(g) lay down, modify or annul, in consultation with the State Government concerned, the standards for a stream or well:

Provided that different standards may be laid down for the same stream or well or for different streams or wells, having regard to the quality of water, flow characteristics of the stream or well and the nature of the use of the water in such stream or well or streams or wells;

(h) plan and cause to be executed a nation-wide programme for the prevention, control or abatement of water pollution;

(i) perform such other functions as may be prescribed.

(3) The Board may establish or recognise a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

Comment

This section enumerates the functions to be discharged by the Central Board, viz. planning a nation-wide programme for the prevention and control of water pollution.

Section 16 of the Water Pollution Act, 1974, relates to the functions of Central Board. Chapter V of the Water (Prevention and Control of Pollution) Rules, 1975, empowers the Central Board to (i) appoint consulting engineer, rule 11; (ii) terminate the appointment of consulting engineer, rule 12; (iii) pay the consulting engineer suitable emoluments or fees, rule 13; (iv) send consulting engineer on tours, rule 14; (v) ask consulting engineer not to disclose information, rule 15; and (vi) depute functions to the consulting engineers. Rule 29 of the said Rules empowers the Central Board to act as State Board for Union Territories. Under rule 30 the Central Board or any officer empowered by the Board shall have the power of taking samples.

17. Functions of State Board.-(I) Subject to the provisions of this Act, the functions of a State Board shall be

(a) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof; -

(b) to advise the State Government on any matter concerning the prevention, control or abatement of water pollution; .

(c) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof; ,

(d) to encourage, conduct and participate in investigations and research relating to problems-of water pollution and prevention, control or abatement of water Pollution;

(e) 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 water pollution and to organise mass education programmes relating thereto;

(f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans specification or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;

(g) to lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;

(h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more

especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;

(i) to evolve methods of utilization of sewage and suitable trade effluents in agriculture;

(j) to evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;

(k) to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;

(l) to make, vary or revoke any order-

(i) for the prevention, control or abatement of discharges of waste into streams or wells;

(ii) requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary to prevent, control or abate water pollution;

(m) to lay down effluent standards to be complied with by persons while causing discharge to sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;

(n) to advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute stream or well;

(o) 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.

(2) The Board may establish or recognise a laboratory, or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

Comments

Section 17 of the Water Pollution Act, 1974, relates to the functions of State Board. .

Financial capacity and responsibility of tanneries.- The Supreme Court in the case of M.C. Mehta v. Union of India, held that it is true that it may not be possible for the tanneries to establish immediately the secondary system plant in view of the large expenditure involved but having regard to the adverse effect the effluents are having on the river water, the tanneries at Jajmau, Kanpur, should at least set up of the primary treatment plants and that is the minimum which the tanneries should do in the circumstances of the case. The financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effect on the public at large which is likely to ensue by the discharging of the trade effluents from the tannery to the river Ganga would be immense and it will outweigh any inconvenience that may be caused to the management and the labour employed by it on account of its closure. Moreover, the tanneries involved in these cases are not taken by surprise. For several years they are being asked to take necessary steps to prevent the flow of untreated waste water from their factories into the river. Some of them have already complied with the demand. It should be remembered that the effluent discharged from a tannery is ten times noxious when compared with the domestic sewage water which flows into the river from any urban area on its banks. The tanneries at Jajmau, Kanpur cannot be allowed to continue to carry on the industrial activity unless they take steps to establish primary treatment plants. In cases of this nature Supreme Court act affecting or likely to affect the public is being committed and the statutory authorities who are charged with the duty to prevent it are not taking adequate steps to rectify the grievance. For every breach of a right there should be a remedy: It is unfortunate that a number of tanneries of Jajmau even though they are aware of these proceedings have not cared even to enter appearance in Supreme Court to express their willingness to take appropriate steps to establish the pre-treatment plants. So far as they are concerned an order directing them to stop working their tanneries should be passed.

The word "shall"-Meaning of.- It has been laid down consistently by the Supreme Court that the mere use of the word "shall" by itself in the statute does not make the provision mandatory, but it is the duty of the Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed. In each case, one has to look to the subject-matter, consider the importance of the provision and the relations of that provisions with the general object intended to be secured by the Act and upon the review of the case in that aspect whether the enactment is mandatory or only directory.

"Shall" cannot be interpreted as "may"? Where the situation and the context warrants it, the word "shall" used in a section or rule of a statute has to be construed as "may".

The power of the Court, however, to ascertain the real intention of the Legislature by carefully examining the scope of the statutes to find out whether the provision is directory or mandatory, remains unimpaired.

18. Powers to give directions.- [(1)] In the performance of its functions under this Act

(a) the Central Board shall be bound by such directions in writing as the Central Government may give to it; and

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

[(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 [and 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 oilier area in the State or any of its other functions in that area.]

Comment

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

CHAPTER V PREVENTION AND CONTROL OF WATER POLLUTION

19. Power of State Governments to restrict the application of the Act to certain areas.-(1) Notwithstanding anything contained in this Act, if the State Government, after consultation with, or on the recommendation of, the State Board, is of the opinion that the provisions of this Act need not apply to the entire State, it may by notification in the Official Gazette, restrict the application of this Act to such area or areas as may be declared therein as water pollution, prevention and control area or areas and thereupon the provisions of this Act shall apply only to such area or areas.

(2) Each water pollution, prevention and control area may be declared either by reference to a map or by reference "to the line of any watershed or the boundary of any district or partly by one method and partly by another.

(3) The State Government may, by notification in the Official Gazette:

(a) alter any water pollution, prevention and control area whether by way of extension or reduction; or

(c) define a new water pollution, prevention and control area in which may be merged one or more water pollution, prevention and control areas, or any part or parts thereof.

Comments

Scope of section.- This section empowers the State Government after consultation with the State Board to impose restriction on the application of the Act to the entire State. Section 19 of the Water Pollution Act, 1974, relates to the applicability of the Act to certain areas.

Section 19 of the Act permitted the State to restrict the application of the Water (Prevention and Control of Pollution) Act, 1974 to particular area, if need be, but it did not enable the State to grant exemption to a particular industry within the area prohibited for location of polluting industries. Exercise of such a power in favour of a particular industry must be treated as arbitrary and contrary to public interest and in violation of the right to clean water under Art. 21 of the Constitution of India.¹

Unless adequate provision for pollution control has been made, licences to establish new industries to be refused.-In *M.C. Mehta v. Union of India*, the Supreme Court held that whenever applications for licences to establish new industries are made such applications shall be refused unless adequate provision has been made for the treatment of trade effluents flowing out of the factories. Immediate action should be taken against the existing industries if they are found responsible for pollution of water.

Petitioner entitled to move the Court to enforce the statutory provisions of the Act.- The petitioner in the case is no doubt not a riparian owner. He is a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga and his right to maintain the petition cannot be disputed. The nuisance caused of the pollution of the river Ganga is a public nuisance, which is widespread in range and indiscriminate in its effect, and it would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large. The petition has been entertained as a public interest litigation. On the facts and in the circumstances of the case, it was held that the petitioner is entitled to move Supreme Court in order to enforce the statutory provisions which impose duties on the municipal authorities and the Boards constituted under the Water Act. The Supreme Court has already set out the relevant provisions of the statute which impose those duties on the authorities concerned. On account of their failure to obey the statutory duties for several years the water in the river Ganga at Kanpur has become so much polluted that it can no longer be used by the people either for drinking or for bathing. The Nagar Mahapalika of Kanpur has to bear the major responsibility for the pollution of the river near Kanpur City.¹

Duty of Nagar Mahapalika to prevent the pollution of water.-Dealing with the duties of Nagar Mahapalika, the Supreme Court in the case of *M.C. Mehta v. Union of India* observed as under:

"It is no doubt true that the construction of certain works has been undertaken under the Ganga Action Plan at Kanpur in order to improve the sewerage system and to prevent pollution of the water in the river Ganga.*** The Kanpur Nagar Mahapalika should take action under the provisions of the D.P. Nagar Mahapalika Adhiniyam, 1959 or the relevant bye-laws made thereunder to prevent the pollution of the water in the river Ganga on account of the waste accumulated at the dams. * * * The Kanpur Nagar Mahapalika should immediately take action to prevent the collection of manure at private manure pits inside the city. The Kanpur Nagar Mahapalika should take immediate steps to increase the size of the sewers in the labour colonies so that the sewage may be carried smoothly through the sewage system. The proposal to levy any charge for making use of such latrines and urinals shall be dropped as that would be a reason for the poor people not using the public latrines and urinals. The cost of maintenance of cleanliness of those latrines and urinals has to borne by the Kanpur Nagar Mahapalika * * * Steps shall be taken by the Kanpur Nagar Manapalika and the police authorities to ensure that dead

bodies or half burnt bodies are not thrown into the river Ganga. * * * "

Supreme Court decision applies mutatis mutandis to all other Mahapalikas and Municipalities.-About the applicability of the decision of *M.C. Mehta v. Union of India*, their Lordships of the Supreme Court held as under:

"What we have stated above applies *mutatis mutandis* to all other Mahapalika and Municipalities which have jurisdiction over the areas through which the river Ganga flows.

High Courts should not ordinarily grant orders of stay in criminal proceedings relating to pollution control.- The exercise of inherent powers of High Court under Sec. 482 of the Code of Criminal Procedure, depends upon the peculiar facts and circumstances of each particular case. The Supreme Court in the case of *M.C. Mehta v. Union of India* in a question raised by Pollution Board relating to quick obtaining of stay orders from High Court under Sec. 482 of the Code of Criminal Procedure, 1973. held as under:

"It is submitted before us that whenever the Board constituted under the Water Act initiates any proceedings to prosecute industrialists or other persons who pollute the water in the river Ganga, the persons accused of the offence immediately institute petitions under Sec. 482 of the Code of Criminal Procedure, 1973 in the High Court and obtain stay orders thus frustrating the attempts of the Board to enforce the provisions of the Water Act. [* * *] We are, however, of the view that since the problem of pollution of the water in the river Ganga has become very acute the High Courts should not ordinarily grant orders of stay of criminal proceedings in such cases and even if such an order of stay is made in any extraordinary cases the High Courts should dispose of the case within a short period, say about two months, from the date of the institution of such case..."

"The case of the petitioner is that on the installation of the sewerage treatment plant in the civic amenity site which is opposite to the house of the petitioner facing 60' road running North to South will result in health hazard to the residents of the locality. On the question whether the location of the sewerage treatment plant in the civic amenity site in question is hazardous to the public health, the third respondent on which the responsibility is placed under the Water (Prevention and Control of Pollution) Act, 1974, has examined all the aspects of the case and has accorded approval for location of the sewerage treatment plant. It is clear that by reason of location of the sewerage treatment plant and implementation of the suggestions made therein will result in better use of the civic amenity site and it will also remove the water pollution and prevent it for all time to come and consequently the residents of the locality will be free from water pollution and also the bad smell that is being now emitted by reason of pollution of water in the tank consequent to discharge of sewerage water from all the three extension into it. In addition to this all the four House Building Co-operative Societies have also agreed to it. That being the position it is not possible to agree with the contention of the petitioner that location of sewerage treatment plant at the place at which now it is proposed to be located would result in the consequences as pleaded by him in paras. 6 to 8 of his petition. The petitioner apart from asserting as per paras. 6 to 8 has not placed any opinion of an expert. nor he himself claims to be an expert in the matter. When the third respondent, which is placed, in charge of the prevention and control of water pollution under the Pollution Control Act, has accorded approval and has also further got it examined through the officer concerned with the Pollution Control Department_ it is not possible to accept the averments made by the petitioner.

20. Power to obtain information.-(1) For the purpose of enabling a State Board to perform the functions conferred on it by or under this Act the State Board or any officer empowered by it in that behalf, may make surveys of any area and gauge and keep records of the flow or volume and other characteristics of any stream or well in such area, and may take steps for the measurement and recording of the rainfall in such area or any part thereof and for the installation and maintenance for those purposes of gauges or other apparatus, and works connected therewith and carry out stream surveys and may take such other steps as may be necessary in order to obtain any information required for the purposes aforesaid.

(2) A State Board may give directions requiring any person who in its opinion is abstracting water from any such stream or well in the area in quantities which are substantial in relation to the flow or volume of that stream or well or is discharging sewage or trade effluent into any such stream or well, to give such information as to the abstraction or the discharge at such times and in such forms as may

be specified in the directions.

(3) Without prejudice to the provisions of sub-section (2), a State Board may, with a view to preventing or controlling pollution of water give directions requiring any person in charge of any establishment where any [industry, operation or process or treatment and disposal system] is carried on, to furnish to it information regarding the construction, installation or operation of such establishment, or of any disposal system or of any extension or addition thereto in such establishment and such other particulars as may be prescribed.

Comment

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

21. Power to take samples of effluents 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 water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well.

(2) The result of any analysis of a sample of any sewage or trade effluent taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3), (4) and (5) are complied with.

(3) Subject to the provisions of sub-sections (4) and (5), when a sample (composite or otherwise as may be warranted by the process used) of any sewage or trade effluent is taken for analysis under sub-section (1), the person taking the sample shall -

(a) serve on the person in charge of, or having control over, the plant or vessel or in occupation of the place (which person is hereinafter referred to as the occupier) or any agent of such occupier, 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, divide the sample into two parts;

(c) cause each part to be placed in a container which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;

(d) send one container forthwith, -

(i) in a case where such sample is taken from any area situated in a Union Territory, to the laboratory established or recognized by the Central Board under Sec. 16; and

(ii) in any other case, to the laboratory established or recognized by the State Board under Sec. 17;

(e) on the request of the occupier or his agent, send the second container,

(i) in a case when such sample is taken from any area situated in a Union Territory, to the laboratory established or specified under sub-section (1) of Sec. 51; and

(ii) in any other case, to the laboratory established or specified under sub-section (1) of Sec. 52.

[(4) When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under Cl. (a) of sub-section (3) and the occupier or his agent wilfully absents himself then,-

(a) the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the case may be, of Cl. (e) of sub-section (3) and such person shall inform the Government analyst appointed under sub-section (1) or sub-section (2), as the case may be of Sec. 53, in writing about the wilful absence of the occupier or his agent; and

(b) the cost incurred in getting such sample analysed shall be payable by the occupier or his agent and in case of default of such payment, the same shall be recoverable from the occupier or his agent, as the case may be, as an arrear of land revenue or of public demand:

Provided that no such recovery shall be made unless the occupier or, as the case may be, his

agent has been given a reasonable opportunity of being heard in the matter.]

(5) When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent a notice under Cl. (a) of sub-section (3) and the occupier or his agent who is present at the time of taking the sample does not make a request for dividing the sample into two parts as provided in Cl. (b) of sub-section (3), then, the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i), or sub-clause (ii), as the case may be, of Cl. (d) of sub-section (3).

Comments

Section 21 of the Water Pollution Act, 1974, relates to the power of taking samples and procedure to be followed in connection therewith. Similar provision has been provided in Sec. 11 of the Environment (Protection) Act, 1986. Rule 31 of the Water (Prevention and Control of Pollution) Rules, 1975, provides that in case of Union Territory a notice under Cl. (a) of sub-section (3) of Sec. 21 of the Water Pollution Act, 1974, shall be given in Form XII.

This section requires the person taking sample for analysis under sub-section (1) to serve a notice then and there of his intention to have it so analysed.

Compliance of Sec. 21 (5).-The learned Magistrate observed that as no presence was put in on behalf of the company, so the question of there being any request by the company for dividing the samples into two parts did not arise. This conclusion of the learned Magistrate is not sustainable as a representative of the company was duly present at the time when the sample was lifted. Further in view of the said pleadings of the parties it has to be taken that a demand was also made by the said representative to the officials of the Board to divide the sample into two parts and to get the same analysed in accordance with Sec. 21 (5) of the Act but that request was not acceded to. Thus it can be held that the officials of the Board were not justified in getting the sample analysed from a laboratory only recognized by the Board instead of getting the same analysed from the laboratory of the Delhi Administration and without complying with the requirements of sub-section (5) of Sec. 21 of the Act. That being so, the conclusion that the petitioners were discharging effluents in the stream which were likely to cause pollution is not sustainable. Consequently the impugned order is bad and is liable to be set aside.

22. Reports of the result of analysis on samples taken under Sec. 21.-(1) Where a sample of, any sewage or trade effluent has been sent for analysis to the laboratory established or recognised by the Central Board or, as the case may be, the State Board, the concerned Board analyst appointed under sub-section (3) of Sec. 53 shall analyse the sample and submit a report in the prescribed form of the result of such analysis in triplicate to the Central Board or the State Board, as the case may be.

(2) On receipt of the report under sub-section (1), one copy of the report shall be sent by the Central Board or the State Board, as the case may be, to the occupier or his agent referred to in Sec. 21, another copy shall be preserved for production before the Court in case any legal proceedings are taken against him and the other copy shall be kept by the concerned Board.

(3) Where a sample has been sent for analysis under Cl. (e) of sub-section (3) or sub-section (4) of Sec. 21 to any laboratory mentioned therein, the Government analyst referred to in that sub-section shall analyse the sample and submit a report in the prescribed form of the result of the analysis in triplicate to the Central Board or, as the case may be, the State Board which shall comply with the provisions of sub-section (2).

(4) If there is any inconsistency or discrepancy between, or variation in the results of, the analysis carried out by the laboratory established or recognized by the Central Board or the State Board, as the case may be, and that of the laboratory established or specified under Sec. 51 or Sec. 52, as the case may be, report of the latter shall prevail.

(5) Any cost incurred in getting any sample analysed at the request of the occupier or his agent 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.

Comments

Section 22 of the Water Pollution Act, 1974 deals with report of the analysis on samples taken. Similar provision is contained in Sec. 15 of the Environment (Protection) Act, 1986. Rule 26 of the Water (Prevention and Control of Pollution) Rules, 1975, provides that when a sample has been sent for analysis to a laboratory established or recognized by the Central Board, the Central Board Analyst shall analyse the sample and submit his report in triplicate in Form X.

The result of analysis carried out by the laboratory established or recognized by the State shall prevail over the result carried out by the laboratory established by the Central Board in case of variation between the *two*.

23. 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 at any time to enter, with such assistance as he considers necessary, any place

(a) for the purpose of performing any of the functions of the 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 any plant, record, register, document or any other material object or for conducting a search of any place in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed and for seizing any such plant, record, register, document or other material object, if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder:

Provided that the right to enter under this sub-section for the inspection of a well shall be exercised only at reasonable hours in a case where such well is situated in any premises used for residential purposes and the water thereof is used exclusively for domestic purposes.

(2) The provisions of [the Code of Criminal Procedure, 1973 (2 of 1974)] or, in relation to the State of Jammu and Kashmir, the provision of any corresponding law in force in that State, shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under [Sec. 94] of the said Code, or, as the case may be, under the corresponding provisions of the said law.

Explanation.- For the purposes of this section, "place" includes vessel.

Comments

Section 23 of the Water Pollution Act, 1974, relates to the powers of entry and inspection. Similar provision is provided under Sec. 10 of the Environment (Protection) Act, 1986 and Sec. 24 of the Air Pollution Act, 1981. Section 94 of the Code of Criminal Procedure, 1973 (2 of 1974), has been made applicable.

Inspect-Meaning of.- The ordinary dictionary meaning of the term "inspect" is "to look closely into" or "examine officially" vide *Oxford Concise Dictionary*. Normally this will not involve seizure or search.

Search-Meaning of.- The meaning of "search" in the *Oxford Concise Dictionary* is given as "look or feel or go over (person or his face or pockets, receptacle, place, book) for what can be found or to find something of which presence is suspected, probe, look for, seek out". A search is, therefore, not mere looking for something which is produced or open but which is hidden concealed or not obvious. It is looking for in the sense of seeking out what is suspected or concealed by probing into or investigation or examination.

Davis in *Federal Searches and Seizures* says that the mere observation or visual inspection of what is open and patent does not constitute a search.

Search and inspection-Distinction.-All searches are inspections, but all inspections are not searches. A search is a thorough inspection of a man's house, building or premises or of his person, with the object of discovering some material which would furnish evidence of guilt for some offence with which he is charged.

If the object sought for is always in plain sight, then there is no search. If the private account-books had been kept in the counter openly at all times and they could have been seen found on inspection at any time of the day, then the seizure of such account-books cannot be said to have been made after a search.

Nature.- The term implies some exploratory investigation, or an invasion and quest,³ a looking for⁴ or seeking out. The quest may be secret, intrusive, or accomplished by force,⁶ and it has been held that a search implies some sort of force, either actual or constructive, much or little. A search implies a prying into hidden places for that which is concealed and that the object searched for has been hidden or intentionally put out of the way.

Seize - Meaning of.-The meaning of the word "seize" given in Ballantine's *Law Dictionary* is equated to taking a thing into possession. No doubt, in cases where a delivery is effected by an owner of the goods in pursuance of a demand under legal right, whether oral or backed by a warrant, it would certainly be a case of seizure but the idea that it is the unilateral act of the person seizing is the very essence of the concept.¹⁰

Seizure – Dictionary meaning. - According to Stroud's *Judicial Dictionary* also, the word "seizure" in its ordinary and natural sense means "forcible taking possession". According to *Webster's Dictionary* the word "seize" means "to effect legal possession". In *Shorter Oxford English Dictionary* the said word means "to put in possession". .

Seizure implies not mere taking but forcible taking. It is taking with force possession of something contrary to the wishes of its owner or possessor. In *Chandrika Sao and Hazarilal v. State of Bihar*, it was pointed out that merely holding books found lying in the premises for perusing them cannot properly be regarded as seizure because seizure implies doing something over and above holding an article in one's hand. According to the *Shorter Oxford Dictionary*, seizure, among other things, means confiscation or forcible taking possession (lands or goods); a sudden and forcible taking hold'.

A mere power of inspection will not, therefore, take with it a power to seize unlike a search which often, particularly, as seen from the provisions of the Code of Criminal Procedure, includes a power of seizure. But a power of seizure need not necessarily imply a power of search, for, there may be seizure on production or on inspection.

Seizure-Nature. -A seizure contemplates a forcible dispossession of the owner and it is not a voluntary surrender.

Right to restoration of seized goods.- The right to restoration of the seized goods is a civil right which accrues on the expiry of the initial six months and which is defeated on an extension being granted, even though such extension is possible within a year from the date of the seizure.

Seizure when charge is only of abetting.-Where the specific charge against the petitioner was that he was abetting the illegal importation of gold, there is no need to seize incriminating article from the petitioner, since he is not charged of carrying but only abetting.

Illegality of search-If vitiates the seizure.- The illegality of search by itself cannot and will not vitiate the seizure of the articles.

Seizure of foreign currency.-In *Remo Paul Altoe v. Union of India*, the appellant was a foreigner who arrived at Calcutta by air from Bangkok on 28th June, 1975. On a search of his room in the hotel where he was staying in Calcutta, the customs authorities found in his possession 1,701 U.S. dollars and 4,400 Canadian dollars which they seized as smuggled goods. The Metropolitan Magistrate convicted the appellant under Sec. 135 of the Customs Act and sentenced him to pay a fine of Rs. 2,000 in default to suffer rigorous imprisonment for six months (now one year). The Magistrate further ordered that the "goods involved in this case are confiscated to the State, if not already confiscated". The Calcutta High Court in revision affirmed the appellant's conviction but reduced the sentence of fine to Rs. 500 and affirmed the order of confiscation. It was held by the Supreme Court that the appeal should succeed on a short point. An order for the disposal of any property under Sec. 452 (1) of the Criminal Procedure Code of 1898, is necessary where the property remains to be disposed of by the Court after the enquiry or trial is over. In the present case it appears that the foreign currency seized from the appellant was not produced before the Magistrate and was not in the custody or control of the Court when the order of confiscation was made. There was thus no necessity or occasion for the Court to make an order for disposal of any property; the order of the Magistrate that the goods involved in the case are confiscated "if not already confiscated" clearly shows that he was not aware what had happened to the goods which were in the control of the customs authorities. It is true that the foreign currency seized from the appellant's possession was property in respect of which an offence was committed, but this fact alone did not call for order under Sec. 452 (1) in the circumstances of the case and the order passed, besides being unwarranted, is likely to create complication if in respect of the foreign currency a proceeding under the Customs Act is pending or the customs authorities have made any order with which the Magistrate's order is inconsistent. The Supreme Court set aside the order of confiscation.

Search-Independent witnesses.-Panchas whom the police took with them at the time of raid are independent witnesses and their evidence is good evidence requiring no corroboration before acceptance.

Every citizen of India must be presumed to be an independent person until it is proved that he was a dependant of the police or other officials for any purpose whatsoever?

Search-Necessity of independent witnesses.- So long as the persons are respectable they can be from a different locality.³ An omission to get witness of the same locality will, therefore, be at the most an act of irregularity and will not render such as illegal.

If respectable persons are not to be found very near the premises to be searched, it will not be illegal to bring persons from half a mile away.

However persons living more than a mile away cannot be said to be persons of the locality. The necessity for "independent witness" in cases involving police raid or police search is incorporated in the statute not for the purpose of helping the indicted person to bypass the evidence of those *panch* witnesses who have had some acquaintance with the police or officers conducting the search at some time or the other. Acquaintance with the police by itself would not destroy a man's independent outlook.

The term "respectable inhabitants of the locality".- The words "respectable inhabitants of the locality" must be construed in the light of object of the section in accordance with *maxim ut res magis valet qualm pereat* that an act may avail rather than perish. The Legislature has made this provision to ensure fair dealing and a feeling of confidence and security amongst the public in regard to a sometime necessary invasion of a private right regarded as almost sacred under the British system. In order to give effect to this object, it is necessary that the persons selected should be absolutely unprejudiced and uninterested in the result of what they have to take part. The mere fact that the witnesses are taken from another locality should not be looked upon as a factor militating against their respectability. The emphasis of the section is on the word "respectable" and not on the word "locality".

The expression "inhabitants of the locality" has to be interpreted having regard to the object of the section. They must be absolutely unprejudiced and disinterested. Merely because a person was a prosecution witness, it does not deprive him of title to respectability.

Respectable person is one who is impartial and on whom the owner and occupier of the premises searched can *prima facie* rely.

The respectability has no reference to status or wealth. The only requirement is that he should not be disreputable in any way.

Search witnessed by non-respectable persons-Legality.- The fact that the search was witnessed by non-respectable persons, namely, two *rickshawalas* would not affect the legality of the search but would affect the weight of the evidence.

Witnesses of different locality.-In Panda Inderjit v. Emperor, the search-witnesses were residents of different localities and the officer conducting the search had made no attempt to secure the presence of respectable person, it was held that the search was not a good search and it could not be made the basis of a successful prosecution.³

Search-Recording of reasons.- The recording of reasons is an important step in the matter of search and to ignore it is to ignore the material part of the provisions governing searches. If that can be ignored, it cannot be said that the search is carried out in accordance with the provisions of the Code of Criminal Procedure; it would be a search made in contravention of the provisions of the Code of Criminal Procedure.

Search-Reason to believe.-Where no reasons have been recorded before the search and seizure, the search and seizure are without jurisdiction and must be set aside. It has been held in *Income-tax Officer, Special Investigation, Circle B, Meerut v. Seth Brothers*, that if the action of the Commissioner in issuing a search-warrant under Sec. 132 (1) of the Income-tax Act is challenged, the burden lies on him to satisfy the Court that he had taken action on proper and relevant material. It has been held that by virtue of the application of Sec. 165 (new), Cr.P.c., the Commissioner of Income-tax has to record his reasons before issuing a search-warrant. It is not possible to lay down precisely or exhaustively as to what constitutes "reason to believe". As laid down by their Lordships of the Supreme Court in *Pukhraj v. D.R. Kohli*, all that the Court can consider is whether there is ground, which *prima facie*, justifies the statement in the warrant by the Warrant Officer that he had "reason to believe".

Vitiation of search on account of non-observance of conditions of Sec. 165, Cr. P. C. -A search conducted by a Deputy Superintendent of Central Excise without observing the conditions laid down in Sec. 165, Cr. P. C., is illegal.

24. Prohibition on. use of stream or well for disposal of polluting matter, etc.-(1) Subject to the provisions of this section, -

(a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any stream or well or sewer or on land]; or

(b) no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences.

(2) A person shall not be guilty of an offence under sub-section (1), by reason only of having done or caused to be done any of the following acts, namely:

(a) constructing, improving or maintaining in or across or on the bank or bed of any stream any building, bridge, weir, dam, sluice, dock, pier, drain or sewer or other permanent works which he has a right to construct, improve or maintain;

(b) depositing any materials on the bank or in the bed of any stream for the purpose of reclaiming land or for supporting, repairing or protecting the bank or bed of such stream provided such materials are not capable of polluting such stream;

(c) putting into any stream any sand or gravel or other natural deposit which has flowed from or been deposited by the current of such stream;

(d) causing or permitting, with the consent of the State Board, the deposit accumulated in a well, pond or reservoir to enter into any stream.

(3) The State Government may, after consultation with, or on the recommendation of the State Board, exempt, by notification in the Official Gazette, any person from the operation of sub-section (1) subject to such conditions, if any, as may be specified in the notification and any condition so specified may by a like notification be altered, varied or amended.

Comments

The State Government is empowered to grant exemption to any person from the operation of sub-section (1).

Object of the Act.-The object of the Act enumerated is to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water.

Section 24 contains prohibition of use of stream or well for disposal of polluting matter.

Offences by companies.-The averments in the complaint show that the Distillery unit of the company has been discharging noxious trade effluents into the river Gomti and causing continuous pollution of the river. It was further averred in the complaint that samples of trade effluents were collected by the officers empowered in this behalf from the drain "just outside the plant inside the factory" and from the irrigation plant out of which the effluents were pumped into the river. When samples were analysed in the Industrial Toxicology Research Centre, Lucknow, it was revealed that the quality of effluents was beyond the standard laid down for the purpose. Therefore, it was alleged that the company has violated Sec. 24 of the Act and thereby the company is guilty of the offence under Sec. 43 of the Act. When an offence under the Act has been committed by a company every person who was in charge of and was responsible to the company for the conduct of the business of the company is also made guilty of the offence by the statutory creation. What is to be looked at during the stage of issuing process is whether there are allegations in the complaint by which the manager or directors of the company can also be proceeded against when the company is alleged to be guilty of the offence.

Cases under the Air or Water Pollution Act cannot be permitted to be lingered.-The cases under the Air or Water Pollution Act cannot be permitted to be lingered and pinged on at the whims and caprice of the factory owners who pollute air and water to the greatest detriment of the public interests. Therefore, as a matter of fact, the prosecution under the Pollution Act must be given utmost and "A" priority from day to day. This is the only way whereby the pollution law can be made meaningful, its objects realised and public is spared from the agony of contaminated atmosphere created by air and water pollution.

Proper complaint.- There was sufficient material before the learned Chief Judicial Magistrate to proceed under Sec. 33(3) of the Water (Prevention and Control of Pollution) Act and give directions to the accused.

Evolving a national policy for location of chemical and other hazardous industries in areas where population is scarce.- The Supreme Court in the case of *M.C. Mehta v. Union of India*, by its order dated 17th February, 1986 held that a national policy for location of chemical and other hazardous industries in areas where population is scarce and there is little hazard or risk to the community, be evolved and when hazardous industries are located in such area, every care must be taken to see that large human habitation does not grow around them. There should preferably be a green belt of 1 to 5 km. width around such hazardous industries.

Liability of occupier or officer in charge of actual operation of the caustic chlorine plant.- The Supreme Court in the case of *M.C. Mehta v. Union of India*, held that pending consideration of the issue whether the caustic chlorine plant should be directed to be shifted and re-located at some other place, the caustic chlorine plant should be allowed to be re-started by the management of Shriram, subject to certain stringent conditions.

The Supreme Court further held that the conditions formulated shall be strictly and scrupulously followed by Shriram and if at any time it is found that any one or more of these conditions are violated the permission granted will be liable to be withdrawn.

Personal liability of Chairman and Managing Director for payment of compensation in case of death or injury resulting on account of escape of chlorine gas.-The Supreme Court in the case of *M.C. Mehta v. Union of India*, in its order dated 17th February, 1986, formulated certain conditions relating to personal liability of Chairman and Managing Director for payment of compensation.

Supreme Court's suggestion for setting up Environment Courts.-In the case of *M.C. Mehta v. Union of India*, the Supreme Court has suggested the Government of India to set up Environment Courts.

Conditional order of discharge of effluent from the factory even into the lagoons.-In view of the undertaking given on behalf of the petitioner in the instant case, it was held that a complete stoppage of the discharge of effluents from the factory even into the lagoons shall take place forthwith and it will continue till all the lagoons have polythene layering. If the Board after the test of the trade effluents finds them to be above the prescribed standard, the petitioners shall take immediate steps to bring them within the prescribed limits within a reasonable time which shall not be more than six months, in any case from the date of the report of the Board and if after that time also the effluents which are discharged are above the standard prescribed, their discharge shall further stay till the Treatment Plant is completed and the prescribed standard is obtained.

Public interest litigation-Maintainability under Art. 32.-A petition under Art. 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceeding under Art. 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community. Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Art. 32, are entertained, it would amount to abuse of process of the Court, preventing speedy remedy to other genuine petitioners from Supreme Court. Personal interest cannot be enforced through the process of Supreme Court under Art. 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of Fundamental Rights by a group of persons or community which are not able to enforce their Fundamental Rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of Supreme Court under Art. 32 must approach Supreme Court for the vindication of the Fundamental Rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is the duty of Supreme Court to discourage such petitions and to ensure that the Course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of Supreme Court for personal matters under the garb of the public interest litigation.

25. Restrictions on new outlets and new discharges.-(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter, in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in Such form, contain such particulars and shall be accompanied by such fees as may be prescribed.]

(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) The State Board may -

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being

(i) in case referred to in CIs. (a) and (b) of sub-section (1) of Sec. 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order, and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process; or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such registers shall be conclusive proof that the consent was granted subject to such conditions.]

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and Secs. 27 and 30, -

(a) the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement; .

(b) the expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent; substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

Comments

Rule 32 of the Water (Prevention and Control of Pollution) Rules, 1975, provides for moving an application for obtaining the consent of the Central Board for bringing into use any new or altered outlet for the discharge of sewage or trade effluent into stream or well or to make any new discharge under Sec. 25 or for continuing an existing discharge or sewage or trade effluent under Sec. 26. Overriding public interest requires that even the District Inquiries Centre should not be bound by its promise and should be free to act unfettered by it.

Section 25-Provisions of:-Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 provides that no person shall, without the previous consent of the State Board establish any industry, operation or process, or any treatment and disposal system which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land. In the instant case, there is conscious of the statutory provisions which require them to obtain the necessary consent/ authorisation from the Pollution Control Boards concerned.

No equities could be claimed when action of the industry is contrary to the provisions of the Act.-After the amendment of sub-section (1) of Sec. 25 by Act 53 of 1988, the prohibition was extended even to 'establishment' of the industry or taking of steps for that purpose and, therefore, before consent of the Pollution Board is obtained, neither can the industry be established nor any steps can be taken to establish it. The industry ought not to have taken steps to obtain approval of plans by the Gram Panchayat, nor for conversion of land-use by the Collector, nor should it have proceeded with civil work in the installation of machinery. The action of the industry being contrary to the provisions of the Act, no equities can be claimed. The Appellate Authority erred in thinking that, because of the approval of plan by the Panchayat, or conversion of land-use by the Collector or grant of letter of intent by the Central Government, a case for applying principle of "promissory estoppel" applied to the facts of this case. There could be no estoppel against the statute. The industry could not, therefore, seek an NOC after violating the policy decision of the Government.

Action for penalty for contravention of provisions of Secs. 24, 25 and 26 when justified.-The Water Pollution Board-petitioner filed complaint under the provisions of Secs. 25,26 read with Secs. 43 and 44 of the Water (Prevention and Control of Pollution) Act, 1974; against the respondents. The allegation in the complaint was that under Sec. 24 of the Act, prohibition is prescribed for use of stream or a well for disposal of polluting matter and under Sec. 25 of the said Act, consent of the Board is necessary with regard to bring into use any new or altered outlet for the proposed discharge of trade or sewage effluent or waste into a stream in the Water Pollution Prevention Area. An application, therefore, was filed by the accused No. I-Textile Corporation of Marathawada Ltd. and consent was granted on certain conditions. The present complaint is filed by the petitioner-Board for breach of the conditions by the accused persons including the Textile Corporation of Marathawada Ltd. Sections 43 and 44 of the said Act provides for penalty for contravention of provisions of Secs. 24, 25 and 26. The Chief Judicial Magistrate, Nanded, passed the order to issue process against all the accused persons. Thereafter an application was filed to quash the proceedings and also to set aside the order issuing process on the ground that no sanction is obtained as provided under Sec. 197 of the Code of Criminal Procedure. The accused persons challenged the order regarding sanction under Sec. 197 of the Code of Criminal Procedure, by way of revision in the Sessions Court at Nanded. The Third Additional Sessions Judge allowed the revision filed by the accused persons and, directed that the order to issue process be quashed.

The present revisions is filed to challenge the order passed by the Third Addl. Sessions Judge in revision by which the order to issue process against the respondent accused persons is quashed. The High Court held that the approach of the Addl. Sessions Judge in this case is not justified. The Addl. Sessions Judge has proceeded on the footing that cognizance of offence alleged to have been committed by a public servant *simpliciter* cannot be taken into consideration unless sanction is obtained under the provisions of Sec. 197 of the Code of Criminal Procedure. The Judge lost sight of the fact that Sec. 197 of the Code of Criminal Procedure, does not provide for obtaining sanction in regard to each and every public servant but the protection is extended to only such public servants whose services are removable by the State Government or with the sanction of the State Government. The essential ingredients of Sec. 197 of the Code of Criminal Procedure was, therefore, lost sight of by the Judge. The Bombay High Court set aside the order passed by the Third Additional Sessions Judge quashing the order to issue process against the accused persons. The order of the Chief Judicial Magistrate, Nanded, is restored.

Failure to comply with the conditions-Effect.-A mere consent order issued by the State Board under Sec. 25 (2) did not entitle the applicant to discharge trade effluents and it was incumbent upon the applicants to comply with the conditions mentioned in the consent order, as also to put up the effluent treatment plants within the time prescribed in the consent order. Failure to comply with the requirement of putting up effluent treatment plant resulted in lapse of the consent. Therefore, mere fact that consent orders were obtained by the petitioners cannot insulate them against the requirement of putting up the effluent treatment plants and complying with the standards of tolerance limits prescribed.

Refusal of consent to continue industry.--coming to the order of the State Board refusing to grant consent, it was within the power and competence of the Board to refuse consent. The only statutory requirement was to state the reason in the order. It is stated in the order dated 30th April, 1991 that the site is located in a thickly populated area and there is public complaint against the factory. Both the reasons are factual in nature. From the averments in the writ application, it appears that the petitioner has not challenged the basis of the reasons except stating that the public complaint was only from Sri Bal Gopal Mishra, Ex. MLA of Kantabanji, whose protest was motivated. The reason stated cannot be said to be unreasonable or extraneous or not germane to the purpose of the statute, which is to prevent and to control water pollution and to maintain wholesomeness of water. Grant or refusal of consent in the very nature of thing is at the discretion of the State Board. It is not for the Court to go into the propriety of the reason and substitute its opinion in place of the decision of the State Board.³

26. Provisions regarding existing discharge of sewage or trade effluent. Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a [stream or well or sewer or on land] the provisions of Sec. 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under sub-section (2) of that section [shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette].

Comments

Section 26-Scope of - In the terms of Sec. 26 of the Water (Prevention and Control of Pollution) Act, 1974, the Calcutta tanneries are under an obligation to obtain consent from the Board before they are permitted to discharge the trade effluent into a stream or on land. In the present case, according to the affidavits filed by the Board very large number of Calcutta tanneries have not obtained the consent required under the Water (Prevention and Control of Pollution) Act, 1974. Therefore, such tanneries are liable to be prosecuted under the Water (Prevention and Control of Pollution) Act, 1974.

Complaint-Maintainability.-In the complaint, the complainant has not specified the place of sewage discharge as mentioned in the Act viz. either in stream or well or sewerage or on land, and therefore, without specifying the place of discharge the complaint for the offence under Sec. 26 of the Water (Prevention and Control of Pollution) Act is not maintainable. As Sec. 26 of the Act refers to the place of discharge like stream, well or sewerage or on land, unless these places are specified in the complaint, it cannot be taken that there is violation of the provisions of the Act and therefore, in the absence of any such place, the complaint with vague language, is not maintainable.

27. Refusal or withdrawal of consent by State Board.- [(1) A State Board shall not grant its consent under sub-section (4) of Sec. 25 for the establishment of any industry, operation or process, or treatment and disposal system or extension or addition thereto, or to the bringing into use of a new or altered outlet unless the industry, operation or process, or treatment and disposal system or extension or addition thereto, or the outlet is so established as to comply with the conditions imposed by the Board to enable it to exercise its right to take samples of the effluent.] [(2)A State Board may from time to time review -

[(a) any condition imposed under Sec. 25 or Sec. 26 and may serve on the person to whom a consent under Sec. 25 or Sec. 26 is granted a notice making any reasonable variation of or revoking any such condition;]

[(b) the refusal of any consent referred to in sub- section (1) of Sec. 25 or Sec. 26 or the grant of such consent without any condition, and may make such orders as it deems fit.]

(3) Any condition imposed under Sec. 25 or Sec. 26 shall be subject to any variation made under sub-section (2) and shall continue in force until revoked under that sub-section.

Comment

The State Board is empowered to review the refusal of any consent referred to in sub-section (1) of Sec. 25 or Sec. 26.

28. Appeals.-(1) Any person aggrieved by an order made by the State Board under Sec. 25, Sec. 26 or Sec. 27 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) An appellate authority shall consist of a single person or three persons, as the State Government may think fit, to be appointed by that Government.]

(3) The form and 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.

(5) If the appellate authority determines that any condition imposed, or the variation of any condition, as the case may be, was unreasonable, then, -

(a) where the appeal is in respect of the unreasonableness of any condition imposed, such authority may direct either that the condition shall be treated as annulled or that there shall be substituted for it such condition as appears to it to be reasonable;

(c) where the appeal is in respect of the unreasonableness of any variation of a condition, such authority may direct either that the condition shall be treated as continuing in force unvaried or that it shall be varied in such manner as appears to it to be reasonable.

Comments

Section 28 of the Water Pollution Act, 1974 provides for appeal.

The appellate authority is empowered to entertain the appeal even after the expiry of the period of thirty days.

Locus standi to file appeal and its maintainability.-In the instant case it was submitted for the petitioner that the respondent has no *locus standi* to file appeal before the Appellate Authority. It is a grievance of the respondent No.1 before the Appellate Authority that the consent order passed by the petitioner in respect of the respondent No.2-industry will adversely affect the petitioner and other persons of the area and he has a right of appeal. It is true that respondent No.1 was not a party to the consent order, but in case that order adversely affectes the petitioner, certainly, the appeal is maintainable. He was not a party to the order impugned before the Appellate Authority and copy of the same was not required to be sent to him. But, merely because he was not a party or that the copy of order was not sent to respondent No. 1, is hardly any ground to disallow him from filing the appeal.

This is a matter of pollution control and all the affected persons can file appeal under Sec. 28 of the Act, which is very specific and clear. Any person aggrieved by an order made by the Board under Sec. 25, Sec. 26 or Sec. 27, has a right of appeal. It is not the case of the petitioner that the order which has been challenged by respondent No.1 before the Appellate Authority does not fall under any or the provisions of Sec. 25, 26 or 27 of the Act. The water and air pollution are really a serious problems in the country and it is not unknown that the Courts are taking these matters very seriously. Public interest litigations are being filed in the Court in many matters where there is danger of water or air pollution by installation of industry. If this is the position then, how could respondent No.1 have been deprived of his right of pollution-free air and water.

A person who was not a party to the order has a right of appeal to the Appellate Authority though with the leave of the Appellate Authority, where the impugned order adversely affects him. This position of law is well settled. The petitioner, in case is aggrieved of the order of the Board, an appeal is permissible with the leave of the Appellate Authority.

29. Revision.-(1) The State Government may at any time either of its own motion or on an application made to it in this behalf, call for the records of any case where an order has been made by the State Board under Sec. 25, Sec. 26 or Sec. 27 for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it may think fit:

Provided that the State Government shall not pass any order under this sub-section without affording the State Board and the persons who may be affected by such order a reasonable opportunity of being heard in the matter.

(2) The State Government shall not revise any order made under Sec. 25, Sec. 26 or Sec. 27 where an appeal against that order lies to the appellate authority, but has not been preferred or where an appeal has been preferred such appeal is pending before the appellate authority.

30. Power of State Board to carry out certain works.-(1) Where under this Act, any conditions have been imposed on any person while granting consent under Sec. 25 or Sec. 26 and such conditions require such person to execute any work in connection therewith and such work has not been executed within such times as may be specified in this behalf, the State Board may serve on the person concerned a notice requiring him within such time (not being less than thirty days) as may be specified in the notice to execute the work specified therein.]

(2) If the person concerned fails to execute the work as required in the notice referred to in sub-section (1), then, after the expiration of the time specified in the said notice, the State Board may itself execute or cause to be executed such work.

(3) All expenses incurred by the State Board for the execution of the aforesaid work, together with interest, at such rate as the State Government may, by order, fix, from the date when a demand for the expense is made until it is paid, may be recovered by that Board from the person concerned, as arrears of land revenue, or of public demand.

31. Furnishing of information to State Board and other agencies in certain cases. -/(1) If at any place where any industry, operation or process, or any treatment and disposal system or any extension or addition thereto is being carried on, due to accident or other unforeseen act or event, any poisonous, noxious or polluting matter is being discharged, or is likely to be discharged into a stream or well or sewer or on land and, as a result of such discharge, the water in any stream or well is being polluted, or is likely to be polluted, then the person in charge of such place shall forthwith intimate the occurrence of such accident, act or event to the State Board and such other authorities or agencies as may be prescribed.]

(2) Where any local authority operates any sewerage system or sewage works, the provisions of sub-section (1) shall apply to such local authority as they apply in relation to the person in charge of the place where any industry or trade is being carried on.

Comments

This section requires the person in charge of place or industry to furnish the information of the discharge of poisonous or polluting matter into a stream or well due to accident or other unforeseen act.

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

32. Emergency measures in case of pollution of stream or well.-(1) Where it appears to the State Board that any poisonous, noxious or polluting matter is present in [any stream or well or on land] by reason of the discharge of such matter in such [stream or well or on such land] or has entered into that stream or well due to any accident or other unforeseen act or event, and if the Board is of opinion that it is necessary or expedient to take immediate action, it may for reasons to be recorded in writing, carry out such operations as it may consider necessary for all or any of the following purposes, that is to say,

(a) removing that matter from the [stream or well or on land] and disposing it of in such manner as the Board considers appropriate;

(b) remedying or mitigating any pollution caused by its presence in the stream or well;

(c) issuing orders immediately restraining or prohibiting the person concerned from discharging any poisonous, noxious or polluting matter [into the stream or well or on land], or from making insanitary use of the stream or well.

(2) The power conferred by sub-section (1) does not include the power to construct any works other than works of a temporary character which are removed on or before the completion of the operation.

33. Power of Board to make application to Courts for restraining apprehended pollution of water in streams or wells.-(1) Where it is apprehended by a Board that the water in any stream or well is likely to be polluted by reason of the disposal or likely disposal of any matter in such stream or well or in any sewer or on any land, or otherwise, 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 the person who is likely to cause such pollution from so causing.]

(2) On receipt of an 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 polluting the water in any stream or well, it may in that order,

(i) direct the person who is likely to cause, or has caused the pollution of the water in the stream or well, to desist from taking such action as is likely to cause pollution or/as the case may be, to remove from such stream or well, such matter, and

(ii) authorise the Board, if the direction under Cl. (i) (being a direction for the removal of any matter from such stream or well) is not complied with by the person to whom such direction is issued, to undertake the removal and disposal of the matter in such manner as may be specified by the Court.

(4) All expenses incurred by the Board, in removing any matter in pursuance of the authorisation under Cl. (ii) of sub-section (3) or in the disposal of any such matter may be defrayed out of any money obtained by the Board from such disposal and any balance outstanding shall be recoverable from the person concerned as arrears of land revenue or of public demand.

Comments

Section 33 of the Water Pollution Act, 1974, relates to the contributions by Central Government.

Scope.- This section gives powers to the Board to file an application to a Court not inferior to a Presidency Magistrate or a Magistrate of the First Class, for restraining a person who was likely to cause pollution as mentioned in the said section from so causing it. Non-compliance with the directions given by the Court under the said Sec. 33 was made an offence punishable under Sec. 41 (2) of the Act. Under the provisions of Sec. 33, it was a validly constituted Board which alone could file an application under that section. In case, at the date of the application, there was no such validly constituted Board and, therefore, the said application was not maintainable.

Justification of directions under Sec. 33.-Though the name of the river (or stream or well) does not appear in the complaint or the special application under Sec. 33 of the Water (Prevention and Control of Pollution) Act, there was sufficient material before the learned Chief Judicial Magistrate to

proceed under Sec. 33 (3) of the Water (prevention and Control of Pollution) Act, and give directions to the accused; in any event the directions given are interlocutory in nature and liable to be set aside if the accused persons satisfy the Chief Judicial Magistrate to refrain from making them continue till the completion of the trial. There is no force in the argument that the learned Chief Judicial Magistrate has already pre-judged the issue. He has simply proceeded under Sec. 33 of the Water (Prevention and Control of Pollution) Act, in pursuant to a special application in that regard by the complainant of which there was material before him.

Dismissal of the application under Sec. 33 of the Water (Prevention and Control of Pollution) Act, 1974-For non-appearance of the complainant-Is a final order-No provision to review or recall.
-Dismissal of the application under Sec. 33 of the Water (Prevention and Control of Pollution) Act, 1974 filed by the Water Pollution Board for the non-appearance of the complainant is a judicial order which is a final one so far as that Court is concerned. Recall of a case disposed of by the Magistrate by a judicial order is not permissible under the Code of Criminal Procedure. So far as the accused are concerned, dismissal of the complaint for non-appearance of the complainant is a final order and after passing that order the Magistrate becomes *functus officio* and had no power to review or recall that order on any of the ground whatsoever because no review petition can be entertained as there is no provision in the Code of Criminal Procedure enabling the Criminal Court to review its order. There is no bar for filing the second complaint though there are certain limitations to it. The complainant if so likes, can file a second complaint provided it falls within the limitation prescribed.

Proceeding under Sec. 33 of the Act are obviously legal proceedings under the Act.- The proceedings under Sec. 33 of the Act are obviously legal proceedings under the Act. It is thus clear that the sample must be lifted in accordance with the provisions of Sec. 21 of the Act when only its analysis could be admissible in evidence in the proceedings under Sec. 33 of the Act. For taking action under Sec. 33 which is a normal provision in which the lifting of samples is involved that the provision of Sec. 21 is not operative is wholly fallacious. Section 33 (1) only provides for the passing of a restraint order by the Court against the Company for ensuring the stoppage of apprehended pollution of water in the stream in which the trade effluents of the Company are discharged. For the non-erection of the treatment plant the Board has the power to launch prosecution against the defaulting company under the provisions of Sec. 41 of the Act. Therefore, the learned Magistrate was not right in coming to the conclusion that though the provisions of Sec. 21 were applicable to the case, yet the sample was not required to be divided into two parts and got analysed as per the provision of sub-section (5) of Sec. 21 because in his view no appearance was put in on behalf of the company before the officials of the Board at the time of the taking of the sample by them.

Sections do not overlap but are complementary to each other.-The Water (Prevention and Control of Pollution) Act, 1974, is different from the Air (Prevention and Control of Pollution) Act, 1981. The two legislations are complementary to each other, and are intended to function side by side in their own parallel channels. They do not even overlap.

Doctrine of implied repeal-Rules of interpretation.- The doctrine of implied repeal is based on the theory that the Legislature, which is presumed to know the existing law, did not intend to create any confusion by retaining conflicting provisions and, therefore, when the Court applies the doctrine, it does no more than give effect to the intention of the Legislature by examining the scope and the object of the two enactments and by a comparison of their provisions.⁴ A repeal by implication will not be inferred merely from something contained in the preamble of the Act.

[33-A. Power to give directions.-Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, 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 of regulation of any industry, operation or process; or (b) the stoppage or regulation of supply of electricity, water or any other service.]

Comments

Natural justice.- Applying facts to law there is serious flaw in "decision making process" and decision is taken on extraneous consideration and arbitrarily. Accordingly orders as assailed, are infirm. The grounds stated in show-cause notices and basis of orders are not quite same, and these seem to be distant neighbours. There is thus, denial of principles of natural justice and consequent violation of in built procedural safeguards.

Compliance o/the direction.-According to the Board, the seepage from the unlined lagoons in which effluent has been stored, joins the drain and ultimately reaches river Bhavani thereby polluting the river water. This is a serious matter and shows that pollution is continuing because of actions of respondent No.6 and remedial steps have not been taken to prevent pollution and contamination of the river water. Respondent No.6, has obviously failed to arrest the unabated pollution, which has become a health hazard and environmental enemy. Enough time has been given to the Industry (respondent No.6) to take the remedial steps. Therefore, no other option is left but to direct the closure of the operation of the Industry (respondent No.6) on or before 2nd February, 1998. The Supreme Court has further directed that the Tamil. Nadu Pollution Control Board shall submit a report regarding compliance of this direction by the Industry within ten days.

CHAPTER VI FUNDS, ACCOUNTS AND AUDIT

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

35. Contributions by State Government.- The State Government may, after due appropriation made by the Legislature of the State by law in this behalf, make in each financial year such contributions to the State Board as it may think necessary to enable that Board to perform its functions under this Act.

36. Fund of Central Board.-(1) The Central Board shall have its own fund, and all sums which may, from time to time, be paid to it by the Central Government and all other receipts (by way of gifts, grants, donations, benefactions [fees] 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) The Central Board may expend such sums as it thinks fit for performing its functions under this Act, [and, where any law for the time being in force relating to the prevention, control or abatement of air pollution provides for the performance of any function under such law by the Central Board, also for performing its functions under such law] and such sums shall be treated as expenditure payable out of the fund of that Board.

Comments

This section empowers the Central Board to expend such sums which it thinks fit for performing its functions under this Act.

37. Fund of State Board.-(1) The State Board shall have its own fund, and the sums which may, from time to time, be paid to it by the State Government and all other receipts (by way of gifts, grants, donations, benefactions [fees] 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) The State Board may expend such sums as it thinks fit for performing its functions under this Act, 2[and, where any law for the time being in force relating to the prevention, control or abatement of air pollution provides for the performance of any function under such law by the State Board, also for

performing its functions under such law] and such sums shall be treated as expenditure payable out of the fund of that Board.

Comment

Section 37 of the Water Pollution Act 1974, relates to the fund of State Board. **[37-A. Borrowing powers of Board.** -A Board may, with the consent of, or in accordance with, the terms of any general or special authority given to it by the Central Government or, as the case may be, the State Government, borrow money from any source by way of loans or issue of bonds, debentures or such other instruments, as it may deem fit, for the performance of all or any of its functions under this Act.

38. 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, and copies thereof shall be forwarded to the Central Government or as the case may be, the State Government.

Comment

Section 38 of the Water Pollution Act 1974, relates to the budget.

[39. 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 from 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.]

Comment

Section 39 of the Water Pollution Act, 1974, relates to the annual report.

40. Accounts and audit.-(1) Every Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government or, as the case may be, the State Government.

(2) The accounts of the Board shall be audited by an auditor duly qualified to act as an auditor of companies under Sec. 226 of the Companies Act, 1956 (1 of 1956).

(3) The said auditor shall be appointed by the Central Government or, as the case may be, the State Government on the advice of the Comptroller and Auditor-General of India.

(4) Every auditor appointed to audit the accounts of the Board under this Act shall have the right to demand the production of books, accounts, connected vouchers and other documents and 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.

(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.

Comment

Section 40 of the Water Pollution Act, 1974, relates to "accounts and audit". Rule 25 of the Water (Prevention and Control of Pollution) Rules, 1975, provides that the annual statement of accounts of the Central Board shall be in Forms V to IX of the Rules.

CHAPTER VII PENALTIES AND PROCEDURE

[41. Failure to comply with directions under sub-section (2) or sub-section (3) of Sec. 20, or orders issued under Cl. (c) of sub-section (1) of Sec. 32 or directions issued under sub-section (2) of Sec. 33 or Sec. 33-A.-(1) Whoever fails to comply with any direction given under sub-section (2)" or sub-section (3) of Sec. 20 within such time as may be specified in the direction shall, on conviction, 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 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) Whoever fails to comply with any: order issued under Cl. (c) of sub-section (1) of Sec. 32 or any direction issued by a Court under sub-section (2) of Sec. 33 or any direction issued under Sec. 33-A shall, in respect of each such failure and on conviction, 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.

(3) If the failure referred to in sub-section (2) continues beyond a period of one year after the date of conviction, the offender shall, on conviction, 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.]

Comments

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

Taking of cognizance of offences.-All the three Acts viz. the Water (Prevention and Control of Pollution) Act, 1974, the Environment (Protection) Act, 1986 and the Air (Prevention and Control of Pollution) Act, 1981, contemplate the taking of the cognizance of the offences by the Court. Thus, a person guilty of contravention of provisions of any of the three Acts which constitutes an offence has to be prosecuted for such offence and in case the offence is found proved then alone he can be punished with imprisonment and fine or both. The *sine qua non* for punishment of Imprisonment and fine is a fair trial in a competent Court. The punishment of imprisonment or fine can be imposed only after the person is found guilty.

42. Penalty 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, or

(b) obstructs an" 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 any officer or other employee of the Board any information required by him for the purpose of this Act, or

(e) fails to intimate the occurrence of any accident or other unforeseen act or event under Sec. 31 to the Board and other authorities or agencies as required by that section, or

(f) in giving any information which he is required to give under this Act, knowingly or wilfully makes a statement which is false. in any material particular, or

(g) for the purpose of obtaining any consent under Sec. 25 or Sec. 26 knowingly or wilfully makes a statement which is false in any material particular, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to [ten thousand rupees] or with both.

(2) Where for the grant of a consent in pursuance of the provisions of Sec. 25 or Sec. 26 the use of a meter or gauge or other measure or monitoring device is required and such device is used for the purposes of those provisions, any person who knowingly or wilfully alters or interferes with that device so as to prevent it from monitoring or measuring correctly shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to [ten thousand rupees or with both.

Comment

Section 42 of the Water Pollution Act, 1974, provides penalty for certain acts.

Sub-section (2) provides for the punishment consisting of imprisonment up to three months or of fine up to one thousand rupees or both for wilful alteration or interference with the device used, *i.e.* meter, gauge monitoring device for the grant of a consent in pursuance of the provisions of Sec. 25 or Sec. 26.

43. Penalty for contravention of provisions of Sec. 24.-Whoever contravenes the provisions of Sec. 24 shall 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.

Comment

Necessity of sanction. -Cognizance can be taken either on a complaint filed by the State Board itself, or with the previous sanction of the State Board if the complaint is not filed by the State Board itself. In the present case when the complainant is the State Board itself, the question of sanction does not arise.

44. Penalty for contravention of Sec. 25 or Sec. 26.-Whoever contravenes the provisions of Sec. 25 or Sec. 26 shall 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.

Comments

Withdrawal of the complaint for the offence under Sees. 43 and 44.-Mere mention in an application to withdraw the complaint, or, the same be dismissed as withdrawn, would not be sufficient to hold that the said application tantamounts to request for withdrawal of the prosecution launched against the accused-petitioner by the complainant Board.

Want of sanction for prosecution.-In the instant case the complaint launched against the applicants being without sanction of the State Government as required by Sec. 197 of the Code of Criminal Procedure, no cognizance can be taken against them and therefore, the application of Shri G.D. Misra, Vice President and Shri Raghunath Sahai Puri, President of the committee is bad in the eyes of law and they are, therefore, discharged for want of sanction under Sec. 197 of the Code of Criminal Procedure.

Plea for sanction under Sec. 197 of the Code of Criminal Procedure when not justified. - Sections 43 and 44 of the Act provide for penalty for contraventions of provisions of Secs. 24, 25, and 26. The Chief Judicial Magistrate, Nanded, passed the order to issue process against all the accused persons. Thereafter an application was filed to quash the proceedings and also to set aside the order issuing process on the ground that no sanction is obtained as provided under Sec. 197 of the Code of Criminal Procedure. The accused persons challenged the order regarding sanction under Sec. 197 of the Code of Criminal Procedure by way of revision in the Sessions Court at Nanded. The Third Additional Sessions Judge allowed the revision filed by the accused persons and directed that the order to issue process be quashed. The present revision is filed to challenge the order passed by the Third Additional Sessions Judge in revision by which the order to issue process against the respondent-accused persons is quashed. The approach of the Additional Sessions Judge in the case is not justified. The Additional Sessions Judge has proceeded on the footing that cognizance of offence alleged to have been committed by a public servant *simpliciter* cannot be taken into consideration unless sanction is obtained under the provisions of Sec. 197 of the Code of Criminal Procedure. The Judge lost sight of the fact that Sec. 197 of the Code of Criminal Procedure, does not provide for obtaining sanction in regard to each and every public servant but the protection is extended to only such public servants whose services are removable by the State Government. The essential ingredients of Sec. 197 of the Code of Criminal Procedure was, therefore, lost sight of by the learned Judge.

The Court set aside the order passed by the Third Sessions Judge quashing the order to issue process against the accused persons. The order of the Chief Judicial Magistrate, Nanded, is restored.

45. Enhanced penalty after previous conviction.-If any person who has been convicted of any offence under Sec. 24 or Sec. 25 or Sec. 26 is again found guilty of an offence involving a contravention of the same provision, he shall, on the second and on every subsequent conviction, be punishable with imprisonment for a term which shall not be less than 2[two years] but which may extend to seven years and with fine:

Provided that for the purpose of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

Comment

This section provides for taking into account of the previous conviction for the contravention of Sec. 24 or Sec. 25 or Sec. 26, since it provides enhanced penalty therefor. But the previous conviction should not have been more than two years before the commission of the offence which is the subject of punishment.

[45-A. Penalty for contravention of certain provisions of the Act. Whoever contravenes any of the provisions of this Act or fails to comply with any order or direction given under this Act, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment which may extend to three months or with fine Which may extend to ten thousand rupees or with both, and in the case of a continuing contravention or failure, with an additional fine which may extend to five thousand rupees for every day during which such contravention or failure continues after conviction for the first such contravention or failure.]

46. Publication of names of offenders.-If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the Court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such newspaper or in such other manner as the Court may direct and the expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.

47. 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 in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with 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.

Comments

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

Under this section, the director or manager is also liable to be punished if the offence has been committed with his consent or connivance.

Definitions-Company.- The expressions, "company", "existing company", "private company" and "public company", are defined in Sec. 3 of the Companies Act, 1956.

Director.- The word "director" has been defined in Sec. 2(13) of the Companies Act, 1956.

Manager.- The word "manager" has been defined in Sec. 2 (24) of the Companies Act, 1956.

Managing agent.- The words "managing agent" have been defined in Sec. 2 (25) of the Companies Act, 1956.

Managing Director.-- The words "managing director" have been defined in Sec. 2 (26) of the Companies Act, 1956.

Officer.- The word "officer" has been defined in Sec. 2 (30) of the Companies Act, 1956.

Secretary.-The word "secretary" has been defined in Sec. 2 (45) of the Companies Act, 1956.

Firm.- The firm being a partnership firm comes under the definition of the company. 1 The expression "firm" has been defined in Sec. 4 of the Indian Partnership Act, 1932.

Offence committed by the firm.-When the firm is accused of an offence an opportunity must be given to defend itself and for that purpose proper representation of the firm will be necessary. The company, meaning here the firm, is a distinct legal entity and therefore separate charge must be framed. When there was no charge or notice to the firm that it would be tried there can be no question of conviction against the firm.

"Act of firm".-The expression "act of firm" has been defined in Sec. 2 (a) of the Indian Partnership Act, 1932.

Where there was nothing on the record to show that the Plant Superintendent (sole accused) was a person responsible or in charge of or responsible to the manufacture or sale of Coca-Cola, it was held that he was entitled to the benefit of doubt.

In *Municipal Corporation of Delhi v. Bhagwan Dass*, the defence taken by the accused was that he had severed his connections with the firm and that defence he had failed to establish. It was held that there was no question of the offence having been committed without his knowledge or that he had exercised all due diligence for the prevention of such offence.

Liability of a partner of firm.- A Division Bench of the Delhi High Court in *M.C.D. v. Krishan Chand*,³ has held that where a company has been acquitted "whatever the reasons for the acquittal may be, and as an inevitable concomitant thereof, it is not possible to deem any person to be guilty of the offence because of his being in charge of the business of the company at the material time."

Prosecution of manager in the absence of the proprietor.-Withdrawal of the prosecution against the proprietors of the firm, is not a ground for dropping of the proceedings against the manager of the firm.

Prosecution against director and secretary of company.-In a case it has been said in the complaint that the accused persons are knowingly and intentionally discharging their polluted trade effluent without obtaining the consent of the Board and they are Directors and Secretary of the company. There is clear allegation against them. So they can be prosecuted unless they proved that the offence was committed without their knowledge of that they exercised all due diligence to prevent the commissioning of such offence.

Prosecution against the person incharge of the Hospital-Whether Sec. 47 is applied.-It is held that authorisation to prosecute the persons incharge of Medwin Hospital would include the authorisation to prosecute Medwin Hospital. It is not as if only persons incharge of Medwin Hospital could be prosecuted and not the Hospital itself. After all, the Hospital itself in the event of the prosecution establishing the case, could not be punished under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and in that context the expression in the Board's resolution to prosecute the person in charge of Medwin Hospital is required to be construed. Courts cannot resort to have such hyper-technical view as suggested by the learned senior counsel to shoot at sight the prosecution even at the threshold. Such a course is not permissible.

Liability of co-operative society and its secretary. - A co-operative society and the secretary can be separately convicted.

Natural persons are made vicariously liable for an offence when it is established that the offence was committed by a company or firm and these persons had some nexus with the crime either because of their connivance with or due to their criminal negligence which had resulted in its commission.

Whether a private corporation would fall within scope and ambit of Art. 12 of the Constitution.-The Supreme Court in the case of *M.C. Mehta v. Union of India*, held that it is not correct to say that in India once a corporation is deemed to be "authority".

Section does not necessarily mandate the incorporation of the words "was in charge of and was responsible to the company for the conduct of the business of the company".-Section 47 (1) does not necessarily mandate the incorporation of the words, 'was in charge of and was responsible to the company for the conduct of the business of the company" in all complaints against the Chairman, the Managing Director or the General Manager of the company for offences in contravention of the Act.

In the facts of the present case, it is not *specified in* the complaint itself whether the respondents are arrayed under sub-section (1) or sub-section (2) of Sec. 47 of the Act. However, there are clear averments in the complaint alleging that the accused including the petitioners are in charge of and responsible for the conduct of the business of the company. It is also alleged that while the treatment plants of the company were never working at the time of monitoring inspection visits, the accused, which term includes the petitioners, used to take shelter under one or the other fabricated pretexts, and that the accused had failed to provide effective functioning of the treatment plants which has resulted into hazardous and dangerous water pollution. It is alleged in the complaint that for a considerable time the accused had been evading the implementation of the conditions of the consent order violating the provisions of Sec. 25 of the Act. Thus, it cannot be said that no case is made out or that there is no material in the complaint implicating the petitioners to which the learned Magistrate could have adverted to before issuing the process, nor can it be said that the process has been issued against the petitioners mechanically or without application of mind. This is not a case where motive of harassment or abuse of process of Court is attributed to the complainant. As seen earlier, considering the averments made in the complaint and the statement recorded below it, it would be reasonable that the case is proceeded for a full fledged trial. There is no fundamental legal defect or an absolute lack of material against the petitioners.

Whether Sec. 47 (2) inflexibly mandate the incorporation of the allegation that the offence was committed with the consent or connivance or was attributable to the neglect on the part of the Chairman or Managing Director or General Manager of the company in the complaint itself -Section 47 (2) does not mandate the incorporation that the offence was committed with the consent or connivance or was attributable to the neglect on the part of the Chairman, Director or General Manager of the company in the complaint itself.

Director of company or partner of a firm can be tried for the offence committed by the company.-A bare reading of Sec. 47 makes it manifest that besides persons who at the time the offence was committed were in charge and were responsible to the company for the conduct of the business of the company, the company as well is to be deemed to be guilty: of the offence and be liable to be proceeded against and punished accordingly. The section, as it appears is comprehensive enough to bring in and take out people dependent on the facts and circumstances of each case. But to say that being with no director of a company or partner of a firm can be tried for the offence committed by the company apparently does not appeal. In all these complaints, when the direction of the Board was not obeyed to obtain consent conceived of under Secs. 25 and 26 of the said Act, requisite notices were sent to all concerned inclusive of the petitioners to do the needful as required under the law. It is only on the failure thereof that these complaints have been filed.

Strict vicarious criminal liability is somewhat of an exception to the general rule of direct personal culpability.-Section 47 provides specially for offences by companies. A plain reading of Sec. 47 of the Water (Prevention Control of Pollution) Act, would indicate that this incorporates the stringent principle of strict vicarious criminal liability of persons who are responsible to the company for the conduct of its business or its responsible office-bearers like a director, manager, secretary, etc. for all offences committed by a company. Now, strict vicarious criminal liability is somewhat of an exceptions to the general rule of direct personal culpability and is a modern development through statutory provisions. Nevertheless steeped as Courts are in the basic principle of criminal jurisprudence that *mens rea* must be an ingredient of an offence and both the act and intent must concur to constitute a crime, it needs some effort to accept whole-heartedly the legislative mandate of vicarious criminality even in the absence of either of the aforesaid ingredients.

Vicarious liability discussed -It would be noticed that sub-section (1) of Sec. 47 is much wider than sub-section (4) of Sec. 17 of the Prevention of Food Adulteration Act, 1954, which fell for consideration in *I.K. Nangia v. State (Delhi Administration)*. On a combined reading of the provisions contained in sub-sections (1) and (2), there is no doubt whatever that the Chairman, Vice-Chairman, Managing Director and Members of the Board of Directors of Messrs. Modi Industries Ltd., the company owning the industrial unit. M/s. Modi Distillery could be prosecuted as having been in charge of and responsible to the company for the business of the industrial unit M/s. Modi Distillery owned by it and could be deemed to be guilty of the offence with which they are charged.

Measure of liability of an enterprise engaged in a hazardous or inherently dangerous industry.-The Supreme Court in the case of *M.C. Mehta v. Union of India*, dealt with a question relating to measure of liability of an enterprise which is engaged in a hazardous or inherently dangerous industry.

What amounts to neglect.-In Criminal Miscellaneous Application No. 3277 of 1988 decided on 24th May, 1985 the Allahabad High Court held that the expression "neglect" in sub-section (2) of Sec. 47 is not to be interpreted in a narrow sense. What would amount to "neglect" in a given case should depend on a variety of factors and circumstances. The expression "neglect" in relation to contravention of the provisions of Secs. 25 and 26 of the Act should be taken to have a wider connotation.

Stagnation of water in the main stream.-In the under-noted case the petitioner Gram Panchayat is seeking a writ of mandamus directing the Punjab Water Pollution Board respondent No. 1, to restrain respondents Nos. 2 to 5 from discharging the polluted/untreated water and trade effluents into the main drain which passes through the village of Gram Panchayat and further to restrain respondents Nos. 2 to 5 from discharging of such polluted/untreated water and trade effluents till the said respondents comply with the requirements as per provisions of the Water (Prevention and Control of Pollution) Act, 1974. It has been stated that there is no stagnation of water in the main drain. In this situation, it cannot be said that the same is injurious to the health of the residents of the village and detrimental of the crops as is alleged by the petitioner.

48. Offences by Government Departments.-Where an offence under this Act has been committed by the 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.

Comments

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

Under this section the head of the Department of Government cannot be held guilty of the offence if the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

49. *Cognizance of offences.*-1[(1) No Court shall take cognizance of any offence under this Act except on a complaint made by

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

(b) any person who has given notice 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 first class shall try any offence punishable under this Act] .

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

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

3[(3)] Notwithstanding anything contained in 4[Sec. 29 of the Code of Criminal Procedure, 1973 (2 of 1974)/ it shall be lawful for any 4[Judicial Magistrate of the first class or for any Metropolitan

Magistrate] to pass a sentence of imprisonment for a term exceeding two years, or of fine exceeding two thousand rupees on any person convicted of an offence punishable under this Act

Comments

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

Only the Court of Metropolitan Magistrate or a Judicial Magistrate of the first class or any Court superior to that can take the cognizance of the offence.

Validity of delegation of power of sanctioning prosecution by the State Board to the Chairman.-The Legislature intended to authorise the State Board to delegate its powers and duties to be performed under the Act to its Chairman. Therefore, power under Sec. 49 (1) to prosecute or to give previous sanction to prosecute any person for offences under the Act can be delegated by the State Board to the Chairman under Sec. 11-A of the Act. In the present case, the order of sanction to prosecute is given by the Chairman and it cannot be said that it is illegal or without authority and the Court can take cognizance of the complaint

Necessity of second sanction under Sec. 197 of the Code of Criminal Procedure.-The provisions for sanction under Sec. 197 of the Code of Criminal Procedure are meant to protect certain categories of public servants, against false, frivolous and *malafide* criminal cases. Therefore, the section requires that before the Magistrate takes cognizance of any offence-alleged to have been committed by such a public servant, the State Government or a competent officer authorised on its behalf should apply his mind to the facts and circumstances of the case, the material collected during investigation/ enquiry and be satisfied that the case is not frivolous one. This provision acts as a check on initiation of criminal cases which ordinarily can be set in motion by any person by lodging a report with a police or by filing a complaint before the Magistrate. Reading Sec. 49 of the Act, It appears that this purpose is amply served by the provisions in the section since the Board statutorily constituted comprising of experienced knowledgeable and high ranking officers with expert knowledge in the field is to scrutinize every case before a complaint is filed before the Magistrate. Therefore, in a case where Sec. 49 has been complained with, it is not necessary to insist upon a second sanction from the State Government before proceeding in the criminal case. Accepting the contrary view will cause unnecessary restriction on the jurisdiction of the competent Court to take cognizance of offence committed within its territorial limits and may throttle *bonafide* criminal prosecution.

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

Comments

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

Public servant.-Section 21 of the Indian Penal Code describes the term by enumeration. The term may generally be defined to signify any person duly appointed and invested with authority to administer any part of the executive power of the Government or to execute any other public duty imposed by law; whether it be judicial, ministerial or mixed, "other person to whom anI, cause or matter has been referred for decision or report": The "cause or matter" be one in controversy. "Every officer whose duty it is as such officer to take, etc., property", means a person employed to exercise to some extent defegated function of Government and he must be either himself armed with some authority of a representative character, or his duties must be immediately auxiliary to those of someone who is so armed.³ An officer in the service or pay of Government within the terms of Sec. 21, Penal Code, is one who is appointed to some office for the performance of some public duty.⁴When a person who has no general power to execute a judicial process is authorised by a Court to execute such a process, he is "specially authorised within the meaning of the section.s The Port Trust Estate does not fall within the term village, town or district as used in Cl. 2 of this section.

Gaon Pradhan-If public servant.- There is no manner of doubt that the *Pradhan of Gram Sabha* is an officer within the meaning of the 12th Clause of Sec. 21LP.C. A *Pradhan* can be deemed to be an officer in the service of the local authority.

Not public servant.-The Chairman of Co-operative Credit Society would not appear to have been a "public servant".² Secretary of the Co-operative Credit Society registered under the Andhra Pradesh Co-operative Societies Act is not a "public servant" within the meaning of Sec. 21 and Sec. 409, LP.C.³ The President of a Co-operative Society is not a public servant within the meaning of the expression in the Penal Code.⁴ Nor its secretary.⁵ A corporate body cannot be a public servant within the meaning of Sec. 21 of the Indian Penal Code.⁶ A member of the Indian Administrative Service, whose services are placed at the disposal of an organisation which is neither a local-authority, nor a corporation established by or under a Central, Provincial or State Act, nor a Government company, by the Central Government or the Government of a State cannot be treated to be a public servant within the meaning of Clause twelfth of Sec. 21 of the Indian Penal Code for purposes of Sec. 197 of the Code of Criminal Procedure, 1973.⁷ The Sanitary Inspector of a Panchayat Board is not a public servant within the contemplation of this section. The fact that he is authorised by the President of the Panchayat Board to collect fees for sealing animals before slaughter would not make him a public servant.⁸ It was held in a Calcutta case that there was nothing in the Calcutta Municipal Corporation Act (Act IV of 1877) to suggest that the Corporation was a "public servant".⁹

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Recording of statement under Sec. 200, Cr.P.c., before issue of summons. Under Sec. 59 of the Water (Prevention and Control of Pollution) Act, 1974, all officers of the Pollution Board are public servants. Section 200, Cr.P.c., says that when a complaint is made in writing by a public servant, the Magistrate need not examine the complainant and the witnesses.¹⁰

CHAPTER VIII

" MISCELLANEOUS

51. **Central Water Laboratory.**-(1) The Central Government may, by notification in the Official Gazette,
 (a) establish a Central Water Laboratory; or
 (b) specify any laboratory or institute as a Central Water Laboratory, to carry out the functions entrusted to the Central Water Laboratory under this Act.

(2) The Central Government may, after consultation with the Central Board, make rules prescribing-
 (a) the functions of the Central Water Laboratory;
 (b) the procedure for the submission to the said laboratory of samples of water or of sewage or trade effluent 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.

52. **State Water Laboratory.**-(1) The State Government may, by notification in the Official Gazette,
 (a) establish a State Water Laboratory; or
 (b) specify any laboratory or institute as a State Water Laboratory, to carry out the functions entrusted to the State Water Laboratory under this Act.

(2) The State Government may, after consultation with the State Board, make rules prescribing
 (a) the functions of the State Water Laboratory;
 (b) the procedure for the submission to the said laboratory of samples of water or of sewage or trade effluent 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.

Comment

Section 52 of the Water Pollution Act, 1974, deals with State Water Laboratory, whereas Sec. 28 of the Air Pollution Act, 1981 relates to State Air Laboratory and Sec. 12 of the Environment (Protection) Act, 1986 deals with "Environmental Laboratories",

53. Analysts.-(1) The Central Government may, by notification in the Official Gazette, appoint such person as it thinks fit and having the prescribed qualifications to be Government analysts for the purpose of analysis of samples of water or of sewage or trade effluent sent for analysis to any laboratory established or specified under sub-section (1) of Sec. 51.

(2) 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 water or of sewage or trade effluent sent for analysis to any laboratory established or specified under sub-section (1) of Sec. 52.

(3) Without prejudice to the provisions of sub-section (3) of Sec. 12, the Central Board, or, as the case may be, the State Board may, by notification in the Official Gazette, and with the approval of the Central Government or the State Government, as the case may be, appoint such person as it thinks fit and having the prescribed qualifications to be Board Analysts for the purpose of analysis of samples of water or of sewage or trade effluent sent for analysis to any laboratory established or recognised under Sec. 16, or, the case may be, under Sec. 17.

Comment

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

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

Comments

The section deals with the evidentiary value of the document purporting to be a report signed by a Government Analyst.

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

55. Local authorities to assist.-All local authorities shall render such help and assistance and furnish such information to the Board as it may require for the discharge of its functions, and shall make available to the Board for institution and examination such records, maps, plans and other documents as may be necessary for the discharge of its functions.

56. Compulsory acquisition of land for the State Board.-Any land required by a State Board for the efficient performance of its functions under this Act shall be deemed to be needed for a public purpose and such land shall be acquired for the State Board under the provisions of the Land Acquisition Act, 1894 (1 of 1894), or under any other corresponding law for the time being in force

Comment

The State Board is empowered to acquire any land for the efficient performance of its functions, and such purpose shall be treated as "public purpose".

57. Returns and reports.-The Central Board shall furnish to the Central Government, and a State Board shall furnish to the State Government and to the Central Board such reports, returns, statistics, accounts and other information with respect to its fund or activities as that Government, or, as the case may be, the Central Board may, from time to time, require.

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

Comments

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

bar the jurisdiction of Civil Court.

This section ousts the jurisdiction of the Civil Court to grant injunction; against the action taken or to be taken in pursuance of any power conferred by or under the Act.

Whether Sec. 58 prohibits the jurisdiction of a Civil Court to entertain any suit or proceeding restraining a party to cause pollution.- The preamble says that the Act is to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water for the establishment and with a view to carrying out the purpose aforesaid, statutory Boards are established. Section 58 does not prohibit the jurisdiction of a Civil Court to entertain any suit or proceeding restraining the defendant to cause pollution.¹

59. Protection of action taken in good faith.-No suit or other legal proceedings shall lie against the Government or any officer of Government or any member or officer of a Board in respect of anything which is in good faith done or intended to be done in pursuance of this Act or the rules made thereunder.

Comments

This section seeks to exempt the Government, officers of Government, members and officers of the Board from the legal proceedings in respect of anything done or intended to be done in good faith and in pursuance of the Act.

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

Good faith--Meaning of.-Nothing shall be deemed to be done in good faith which is not done with due care and attention. ¹

The words "good faith" have no technical legal signification, but are to be taken in their ordinary acceptance and mean simply, honestly in belief, purpose, or conduct.²

This definition of "good faith" is merely a negative one. It does not define "good faith" but rests content with stating what it is not. The positive aspect of the term is presented by the General Clauses Act (Act X of 1897). No definition of the term existed in the earlier Acts in which it is thus defined:

"3(22). A thing shall be deemed to be done in 'good faith' where it is in fact done honestly, whether it is done negligently not."

As regards good faith, bearing in mind the negative definition of "good faith" as given in Sec. 52 of the Indian Penal Code, it must be safely stated that good faith has no reference to the moral elements of honesty. How far erroneous actions or statements are to be imputed to want of due care and caution must, in each case, be considered with reference to the general circumstances and the capacity and the intelligence of the person whose conduct is in question.³

The element of honesty which is introduced by the definition prescribed by the General Clauses Act is not introduced by the definition of the Code.⁴ It is a cardinal canon of construction that an expression which has no uniform, precisely fixed meaning takes its colour, light and content from the context.⁵

A mere mistake of fact is not enough. It must be an honest mistake, the fact may not exist, but he must honestly believe in its existence. On the other hand, if the fact exists, and he does not believe in its existence, there is no belief in "good faith" and consequently no protection.⁶

Good faith-Belief If it be reasonable.-In order to establish belief in good faith, there ought to be sufficiently strong and just grounds for his belief.⁷

Distinction between definition of "good faith" in General Clauses Act and Penal Code.-The term "good faith" is defined both in Sec. 3 (22) of the General Clauses Act (No. X of 1897), and also in Sec. 52 of the Penal Code. "Good faith" precludes pretence or deceit and also negligence and recklessness. A lack of diligence, which an honest man of ordinary prudence is accustomed to exercise, is, in law, a want of good faith. Once this is shown, good faith does not require a sound judgment.

Question of fact.- The law does not expect the same degree of care and attention from all persons. It varies with the positions they occupy.² The standard of "due care and attention" is not the standard of the hypothetically "reasonable man". But it is the standard of the man whose "good faith" is on trial. The Court has to see whether he, circumstanced as he was, had exercised the care and attention which might be expected of him.

Good faith-Moral element of honesty.-Section 52 of the Indian Penal Code, makes no reference to

the moral elements of honesty and right motive which are involved in the popular significance of "good faith" and which are prominent in the positive definition enacted in other Acts of the Legislature.

Overriding effect.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

Comment

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

61. Power of Central Government to supersede the Central Board and Joint Boards.-(1) If at any time the Central Government is of opinion-

(a) that the Central Board or any Joint Board 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 Central Government may, by notification in the Official Gazette, supersede the Central Board or such Joint Board, as the case may be, for such period, not exceeding one year, as may be specified in the notification:

Provided that before issuing a notification under this sub-section for the reasons mentioned in Cl. (a), the Central Government shall give a reasonable opportunity to the Central Board or such Joint Board, as the case may be, to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Central Board or such Joint Board, as the case may be.

(2) Upon the publication of a notification under sub-section (1) superseding the Central Board or any Joint 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 Central Board or such Joint Board shall, until the Central Board or the Joint Board, as the case may be, is re-constituted under sub-section (3) be exercised, performed or discharged by such person or persons as the Central Government may direct;

(c) all property owned or controlled by the Central Board or such Joint Board shall, until the Central Board or the Joint Board as the case may be, is re-constituted under sub-section (3) vest in the Central Government.

(3) On the expiration of the period of supersession specified in notification issued under sub-section (1), the Central Government may

(a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary; or

(b) re-constitute the Central Board or the Joint Board, as the case may be, by fresh nomination or appointment, as the case may be, and in such case any person who vacated his office under Cl. (a) of sub-section (2) shall not be deemed disqualified for nomination or appointment:

Provided that the Central 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 Cl. (b) of this sub-section.

Comments

This section empowers the Central Government to supersede the Central Board and Joint Board, but the limit of period of such supersession should not exceed one and a half year at any rate.

Section 61 of the Water Pollution Act, 1974 empowers the Central Government to supersede the Central Board or the State Board in certain cases.

62. Power of State Government to supersede State Board.-(1) If at any time the State Government is of opinion

(a) that the State Board 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 one year, as may be specified in the notification:

Provided that before issuing a notification under this sub-section for the reasons mentioned in Cl. (a), the State Government shall give a reasonable opportunity to the State Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the State Board.

(2) Upon the publication of a notification under sub-section (1) superseding the State Board, the provisions of sub-sections (2) and (3) of Sec. 61 than apply in relation to the supersession of the State Board as they apply in relation to the supersession of the Central Board or a Joint Board by the Central Government.

Comments.

Section 62 of the Water Pollution Act, 1974, empowers the State Government to supersede the State Board in certain cases but the limit of period of such supersession should not exceed one year.

*Supersession of the Board-Justification of.-*No Government would tolerate a defiant Board throwing to winds its declared industrial policy by putting impediments in the growth of industrial development in the State. It was with a View to attract small-scale industries and to give Impetus to them that the Government at its highest level had decided not to ask for NOCs from them except from the 36 highly polluting industries identified by the Government of India and the Board. The conduct of the Board in insisting for such NOCs from all the industries against Government policy was bound to adversely affect industrial growth in the State. This was leading to discontent in the industry and numerous complaints against the Board were being received by the Government. The Government was, thus, justified in forming an opinion that circumstances existed which necessitated supersession of the Board.1

63. Power of Central Government to make rules.-(1) The Central Government may, simultaneously with the constitution of the Central Board, make rules in respect of the matters specified in sub-section (2):

Provided that when the Central Board has been constituted, no such rule shall be made, varied, amended or repealed without consulting the Board.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the terms and conditions of service of the members (other than the Chairman and Member-Secretary) of the Central Board under sub-section (8) of Sec. 5;

(b) the intervals and the time and place at which meetings of the Central Board or of any committee thereof constituted under this Act, shall be held and the procedure to be followed at such meetings, including the quorum necessary for the transaction of business under Sec. 8, and under sub-section (2) of Sec. 9;

(c) the fees and allowances to be paid to such members of a committee of the Central Board as are not members of the Board under sub-section (3) of Sec. 9;

(d) the manner in which and the purposes for which persons may be associated with the Central Board under sub-section (1) of Sec. 10 and the fees and allowances payable to such persons;]

(e) the terms and conditions of service of the Chairman and the Member-Secretary of the Central Board under sub_ section (9) of Sec. 5 and under sub-section (1) of Sec. 12;

f) conditions subject to which a person may be appointed as a consulting engineer to the Central Board under sub-section (4) of Sec. 12;

(g) the powers and duties to be exercised and performed by the Chairman and the Member-Secretary of the Central Board; the form of the report of the Central Board Analyst under sub-section (3) of Sec. 22;

(h) the form of the report of the Government Analysts under sub-section

(3) of Sec. 22; 3[(1) the form in which and the time within which the budget of the Central Board may be prepared and forwarded to the Central Government under Sec. 38; .

(11) the form in which the annual report of the Central Board may be prepared under Sec. 39;]

(m) the form in which the accounts of the Central Board may be maintained under Sec. 40;

4[(mm) the manner in which notice of intention to make a complaint shall be given to the Central Board or officer authorised by it under Sec. 49;]

(n) any other matter relating to the Central Board, including the powers and functions of that Board in relation to Union Territories;

(o) any other matter which has to be, or may be prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, I 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, in two or more successive sessions, and if, 5[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 depend under that rule.

Comments

Section 63 of the Water Pollution Act, 1974, empowers the" Central Government to make rules. Section 25 of the Environment (Protection) Act, 1986 and Sec. 53 of the Air Pollution Act, 1981 also provide the same power to Central Government. The Central Government under Sec. 63 of the Water Act have framed the Water (Prevention and Control of Pollution) Rules, 1975 and the Water Pollution (Procedure for Transaction of Business) Rules, 1975. Every rule has to be laid before the Parliament for approval. *Rules-Power of framing.*- The general power of framing rule for effectuating the purposes of the Act would plainly authorize and sanctify the framing of such a rule. *Rules, whether validly framed.*- The question whether rules are validly framed to carry out the purposes of the Act can be determined on the analysis of the provisions of the Act. 2

64. Power of State Government to make rules.-(1) The State Government may, simultaneously with the constitution of the State Board, make rules to carry out the purposes of this Act in respect of matters not falling within the purview of Sec. 63:

Provided that when the State Board has been constituted, no such rule shall be made, varied, amended or repealed without consulting that Board.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the terms and conditions of service of the members (other than the Chairman and the Member-Secretary) of the State Board under sub-section (8) of Sec. 5;

(b) the time and place of meetings of the State Board or of any committee of that Board constituted under this Act and the procedure to be followed at such meeting, including the quorum necessary for the transaction of business under Sec. 8 and under sub-section (2) of Sec. 9;

(c) the fees and allowances to be paid to such members of a committee of the State Board as are not members of the Board under sub-section (3) of Sec. 9.;

(d) the manner in which and the purposes for which persons may be associated with the State Board under sub-section (1) of Sec. 10 3[and the fees and allowances payable to such persons;]

(e) the terms and conditions of service of the Chairman and the Member-Secretary of the State Board under sub- section (9) of Sec. 5 **and** under sub-section (1) of Sec. 12;

(f) the conditions subject to which a person may be appointed as a consulting engineer to the State Board under sub-section (4) of Sec. 12;

(g) the powers and duties to be exercised and discharged by the Chairman and the Member-Secretary of the State Board;

(h) the form of the notice referred to in Sec. 21;

(i) the form of the report of the State Board Analyst under sub-section (1) of Sec. 22;

(j) the form of the report of the Government Analyst under sub-section (3) of Sec. 22;

(k) the form of application for the consent of the State Board under sub-section (2) of Sec. 25, and the particulars it may contain;

(l) the manner in which inquiry under sub-section (3) of Sec. 25 may be made in respect of an application for obtaining consent of the State Board and the matters to be taken into account in granting or refusing such consent;

(m) the form and manner in which appeals may be filed, the fees payable in respect of such appeals and the procedure to be followed by the appellate authority in disposing of the appeals under sub-section (3) of Sec. 28;

1 [(n) 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 Sec. 38;

(nm) the form in which the annual report of the State Board may be prepared under Sec. 39;-]

(o) the form in which the accounts of the State Board may be maintained under sub-section (1) of Sec. 40; .,

2[(00) the manner in which notice of intention to make a complaint shall be given to the State Board or officer authorised by it under Sec. 49;]

(p) any other mat4:er which has to be, or may be, prescribed

Comment

Section 64 of the Water Pollution Act, 1974, empowers the State Government to make rules.

THE WATER (PREVENTION AND CONTROL OF POLLUTION) RULES, 1975

G.S.R. 58 (E), dated the 27th February, 1975.-In exercise of the powers

Conferred by Sec. 63 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), the Central Government after consultation with the Central Board for the Prevention and Control of Water Pollution, hereby makes the following rules, namely:

CHAPTER I PRELIMINARY

1. *Short title and commencement.*-(1) These rules may be called the Water (Prevention and Control of Pollution) Rules, 1975.

(2) They shall come into force on the date² of their publication in the Official Gazette.

2. *Definitions.*-In these rules unless the context otherwise requires:

(a) "Act" means the Water (Prevention and Control of Pollution) Act, 1974;

(b) "Chairman" means the Chairman of the Central Board;

(c) "Central Board Laboratory" means a laboratory established or recognised as such under sub-section (3) of Sec. 16;

(d) "Central Water Laboratory" means a laboratory established or specified as such under sub-section (1) of Sec. 51;

(e) "form" means a form set out in Sch. I;

(f) "member" means a member of the Central Board and includes the Chairman thereof;

(g) "Member-Secretary" means the Member-Secretary of the Central Board;

(h) "section" means a section of the Act;

(i) "schedule" means a schedule appended to these rules;

(j) "year" means the financial year commencing on the first day of April.

COMMENT

General principle of construction.- There is one principle on which there is complete unanimity of all the Courts in the world and this is that where the words or the language used in a statute are clear and cloudless, plain, simple and explicitly unclouded and unobscured, intelligible and pointed so as to admit of no ambiguity, vagueness, uncertainty or equivocation, there is absolutely no room for deriving support from external aids. In such cases, the statute should be interpreted on the face of the language itself without adding, subtracting or omitting words therefrom. Where the language is plain, and unambiguous the Court is not entitled to go behind the language so as to add or supply omissions and thus play the role of a political reformer or of a wise counsel to the Legislature.³

CHAPTER II

TERMS AND CONDITIONS OF SERVICE OF THE MEMBERS OF THE CENTRAL BOARD AND OF COMMITTEES OF CENTRAL BOARD

3. Salaries, allowances and other conditions of service of the Chairman:- (1) The Chairman shall be paid a fixed monthly salary of Rs. 3,000.¹

2[(2) (a) In addition to the salary specified in sub-rule (1), the Chairman shall be entitled to city compensatory allowance and house-rent allowance as admissible to a Central Government servant in terms of Ministry of Finance (Department of Expenditure) a.M. No. 2(3)-E, II(B)/64, dated the 27th November, 1965:

Provided that where the Chairman is allotted an accommodation by the Central Government, he shall not be entitled to house-rent allowance and shall be required to pay ten per cent of the emoluments drawn by him as house-rent or licence fee;

(b) In respect of journeys undertaken by the Chairman in connection with his duties as Chairman, he shall be entitled to travelling allowance and daily allowance at the rates permissible in the case of a Government officer of equivalent rank under the Supplementary Rules of the Central Government;

(c) the Central Board shall provide to the Chairman, medical facilities as admissible to an officer of the Central Government drawing salary of Rs. 3,000/per mensem.]

(3) Notwithstanding anything contained in sub-rules (1) and (2), where a Government servant is appointed as Chairman, the terms and conditions of his service shall be such as may be specified by the Central Government from time to time. -

Comment

The Chairman shall not be entitled to the house rent if he has been allotted an accommodation by the Central Government.

4. Salaries, allowances and other conditions of service of Member Secretary:- (l) The Member-Secretary shall be paid a monthly pay in the scale of Rs.2,250-125-4,500;

2[(2) (a) In addition to the salary specified in sub-rule (1) the Member Secretary shall be entitled to city compensatory allowance and house-rent allowance a admissible to a Central Government servant in terms of Ministry of Finance (Department of Expenditure) a.M. No. 2(3)-E II (B)/64, dated the 27th November, 1965:

Provided that where the Member-Secretary is allotted an accommodation by the Central Government he shall not be entitled to house-rent allowance and shall required to pay ten per cent of the emolument drawn by him as house-rent or licence fee;

(b) In respect of journeys undertaken by the Member- Secretary in connection with his duties as Member-Secretary he shall be entitled to travelling allowance and daily allowance at the rates permissible in the case of a Government Officer of equivalent rank under the Supplementary Rules of the Central Government;

(c) The Central Board shall provide to the Member-Secretary, medical facilities as admissible to an officer of the Central-Government drawing salary in the scale of Rs.2,250-125- 2,500 per mensem.]1

(3) Notwithstanding anything contained in sub-rules (1) and (2) where a Government servant is appointed as Member-Secretary, the terms and conditions of his service shall be such as may be specified by the Central Government from time to time.

5. Terms and conditions of service of Members of the Central Board.-(l) Non-official members of the Central Board resident in Delhi shall be paid an allowance of 2[rupees seventy-five] per day for each day of the actual meetings of the Central Board.

(2) Non-official members of the Central Board, not resident in Delhi shall be paid an allowances of rupees seventy-five per day (inclusive of daily allowance) for each day of the actual meetings of the Central Board and also travelling allowance at such rate as is admissible to a Grade I Officer of the Central Government:

Provided that in case of a member of Parliament who is also a member of the Central Board, the said daily and travelling allowance will be admissible when the Parliament is not in session and on production of a certificate by a member that he has not drawn any such allowance for the same journey and halts from any other Government source.

Comment

Sub-rule (2) provides for the payment of allowance of rupees seventy-five per day to non-official members of the Central Board not resident in Delhi for attending the meetings of the Central Board.

6. Fees and allowances to be paid to such members of a committee of the Central Board as are not-members of the Board under sub-section (3) of Sec. 9:- A member of a committee of the Central Board shall be paid in respect of meetings of the committee travelling and daily allowances, if he is a non-

official, at the rates specified in rule 5, as if he were a member of the Central Board and if he is Government servant, at the rates, admissible under the relevant rules, of the respective Government under whom he is serving.

CHAPTER III

POWERS AND DUTIES OF THE CHAIRMAN AND MEMBER-SECRETARY AND APPOINTMENTS OF OFFICERS AND EMPLOYEES

7. Powers and duties of the Chairman.-(1) The Chairman shall have overall control over the day-to-day activities of the Central Board.

(2) (i) The Chairman may undertake tours within India for carrying out the functions of the Central Board:

Provided that he shall keep the Central Government (Secretary to the Ministry of Works and Housing) and the Central Board, informed of his tours.

(ii) The Chairman may, with the prior approval of the Central Government, visit *any* country outside India.

[(3)] In the matter of acceptance to tenders, the Chairman shall have full powers subject to the concurrence of the Central Board: (to) The Member-Secretary shall countersign the confidential reports of all the Class III employees of the Central Board.

(11) (i) The Member-Secretary shall sanction the annual increments of Class I and Class II Officers of the Central Board:

Provided that the increment of Class I and Class II Officers shall be withheld only with the approval of the Chairman.

m) The annual increments of other employees of the Central Board not referred to in Cl. (i) shall be sanctioned by officers authorised in this behalf by the Member-Secretary.

(12) The Member-Secretary shall have full powers for according technical sanction to all estimates.

(13) The Member-Secretary shall exercise such other powers and perform such other functions as may be delegated to him from time to time either by the Board or by the Chairman.

Comment

This rule enumerates the power and duties of the Member-Secretary *viz.*, to authorise or sanction all payments against allotments made.

CHAPTER IV

TEMPORARY ASSOCIATION OF PERSONS WITH CENTRAL BOARD

10. Manner and purpose of association of persons with Central Board.-(1) The Central Board may invite an} person, whose assistance or advice it considers useful to obtain in performing any of its functions, to participate in the deliberations of any of its meetings.

(2) If the person associated with the Board under sub-rule (1) happens to be a non-official, resident in Delhi, he shall be entitled to get an allowance of 1 [rupees seventy-five] per day for each day of actual meeting of the Central Board in which he is associated.

(3) If such person is non-resident in Delhi, he shall be entitled to get an allowance of rupees seventy-five per day (inclusive of daily allowance) for each day of actual meeting of the Central Board in which he is so associated and also to travelling allowance at such rates as is admissible to a Grade I Officer of the Central Government.

(4) Notwithstanding anything in sub-rules (2) and (3), if such person is a Government servant or an employee in a Government Undertaking he shall be entitled to travelling and daily allowances only at the rates admissible under the relevant rules applicable to him.

Provided further that if at the time of the initial appointment the Central Board had reason to believe that the services of the consulting engineer would be required for a period of more than four months, the Central Board shall not make the appointment without the prior approval of the Central Government.

12. Power to terminate appointments.-Notwithstanding the appointment of a consulting engineer

for a specified period under rule 11, the Central Board shall have the right to terminate the services of the consulting engineer before the expiry of the specified period, if, in the opinion of the Board, the consulting engineer is not discharging his duties properly or to satisfaction of the Board or such a course of action is necessary in the public interest:

[Provided that the services of a consulting engineer shall not be terminated under this rule by the Central Board except after giving him a reasonable opportunity for showing cause against the proposed action.]

13. Emoluments of the consulting engineer.- The Central Board may pay the consulting engineer suitable emoluments or fees depending on the nature of work, and the qualifications and experience of the consulting engineer:

Provided that the Central Board shall not appoint any person as consulting engineer without the prior approval of the Central Government if the emoluments or fees payable to him exceeds rupees two thousand per month.

14. Tours by consulting engineer:- The consulting engineer may undertake tours within the country for the performance of the duties entrusted to him by the Central Board and in respect of such tours he shall be entitled to travelling and daily allowances as admissible to a Grade I officer of the Central Government. He shall, however, get the prior approval of the Member-Secretary to his tour programme.

15. Consulting engineer not to disclose information:- The consulting engineer shall not disclose any information either given by the Central Board or obtained during the performance of the duties assigned to him either from the Central Board or otherwise, to any person other than the Central Board without the written permission of the Board.

COMMENTS

The word */shall/* Meaning of.-It has been laid down consistently by the Supreme Court that the mere use of the word "shall" by itself in the statute does not make the provision mandatory, but it is the duty of the Courts of justice to decide whether the enactment is a mandatory or only directory.² The word "shall" cannot be interpreted as "may".³ Where the situation and the context warrants it, the word "shall" used in a section or rule has to be construed as "may".⁴ The power of the Court is, however, to find out whether the provision is directory or mandatory, remains unimpaired.⁵

16. Duties and functions of the consulting engineer.-The consulting engineer shall discharge such duties and perform such functions as *are* assigned to 68

WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 RULE 17

Him by the Central Board and it will be his duty to advise the Board on all technical matter referred to him by the Board.

CHAPTER VI BUDGET OF THE CENTRAL BOARD

17. Form of budget estimates.-(1) The budget in respect of the year next ensuing showing the estimated receipts and expenditure of the Central Board shall be prepared in Forms I, II, III and IV and submitted to the Central Government.

(2) The estimated receipts and expenditure shall be accompanied by the revised budget estimates for the current year.

(3) The budget shall, as far as may be, based on the account heads specified in Sch. II.

18. Submission of budget estimates to the Central Board.-(1) The budget estimates as compiled

in accordance with rule 17 shall be placed by the Member-Secretary before the Central Board by the 5th October each year for approval.

(2) After approval of the budget estimates by the Central Board, four copies of the final budget proposals incorporating therein such modifications as have been decided upon by the Central Board shall be submitted to the Central Government by the 15th October each year.

COMMENT

Sub-rule (2) requires the Central Board to submit four copies of the final budget proposals to the Central Government by the 15th October each year.

19. Estimates of establishment expenditure and fixed recurring charges:- (1) The estimates of expenditure on fixed establishment as well as fixed monthly recurring charges on account of rent, allowances, etc., shall provide for the gross sanctioned pay without deductions of any kind.

(2) To the estimates referred to in sub-rule (1) shall be added a suitable provision for leave salary based on past experience with due regard to the intention of the members of the staff in regard to leave as far as the same can be ascertained.

(3) If experience indicates that the total estimate for fixed charges referred to in sub-rules (1) and (2) is not likely to be fully utilized, a suitable lump deduction shall be made from the total amount estimated.

20. Re-appropriations and emergent expenditure:- No expenditure which is not covered by a provision in the sanctioned budget estimates, or which is likely to be in excess over the amount provided under any head, shall be incurred by the Central Board without provision being made by re-appropriation from some other head under which savings are firmly established and available.

21. Power to incur expenditure:- The Central Board shall incur expenditure out of the funds received by it in accordance with the instructions laid down under the General Finance Rules of the Central Government and other instructions issued by the Government from time to time.

22. Operation of fund of the Central Board:- The fund of the Central Board shall be operated by the Member-Secretary of the Central Board or in his absence by any officer of the Central Board who may, subject to the approval of the Central Government, be so empowered by the Central Board.

23. Saving:- *Nothing* in the chapter shall apply to a budget already finalised before the commencement of these rules.

RULE 30

WATER (PREVENTION AND CONTROL OF POLLUTION) RULES, 1975

CHAPTER VII

ANNUAL REPORT OF THE CENTRAL BOARD

24. Form of annual report.- The annual report in respect of the year last ended giving a true and full account of the activities of the Central Board during the previous financial year shall contain the particulars specified in the Sch. III and shall be submitted to the Central Government by the 15th of May each year.

CHAPTER VIII

ACCOUNT OF THE CENTRAL BOARD

25. Form of annual statement of accounts of the Central Board:- The annual statement of accounts of the Central Board shall be, in Forms V to IX.

CHAPTER IX

REPORT OF CENTRAL BOARD ANALYST

26. Form of report of Central Board Analyst:- *-When* a sample of any water, sewage or trade effluent has been sent for analysis to a laboratory established or recognized by the Central Board, the Central Board analyst appointed under sub-section (3) of Sec. 53 shall analyse the sample and submit to the Central Board a report in triplicate in Form X of the result of such analysis.

Comment

This rule prescribes the Form X for recording the findings by the Central Water Laboratory of analysis of any samples of water, sewage or trade effluent received by it from the officer authorized by the Central Board.

CHAPTER X

CENTRAL WATER LABORATORY

27. Functions of the Central Water Laboratory:- *The* Central Water Laboratory, shall cause to be analysed any sample of water, sewage or trade effluent received by it from any officer authorized by the Central Board for 'the purpose, and the findings 1 [shall be recorded in a report in triplicate] in Form XI.

1 [28. Fees for report.- The fees payable in respect of each report of the Central Water Laboratory on any analysis or test mentioned in Column (2) of Sch. IV shall be at the rates specified in the corresponding entry in Column (3) thereof.]

CHAPTER XI

POWERS AND FUNCTIONS OF THE CENTRAL BOARD IN RELATION TO UNION TERRITORIES

29. Central Board to act as State Board for Union Territories:- The Central Board shall act as the State Board for Union Territories under sub-section (4) of Sec.4.

30. Power to take samples:- The Central Board or any officer empowered by it in this behalf shall have power to take for the purposes of analysis samples of water from any stream or well or samples of sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well in any Union Territory.

WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

RULE 31

Comment

This rule empowers the Central Board and its officers to take samples of water from any stream or well or samples of sewage or trade effluent from any place in any Union Territory.

31. Form of notice:- A notice under Cl. (a) of sub-section (3) of Sec. 21 shall, in the case of a Union Territory, be in Form XII.

1 [32. Application for consent:- An application for obtaining the consent of the Central Board for establishing or taking any steps to establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a

stream or well or sewer or on land (such discharge being hereinafter in this rule referred to as discharge of sewage); or for bringing into use any new or altered outlet for the discharge of sewage (or bringing to make any new discharge of sewage under Sec. 25 or for continuing any existing discharge of sewage under Sec. 26 shall be made to the Central Board in Form XIII.]

Comment

This rule is prescribed in the Form XIII for making application for securing consent under Sec. 25 or Sec. 26 of the Central Board.

33. Procedure for making inquiry into application for consent:- (1) On receipt of an application for consent under Sec. 25 or Sec. 26, the Central Board may depute any of its officers, accompanied by as many assistants as may be necessary, to visit the premises of the applicant, to which such application relates, for the purpose of verifying the correctness or otherwise of the particulars furnished in the application or for obtaining such further particulars or information as such officer may consider necessary. Such officer may, for that purpose, inspect any place where water or sewage or trade effluent is discharged by the applicant, or treatment plants, purification works or disposal system of the applicant and may require the applicant to furnish to him any plans, specifications and other data relating to such treatment plants, purification works or disposal systems or any part thereof, that he considers necessary.

(2) Such officer shall, before visiting any premises of the applicant for the purpose of inspection under sub-rule (1) above, give notice to the applicant of his intention to do so in Form XIV. The applicant shall furnish to such officer all facilities that such officer may legitimately require for the purpose.

(3) An officer of the Central Board may, before or after carrying out an inspection under sub-rule (1) above, require the applicant to furnish to him, orally or in writing such additional information or clarification, or to produce before him such documents, as he may consider necessary for the purpose of investigation of the application and may, for that purpose, summon the applicant or his authorised agent to the office of the Central Board.

2[34. Directions.-(1) Any directions issued under Sec. 33-A shall be in writing.,

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

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

(4) Where the proposed direction is for the stoppage or regulation of electricity or water or any other services affecting the carrying on any industry, operation or process and is sought to be issued to an officer or an authority, a copy of the proposed direction shall also be endorsed to the occupier of the industry, operation or process, as the case may be, and objections, if any, filed by the occupier with an officer designated in this behalf shall be dealt with in accordance with the procedures under sub-rules (3) and (5) of this rule:

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

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

(6) In a case where the Central Board is of the opinion that in view of the likelihood of a grave injury to the environment it is not expedient to provide an opportunity to file objections against the proposed directions without providing such opportunity.

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

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

post; or

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

(b) Where the person to be served is an officer serving Government, if the document is addressed to the person and a copy thereof is endorsed to his Head of the Department and also to the Secretary to the Government, as the case may be, incharge of the Department in which for the time being the business relating to the Department in which the officer is employed is transacted and is either, (i) sent by registered post, or (ii) is given or tendered to him;

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

(i) is given or tendered to him; or

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

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

Explanation.-For the purpose of this sub-rule:

(a) "company" means anybody corporate and includes a firm or other association of individuals;

(b) "a servant" is not a member of the family.

35. Manner of giving notice.-*The manner of giving notice under Cl. (b) of sub-section (1) of Sec. 49 shall be as follows, namely:*

(1) The notice shall be in writing in Form XV.

(2) If the alleged offence has taken place in a Union Territory, the person giving notice may send notice to:

(i) the Central Board, and

(ii) the Ministry of Environment and Forests (represented by the Secretary to the Government of India); and

(iii) the Administrator of the Union Territory (represented by the Secretary/Head incharge of Environment).

(3) The notice shall be sent by registered post acknowledgment due; and

(4) The period of sixty days mentioned in Cl. (b) of sub-section (1) of Sec. 49 of the Act, shall be reckoned from that date it is first received by one of the authorities mentioned in sub-rule (2)].

FORM X REPORT BY THE CENTRAL BOARD ANALYST
(See rule 26)

Report No.....

Dated the.....19.....

I hereby certify that I, (I)Central Board Analyst duly appointed under sub-section (3) of Sec. 53 of the Water (prevention and Control of Pollution) Act, 1974 (6 of 1974) received on the (II)..... day of19.....from (III) a sample of for analysis. The sample was in a condition fit for analysis reported below:

I further certify that I have analysed the aforementioned sample of and declare the result of the analysis to be as follows.

(IV) _____

(V) _____

The condition of the seals, fastening and container on receipt was as follows:

Signed this.....day of.....19.

(Signature)
Central Board Analyst.

Address.....

.....

To

.....

.....

- (I) Here write the full name of the Central Board Analyst.
- (II) Here write the date of receipt of the sample.
- (III) Here write the name of the Board or person or body of persons or officer from whom the sample was received.
- (IV) Here write the date of analysis.
- (V) Here write the details of the analysis and refer to the method of analysis. If the space is not adequate the details may be given on a separate sheet of paper.

FORM XI
REPORT BY THE GOVERNMENT ANALYST
(See rule 27)

Report No.....

Dated the.....19.....

I hereby certify that I, (I)Central Board Analyst duly appointed under sub-section (3) of Sec. 53 of the Water (prevention and Control of Pollution) Act, 1974 (6 of 1974) received on the (II)..... day of19.....from (III) a sample of for analysis. The sample was in a condition fit for analysis reported below:

I further certify that I have analysed the aforementioned sample, on (IV)..... and declare the result of the analysis to be as follows.

(V)_____

The condition of the seals, fastening and container on receipt was as follows:

Signed this.....day of.....19.

(Signature)
Central Board Analyst.

Address.....

.....

To

.....

.....

- (I) Here write the full name of the Central Board Analyst.
- (II) Here write the date of receipt of the sample.
- (III) Here write the name of the Board or person or body of persons or officer from whom the sample was received.
- (IV) Here write the date of analysis.
- (V) Here write the details of the analysis and refer to the method of analysis. If the space is not adequate the details may be given on a separate sheet of paper.

FORM XII
CENTRAL BOARD FOR PREVENTION AND CONTROL OF
WATER POLLUTION
Notice of intention to have sample analysed
(See rule 31)

To,

.....
.....

Take notice that it is intended to have analysed the sample of water/sewage effluent/trade effluent which is being taken today the.....day of.....J9.....from (I).

--- --- --- --- --- --- --- --- --- --- ---
--- --- --- --- --- --- --- --- --- --- ---
--- --- --- --- --- --- --- --- --- --- ---

**Name and designation of the person
who takes the sample**

(I) Here specify the stream, well, point, vessel or place from where the sample is taken.

To

.....
.....
.....

FORM XIII

Application for consent for establishing or taking any steps for establishment of industry/operational process/or any treatment/disposal system for discharge, continuation of discharge under Sec. 25 or Sec. 26 of the Water {Prevention and Control of Pollution} Act, 1974

(See rule 32)

Date.....

From

To

The Member-Secretary,
Central Pollution Control Board,

Sir,

I/We hereby apply for Consent/Renewal of Consent under Sec. 25 or Sec. 26 of the Water Prevention and Control of Pollution Act, 1974 (6 of 1974) for establishing or taking any steps for establishment of industry/operation/process/or any treatment/ disposal system to bring into use any new filtered outlet for discharge of "sewage/trade effluent" /to continue to discharge" sewage/trade effluent" from land/premises owned by.....

The other: relevant details are as below:

1. Full name of the applicant.....

2. Nationality of the applicant.....

3. Status of the applicant:

(a) Individual

(b) Proprietary concern

(c) Partnership firm (whether registered or unregistered)

(d) Joint family concern

(e) Private Limited Company

(f) Public Limited Company

(g) Government Company

(1) State Government

(2) Central Government

(3) Union Territory

(h) Foreign Company

(If a foreign company /the details of registration, incorporation, etc.)

(i) Any other Association or Body:

4. Name, Address and Telephone Nos. of the Applicant.

(the full list of individuals, partners, persons, Chairman (full time or part-time), Managing Directors, Managing Partners, [Directors (full time or part-time), other kinds of office- bearers are to be furnished with their period of tenure in the respective office with telephone Nos. and address].

5. Address of the Industry

(Survey No., Khasra No. Location as per the revenue records, Village Firka, Tehsil, District, Police Station or SHO, jurisdiction of the First Class Magistrate).

6. Details of commissioning, etc.:

(a) Approximate date of the proposed commissioning of work.

(b) Expected date of production:

7. Total number of employees expected to be employed.

8. Details of licence, if any, obtained under the provisions of Industrial Development (Regulations) Act, 1951.

9. Name of the person authorised to sign this form (the original authorisation except in the case of individual/ proprietary concern is to be enclosed)

10. (a) Attach the list of all raw materials and chemicals used per month.

(b) Licensed Annual Capacity of the Factory /industry.

11. State daily quantity of water in Kilolitres utilised and its source (domestic/industrial! process/bodies/boiler / cooling/ others)

12. (a) State the daily maximum quantity of effluents and mode of disposal (sewer or drains

or river).

Also attach analysis report of the effluents. Type of effluent quantity in kilolitres, mode of disposal

(i) Domestic

(ii) Industrial

(b) Quality of effluent currently being discharged or expected to be discharged.

(c) What monitoring arrangement is currently there or proposed.

13. State whether you have any treatment plant for industrial, domestic or combined effluents.

Yes/No

If yes, attach a description of the process of treatment in brief. Attach information on the quality of treated effluent *vis-a-vis* the standards.

14. State details of solid wastes generated in the process or during waste treatment.

Description	Quantity	Method of collection	Method of disposal
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15. I/We further declare that the information furnished above is correct to the best of my knowledge.

16. I/We hereby submit that in case of change either of the point of discharge or the quantity of discharge or its quality, a fresh application for consent shall be made and until such consent is granted no change shall be made.

17. I/We hereby agree to submit to the Central Board an application for renewal of consent one month to advance of the date of expiry of the consented period for outlet/ discharge if to be continued thereafter.

18. I/We undertake to furnish any other information within one month of its being called by the Central Board.

19. I/We enclose herewith cash receipt no./bank draft no.....dated.....for Rs..... (Rupees.....) in favour of the Central Pollution Control Board, New Delhi, as fees payable under Sec. 25 of the Act.

Yours faithfully,
Signature of the applicant.

Note:"Strike out which is not relevant.]

**WATER POLLUTION (PROCEDURE FOR TRANSACTION OF BUSINESS)
RULES, 1975**

G.S.R. 3 (E), dated 10th January, 1975¹ :- In exercise of the powers conferred by Sec. 63 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), the Central Government after consultation with the Central Board for the Prevention and Control of Water Pollution hereby makes the following rules, namely:

1. *Short title and commencement*:- (1) These rules may be called the Central Board for the Prevention and Control of Water Pollution (Procedure for Transaction of Business) Rules, 1975.

(2) They shall Come into force on the date² of their publication in the Official Gazette.

2. *Definitions*.-In these rules, unless the context otherwise requires,

(a) "Act" means the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(b) "Government" means the Central Government;

(c) "Chairman" means the Chairman of the Central Board;

(d) "Member" means a Member of the Central Board and includes the Chairman thereof;

(e) "Member-Secretary" means the Member-Secretary of the Central Board;

(f) "Meeting" means a meeting of the Central Board;

(g) "Section" means a section of the Act;

3. *Notice of meetings*.-{1) Meetings of the Central Board shall ordinarily be held at Delhi on such dates as may be fixed by the Chairman.

(2) The Chairman shall, upon the written request of not less than five members of the Central Board or upon a direction of the Central Government, call a special meeting of the Central Board.

(3) Fifteen clear days' notice of an ordinary meeting and three clear days' notice of a special meeting specifying the time and the place at which such meeting is to be held and the business to be transacted thereat, shall be given by the Member-Secretary to the members.

(4) Notice of a meeting may be given to the member by delivering the same by messenger or sending it by registered post to his last known place of residence or business or in such other manner as the Chairman may, in the circumstances of the case, think fit.

(5) No member shall be entitled to bring forward for the consideration of the meeting any matter of which he has not given ten clear days' notice of the Member/Secretary, unless the Chairman in the discretion, permits him to do so.

3(6) (a) The Central Board may adjourn its meetings from day to day or to any particular date.

(b) Where a meeting of the Central Board is adjourned from day to day, notice of such adjourned meeting shall be given to the members available in the city, town or other place where the meeting which is adjourned is held, either by telephone or by special messenger and it shall not be necessary to give notice of the adjourned meeting to other members.

(c) Where a meeting of the Central Board is adjourned not from day to day but from the day on which the meeting is held to another date, notice of such meeting shall be given to all the members as provided in sub-rules (3) and (4);

(7) 1[.. .. .]

Comment

This rule fixes the minimum limit of notice for the ordinary and special meeting, viz. fifteen days and three days respectively.

4. *Presiding Officer*:- Every meeting shall be presided over by the Chairman and, in his absence, by a Chairman for the meeting to be elected by the members present from amongst themselves.

Comment

The word "shall"-meaning of-It has been laid down consistently by the Supreme Court that the mere use of the word "shall" by itself in the statute does not make the provision mandatory, but it is the duty of the Courts of Justice to decide whether the enactment is mandatory or only directory.²

The word "shall" cannot be interpreted as "may".³ Where the situation and the context warrants it, the word "shall" used in a section or rule has to be construed as "may".⁴ The power of the Court, however, to find out whether the provision is directory or mandatory remains unimpaired.

5. All questions to be decided by majority. -(1) All questions at a meeting shall be decided by a majority of votes of members present, and voting shall be by raising of hands in favour of the proposal. (2) In case of an equality of votes, the presiding officer shall have a second or casting vote.

Comment

This rule gives the second or casting vote to the presiding officer when there is an equality of votes.

6. Quorum. -(1) Five members shall form the quorum for any meeting.

(2) If at any time fixed for any meeting or during the course of any meeting a quorum is not present, the presiding officer shall adjourn the meeting and if a quorum is not present on the expiration of fifteen minutes from such adjournment the presiding officer shall adjourn the meeting to such hours on the following or on some other future date as he may fix.

(3) No quorum shall be necessary for the adjourned meeting.

(4) No matter which had not been on the agenda of the original meeting shall be discussed at such adjourned meeting.

1[(5) (a) Where a meeting of the Central Board is adjourned under sub-rule (2) for want of quorum to the following day, notice of such adjourned meeting shall be given to the members available in the city, town or other place where the meeting which is adjourned is held, either by telephone or by special messenger and it shall not be necessary to give notice of the adjourned meeting to the other members.

(b) Where a meeting of the Central Board is adjourned under sub-rule (2) for want of quorum not to the following day but to another date, notice of such adjourned meeting shall be given to all the members as provided in sub-rules (3) and (4).]

Comment

Sub-rule (3) dispenses with the requirement of the quorum of five members in the case of the adjourned meeting.

7. Minutes. -(1) Record shall be kept of the names of members who attend the meeting and of the proceedings at the meeting in a book to be maintained for that purpose by the Member-Secretary.

(2) The minutes of the previous meeting shall be read at the beginning of every succeeding meeting, -and shall be confirmed and signed by the presiding officer at such meeting.

(3) The proceedings shall be open to inspection by any member at the office of Central Board during office hours.

Comment

This rule requires for keeping of the record of the names of the members who attend the meeting by the Member-Secretary.

8. Maintaining order at meeting. - The presiding officer shall preserve order at meeting.

9. Business to be transacted at meeting. -Except with the permission of the presiding officer, no business which is not entered in the agenda or of which notice has not been given by a member under sub-rule (5) of rule 3, shall be transacted at any meeting.

Comment

The business other than which is entered in the agenda can be transacted at meeting only with the permission of the presiding officer.

10. Order of business. - (1) At any meeting business shall be transacted in the order in which it is entered in the agenda.

(2) Either at that beginning of the meeting or after the conclusion of the debate on a motion during the meeting the presiding officer or a member may suggest a change in the order of business as entered in the agenda and if the meeting agrees, such a change shall take place.

11. Procedure for transaction of business of committees constituted by the Board. -(1) The

time and place of the meetings of the committees constituted by the Central Board under sub-section (1) of Sec. 9 shall be as specified by the Chairman.

(2) The quorum for a meeting of a committee constituted under sub-section (1) of Sec. 9 shall be one-half of the total number of members of the committee.

(3) Subject to sub-rule (1) and sub-rule (2) the meetings of any of the committees constituted under sub-section (f1) of Sec. 9 shall, as far as may, be governed by the rules applicable to the meetings of the Central Board.

Comment

This rule fixes the quorum for a meeting of a committee, *viz.* one-half of the total number of members of the committee.

**THE WATER (PREVENTION AND CONTROL OF POLLUTION)
CESS ACT, 1977
(ACT NO. 36 OF 1977)**

[7TH December]

An Act to provide for the levy and collection of access on water consumed by persons carrying on certain industries and by local authorities, with a view to augment the resources of the Central Board and the State Boards for the prevention and control of water pollution constituted under the Water (Prevention and Control of Pollution.) Act, 1974.

Be it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows:

STATEMENT OF OBJECTS AND REASONS¹

The Water (Prevention and Control of Pollution) Act, 1974, has been enacted by Parliament under Art. 252 of the Constitution with a view to control the pollution of rivers and streams which has assumed considerable importance and urgency in recent years as a result of increasing industrialisation and urbanisation. The Act is intended to ensure that the domestic and industrial effluents are not allowed to be discharged into watercourses without adequate treatment. This Act is now in *force* in fifteen States and in all Union Territories. The other remaining States are also likely to adopt the Act in the near future.

2. According to the provisions of the Act, the Central Government and the State Governments have to provide funds to the Central Board and State Boards for prevention and control of water pollution respectively, *for* implementing the provisions of the Act. However, due to pressure on the limited resources, the State Governments are not able to provide adequate funds to the State Boards *for* their effective functioning. It is, therefore, proposed to levy access on local authorities which are entrusted with the duty of supplying water under the law by or under which they are constituted and on certain specified industries. The cess proposed to be levied will be on the basis of water consumed by such local authorities and industries. The cess will be collected by the State Governments concerned and will be paid to the Central Government and the Central Government after due appropriation made by Parliament fit by law; will pay, having regard to the amount of cess collected by the concerned State Governments, such sums of money it may think fit to the Central Board and the State Boards.

STATEMENT OF OBJECTS AND REASONS OF ACT NO. 44 OF 1978

In the process of implementation of the Water (Prevention and Control of Pollution) Act, 1974, in various States, certain drawbacks have come to the notice of the Government and consequently it has become necessary to make certain amendments in the Act.

2. Section 4 of the Act requires that those State Governments which have adopted the Act should set up the State Boards within Six months from the date of adoption. One of the fifteen States which have so far adopted the Act, has not set up the State Board within this time limit. It has been felt that prescribed time limit of six months for constitution of the State Boards may be done away with. Further, it has come to the notice of the Government that some State Governments have set up the State Boards after the prescribed time limit of six months. It is, therefore, necessary to regularise the setting up of these Boards and also the action of the State Boards constituted after the prescribed time limit of six months.

3. Moreover, certain States are finding it difficult to provide a full-time Chairman for the State Boards. It is, therefore, proposed to amend the Act to provide for the appointment of a Chairman of the State Board either on full-time or on part-time, depending on the specific situation and as the State Government thinks fit.

4. It is felt that there should be an integrated approach for tackling the water and air pollution problems. It is, therefore, proposed that the existing Boards for the Prevention and Control of Water Pollution should also be authorised to perform functions relating to the prevention, control and abatement of air pollution. The Government have already introduced a Bill, namely, the Air (Prevention and Control of Pollution) Bill, 1978, in the Lok Sabha on the 17th April, 1978. It has thus become necessary to authorise the Central Board and the State Board for the Prevention and Control of Water Pollution to spend from their funds for performing functions relating to prevention, control and abatement of air pollution also.

5. In addition, certain other minor amendments are also proposed in the Bill.

STATEMENT OF OBJECTS AND REASONS OF ACT 53 OF 1988

The Water (Prevention and Control of Pollution) Act, 1974 (Water Act) was enacted in pursuance of Cl. (1) of Art. 252 of the Constitution to provide for the prevention and control of water pollution and the maintenance or restoration of wholesomeness of water. Subsequently, the Water Act was amended by Act 44 of 1978 to remove certain practical difficulties that were faced in its implementation.

2. The Water Act is implemented by the Central and State Governments and the Central and State Pollution Control Boards. Over the past few years, the implementing agencies have experienced some more administrative and practical difficulties in effectively implementing the provisions of the Act. The ways and means to remove these difficulties have been thoroughly examined in consultation with the implementing agencies. Taking into account the views expressed, it is proposed to amend certain provisions of the Act in order to remove such difficulties. The State Legislatures of Himachal Pradesh, Manipur and Tripura have passed resolutions under Art. 252 (2) of the Constitution authorising the Parliament to amend the provisions of the Water Act to give effect to those amendments.

3. The Bill, *inter alia*, seeks to make the following amendments in the Act, namely:

(i) the Central Board and State Board for the Prevention and Control of Water Pollution are proposed to be renamed as Central State Pollution Control Board as these Boards deal with both water and air pollution control;

(ii) the Central Board is proposed to be empowered to exercise the powers and perform the functions of the State Board in specific situations, particularly when a State Board fails to act and comply with the directions issued by the Central Board. It is also proposed to recover the cost of the exercise of such powers and the performance of such functions by the Central Board from the person or persons concerned, if the State Board is empowered to recover such costs under the provisions of the Act, as arrears of land revenue or of public demand;

(iii) it is proposed to make it obligatory on the part of a person to obtain the consent of the relevant Board for establishing or taking any steps to establish any industry, operation or process which is likely to cause pollution of water and also to empower the Boards to limit their consents for suitable periods so as to enable them to monitor observance of the prescribed conditions;

(iv) in order to effectively prevent water pollution, the penal provisions of the Act are proposed to be made stricter and bring them at par with the punishments prescribed in the Air (Prevention and Control of Pollution) Act, 1981 as amended by Act 47 of 1987;

(v) in order to elicit public co-operation, it is proposed that any person should be able to complain to the Courts regarding violations of the provisions of the Act after giving a notice of sixty days to the concerned Board or the officer authorised in this behalf;

(vi) it is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure on regulation of offending industry, operation or process or stoppage or regulation of supply of services such as water and electricity;

(vii) for increasing the financial resources of the Boards, it is proposed to empower them to raise moneys by means of loans and debentures.

4. The Bill seeks to achieve the above objects.

1. *Short title, extent, application and commencement.*-(1) This Act may be called the Water (Prevention and Control of Pollution) Cess Act, 1977.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) Subject to the provisions of sub-section (2), it applies to all the States to which the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), applies and the Union Territories.

(4) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

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

(a) "local authority" means a municipal corporation or a municipal council (by whatever name called) or a Cantonment Board or any other body, entrusted with the duty of supplying water under the law by or under which it is constituted;

(b) "prescribed" means prescribed by rules made under this Act;

(c) "industry"; includes any operation or process, or treatment and disposal system, which consumes water or gives rise to sewage effluent or trade effluent, but does not include any hydel power unit];

(d) words and expressions used but not defined in this Act and defined in the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), shall have the meanings respectively assigned to them

in that Act.

Comments

Purpose for enactment.- The Act was passed only for the purpose of providing for levy and collection of cess on water consumed by persons carrying on certain industries with a view to augment the resources of the Central Board and the State Boards.³

Object of the enactment.-Under the provisions of the Water (Prevention and Control of Pollution) Act of 1974, the Central Government and the State Governments have to provide funds to the Central Board and the State Boards for prevention and control of water pollution respectively for implementing the provisions of the Act. The Water (Prevention and Control of Pollution) Cess Act of 1977, was enacted to provide for levy and collection of cess on water consumption by persons carrying on certain industries and by local authorities.¹

Purpose or object of the legislation-Determination of.- The law is well settled that it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law to determine the purpose or object of the legislation.²

Construction of statute-Guiding principles.- To ascertain the literal meaning it is equally necessary first to ascertain the juxtaposition in which the rule is placed, the purpose for which it is enacted and the object which it is required to sub serve and the authority by which the rule is framed.

Construction of the terms and expressions used in an Act of Parliament.-If the statute is with reference to a particular trade, business or transaction, then the word used therein which everybody conversant with that trade, business or transaction knows and understands to have a particular meaning of it, then those words should be construed as having that particular meaning which may differ from the ordinary or popular meaning.⁴

Chemical-Meaning of.-The expression "chemical" means, according to *Collins English Dictionary*, any substance used in or resulting from a reaction involving changes to atoms or molecules used in chemistry. The *Concise Oxford Dictionary*, 8th Edition, pages 170 defines "chemical" as made by or relating to, chemistry's .

Metallurgy-Meaning of.- The term "metallurgy", as defined in the *Engineering Encyclopaedia* is "the art of extricating metals from their crust and the term has, by custom, restricted to the commercial methods used as opposed to those which are employed in the laboratory." According to it, metallurgy is a particularly broad subject, its scope overlapping many other sciences and technologies, such as, physics, chemistry, mining, mechanical and chemical engineering, economics and manufacturing.⁶

Metallurgical industry-Meaning of.- The scope and ambit of a metallurgical industry starts from extracting mineral ores, refining them by mechanical and chemical processes and finally producing steel in various forms. With this the function of the metallurgical industry ends. The final product of metallurgical industry is the stock of steel either in the form of rods or sheets etc., and is ready for being used by consumer industries of different denominations?