

1958

**IN THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 889/2022**

In the matter of:-

JEETU YADAV

... APPLICANT

VERSUS

UPPCB & ORS.

... RESPONDENT

INDEX

Sr. No.	Particulars	Page No.
1.	BRIEF SUBMISSIONS ON THE ISSUE OF THE INTERPRETATION OF SECTIONS 31-A AND 37 OF 'THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981'	2-8
2.	A true copy of the said AIR Act is annexed here as ANNEXURE 1	9-32
3.	A true copy of the water act is annexed here as ANNEXURE 2.	31-62
4.	A true copy of the said judgement is annexed here as ANNEXURE 3	62- 138
. 5.	A true copy of the said judgement is annexed here as ANNEXURE 4	139 - 170

THROUGH



**PRIYANKA SWAMI
ADVOCATE**

DATE. 12.04.2024

COUNSEL FOR THE STATE OF U.P.

**IN THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 889/2022**

In the matter of:-

JEETU YADAV

... APPLICANT

VERSUS

UPPCB & ORS.

... RESPONDENT

**BRIEF SUBMISSIONS ON THE ISSUE OF THE INTERPRETATION OF
SECTIONS 31-A AND 37 OF 'THE AIR (PREVENTION AND CONTROL
OF POLLUTION) ACT, 1981'**

1. Legislative History and Intent:

(a) Section 31A was introduced in the Air (Prevention and Control of Pollution) Act, 1981 [Air Act] vide a 1987 amendment w.e.f 01.04.1988. The legislative intent behind bringing in Section 31A is stated in the Statement of Objects and Reasons of the 1987 Amending Act as follows –

“Section 3(vii) It is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure or regulation of offending establishment or stoppage or regulation of supply of services such as, water and electricity.”

Section 31 A states as follows:

“31-A. Power to give directions.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give

in this behalf a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

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

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

The expressions ‘person’, ‘officer’ or ‘authority’ referred to in Section 31A of the Air Act have not been defined in the Act. It is therefore submitted that the objective and intent of the Legislature to introduce aforesaid Section 31A was to specifically deal with “*any person, officer or authority of the offending establishments*” and not with respect to the Government officers enforcing such orders.

A true copy of the Air (Prevention and Control of Pollution Act), 1981 has been annexed herein as ANNEXURE 1

- (b) Section 37 of the Air Act, also substituted vide the same amendment of 1987, provides for stringent penal actions upon failure to comply with the provisions of *Section 21 or Section 22 or with the directions issued under section 31-A as follows-*

“(1)Whoever fails to comply with the provisions of section 21 or section 22 or directions issued under section 31-A, shall, in respect of each such failure be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure.

(2)If the failure referred to in sub section (1) continues beyond a period of one year after the date of conviction, the offender

1961

shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.”

Sections 21 and 22 of the Act also provide for restrictions on use of polluting industrial plants and specifically prohibit emission of air pollution in excess of the standard laid down by the State Board.

It is thus submitted that the objective of the 1987 amendment in respect of introduction of section 31-A and 37 was not to give stringent penal provisions upon failure to comply with all / any provisions under the Act, but restricted itself specifically to “*Sections 21, 22 and 31-A of the Act*” thereby restricting the penal provisions to “*any person, officer or authority of the offending establishments*”.

2. **'Directions' that are issued under Section 31-A of the Air Act are of a different quality from "orders" referred to in Section 31 of the same Act.**

The statutory scheme is that directions given under Section 31-A of the Air Act are not appealable. The Hon'ble Supreme Court, in the matter of “*Tamil Nadu Pollution Control Board V Sterlite Industries (India) Limited & Ors.*” [(2019) 19 SCC 479], has discussed the statutory implications of Section 31 and Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 and how the two are separate and distinct from each other, which is as follows:

“36. We have referred to the orders dated 12-4-2018, 23-5-2018, and 28-5-2018 passed by the TNPCB under Sections 33-A and 31-A of the Water Act and the Air Act respectively. At this juncture, it is important to state that Section 33-B of the Water Act and Section 31-B of the Air Act were both enacted on 18-10-2010, which is the very date on which the NGT Act came into force. What is important to note is that whereas Section 33-B(c) of the Water Act read with Section 16(c) of the NGT Act make it clear that directions issued under Section 33-A of the Water Act are appealable to the NGT, directions

issued under Section 31-A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given under Section 31-A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders. Shri Sundaram's argument that these orders being substantially relatable to the Water Act would, therefore, not hold, as such orders are composite orders made both under the Water Act and the Air Act. Equally disingenuous is the reference to Section 14 of the NGT Act which only refers to the original jurisdiction of the NGT and not to its appellate jurisdiction. Also, to state generally that the subject matter of environment lies with the NGT, is an argument of despair that must be dismissed for the reason that as held by us hereinabove, an appeal being a creature of statute, a statute either confers a right of appeal or it does not. In the present case, we have seen that so far as directions issued under Section 31-A of the Air Act are concerned, there is no right of appeal conferred by the Air Act read with the NGT Act. The ingenious argument made by Shri Sundaram that, in any case, a "direction" under Section 31-A of the Air Act is nothing but an "order", and would, therefore, be appealable as such under Section 31-B of the Air Act read with Section 16 of the NGT Act would drive a coach-and-four through the statutory scheme that has just been adverted to. We have seen how all the appellate proceedings to the NGT, whether under the Air Act, the Water Act, or the NGT Act have been brought into force on the same date. Whereas the identical power to give directions by the Board under the Water Act is appealable to the NGT, the same power to give directions by the Board under the Air Act is not so appealable. The absence of any mention of Section 31-A in Section 31-B of the Air Act, given the statutory scheme as aforesaid, makes it clear that even this argument must be rejected. Also, "directions" that are issued under Section 31-A of the Air Act are of a different quality from "orders" referred to in Section 31 of

the same Act. Directions are issued in the exercise of powers and performance of functions under the Act and are not quasi-judicial in nature, whereas orders that are appealed against under Section 31 are quasi-judicial orders made, inter alia, under Section 21 of the Air Act. For this reason, also, we cannot accept the aforesaid argument of Shri Sundaram. However, Shri Sundaram argued, with particular reference to the Explanation to Section 31-A of the Air Act that "directions" partake of the nature of "orders" when closure of any particular industry or stoppage of supply of electricity qua any single industry is made, and therefore, such directions are appealable as orders under Section 31 of the Air Act. This argument is also of no avail as Section 33-A of the Water Act contains an identical explanation to that contained in Section 31-A of the Air Act. Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable. Hence, reference made to P. Ramanatha Aiyar's Law Lexicon and Black's Law Dictionary, which state that in certain circumstances, orders are also directions and vice versa, would not apply to the present case, given the express statutory scheme. In this connection, Shri Sundaram cited Kanhiya Lal Omar v. R.K. Trivedi, and relied upon para 17. where this Court held, referring to Article 324(1) of the Constitution of India, that a "direction" may be equated with a specific or a general order. The context of Article 324 being wholly different, it is obvious that this authority also has no application, given the statutory scheme in the present case."

(Emphasis supplied)

A true copy of the water act is annexed here as ANNEXURE 2.

It is therefore submitted that all orders, and directions passed by the State Board cannot be held to have been passed under Sec 31A of the Act. **A true copy of the said judgment is annexed here as ANNEXURE 3,**

- 3. Directions issued u/s 31A to state categorically that it is issued u/s 31A to attract Section 37**

1964

It has been submitted by the counsel for UPPCB that the communication dated 23.11.2023 which was sent by the Member Secretary, UPPCB was an order passed under Section 31A of Air (Prevention and Control of Pollution) Act, 1981 and the same was sent to the concerned District Magistrates for recovery of environmental compensation. It is submitted that a letter, issued by the State Pollution Control Board requesting the District Magistrate of the concerned district to enforce its earlier orders passed under section 31A of the Act against the Polluter / Offending Establishment under the Act, cannot be deemed to be itself an order passed under section 31A of the Act. This Hon'ble Tribunal has been pleased to direct the UPPCB in para 13 of the order dated 21.12.2023 that “..we are of the opinion that the environmental compensation which is imposed is required to be recovered and prompt action is required to be taken by competent officers of UPPCB...”

The communications sent by the Member Secretary, UPPCB to the District Magistrate including letters dated 10.02.2023 clearly state that these have been issued to enforce the closure order of defaulter brick kiln in reference to Government Order 303(1)/81-7-2021-39 (para)/2014TC-1 dated 15.03.2021 and G.O dated 582(1)/81-7-2021-39 (para)/2014TC-1 dated 07.07.2021 issued by the Government of Uttar Pradesh. The said communications do not state at any place that the letters themselves are being issued under section 31-A of the Act.

It is submitted that the letters requesting enforcement of the closure orders passed under section 31-A of the Act are not directions under section 31-A of the Act. The State Board has been held to be an Enforcement Agency itself under the provisions of the Act and thus, no Government officer who has been called upon by the Board to enforce its Orders under section 31-A can be held to be criminally liable under section 37 of the Act.

In ***Anjum vs Uttar Pradesh Pollution Control Board on 21 February 2024***, Para 36, Hon'ble NGT has discussed the power to give effect to the 'Polluter Pays' principle and impose compensation and its recovery under Sections 3 and 5 of The Environment Protection Act 1986. The Hon'ble Supreme Court has held in ***Indian Council for Enviro Legal Action vs. Union of India*** that

1965

according to the 'Polluter Pays' principle, the responsibility for repairing the damages is that of the offending industry. Sections 3 and 5 of the Act, 1986 empower the Central Government to give directions and take measures for giving effect principle. The executing agencies empowered to curb pollution have not been made liable to pay compensation and be criminally penalised.

A true copy of the said judgment is annexed here as ANNEXURE 3

In any event, correspondence for enforcement of its orders by the State Board cannot be held to be deemed directions issued under section 31-A unless it states categorically that it is issued u/s 31A to attract the penal provisions of Section 37 of the Act.

4. Prior Sanction required for prosecuting the Government officers -

It is submitted that in the event, action should be initiated for prosecuting the concerned District Magistrates under Section 37 of Air (Prevention and Control of Pollution) Act, 198, prior sanction is required for the same under section 197 Cr.P.C. The judgments relied upon by the counsel for the UPPCB *V.C Chinnappa Goudar vs Karnataka State Pollution Control Board & Anr (2-15) 14 SCC 535* and *Noorulla Khan vs Karnataka State Pollution Control Board & Anr (2021) SCC Online SC 601* do not apply to the present set of facts and circumstances.

In the Chinappa case, the Municipal Commissioner was being prosecuted under section 48 of the Water Act, 1974 having himself committed the offence of pollution by allowing the discharge of effluents into the Abalajhuri River. In the Noorulla Khan case, the Municipal Commissioner was being prosecuted under section 48 of the Water Act, 1974 having himself committed an offence of pollution. In such circumstances, the Hon'ble Supreme Court has held that Section 197 is not attracted.

The undisputed fact in the present case is that the District Magistrate has not been held by State Board to be a Polluter or an offending establishment. A government department indulging in polluting activities can be prosecuted

1966

but nowhere does it allow for the prosecution of public servants involved in the execution/enforcement of laws and prevention of pollution. Thus the above cases are clearly distinguishable.

5. **Necessary to implead Union of India to decide on the interpretation.**

The Air (Prevention and Control of Pollution) Act, 1981 was implemented with an objective of taking appropriate steps for the preservation of the natural resources of the country and the conservation of the quality of air and to further control its pollution.

The Central Government i.e., Union of India plays a crucial role in environmental regulation and policymaking. When it comes to addressing issues such as air pollution, which often involve multiple stakeholders including industries, local governments and citizens, the central government's involvement is crucial due to its regulatory authority and jurisdiction over certain aspects of environmental management. Impleading the Union of India in the present case will ensure comprehensive and coordinated efforts to address the issue at both national and local levels, leveraging the regulatory authority, resources, and expertise of the Central Government.

The Ministry of Environment Forest & Climate Change has also issued a Notice for Public consultation (Q-15012/01/2022-CPW) dated 30.06.2022, and submitted a proposal for amendment to Air Act, 1981. Concerns were raised about the decriminalization of existing provisions of the Air (Prevention and Control of Pollution) Act, 1981 to reduce compliances by weeding out fear of imprisonment for simple violations under existing law.

The current issue concerning the interpretation of Section 31A and Section 37 of the Air (Prevention and Control of Pollution) Act, 1981, has implications that extend across the entire country. Therefore, it is imperative to involve the Union of India in this case to ensure a thorough and comprehensive interpretation of the law.

1967

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

ARRANGEMENT OF SECTIONS

CHAPTER I PRELIMINARY

SECTIONS

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

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

3. Central Pollution Control Board.
4. State Pollution Control Boards constituted under section 4 of Act 6 of 1974 to be State Boards under this Act.
5. Constitution of State Boards.
6. Central Board to exercise the powers and perform the functions of a State Board in the Union territories.
7. Terms and conditions of service of members.
8. Disqualifications.
9. Vacation of seats by members.
10. Meetings of Board.
11. Constitution of committees.
12. Temporary association of persons with Board for particular purpose.
13. Vacancy in Board not to invalidate acts or proceedings.
14. Member-secretary and officers and other employees of State Boards.
15. Delegation of powers.

CHAPTER III

POWERS AND FUNCTIONS OF BOARDS

16. Functions of Central Board.
17. Functions of State Boards.
18. Power to give directions.

CHAPTER IV

PREVENTION AND CONTROL OF AIR POLLUTION

19. Power to declare air pollution control areas.
20. Power to give instructions for ensuring standards for emission from automobiles.
21. Restrictions on use of certain industrial plants.
22. Persons carrying on industry, etc., not to allow emission of air pollutants in excess of the standard laid down by State Board.
- 22A. Power of Board to make application to court for restraining persons from causing air pollution.

1968

SECTIONS

- 23. Furnishing of information to State Board and other agencies in certain cases.
- 24. Power of entry and inspection.
- 25. Power to obtain information.
- 26. Power to take samples of air or emission and procedure to be followed in connection therewith.
- 27. Reports of the result of analysis on samples taken under section 26.
- 28. State Air Laboratory.
- 29. Analysis.
- 30. Reports of analysis.
- 31. Appeals.
- 31A. Power to give directions.

CHAPTER V

FUND, ACCOUNTS AND AUDIT

- 32. Contribution by Central Government.
- 33. Fund of Board.
- 33A. Borrowing powers of Board.
- 34. Budget.
- 35. Annual report.
- 36. Accounts and audit.

CHAPTER VI

PENALTIES AND PROCEDURE

- 37. Failure to comply with the provisions of section 21 or section 22 or with the directions issued under section 31A.
- 38. Penalties for certain acts.
- 39. Penalty for contravention of certain provisions of the Act.
- 40. Offences by companies.
- 41. Offences by Government Departments.
- 42. Protection of action taken in good faith.
- 43. Cognizance of offences.
- 44. Members, officers and employees of Board to be public servants.
- 45. Reports and returns.
- 46. Bar of jurisdiction.

CHAPTER VII

MISCELLANEOUS

- 47. Power of State Government to supersede State Board.
- 48. Special provision in the case of supersession of the Central Board or the State Boards constituted under the Water (Prevention and Control of Pollution) Act, 1974.
- 49. Dissolution of State Boards constituted under the Act.
- 50. [Omitted].
- 51. Maintenance of register.

SECTIONS

- 52. Effect of other laws.
- 53. Power of Central Government to make rules.
- 54. Power of State Government to make rules.

THE SCHEDULE [*Omitted.*].

1970

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

ACT NO. 14 OF 1981

[29th March, 1981.]

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

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

AND WHEREAS it is considered necessary to implement the decisions aforesaid in so far as they relate to the preservation of the quality of air and control of air pollution;

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

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Air (Prevention and Control of Pollution) Act, 1981.

(2) It extends to the whole of India.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

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

(a) “air pollutant” means any solid, liquid or gaseous substance² [(including noise)] present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b) “air pollution” means the presence in the atmosphere of any air pollutant;

(c) “approved appliance” means any equipment or gadget used for the bringing of any combustible material or for generating or consuming any fume, gas or particulate matter and approved by the State Board for the purposes of this Act;

(d) “approved fuel” means any fuel approved by the State Board for the purposes of this Act;

(e) “automobile” means any vehicle powered either by internal combustion engine or by any method of generating power to drive such vehicle by burning fuel;

(f) “Board” means the Central Board or a State Board;

(g) “Central Board” means the³ [Central Pollution Control Board] constituted under section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(h) “chimney” includes any structure with an opening or outlet from or through which any air pollutant may be emitted;

(i) “control equipment” means any apparatus, device, equipment or system to control the quality and manner of emission of any air pollutant and includes any device used for securing the efficient operation of any industrial plant;

1. 16th May, 1981, vide notification No. G.S.R. 351(E), dated 15th May, 1981, see Gazette of India, Extraordinary, Part II, sec. 3 (i).

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

3. Subs. by s. 2, *ibid.*, for “Central Board for the Prevention and Control of Water Pollution” (w.e.f. 1-4-1988).

(j) “emission” means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

(k) “industrial plant” means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere;

(l) “member” means a member of the Central Board or a State Board, as the case may be, and includes the Chairman thereof;

¹[(m) “occupier”, in relation to any factory or premises, means the person who has control over the affairs of the factory or the premises, and includes, in relation to any substance, the person in possession of the substance;]

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

(o) “State Board” means,—

(i) in relation to a State in which the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), is in force and the State Government has constituted for that State a ²[State Pollution Control Board] under section 4 of that Act, the said State Board; and

(ii) in relation to any other State, the State Board for the Prevention and Control of Air Pollution constituted by the State Government under section 5 of this Act.

CHAPTER II

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

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

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

5. Constitution of State Boards.—(1) In any State in which the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), is not in force, or that Act is in force but the State Government has not constituted a ⁴[State Pollution Control Board] under that Act, the State Government shall, with effect from such date as it may, by notification in the Official Gazette, appoint, constitute a State Board for the Prevention and Control of Air Pollution under such name as may be specified in the notification, to exercise the powers conferred on, and perform the functions assigned to, that Board under this Act.

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

(a) a Chairman, being a person, having special knowledge or practical experience in respect of matters relating to environmental protection, to be nominated by the State Government:

Provided that the Chairman may be either whole-time or part-time as the State Government may think fit;

1. Subs. by Act 47 of 1987, s. 2, for clause (m) (w.e.f. 1-4-1988).

2. Subs. by s. 2, *ibid.*, for “State Board for the Prevention and Control of Water Pollution” (w.e.f. 1-4-1988).

3. Subs. by s. 3, *ibid.*, for sections 3 and 4 (w.e.f. 1-4-1988).

4. Subs. by s. 4, *ibid.*, for “State Board for the Prevention and Control of Water Pollution” (w.e.f. 1-4-1988).

(b) such number of officials, not exceeding five, as the State Government may think fit, to be nominated by the State Government to represent that Government;

(c) such number of persons, not exceeding five, as the State Government may think fit, to be nominated by the State Government from amongst the members of the local authorities functioning within the State;

(d) such number of non-officials, not exceeding three, as the State Government may think fit, to be nominated by the State Government to represent the interest of agriculture, fishery or industry or trade or labour or any other interest, which, in the opinion of that Government, ought to be represented;

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

¹[(f) a full-time member-secretary having such qualifications knowledge and experience of scientific, engineering or management aspects of pollution control as may be prescribed, to be appointed by the State Government:]

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

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

6. Central Board to exercise the powers and perform the functions of a State Board in the Union territories.—No State Board shall be constituted for a Union territory and in relation to a Union territory, the Central Board shall exercise the powers and perform the functions of a State Board under this Act for that Union territory:

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

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

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

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

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

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

(b) in any other case, to the Chairman of the State Board,

and the seat of the Chairman or such other member shall thereupon become vacant.

(4) A member of a State Board constituted under this Act, other than the member-secretary, shall be deemed to have vacated his seat, if he is absent without reason, sufficient in the opinion of the State Board, from three consecutive meetings of the State Board or where he is nominated under clause (c) of sub-section (2) of section 5, he ceases to be a member of the local authority and such vacation of seat

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

shall, in either case, take effect from such date as the State Government may, by notification in the Official Gazette, specify.

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

(6) A member of a State Board constituted under this Act shall be eligible for re-nomination ^{1***}

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

8. Disqualifications.—(1) No person shall be a member of a State Board constituted under this Act, who—

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

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

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

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

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

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

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

(2) The State Government shall, by order in writing, remove any member who is, or has become, subject to any disqualification mentioned in sub-section (1).

Provided that no order of removal shall be made by the State Government under this section unless the member concerned has been given a reasonable opportunity of showing cause against the same.

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

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

10. Meetings of Board.—(1) For the purposes of this Act, a Board shall meet at least once in every three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed:

Provided that if, in the opinion of the Chairman, any business of an urgent nature is to be transacted, he may convene a meeting of the Board at such time as he thinks fit for the aforesaid purpose.

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

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

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

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

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

12. Temporary association of persons with Board for particular purpose.—(1) A Board may associate with itself in such manner, and for such purposes, as may be prescribed, any person whose assistance or advice it may desire to obtain in performing any of its functions under this Act.

(2) A person associated with the Board under sub-section (1) for any purpose shall have a right to take part in the discussions of the Board relevant to that purpose, but shall not have a right to vote at a meeting of the Board and shall not be a member of the Board for any other purpose.

(3) A person associated with a Board under sub-section (1) shall be entitled to receive such fees and allowances as may be prescribed.

13. Vacancy in Board not to invalidate acts or proceedings.—No act or proceeding of a Board or any committee thereof shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board or such committee, as the case may be.

14. Member-secretary and officers and other employees of State Boards.—(1) The terms and conditions of service of the member-secretary of a State Board constituted under this Act shall be such as may be prescribed.

¹[(2) The member-secretary of a State Board, whether constituted under this Act or not, shall exercise such powers and perform such duties as may be prescribed, or as may, from time to time, be delegated to him by the State Board or its Chairman.]

(3) subject to such rules as may be made by the State Government in this behalf, a State Board, whether constituted under this Act or not, may appoint such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.

(4) The method of appointment, the conditions of service and the scales of pay of the officers (other than the member-secretary) and other employees of a State Board appointed under sub-section (3) shall be such as may be determined by regulations made by the State Board under this Act.

(5) Subject to such conditions as may be prescribed, a State Board constituted under this Act may from time to time appoint any qualified person to be a consultant to the Board and pay him such salary and allowances or fees, as it thinks fit.

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

CHAPTER III

POWERS AND FUNCTIONS OF BOARDS

16. Functions of Central Board.—(1) Subject to the provisions of this Act, and without prejudice to the performance, of its functions under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), the main functions of the Central Board shall be to improve the quality of air and to prevent, control or abate air pollution in the country.

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

1975

(2) In particular and without prejudice to the generality of the foregoing functions, the Central Board may—

(a) advise the Central Government on any matter concerning the improvement of the quality of air and the prevention, control or abatement of air pollution;

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

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

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

¹[(*dd*) perform such of the functions of any State Board as may be specified in and order made under sub-section (2) of section 18;]

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

(f) organise through mass media a comprehensive programme regarding the prevention, control or abatement of air pollution;

(g) collect, compile and publish technical and statistical data relating to air pollution and the measures devised for its effective prevention, control or abatement and prepare manuals, codes or guides relating to prevention, control or abatement of air pollution;

(h) lay down standards for the quality of air;

(i) collect and disseminate information in respect of matters relating to air pollution;

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

(3) The Central Board may establish or recognise a laboratory or laboratories to enable the Central Board to perform its functions under this section efficiently.

(4) The Central Board may—

(a) delegate any of its functions under this Act generally or specially to any of the committees appointed by it;

(b) do such other things and perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

17. Functions of State Boards.—(1) Subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974), the functions of a State Board shall be—

(a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;

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

(c) to collect and disseminate information relating to air pollution;

(d) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise mass-education programme relating thereto;

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

(e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;

(f) to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;

(g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft:

Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;

(h) to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;

(i) to Perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;

(j) to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

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

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

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

(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[(2) Where the Central Government is of the opinion that any State Board has defaulted in complying with any directions given by the Central Board under sub-section (1) and as a result of such default a grave emergency has arisen and it is necessary or expedient so to do in the public interest, it may, by order, direct the Central Board to perform any of the functions of the State Board in relation to such area, for such period and for such purposes, as may be specified in the order.

(3) Where the Central Board performs any of the functions of the State Board in pursuance of a direction under sub-section (2), the expenses, if any, incurred by the Central Board with respect to the performance of such functions may, if the State Board is empowered to recover such expenses, be recovered by the Central Board with interest (at such reasonable rate as the Central Government may, by order, fix) from the date when a demand for such expenses is made until it is paid from the person or persons concerned as arrears of land revenue or of public demand.

(4) For the removal of doubts, it is hereby declared that any directions to perform the functions of any State Board given under sub-section (2) in respect of any area would not preclude the State Board from performing such functions in any other area in the State or any of its other functions' in that area.]

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

2. Ins. by s. 8, *ibid.* (w.e.f. 1-4-1988).

CHAPTER IV
PREVENTION AND CONTROL OF AIR POLLUTION

19. Power to declare air pollution control areas.—(1) The State Government may, after consultation with the State Board, by notification in the Official Gazette declare in such manner as may be prescribed, any area or areas within the State as air pollution control area or areas for the purposes of this Act.

(2) The State Government may, after consultation with the State Board, by notification in the Official Gazette,—

(a) alter any air pollution control area whether by way of extension or reduction;

(b) declare a new air pollution control area in which may be merged one or more existing air pollution control areas or any part or parts thereof.

(3) If the State Government, after consultation with the State Board, is of opinion that the use of any fuel, other than an approved fuel, in any air pollution control area or part thereof, may cause or is likely to cause air pollution, it may, by notification in the Official Gazette, prohibit the use of such fuel in such area or part thereof with effect from such date (being not less than three months from the date of publication of the notification) as may be specified in the notification.

(4) The State Government may, after consultation with the State Board, by notification in the Official Gazette, direct that with effect from such date as may be specified therein, no appliance, other than an approved appliance, shall be used in the premises situated in an air pollution control area:

Provided that different dates may be specified for different parts of an air pollution control area or for the use of different appliances.

(5) If the State Government, after consultation with the State Board, is of opinion that the burning of any material (not being fuel) in any air pollution control area or part thereof may cause or is likely to cause air pollution, it may, by notification in the Official Gazette, prohibit the burning of such material in such area or part thereof.

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

21. Restrictions on use of certain industrial plants.—¹[(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

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

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

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant,²***such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as

1. Subs. by Act 47 of 1987, s. 9, for sub-section (1) (w.e.f. 1-4-1988).

2. The words “for the purpose of any industry specified in the Schedule” omitted by s. 9, *ibid.* (w.e.f. 1-4-1988).

may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

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

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, ¹[and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent]:

²[Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first provision, a reasonable opportunity of being heard shall be given to the person concerned.]

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

(i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

(iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;

(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises; and

(v) such other conditions as the State Board, may specify in this behalf; and

(vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf:

Provided that in the case of a person operating any industrial plant ³*** in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months:

Provided further that—

(a) after the installation of any control equipment in accordance with the specifications under clause (i), or

(b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or

(c) after the erection or re-erection of any chimney under clause (iv),

no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the previous approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom

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

2. Ins. by s. 9, *ibid.* (w.e.f. 1-4-1988).

3. The words “for the purpose of any industry specified in the Schedule” omitted by s. 9, *ibid.* (w.e.f. 1-4-1988).

consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

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

²**22A. Power of Board to make application to court for restraining person from causing air pollution.**—(1) Where it is apprehended by a Board that emission of any air pollutant, in excess of the standards laid down by the State Board under clause (g) of sub-section (1) of section 17, is likely to occur by reason of any person operating an industrial plant or otherwise in any air pollution control area, the Board may make an application to a court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class for restraining such person from emitting such air pollutant.

(2) On receipt of the application under sub-section (1), the court may make such order as it deems fit.

(3) Where under sub-section (2), the court makes an order restraining any person from discharging or causing or permitting to be discharged the emission of any air pollutant, it may, in that order,—

(a) direct such person to desist from taking such action as is likely to cause emission;

(b) authorise the Board, if the direction under clause (a) is not complied with by the person to whom such direction is issued, to implement the direction in such manner as may be specified by the court.

(4) All expenses incurred by the Board in implementing the directions of the court under clause (b) of sub-section (3) shall be recoverable from the person concerned as arrears of land revenue or of public demand.]

23. Furnishing of information to State Board and other agencies in certain cases.—(1) Where in any^{3***} area the emission of any air pollutant into the atmosphere in excess of the standards laid down by the State Board occurs or is apprehended to occur due to accident or other unforeseen act or event, the person in charge of the premises from where such emission occurs or is apprehended to occur shall forthwith intimate the fact of such occurrence or the apprehension of such occurrence to the State Board and to such authorities or agencies as may be prescribed.

(2) On receipt of information with respect to the fact or the apprehension of any occurrence of the nature referred to in sub-section (1), whether through intimation under that sub-section or otherwise, the State Board and the authorities or agencies shall, as early as practicable, cause such remedial measure to be taken as are necessary to mitigate the emission of such air pollutants.

(3) Expenses, if any, incurred by the State Board, authority or agency with respect to the remedial measures referred to in sub-section (2) together with interest (at such reasonable rate, as the State Government may, by order, fix) from the date when a demand for the expenses is made until it is paid, may be recovered by that Board, authority or agency from the person concerned, as arrears of land revenue, or of public demand.

24. Power of entry and inspection.—(1) Subject to the provisions of this section, any person empowered by a State Board in this behalf shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place—

(a) for the purpose of performing any of the functions of the State Board entrusted to him;

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

2. Ins. by s. 11, *ibid.* (w.e.f. 1-4-1988).

3. The words “air pollution control” omitted by s. 12, *ibid.* (w.e.f. 1-4-1988).

(b) for the purpose of determining whether and if so in what manner, any such functions are to be performed or whether any provisions of this Act or the rules made thereunder or any notice, order, direction or authorisation served, made, given or granted under this Act is being or has been complied with;

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

(2) Every person^{1***} operating any control equipment or any industrial plant, in an air pollution control area shall be bound to render all assistance to the person empowered by the State Board under sub-section (1) for carrying out the functions under that sub-section and if he fails to do so without any reasonable cause or excuse, he shall be guilty of an offence under this Act.

(3) If any person willfully delays or obstructs any person empowered by the State Board under sub-section (1) in the discharge of his duties, he shall be guilty of an offence under this Act.

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), or, in relation to the State of Jammu and Kashmir, or any area, in which that Code is not in force, the provisions of any corresponding law in force in that State or area, shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code or, as the case may be, under the corresponding provisions of the said law.

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

26. Power to take samples of air or emission and procedure to be followed in connection therewith.—(1) A State Board or any officer empowered by it in this behalf shall have power to take, for the purpose of analysis, samples of air or emission from any chimney, flue or duct or any other outlet in such manner as may be prescribed.

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

(3) Subject to the provisions of sub-section (4), when a sample of emission is taken for analysis under sub-section (1), the person taking the sample shall—

(a) serve on the occupier or his agent, a notice, then and there, in such form as may be prescribed, of his intention to have it so analysed;

(b) in the presence of the occupier or his agent, collect a sample of emission for analysis;

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

(d) send, without delay, the container or containers to the laboratory established or recognised by the State Board under section 17 or, if a request in that behalf is made by the occupier or his agent when the notice is served on him under clause (a), to the laboratory established or specified under sub-section (1) of section 28.

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

(4) When a sample of emission is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under clause (a) of sub-section (3), then,—

(a) in a case where the occupier or his agent wilfully absents himself, the person taking the sample shall collect the sample of emission for analysis to be placed in a container or containers which shall be marked and sealed and shall also be signed by the person taking the sample, and

(b) in a case where the occupier or his agent is present at the time of taking the sample but refuses to sign the marked and sealed container or containers of the sample of emission as required under clause (c) of sub-section (3), the marked and sealed container or containers shall be signed by the person taking the sample,

and the container or containers shall be sent without delay by the person taking the sample for analysis to the laboratory established or specified under sub-section (1) of section 28 and such person shall inform the Government analyst appointed under sub-section (1) of section 29, in writing, about the wilful absence of the occupier or his agent, or, as the case may be, his refusal to sign the container or containers.

27. Reports of the result of analysis on samples taken under section 26.—(1) Where a sample of emission has been sent for analysis to the laboratory established or recognised by the State Board, the Board analyst appointed under sub-section (2) of section 29 shall analyse the sample and submit a report in the prescribed form of such analysis in triplicate to the State Board.

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

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

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

28. State Air Laboratory.—(1) The State Government may, by notification in the Official Gazette,—

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

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

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

(a) the functions of the State Air Laboratory;

(b) the procedure for the submission to the said Laboratory of samples of air or emission for analysis or tests, the form of the Laboratory's report thereon and the fees payable in respect of such report;

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

29. Analysts.—(1) The State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit and having the prescribed qualifications to be Government analysts for the purpose of analysis of samples of air or emission sent for analysis to any laboratory established or specified under sub-section (1) of section 28.

(2) Without prejudice to the provisions of section 14, the State Board may, by notification in the Official Gazette, and with the approval of the State Government, appoint such persons as it thinks fit and having the prescribed qualifications to be Board analysts for the purpose of analysis of samples of air or emission sent for analysis to any laboratory established or recognised under section 17.

30. Reports of analysts.—Any document purporting to be a report signed by a Government analyst or, as the case may be, a State Board analyst may be used as evidence of the facts stated therein in any proceeding under this Act.

31. Appeals.—(1) Any person aggrieved by an order made by the State Board under this Act may, within thirty day from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the Appellate Authority) as the State Government may think fit to constitute:

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The Appellate Authority shall consist of a single person or three persons as the State Government may think fit to be appointed by the State Government.

(3) The form and the manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the Appellate Authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under sub-section (1), the Appellate Authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

[31A. Power to give directions.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

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

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

CHAPTER V

FUND, ACCOUNTS AND AUDIT

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

Provided that nothing in this section shall apply to any²[State Pollution Control Board] constituted under section 4 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), which is empowered by that Act to expend money from its fund thereunder also for performing its functions, under any law for the time being in force relating to the prevention, control or abatement of air pollution.

33. Fund of Board.—(1) Every State Board shall have its own fund for the purposes of this Act and all sums which may, from time to time, be paid to it by the Central Government and all other receipts (by way of contributions, if any, from the State Government, fees, gifts, grants, donations benefactions or otherwise) of that Board shall be carried to the fund of the Board and all payments by the Board shall be made therefrom.

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

2. Subs. by s. 15, *ibid.*, for “State Board for the Prevention and Control of water Pollution” (w.e.f. 1-4-1988).

(2) Every State Board may expend such sums as it thinks fit for performing its functions under this Act and such sums shall be treated as expenditure payable out of the fund of that Board.

(3) Nothing in this section shall apply to any ¹[State Pollution Control Board] constituted under section 4 of the Water(Prevention and Control of Pollution) Act, 1974 (6 of 1974), which is empowered by that Act to expend money from its fund thereunder also for performing its functions, under any law for the time being in force relating to the prevention, control or abatement of air pollution.

²[**33A. Borrowing powers of Board.**—A Board may, with the consent of, or in accordance with the terms of any general or special authority given to it by, the Central Government or, as the case may be, the State Government, borrow money from any source by way of loans or issue of bonds, debentures or such other instruments, as it may deem fit, for discharging all or any of its functions under this Act.]

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

³[**35. Annual report.**—(1) The Central Board shall, during each financial year, prepare, in such form as may be prescribed, an annual report giving full account of its activities under this Act during the previous financial year and copies thereof shall be forwarded to the Central Government within four months from the last date of the previous financial year and that Government shall cause every such report to be laid before both Houses of Parliament within nine months of the last date of the previous financial year.

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

36. Accounts and audit.—(1) Every Board shall, in relation to its functions under this Act, maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government or, as the case may be, the State Government.

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

(3) The said auditor shall be appointed by 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.

1. Subs. by Act 47 of 1987, s. 15, for “State Board for the Prevention and Control of Water Pollution” (w.e.f. 1-4-1988).

2. Ins. by s. 16, *ibid.* (w.e.f. 1-4-1988).

3. Subs. by s. 17, *ibid.*, for section 35 (w.e.f. 1-4-1988).

CHAPTER VI
PENALTIES AND PROCEDURE

¹[**37. Failure to comply with the provisions of section 21 or section 22 or with the directions issued under section 31A.**—(1) whoever fails to comply with the provisions of section 21 or section 22 or directions issued under section 31A, shall, in respect of each such failure, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.

(2) If the failure referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.]

38. Penalties for certain acts.—Whoever—

(a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or

(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or

(c) damages any works or property belonging to the Board, or

(d) fails to furnish to the Board or any officer or other employee of the Board any information required by the Board or such officer or other employee for the purpose of this Act, or

(e) fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board or the apprehension of such occurrence, to the State Board and other prescribed authorities or agencies as required under sub-section (1) of section 23, or

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

(g) for the purpose of obtaining any consent under section 21, makes a statement which is false in any material particular,

shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ²[ten thousand rupees] or with both.

³[**39. Penalty for contravention of certain provisions of the Act.**—Whoever contravenes any of the provisions of this Act or any order or direction issued thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of continuing contravention, with an additional fine which may extend to five thousand rupees for every day during which such contravention continues after conviction for the first such contravention.]

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

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

1. Subs. by Act 47 of 1987, s. 18, for section 37 (w.e.f. 1-4-1988).

2. Subs. by s. 19, *ibid.*, for “five hundred rupees” (w.e.f. 1-4-1988).

3. Subs. by s. 20, *ibid.*, for section 39 (w.e.f. 1-4-1988).

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 purpose of this section,—

(a) “company” means any body corporate, and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

41. Offences by Government Departments.—(1) Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

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

42. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government or any member or any officer or other employee of the Board in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made thereunder.

¹**43. Cognizance of offences.**—(1) No court shall take cognizance of any offence under this Act except on a complaint made by—

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

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or officer authorised as aforesaid,

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

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

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

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

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

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

1. Subs. by Act 47 of 1987, s. 21, for section 43 (w.e.f. 1-4-1988).

CHAPTER VII
MISCELLANEOUS

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

(a) that a State Board constituted under this Act has persistently made default in the performance of the functions imposed on it by or under this Act, or

(b) that circumstances exist which render it necessary in the public interest so to do,

the State Government may, by notification in the Official Gazette, supersede the State Board for such period, not exceeding six months, as may be specified in the notification:

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

(2) Upon the publication of a notification under sub-section (1) superseding the State Board,—

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under this Act, be exercised, performed or discharged by the State Board shall, until the State Board is reconstituted under sub-section (3), be exercised, performed or discharged by such person or persons as the State Government may direct;

(c) all property owned or controlled by the State Board shall, until the Board is reconstituted under sub-section (3), vest in the State Government.

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

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

(b) reconstitute the State Board by a fresh nomination or appointment, as the case may be, and in such case any person who vacated his office under clause (a) of sub-section (2) shall also be eligible for nomination or appointment:

Provided that the State Government may at any time before the expiration of the period of supersession, whether originally specified under sub-section (1) or as extended under this sub-section, take action under clause (b) of this sub-section.

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

49. Dissolution of State Boards constituted under the Act.—(1) As and when the Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974), comes into force in any State and the State Government constitutes ¹[State Pollution Control Board] under that Act, the State Board constituted by the State Government under this Act shall stand dissolved and the Board first-mentioned shall exercise the powers and perform the functions of the Board second-mentioned in that State.

(2) On the dissolution of the State Board constituted under this Act,—

(a) all the members shall vacate their offices as such;

1. Subs. by Act 47 of 1987, s. 15, for “State Board for the Prevention and Control of Water Pollution” (w.e.f. 1-4-1988).

(b) all moneys and other property of whatever kind (including the fund of the State Board) owned by, or vested in, the State Board, immediately before such dissolution, shall stand transferred to and vest in the¹[State Pollution Control Board];

(c) every officer and other employee serving under the State Board immediately before such dissolution shall be transferred to and become an officer or other employee of the ¹[State Pollution Control Board] and hold office by the same tenure and at the same remuneration and on the same terms and conditions of service as he would have held the same if the State Board constituted under this Act had not been dissolved and shall continue to do so unless and until such tenure, remuneration and terms and conditions of service are duly altered by the ¹[State Pollution Control Board]:

Provided that the tenure, remuneration and terms and conditions of service of any such officer or other employee shall not be altered to his disadvantage without the previous sanction of the State Government;

(d) all liabilities and obligations of the State Board of whatever kind, immediately before such dissolution, shall be deemed to be the liabilities or obligations, as the case may be, of the ¹[State Pollution Control Board] and any proceeding or cause of action, pending or existing immediately before such dissolution by or against the State Board constituted under this Act in relation to such liability or obligation may be continued and enforced by or against the ¹[State Pollution Control Board.]

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

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

(2) The register maintained under sub-section (1) shall be open to inspection at all reasonable hours by any person interested in or affected by such standards for emission or by any other person authorised by such person in this behalf.

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

53. Power of Central Government to make rules.—(1) The Central Government may, in consultation with the Central Board, by notification in the Official Gazette, make rules in respect of the following matters, namely:—

(a) the intervals and the time and place at which meetings of the Central Board or any committee thereof shall be held and the procedure to be followed at such meetings, including the quorum necessary for the transaction of business thereat, under sub-section (1) of section 10 and under sub-section (2) of section 11;

(b) the fees and allowances to be paid to the members of a committee of the Central Board, not being members of the Board, under sub-section (3) of section 11;

(c) the manner in which and the purposes for which persons may be associated with the Central Board under sub-section (1) of section 12;

(d) the fees and allowance to be paid under sub-section (3) of section 12 to persons associated with the Central Board under sub-section (1) of section 12;

(e) the functions to be performed by the Central Board under clause (j) of sub-section (2) of section 16;

1. Subs. by Act 47 of 1987, s. 15 for “State Board for the Prevention and Control of Water Pollution” (w.e.f. 1-4-1988).

¹[(f) the form in which and the time within which the budget of the Central Board may be prepared and forwarded to the Central Government under section 34;

(ff) the form in which the annual report of die Central Board may be prepared under section 35;]

(g) the form in which the accounts of the Central Board may be maintained under sub-section (1) of section 36.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

54. Power of State Government to make rules.—(1) Subject to the provisions of sub-section (3), the State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act in respect of matter not falling within the purview of section 53.

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

²[(a) the qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control required for appointment as member-secretary of a State Board constituted under the Act;]

³[(aa)] the terms and conditions of service of the Chairman and other members (other than the member-secretary) of the State Board constituted under this Act under sub-section (7) of section 7;

(b) the intervals and the time and place at which meetings of the State Board or any committee thereof shall be held and the procedure to be followed at such meetings, including the quorum necessary for the transaction of business thereat, under sub-section (1) of section 10 and under sub-section (2) of section 11;

(c) the fees and allowances to be paid to the members of a committee of the State Board, not being members of the Board under sub-section (3) of section 11;

(d) the manner in which and the purpose for which persons may be associated with the State Board under sub-section (1) of section 12;

(e) the fees and allowances to be paid under sub-section (3) of section 12 to persons associated with the State Board under sub-section (1) of section 12;

(f) the terms and conditions of service of the member-secretary of a State Board constituted under this Act under sub-section (1) of section 14;

(g) the powers and duties to be exercised and discharged by the member-secretary of a State Board under sub-section (2) of section 14;

(h) the conditions subject to which a State Board may appoint such officers and other employees as it considers necessary for the efficient performance of its functions under sub-section (3) of section 14;

(i) the conditions subject to which a State Board may appoint a consultant under sub-section (5) of section 14;

(j) the functions to be performed by the State Board under clause (i) of sub-section (1) of section 17;

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

2. Ins. by s. 24, *ibid.* (w.e.f. 1-4-1988).

3. Clause (a) renumbered as clause (aa) thereof by s. 24, *ibid.* (w.e.f. 1-4-1988).

(k) the manner in which any area or areas may be declared as air pollution control area or areas under sub-section (1) of section 19;

(l) the form of application for the consent of the State Board, the fees payable therefore the period within which such application shall be made and the particulars it may contain, under sub-section (2) of section 21;

(m) the procedure to be followed in respect of an inquiry under sub-section (3) of section 21;

(n) the authorities or agencies to whom information under sub-section (1) of section 23 shall be furnished;

(o) the manner in which samples of air or emission may be taken under sub-section (1) of section 26;

(p) the form of the notice referred to in sub-section (3) of section 26;

(q) the form of the report of the State Board analyst under sub-section (1) of section 27;

(r) the form of the report of the Government analyst under sub-section (3) of section 27;

(s) the functions of the State Air Laboratory, the procedure for the submission to the said Laboratory of samples of air or emission for analysis or tests, the form of Laboratory's report thereon, the fees payable in respect of such report and other matters as may be necessary or expedient to enable that Laboratory to carry out its functions, under sub-section (2) of section 28;

(t) the qualifications required for Government analysts under sub-section (1) of section 29;

(u) the qualification required for State Board analysts under sub-section (2) of section 29;

(v) the form and the manner in which appeals may be preferred, the fees payable in respect of such appeals and the procedure to be followed by the Appellate Authority in disposing of the appeals under sub-section (3) of section 31;

¹[(w) the form in which and the time within which the budget of the State Board may be prepared and forwarded to the State Government under section 34;

(ww) the form in which the annual report of the State Board may be prepared under section 35;]

(x) the form in which the accounts of the State Board may be maintained under the sub-section (1) of section 36;

²[(xx) the manner in which notice of intention to make a complaint shall be given under section 43;]

(y) the particulars which the register maintained under section 51 may contain;

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

(3) After the first constitution of the State Board, no rule with respect to any of the matters referred to in sub-section (2) [other than those referred to ³[[in clause (aa)]] thereof], shall be made, varied, amended or repealed without consulting that Board.

[*The Schedule.*].—Omitted by the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), s. 25(w.e.f. 1-4-1988).

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

2. Ins. by s. 24, *ibid.* (w.e.f. 1-4-1988).

3. Subs. by s. 24, *ibid.*, for "in clause (a)" (w.e.f. 1-4-1988).

1990

THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

ARRANGEMENT OF SECTIONS

CHAPTER I

PRELIMINARY

SECTIONS

1. Short title, application and commencement.
2. Definitions.

CHAPTER II

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

3. Constitution of Central Boards.
4. Constitution of State Board.
5. Terms and conditions of service of members.
6. Disqualifications.
7. Vacation of seats by members.
8. Meetings of Board.
9. Constitution of committees.
10. Temporary association of persons with Board for particular purposes.
11. Vacancy in Board not to invalidate acts or proceedings.
- 11A. Delegation of powers to Chairman.
12. Member-secretary and officers and other employees of Board.

CHAPTER III

JOINT BOARDS

13. Constitution of Joint Board.
14. Composition of Joint Boards.
15. Special provision relating to giving of directions.

CHAPTER IV

POWERS AND FUNCTIONS OF BOARDS

16. Functions of Central Board.
17. Functions of State Board.
18. Powers to give directions.

CHAPTER V

PREVENTION AND CONTROL OF WATER POLLUTION

19. Power of State Government to restrict the application of the Act to certain areas.
20. Power to obtain information.
21. Power to take samples of effluents and procedure to be followed in connection therewith.

1991

SECTIONS

- 22. Reports of the result of analysis on samples taken under section 21.
- 23. Power of entry and inspection.
- 24. Prohibition on use of stream or well for disposal of polluting matter, etc.
- 25. Restrictions on new outlets and new discharges.
- 26. Provision regarding existing discharge of sewage or trade effluent.
- 27. Refusal or withdrawal of consent by State Board.
- 28. Appeals.
- 29. Revision.
- 30. Power of State Board to carry out certain works.
- 31. Furnishing of information to State Board and other agencies in certain cases.
- 32. Emergency measures in case of pollution of stream or well.
- 33. Power of Board to make application to courts for restraining apprehended pollution of water in streams or wells.
- 33A. Power to give directions.

CHAPTER VI

FUNDS, ACCOUNTS AND AUDIT

- 34. Contributions by Central Government.
- 35. Contributions by State Government.
- 36. Fund of Central Board.
- 37. Fund of State Board.
- 37A. Borrowing powers of Board.
- 38. Budget.
- 39. Annual report.
- 40. Accounts and audit.

CHAPTER VII

PENALTIES AND PROCEDURE

- 41. Failure to comply with directions under sub-section (2) or sub-section (3) of section 20, or orders issued under clause (c) of sub-section (1) of section 32.
- 42. Penalty for certain acts.
- 43. Penalty for contravention of provisions of section 24.
- 44. Penalty for contravention of section 25 or section 26.
- 45. Enhanced penalty after previous conviction.
- 45A. Penalty for contravention of certain provisions of the Act.
- 46. Publication of names of offenders.
- 47. Offences by companies.
- 48. Offences by Government Departments.

SECTIONS

49. Cognizance of offences.
50. Members, officers and servants of Board to be public servants.

CHAPTER VIII

MISCELLANEOUS

51. Central Water Laboratory.
52. State Water Laboratory.
53. Analysts.
54. Reports of analysts.
55. Local authorities to assist.
56. Compulsory acquisition of land for the State Board.
57. Returns and reports.
58. Bar of jurisdiction.
59. Protection of action taken in good faith.
60. Overriding effect.
61. Power of Central Government to supersede the Central Board and Joint Boards.
62. Power of State Government to supersede State Board.
63. Power of Central Government to make rules.
64. Power of State Government to make rules.

1993

THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

ACT NO. 6 OF 1974

[23rd March, 1974.]

An Act 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, 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 articles 249 and 250 of the Constitution;

AND WHEREAS in pursuance of clause (1) of article 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:—

CHAPTER I

PRELIMINARY

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 the Union territories; and it shall apply to such other State which adopts this Act by resolution passed in that behalf under clause (1) of article 252 of the Constitution.

(3) It shall come into force, at once 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, and in any other State which adopts this Act under clause (1) of article 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.

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

(a) “Board” means the Central Board or a State Board;

¹[(b) “Central Board” means the Central Pollution Control Board constituted under section 3;]

(c) “member” means a member of a Board and includes the chairman thereof;

²[(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;]

1. Subs. by Act 53 of 1988, s. 2, for clause (b) (w.e.f. 29-9-1988).

2. Subs. by s. 2, *ibid.*, for clause (d) (w.e.f. 29-9-1988).

¹[(*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;

¹[(*gg*) “sewer” means any conduit pipe or channel, open or closed, carrying sewage or trade effluent;]

²[(*h*) “State Board” means a State Pollution Control Board constituted under section 4;]

(*i*) “State Government” in relation to a Union territory means the Administrator thereof appointed under article 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 ³[industry, operation or process, or treatment and disposal system], other than domestic sewage.

CHAPTER II

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

3. Constitution of Central Boards.—(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 ⁴[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 ⁵[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;

1. Ins. by Act 44 of 1978, s. 2 (w.e.f. 12-12-1978).

2. Subs. by Act 53 of 1988, s. 2, for clause (*h*) (w.e.f. 29-9-1988).

3. Subs. by s. 2, *ibid.*, for “trade or industry” (w.e.f. 29-9-1988).

4. Subs. by s. 3, *ibid.*, for “Central Board for the Prevention and Control of Water Pollution” (w.e.f. 29-9-1988).

5. Subs. by Act 44 of 1978, s. 3, for “matters relating to the use and conservation of water resources or the prevention and control of water pollution” (w.e.f. 12-12-1978).

(b) ¹[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 clause (c) of sub-section (2) of section 4;

(d) ²[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;

³(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.

4. Constitution of State Board.—(1) The State Government shall, with effect from such date ⁴*** as it may, by notification in the Official Gazette, appoint, constitute a ⁵[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) a ⁶*** chairman, being a person having special knowledge or practical experience in respect of ⁷[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 State Government:

⁸[Provided that the chairman may be either whole-time or part-time as the State Government may think fit;]

(b) ⁹[such number of officials, not exceeding five,] to be nominated by the State Government to represent that Government;

(c) ¹⁰[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) ¹¹[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 interest 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 that Government;

1. Subs. by Act 44 of 1978, s. 3, for “five officials” (w.e.f. 12-12-1978).

2. Subs. by s. 3, *ibid.*, for “three non-officials” (w.e.f. 12-12-1978).

3. Subs. by Act 53 of 1988, s. 3, for clause (f) (w.e.f. 29-9-1988).

4. The brackets and words “(being a date not later than six months of the commencement of the Act in the State)” omitted by Act 44 of 1978, s. 4 (w.e.f. 12-12-1978).

5. Subs. by Act 53 of 1988, s. 4, for “State Board” (w.e.f. 29-9-1988).

6. The word “full-time” omitted by Act 44 of 1978, s. 4 (w.e.f. 12-12-1978).

7. Subs. by s. 4, *ibid.*, for certain words (w.e.f. 12-12-1978).

8. The proviso ins. by s. 4, *ibid.* (w.e.f. 12-12-1978).

9. Subs. by s. 4, *ibid.*, for “five officials” (w.e.f. 12-12-1978).

10. Subs. by s. 4, *ibid.*, for “five persons” (w.e.f. 12-12-1978).

11. Subs. by s. 4, *ibid.*, for “three non-officials” (w.e.f. 12-12-1978).

¹[(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.

5. Terms and conditions of service 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 a member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

²[(2) The term of office of a member of a Board nominated under clause (b) or clause (e) of sub-section (2) of section 3 or clause (b) or clause (e) of sub-section (2) of section 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 a 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, ³[or where he is nominated under clause (c) or clause (e) of sub-section (2) of section 3 or under clause (c) or clause (e) of sub-section (2) of section 4, 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 a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the member in whose place he was nominated.

(7) A member of a Board ⁴[shall be eligible for renomination].

1. Subs. by Act 53 of 1988, s. 4, for clause (f) (w.e.f. 29-9-1988).

2. Subs. by Act 44 of 1978, s. 5, for sub-section (2) (w.e.f. 12-12-1978).

3. Subs. by s. 5, *ibid.*, for certain words, brackets, letters and figures (w.e.f. 12-12-1978).

4. Subs. by Act 53 of 1988, s. 5, for “shall not be eligible for renomination for more than two terms” (w.e.f. 29-9-1988).

(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.

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

(e) has directly or indirectly by himself or by any partner, any share or interest in any firm or company carrying on the business of manufacture, sale or hire of machinery, plant, equipment, apparatus or fittings for the treatment of 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 by the Government, for the carrying out of sewerage schemes 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 on 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-sections (1) and (7) of section 5, a member who has been removed under this section shall not be eligible for renomination as a member.

7. Vacation of seats by members.—If a member of a Board becomes subject to any of the disqualifications specified in section 6, his seat shall become vacant.

8. Meetings 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.

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 purposes as it may think fit.

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

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

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 functions under this Act.

(2) A person associated with the Board under sub-section (1) for any purpose shall have a right to take part in the discussions of the Board relevant to that purpose, but shall not have a right to vote at a meeting of the Board, and shall not be a member for any other purpose.

¹[(3) A person associated with the Board under sub-section (1) for any purpose 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.]

11. Vacancy in Board not to invalidate acts or proceedings.—No act or proceeding of a Board or any committee thereof shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board or such committee, as the case may be.

²[**11A. 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.]

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 the efficient performance of its functions ^{3***}.

⁴[(3A) The method of recruitment and the terms and conditions of service (including the scales of pay) of the officers (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 a regulation made by the Central Board, it is approved by the Central Government; and

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

⁵[(3B) 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 a 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.

CHAPTER III

JOINT BOARDS

13. Constitution of Joint Board.—(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 Governments of States contiguous to such Union territory or Union territories,

1. Ins. by Act 44 of 1978, s. 6 (w.e.f. 12-12-1978).

2. Ins. by s. 7, *ibid.* (w.e.f. 12-12-1978).

3. Certain words omitted by s. 8, *ibid.* (w.e.f. 12-12-1978).

4. Ins. by s. 8, *ibid.* (w.e.f. 12-12-1978).

5. Ins. by Act 53 of 1988, s. 6 (w.e.f. 29-9-1988).

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 clause (a), for all the participating States, and

(ii) in a case referred to in clause (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 clause (a) of sub-section (1), for the apportionment between the participating States and in a case referred to in clause (b) of that sub-section, for the apportionments 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 clause (a) of sub-section (1), which of the participating State Governments and in a case referred to in clause (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 the references in this Act to the State Government shall be construed accordingly;

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

(d) make such incidental and ancillary provisions, not inconsistent with this 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 clause (a) of sub-section (1), in the Official Gazette of the participating States and in a case referred to in clause (b) of that sub-section, in the Official Gazette of the participating Union territory or Union territories and participating State or States.

14. Composition of Joint Boards.—(1) A Joint Board constituted in pursuance of an agreement entered into under clause (a) of sub-section (1) of section 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 a 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 Government 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 within 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 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 participating State Governments;

²[(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.]

1. Subs. by Act 44 of 1978, s. 9, for certain words (w.e.f. 12-12-1978).

2. Subs. by Act 53 of 1988, s. 7, for clause (f) (w.e.f. 29-9-1988).

(2) A Joint Board constituted in pursuance of an agreement entered into under clause (b) of sub-section (1) of section 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 a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the 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;

²[(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 clause (b) of sub-section (1) of section 13, the provisions of sub-section (4) of section 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 section 4 and sections 5 to 12 (inclusive) shall apply in 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 provision relating to giving of directions.—Notwithstanding anything contained in this Act where any Joint Board is constituted under section 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 any 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.

1. Subs. by Act 44 of 1978, s. 9, for certain words (w.e.f. 12-12-1978).

2. Subs. by Act 53 of 1988, s. 7, for clause (f) (w.e.f. 29-9-1988).

2001

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, carry 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;

¹[(ee) perform such of the functions of any State Board as may be specified in an order made under sub-section (2) of section 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.

17. Functions of State Board.—(1) 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;

1. Ins. by Act 53 of 1988, s. 8 (w.e.f. 29-9-1988).

(d) to encourage, conduct and participate 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, specifications 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 utilisation 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 of 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 a 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.

18. Powers to give directions.—¹[(I)] 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:

1. S. 18 renumbered as sub-section (I) thereof by Act 53 of 1988, s. 9 (w.e.f. 29-9-1988).

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

¹[(2) Where the Central Government is of the opinion that any State Board has defaulted in complying with any directions given by the Central Board under sub-section (1) and as a result of such default a grave emergency has arisen and it is necessary or expedient so to do in the public interest, it may, by order, direct the Central Board to perform any of the functions of the State Board in relation to such area, for such period and for such purposes, as may be specified in the order.

(3) Where the Central Board performs any of the functions of the State Board in pursuance of a direction under sub-section (2), the expenses, if any, incurred by the Central Board with respect to the performance of such functions may, if the State Board is empowered to recover such expenses, be recovered by the Central Board with interest (at such reasonable rate as the Central Government may, by order, fix) from the date when a demand for such expenses is made until it is paid from the person or persons concerned as arrears of land revenue or of public demand.

(4) For the removal of doubts, it is hereby declared that any directions to perform the functions of any State Board given under sub-section (2) in respect of any area would not preclude the State Board from performing such functions in any other area in the State or any of its other functions in that area.]

CHAPTER V

PREVENTION AND CONTROL OF WATER POLLUTION

19. Power of State Government 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 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

(b) 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.

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 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 form as may be specified in the directions.

1. Ins. by Act 53 of 1988, s. 9 (w.e.f. 29-9-1988).

(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 ¹[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.

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 recognised by the Central Board under section 16; and

(ii) in any other case, to the laboratory established or recognised by the State Board under section 17;

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

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

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

²[(4) When a sample of any sewage or trade affluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under clause (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 clause (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 section 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:

1. Subs. by Act 53 of 1988, s. 10, for "industry or trade" (w.e.f. 29-9-1988).

2. Subs. by Act 44 of 1978, s. 10, for sub-section (4) (w.e.f. 12-12-1978).

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 clause (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 clause (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 clause (d) of sub-section (3).

22. Reports of the result of analysis on samples taken under section 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 section 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 section 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 clause (e) of sub-section (3) or sub-section (4) of section 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 recognised by the Central Board or the State Board, as the case may be, and that of the laboratory established or specified under section 51 or section 52, as the case may be, the 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.

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 of 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 ¹[the Code of Criminal Procedure, 1973 (2 of 1974)], or, in relation to the State of Jammu and Kashmir*, the provisions 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 ²[section 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.

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 ³[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.

25. Restrictions on new outlets and new discharges.—⁴(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 (53 of 1988), for which no consent was necessary prior to such commencement,

1. Subs. by Act 44 of 1978, s. 11, for “the Code of Criminal Procedure, 1898 (5 of 1898)” (w.e.f. 12-12-1978).

2. Subs. by s. 11, *ibid.*, for “section 98” (w.e.f. 12-12-1978).

3. Subs. by Act 53 of 1988, s. 11, for “stream or well” (w.e.f. 29-9-1988).

4. Subs. by s. 12, *ibid.*, for sub-sections (1) and (2) (w.e.f. 29-9-1988).

*. *Vide* Notification No. S.O. 3912 (E), dated 30th October, 2019, this Act is made applicable to the Union territory of Jammu and Kashmir and the Union territory of Ladakh.

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.

¹[(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 cases referred to in clauses (a) and (b) of sub-section (1) of section 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 of 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 register 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 sections 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 to 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

1. Subs. by Act 53 of 1988, s. 12, for sub-sections (4), (5) and (6) (w.e.f. 29-9-1988).

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.

26. Provision 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 ¹[stream or well or sewer or on land], the provisions of section 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 ²[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].

27. Refusal or withdrawal of consent by State Board.—³[(1) A State Board shall not grant its consent under sub-section (4) of section 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 any conditions imposed by the Board to enable it to exercise its right to take samples of the effluent.]

⁴[(2) A State Board may from time to time review—

⁵[(a) any condition imposed under section 25 or section 26 and may serve on the person to whom a consent under section 25 or section 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 section 25 or section 26 or the grant of such consent without any condition, and may make such orders as it deemed fit.]

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

28. Appeals.—(1) Any person aggrieved by an order made by the State Board under section 25, section 26 or section 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.

⁶[(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.

1. Subs. by Act 44 of 1978, s. 13, for "stream or well" (w.e.f. 12-12-1978).

2. Subs. by s. 13, *ibid.*, for certain words (w.e.f. 12-12-1978).

3. Subs. by Act 53 of 1988, s. 13, for sub-section (1) (w.e.f. 29-9-1988).

4. Subs. by Act 44 of 1978, s. 14, for sub-section (2) (w.e.f. 12-12-1978).

5. Subs. by Act 53 of 1988, s. 13, for clause (a) (w.e.f. 29-9-1988).

6. Subs. by Act 44 of 1978, s. 15, for sub-section (2) (w.e.f. 12-12-1978).

(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;

(b) 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.

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 section 25, section 26 or section 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 person 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 section 25, section 26 or section 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[(1) Where under this Act, any conditions have been imposed on any person while granting consent under section 25 or section 26 and such conditions require such person to execute any work in connection therewith and such work has not been executed within such time 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 expenses 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.—²[(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.

1. Subs. by Act 53 of 1988, s. 14, for sub-section (1) (w.e.f. 29-9-1988).

2. Subs. by s. 15, *ibid.*, for sub-section (1) (w.e.f. 29-9-1988).

32. Emergency measures in case of pollution of stream or well.—¹(1) Where it appears to the State Board that any poisonous, noxious or polluting matter is present in ¹[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 ²[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 ³[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 operations.

33. Power of Board to make application to courts for restraining apprehended pollution of water in streams or wells.—⁴(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 clause (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 clause (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.

⁵**[33A. Power to give directions.**—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

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

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

1. Subs. by Act 53 of 1988, s. 16, for “any stream or well” (w.e.f. 29-9-1988).

2. Subs. by s. 16, *ibid.*, for “stream or well” (w.e.f. 29-9-1988).

3. Subs. by s. 16, *ibid.*, for “into the stream or well” (w.e.f. 29-9-1988).

4. Subs. by s. 17, *ibid.*, for sub-section (1) (w.e.f. 29-9-1988).

5. Ins. by s. 18, *ibid.* (w.e.f. 29-9-1988).

CHAPTER VI

FUNDS, ACCOUNTS AND AUDIT

34. Contributions by Central Government.—The Central Government may, after due appropriation made by Parliament by law in this behalf, make in each financial year such contributions to the 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 ¹[, 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, ¹[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 the Board.

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 ²[, 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.

³[**37A. 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.

⁴[**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.]

1. Ins. by Act 44 of 1978, s. 16 (w.e.f. 12-12-1978).

2. Ins. by s. 17, *ibid.* (w.e.f. 12-12-1978).

3. Ins. by Act 53 of 1988, s. 19 (w.e.f. 29-9-1988).

4. Subs. by s. 20, *ibid.*, for section 39 (w.e.f. 29-9-1988).

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 section 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.

CHAPTER VII

PENALTIES AND PROCEDURE

¹[**41. Failure to comply with directions under sub-section (2) or sub-section (3) of section 20, or orders issued under clause (c) of sub-section (1) of section 32 or directions issued under sub-section (2) of section 33 or section 33A.**—(1) Whoever fails to comply with the direction given under sub-section (2) or sub-section (3) of section 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 clause (c) of sub-section (1) of section 32 or any direction issued by a court under sub-section (2) of section 33 or any direction issued under section 33A 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.]

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 any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or

(c) damages any works or property belonging to the Board, or

(d) fails to furnish to 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 section 31 to the Board and other authorities or agencies as required by that section, or

1. Subs. by Act 53 of 1988, s. 21, for section 41 (w.e.f. 29-9-1988).

(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 section 25 or section 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 ¹[ten thousand rupees] or with both.

(2) Where for the grant of a consent in pursuance of the provisions of section 25 or section 26 the use of 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 ¹[ten thousand rupees] or with both.

43. Penalty for contravention of provisions of section 24.—Whoever contravenes the provisions of section 24 shall be punishable with imprisonment for a term which shall not be less than ²[one year and six months] but which may extend to six years and with fine.

44. Penalty for contravention of section 25 or section 26.—Whoever contravenes the provisions of section 25 or section 26 shall be punishable with imprisonment for a term which shall not be less than ²[one year and six months] but which may extend to six years and with fine.

45. Enhanced penalty after previous conviction.—If any person who has been convicted of any offence under section 24 or section 25 or section 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 ³[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.

⁴[**45A. 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 newspapers 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.

1. Subs. by Act 53 of 1988, s. 22, for "one thousand rupees" (w.e.f. 29-9-1988).

2. Subs. by s. 23, *ibid.*, for "six months" (w.e.f. 29-9-1988).

3. Subs. by s. 24, *ibid.*, for "one year" (w.e.f. 29-9-1988).

4. Ins. by s. 25, *ibid.* (w.e.f. 29-9-1988).

(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.

48. Offences by Government Departments.—Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

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 authorised 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 the first class shall try any offence punishable under this Act.]

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

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

³[(3) Notwithstanding anything contained in ⁴[section 29 of the Code of Criminal Procedure, 1973 (2 of 1974)], it shall be lawful for any ⁵[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.

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 rules made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

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

1. Subs. by Act 53 of 1988, s. 26, for sub-section (1) (w.e.f. 29-9-1988).

2. Ins. by s. 26, *ibid.* (w.e.f. 29-9-1988).

3. Sub-section (2) renumbered as sub-section (3) thereof by s. 26, *ibid.* (w.e.f. 29-9-1988).

4. Subs. by Act 44 of 1978, s. 19, for "section 32 of the Code of Criminal Procedure, 1898 (5 of 1898)" (w.e.f. 12-12-1978).

5. Subs. by s. 19, *ibid.*, for "Magistrate of the first class or for any Presidency Magistrate" (w.e.f. 12-12-1978).

(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 thereunder 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.

53. Analysts.—(1) The Central 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 section 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 section 52.

(3) Without prejudice to the provisions of sub-section (3) of section 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 persons 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 section 16, or, as the case may be, under section 17.

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.

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 inspection 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.

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.

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.

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

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 clause (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 reconstituted 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 reconstituted under sub-section (3) vest in the Central Government.

(3) On the expiration of the period of supersession specified in the 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) reconstitute 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 clause (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 clause (b) of this sub-section.

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 clause (a), the State Government shall give a reasonable opportunity to the State Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the State Board.

(2) Upon the publication of a notification under sub-section (1) superseding the State Board, the provisions of sub-sections (2) and (3) of section 61 shall 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.

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 section 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 section 8, and under sub-section (2) of section 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 section 9;

¹[(d) the manner in which and the purposes for which persons may be associated with the Central Board under sub-section (1) of section 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 section 5 and under sub-section (1) of section 12;

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

(g) the powers and duties to be exercised and performed by the chairman and the member-secretary of the Central Board;

²* * * * *

(j) the form of the report of the Central Board analyst under sub-section (1) of section 22;

(k) the form of the report of the Government analyst under sub-section (3) of section 22;

1. Subs. by Act 44 of 1978, s. 20, for clause (d) (w.e.f. 12-12-1978).

2. Clauses (h) and (i) omitted by s. 20, *ibid.* (w.e.f. 12-12-1978).

¹[(*l*) the form in which and the time within which the budget of the Central Board may be prepared and forwarded to the Central Government under section 38;

(*ll*) the form in which the annual report of the Central Board may be prepared under section 39;]

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

²[(*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 section 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, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, ³[before the expiry of the session immediately following the session or the successive sessions aforesaid], both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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 section 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 section 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 section 8 and under sub-section (2) of section 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 section 9;

(*d*) the manner in which and the purposes for which persons may be associated with the State Board under sub-section (1) of section 10 ⁴[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 section 5 and under sub-section (1) of section 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 section 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 section 21;

(*i*) the form of the report of the State Board analyst under sub-section (1) of section 22;

1. Subs. by Act 53 of 1988, s. 27, for clause (*l*) (w.e.f. 29-9-1988).

2. Ins. by s. 27, *ibid.* (w.e.f. 29-9-1988).

3. Subs. by Act 44 of 1978, s. 20, for certain words (w.e.f. 12-12-1978).

4. Ins. by s. 21, *ibid.* (w.e.f. 12-12-1978).

2019

(j) the form of the report of the Government analyst under sub-section (3) of section 22;

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

(l) the manner in which inquiry under sub-section (3) of section 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 section 23;

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 section 38;

(nn) the form in which the annual report of the State Board may be prepared under section 39;]

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

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

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

1. Subs. by Act 53 of 1988, s. 28, for clause (n) (w.e.f. 29-9-1988).

2. Ins. by s. 28, *ibid.* (w.e.f. 29-9-1988).



2019 INSC 220

2020

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.4763-4764 OF 2013**

**TAMIL NADU POLLUTION
CONTROL BOARD**

... APPELLANT(S)

VERSUS

STERLITE INDUSTRIES (I) LTD. & ORS.

... RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 8773-8774 OF 2013

CIVIL APPEAL NOS. 9542-9543 OF 2013

CIVIL APPEAL NO. 5782 OF 2014

CIVIL APPEAL NOS. 1552-1554 OF 2019

CIVIL APPEAL NO. 23 OF 2019

CIVIL APPEAL NO. 1582 OF 2019

J U D G M E N T

R.F. NARIMAN, J.

1. The present appeals arise out of orders that have been passed by the National Green Tribunal [**“NGT”**] dated 31.05.2013, 08.08.2013,

Signature Not Verified
Digitally signed by R
NATARAJAN
Date: 2019.02.18
16:43:08 IST
Reason: []

2021

and 15.12.2018. The brief facts necessary to appreciate the controversy raised in the present case are as follows.

2. The respondent, Sterlite Industries (India) Ltd. / Vedanta Ltd., was operating a copper smelter plant at the State Industries Promotion Corporation of Tamil Nadu Ltd. (SIPCOT) Industrial Complex at Thoothukudi, Tamil Nadu. On 01.08.1994, the respondent received a No-Objection Certificate [**“NOC”**] from the Tamil Nadu Pollution Control Board [**“TNPCB”**] for the production of blister copper and sulphuric acid. The environmental clearance to the project by the Ministry of Environment, Forest, and Climate Change [**“MoEF”**] followed on 16.01.1995. On 17.05.1995, the State MoEF also granted environmental clearance to the respondent. The TNPCB granted its consent under the Air (Prevention and Control of Pollution) Act, 1981 [**“Air Act”**] and Water (Prevention and Control of Pollution) Act, 1974 [**“Water Act”**] on 22.05.1995. After obtaining the requisite permissions, the consent to operate the plant was issued on 14.10.1996 by the TNPCB. Production commenced on 01.01.1997. However, the environmental clearances that were granted were challenged before the Madras High Court in Writ Petition Nos.15501-15503/1996,

2022

5769/1997, and 16961/1998. On 20.05.1999, the TNPCB granted its consent for production of two more products, namely, phosphoric acid and hydrofluorosilicic acid. On 21.09.2004, a Supreme Court Monitoring Committee was constituted to verify the compliance status of hazardous waste management. It recommended to the MoEF that the environmental clearance for the proposed expansion should not be granted, and if granted, should be revoked. On 19.04.2005, the TNPCB issued consent to operate, subject to fulfillment of various conditions for the expanded capacity. Meanwhile, the Madras High Court, on 28.09.2010, allowed the various writ petitions that had been filed and quashed the environmental clearances granted to the respondent and directed the TNPCB to close down the plant.

3. Meanwhile, on 23.03.2013, the residents of nearby areas started complaining of irritation, throat infection, severe cough, breathing problem, nausea etc. due to emissions from Sterlite Industries. Reports were obtained after inspection of the premises by the TNPCB. Based on these reports, the TNPCB issued a show-cause notice dated 24.03.2013 and directed closure of the unit under Section 31A of the Air Act on 29.03.2013. This order was stayed by the NGT

2023

on 31.05.2013, allowing the respondent to commence production subject to certain conditions. Against this, the TNPCB filed Civil Appeal Nos.4763-4764 of 2013, which will be disposed of by the judgment delivered in this case. Finally, on 08.08.2013, the NGT set aside the TNPCB order dated 29.03.2013, against which, Civil Appeal Nos. 8773-8774 of 2013 were filed, which again will be disposed of by this judgment. It is important to note that the appellants herein raised the issue of maintainability of the respondent's appeal before the NGT, stating that an appeal should have been filed first before the appellate authority under the Air Act / the National Green Tribunal Act, 2010 [**“NGT Act”**]. This ground of maintainability was decided against the appellants by the impugned order dated 08.08.2013.

4. Owing to various interim orders passed by the NGT, the respondent continued to operate its plant. On 13.04.2016, the TNPCB granted consent to operate the plant for one year subject to certain conditions. Post inspection of the unit of the respondent in March 2017, the TNPCB issued a show-cause notice dated 14.03.2017 for violations under the Air Act and the Water Act which, apparently, was not pursued. On 06.09.2017, an inspection report by the TNPCB was

2024

made, and an order passed on 07.09.2017, granting renewal of consent to operate only till 31.03.2018 subject to various conditions. Meanwhile, a protest had been organized in March 2018 by some persons against the proposed expansion sought by the respondent. The respondent, therefore, had to file Writ Petition No.7313 of 2018 before the Madurai Bench of the Madras High Court for police protection. This Writ Petition was disposed of by an order dated 04.04.2018 with a direction to consider the respondent's application. On 09.04.2018, the TNPCB refused renewal of consent to operate to the respondent's unit based on non-compliance with certain conditions that were laid down under the Air Act and the Water Act. On 12.04.2018, the respondent filed Appeal Nos.36-37 of 2018 before the appellate authority under Section 28 of the Water Act. In these appeals, various orders were passed, until, on 06.06.2018, the following order was passed:

“APPLICATIONS 28 & 29 / 2018, APPLICATIONS 30
& 31 / 2018 AND APPEALS 36 & 37 / 2018:

Heard.

In view of the Government Order passed by the Government of Tamilnadu in G.O. Ms. No: 72, Environment & Forests (EC-3) Department Dated: 28.5.2018, directing the Tamilnadu Pollution Control Board to close the plant permanently, we feel it is not

2025

appropriate to hear the Appeals and decide the issue at this juncture.

Hence the Appeals and applications are adjourned to 10.7.2018.”

On 10.07.2018, the matter was further adjourned as follows:

“APPLICATIONS 28 & 29 / 2018, APPLICATIONS 30 & 31 / 2018 AND APPEALS 36 & 37 / 2018:

In view of the remarks made in the adjudication proceedings on 6.6.2018 and as the position is same now, the Appeals and Applications are adjourned to 21.8.2018.”

Finally, on 18.12.2018, i.e., three days after the impugned order was passed by the NGT on 15.12.2018, an order passed by the appellate authority was as follows:

“APPLICATIONS 28, 29, 30 & 31 / 2018 AND APPEALS 36 & 37 / 2018:

Ms. Janani, counsel for the appellant and Mr. V. Vasanthakumar, counsel for the respondent-Board are present. None is present on behalf of the 1st, 2nd and 3rd interveners.

Counsel for the appellant seeks permission to withdraw the Appeals. She has also filed a memo to that effect.

In view of the order passed by the Hon’ble National Green Tribunal, Principal Bench, New Delhi on 15.12.2018 in Appeal No. 87 of 2018 setting aside the impugned order dated 9.4.2018 which is subject matter of these appeals pending before this Appellate

2026

Authority, the Appeals have become infructuous and hence they are closed.”

5. On 12.04.2018, an order was passed by the TNPCB under Section 33A of the Water Act and Section 31A of the Air Act directing that the respondent's unit shall not resume production without obtaining prior approval/renewal or consent from the TNPCB. This was followed by two orders, both dated 23.05.2018, again issued under the same Sections, this time to close down the respondent's unit and disconnect power supply to it. Finally, on 28.05.2018, an order was issued by the Government of Tamil Nadu under Section 18(1)(b) of the Water Act stating:

“It is brought to the notice of the Government that Tamil Nadu Pollution Control Board did not renew the Consent to Operate to M/s.Vedanta Limited, Copper Smelter Plant, SIPCOT Industrial Complex, Thoothukudi District in its order dated 9.4.2018. Subsequently, on 23.5.2018, Tamil Nadu Pollution Control Board has also issued directions for closure and disconnection of power supply to the Unit. The power supply has been disconnected on 24.5.2018.

2. Under Article 48-A of the Constitution,

“the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”.

3. Under sections, 18(1)(b) of the Water Act, 1974 in the larger public interest, the Government endorse the closure direction of the Tamil Nadu Pollution

2027

Control Board and also direct the Tamil Nadu Pollution Control Board to seal the unit and close the plant permanently.”

6. On the same date, the TNPCB issued a letter to the District Collector, *inter alia*, directing him to seal the respondent's unit. These six orders became the subject matter of a composite Appeal No. 87 of 2018 under Section 16 of the NGT Act.

7. A writ petition was filed by the respondent before the Madurai Bench of the Madras High Court on 18.06.2018 so that the respondent could access its unit to maintain its plant. This was dismissed as withdrawn on 09.07.2018.

8. The appellants then took up a plea of maintainability of the composite appeal. As this was not being disposed of by the NGT, this Court, by its order dated 17.08.2018, directed the NGT to render its final findings, both on maintainability as well as on merits. On 20.08.2018, the NGT constituted a Committee to go into the material produced by the parties to the Civil Appeal and to visit the site. This Committee was ultimately headed by Justice Tarun Agarwala, former Chief Justice of the Meghalaya High Court, together with two experts, one being a representative of the Central Pollution Control Board

2028

[“CPCB”] and another a representative of the MoEF. Aggrieved by this order, the appellants knocked on the doors of this Court. This Court disposed of this appeal on 10.09.2018, by stating:

“By our order dated 17.08.2018, we had made it clear that the NGT may continue to hear the matter both on merits as well as on maintainability and finally decide the matter on both counts.

Since our order is not referred to in the order dated 20.08.2018 passed by the NGT, we need only to state that once the Committee’s report is given to the Tribunal, it will proceed to decide the matter in accordance with our order dated 17.08.2018.

xxx xxx xxx”

A review petition that was filed against this order was dismissed.

9. The Committee constituted by the NGT then inspected the site on various dates in September/October, 2018, and heard all concerned parties as well as intervenors. It then came out with a detailed Enquiry Report dated 20.11.2018, in which it concluded as follows:

“On the basis of the site visit, public hearing and after hearing the appellant Company, State of Tamil Nadu, Tamil Nadu Pollution Control Board, and the intervenors and, upon consideration of the issues raised, the Committee is of the opinion:

1. The impugned orders cannot be sustained as it is against the principles of natural justice.

2029

No notice or opportunity of hearing was given to the appellant.

2. The grounds mentioned in the impugned orders are not that grievous to justify permanent closure of the factory.
3. Other issues raised also does not justify the closure of the factory even if the appellant was found to be violating the conditions/norms/directions.
4. In the event the Hon'ble Tribunal is of the opinion that the factory should commence production, the committee is of the opinion that the following directions may be issued.
 - a) As per condition No.44 of the Consent Order dated 19-04-2005, the appellant should be directed to monitor ground water quality including heavy metals such as Arsenic, Cadmium, Silver, Copper, Fluoride, etc. in and around the factory premises and nearby villages once a month and such report should be furnished to the TNPCB.
 - b) The sampling of the above should be taken in the presence of an official from TNPCB.
 - c) In addition to the above, the sampling of effluent/emission and solid waste should also be done by a monitoring group to be constituted by TNPCB comprising a representative of the District Collector, an official of TNPCB, NGOs and academicians as per condition no.43 of Consent Order dated 19-04-2005.
 - d) Both the reports should be sent by TNPCB to CPCB for analysis. Recommendations made by CPCB should be followed.

2030

- e) Copper slag dumped at all the eleven sites including the Uppar River should be removed. If copper slag has been used for landfill purposes, then the excess amount of the slag over and above the level of ground would be removed and thereafter the landfill should be compacted with one feet of soil, so that the copper slag is not blown away by the strong winds.
- f) The dead stock of copper slag lying in the dump yard inside the factory premises which has solidified should be removed in a time bound manner. Thereafter, the bottom of the dump yard and the side walls should be covered with HDPE liner. Further, the Company should ensure that the generation and disposal of copper slag is maintained in the ratio of 1:1 and that the Company at best, can retain 10 days generation of copper slag in its dump yard.
- g) The dead stock of gypsum lying in the dump yard inside the factory premises which has solidified should be removed in a time bound manner. Thereafter, the bottom of the dump yard and the side walls should be covered with HDPE liner. Further, the Company should ensure that the generation and disposal of gypsum is maintained in the ratio of 1:1 and that the Company at best, can retain 10 days generation of gypsum in its dump yard.
- h) The Company before disposing copper slag, gypsum (or) any other waste product will seek previous permission from the TNPCB.

2031

- i) Application of the Company for obtaining valid authorization for disposal of hazardous waste under Hazardous & Other Wastes (Management, & Transboundary Movement) Rules, 2016 should be disposed of by the TNPCB in a time bound manner.
- j) Even though there is no requirement of analyzing the air samples through an accredited laboratory nonetheless a direction should be issued to the appellant that they will conduct a periodical survey for ambient air quality/ noise level/ stack emission through accredited laboratories of MoEF&CC/NABL and furnish such report to the TNPCB.
- k) The appellant company should be directed that they shall develop a green belt of 25 metres width around the battery limits of its factory by planting native and high foliage tree and also in and around the factory.
- l) The State of Tamil Nadu/ TNPCB should collect data from their primary health centres and Govt. Hospitals to monitor the various ailments that are being complaint of by the inhabitants living in and around the factory premises.
- m) The State Government should specify the module to the appellant for conducting the proper and designed health monitoring study.
- n) The direction no. (iii) on “Source Apportionment Study” and direction no. (ix) on “conducting a study on health hazards” passed by the NGT in its judgment dated 8/8/2013 in Appeal 58 of 2013 should be carried out by the Tamil

2032

Nadu State Government and TNPCB. Such reports should be furnished to NGT in a time-bound manner.

- o) The appellant should be directed to start the construction of gypsum pond immediately and complete the same in a time bound manner as per the conditions laid down in the guidelines given by CPCB in October, 2014.
- p) The appellant shall undertake a fresh detailed hydrogeological study for determining aquifer vulnerability and migration of leachate from the existing phosphogypsum pond through a reputed organization approved by the TNPCB as per condition No.15 of the Consent Order dated 19/04/2005.
- q) Direction should be given to the TNPCB as well as to the appellant to take independent ground water samples from the same points for the purpose of finding out groundwater pollution if any. Such reports should then be compared by the CPCB. Recommendations made by CPCB should be followed.
- r) Directions/ regulation may be framed for import of high grade copper ore.
- s) Irrespective of the norms, stack height in any case be increased in order to remove the ambiguity and the grievance of inhabitants of the people of the Tuticorin with regard to emission of SO₂.
- t) Till such time, the stack height is not increased, the production of copper as well as sulphuric acid should be restricted/reduced to match the existing stack height.
- u) The transportation of copper ore concentrate from the port to the factory

2033

premises should be done in a closed conveyance or through a pipe conveyor system.

- v) Self-monitoring mechanism needs to be prepared by the appellant for the periodic monitoring of Ambient Air Quality/ Stack emissions/ Fugitive emissions/ ground water quality/ surface water quality/ soil quality/ slag analysis through third party and report shall be furnished to the concerned regulatory agencies.
- w) All the monitoring data, compliance reports of CTE/CTO/EC and environmental statement shall be uploaded on the website of the Company.
- x) TNPCB should be directed to commission “Regional Environmental Impact Assessment Study” in and around Tuticorin District by engaging a reputed national agency.
- y) CPCB recommendations as contained in the order of NGT, dated 20.08.2018 to be complied with.”

Both the respondent as well as the appellants made their detailed comments on the Committee’s report. The NGT then heard final arguments and dictated the impugned order on 15.12.2018, in which it substantially accepted the Committee’s recommendations. In doing so, it set aside the six impugned orders in the composite appeal. One major bone of contention of both the State of Tamil Nadu as well as

2034

the TNPCB in this case is that the appeal before the NGT is not maintainable and hence, the order dated 15.12.2018 is without jurisdiction.

10. As a postscript to this order, the TNPCB looked into the matter again, and issued yet another rejection letter dated 22.01.2019, by which the respondent's application seeking renewal of consent to operate was rejected, stating that the conditions of various previous consents over the last 20 years had not been followed.

11. We have heard wide-ranging arguments from learned counsel appearing on behalf of all the parties as well as the intervenors, on maintainability as well as on merits. Since we will be deciding this case on maintainability alone, we have not ventured to state anything on the merits of the case.

12. Shri C.S. Vaidyanathan, learned Senior Advocate appearing on behalf of the TNPCB, showed us various provisions of the Water Act, Air Act, and the NGT Act and argued that the six impugned orders before the NGT were orders which could not have been corrected by the NGT. Insofar as the first order dated 09.04.2018 was concerned, an appeal was pending before the appellate authority, as a result of

2035

which, the NGT, when it set aside the said order, could not have done so. Similarly, the orders dated 12.04.2018, 23.05.2018, and 28.05.2018, made under Section 33A of the Water Act and Section 31A of the Air Act, were composite orders issued. As orders under Section 31A of the Air Act were not appealable to the NGT either under the Air Act or under Section 16 of the NGT Act, the Tribunal acted without jurisdiction in interfering with these orders. Further, the order dated 28.05.2018, issued by the Government of Tamil Nadu under Section 18 of the Water Act, was certainly not an appealable order under either the Water Act or the NGT Act, and could only have been corrected in judicial review in a writ petition filed under Article 226 of the Constitution of India or in a suit before a Civil Court. According to him, therefore, the setting aside of such an order was also completely without jurisdiction. Shri K.V. Viswanathan, learned Senior Advocate appearing on behalf of the State of Tamil Nadu, added to these submissions. He cited some of our judgments as well as statutes and judgments of the English Courts to show that once an appeal is available to an appellate authority, after which an appeal lies to the NGT, a party cannot leapfrog directly to the NGT. Apart from this, the learned Senior Advocate also argued, based on the scheme

2036

of the Water Act, Air Act, and NGT Act, that all the appeals filed before the NGT were incompetent. Shri Guru Krishnakumar, learned Senior Advocate appearing on behalf of the TNPCB, also went on to criticize the order passed by the NGT dated 08.08.2013 on maintainability. According to him, no doctrine of necessity could be imported if an appellate tribunal was not constituted, as a result of which an appeal could not be argued before the appellate authority. Consequently, a leapfrog appeal would not be maintainable before the NGT. According to the learned Senior Advocate, this order also had to be set aside for the reason that even assuming that the appellate authority was not constituted on the date on which an appeal could have been preferred to it, the NGT, being a second appellate tribunal, would not have jurisdiction, and that either a suit or a writ petition under Article 226 would have to be filed against the original order.

13. As against these arguments, Shri C.A. Sundaram, learned Senior Advocate appearing on behalf of the respondents in all three appeals, sought to sustain the order of the NGT in these three appeals. The learned Senior Advocate painstakingly took us through all the orders that were impugned before the NGT, together with the

2037

relevant provisions of the Air Act, the Water Act, and the NGT Act. According to the learned Senior Advocate, so far as the order dated 09.04.2018 is concerned, thanks to a government affidavit filed, the appeal before the appellate authority had become infructuous, as a result of which, a direct appeal to the NGT would obviously become maintainable. Insofar as the combined orders under Sections 33A and 31A of the Water Act and the Air Act, respectively, are concerned, according to him, an express appeal is provided to the NGT against orders passed under Section 33A of the Water Act, and even if there is no appeal provided under Section 31A of the Air Act, yet, as four out of five items in these orders dealt with the Water Act, the order could be stated to be substantially an order under the Water Act, and therefore, appealable as such. He added that, in any case, such orders could be corrected under Section 14 of the NGT Act to avoid piecemeal litigation. Further, in any case, according to the learned Senior Advocate, a direction made under Section 31A of the Air Act is undoubtedly equivalent to an order made under Section 31 of the Air Act, and therefore, would be expressly appealable under Section 16 of the NGT Act. Another without prejudice argument was made, that assuming all other arguments failed, these matters are only

2038

procedural, and therefore, appeals must necessarily land up before the expert tribunal which is so constituted as an expert tribunal to deal with all matters relating to the environment. For this, he referred to and relied strongly upon Sections 14, 15, 29, and 33 of the NGT Act. Insofar as the attack made upon the order dated 28.05.2018 of the Government of Tamil Nadu under Section 18 of the Water Act is concerned, Shri Sundaram argued that on a proper construction of Section 18 read with the other provisions of the Water Act, only a general order, dealing with general matters, could be passed under the said Section, and not an order to shut down one particular industry. Since the Section 18 order purports to deal with only one particular industry, it is *non est* and liable to be ignored. An alternate argument made is that even though the order states that it is made under Section 18, it can otherwise be traced to Section 29 of the Water Act as an order made in revision, and would, therefore, be appealable as such. The learned Senior Advocate then argued that, in any case, this is an order by which a direction has been made by the State Government to the TNPCB and, therefore, does not directly affect his client. He also argued that when this order was challenged before the NGT, the defence of the Government and the TNPCB would be that

2039

this is an order which, though binding on the TNPCB, would also impact the respondent. This being the case, the NGT could always go into whether such a defence is a valid defence, and could, therefore, decide the matter. He also went on to state that the NGT is an expert body constituted specifically under a special Act, which is far better equipped than the High Court under Article 226 exercising its powers in the writ jurisdiction, and therefore, all matters dealing with the environment should necessarily be decided by the NGT alone. He also relied upon our judgment in **L. Chandra Kumar v. Union of India and Ors.**, (1997) 3 SCC 261 [**L. Chandra Kumar**], in which it has been made clear that Tribunals can exercise powers of judicial review and that, therefore, being the equivalent of a High Court, the NGT could, in exercise of its powers of judicial review, have interfered with the State Government's orders passed under Section 18 of the Water Act.

14. Having heard learned counsel for all parties, it is important first to advert to the provisions of the three Acts in question.

15. The relevant Sections of the Water Act are as follows:

“18. Powers to give directions.—(1) In the performance of its functions under this Act—

2040

- (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.

xxx xxx xxx”

“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

2041

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 cases referred to in clauses (a) and (b) of sub-section (1) of Section 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,

2042

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 register 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

2043

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 Sections 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.”

“26. Provision 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 Section 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

2044

date as may be specified by the State Government by notification in this behalf in the Official Gazette.”

“27. Refusal or withdrawal of consent by State Board.—(1) A State Board shall not grant its consent under sub-section (4) of Section 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 any 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 Section 25 or Section 26 and may serve on the person to whom a consent under Section 25 or Section 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 Section 25 or Section 26 or the grant of such consent without any condition, and may make such orders as it deems fit.

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

“28. Appeals.—(1) Any person aggrieved by an order made by the State Board under Section 25, Section 26 or Section 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

2045

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;

(b) 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.”

2046

“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 Section 25, Section 26 or Section 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 person 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 Section 25, Section 26 or Section 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.”

xxx xxx xxx

“33A. Power to give directions.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

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

- (a) the closure, prohibition or regulation of any industry, operation or process; or

2047

- (b) the stoppage or regulation of supply of electricity, water or any other service.”

“33B. Appeal to National Green Tribunal.—Any person aggrieved by,—

- (a) an order or decision of the appellate authority under Section 28, made on or after the commencement of the National Green Tribunal Act, 2010; or
- (b) an order passed by the State Government under Section 29, on or after the commencement of the National Green Tribunal Act, 2010; or
- (c) directions issued under Section 33-A by a Board, on or after the commencement of the National Green Tribunal Act, 2010,

may file an appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.”

16. The relevant Sections of the Air Act are as follows:

“21. Restrictions on use of certain industrial plants.—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

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

2048

the said period of three months, till the disposal of such application.

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

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

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

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a

2049

reasonable opportunity of being heard shall be given to the person concerned.

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

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

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

Provided further that—

- (a) after the installation of any control equipment in accordance with the specifications under clause (i), or

2050

- (b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (i), or
- (c) after the erection or re-erection of any chimney under clause (iv),

no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the prior approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of the opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.”

xxx xxx xxx

“31. Appeals.—(1) Any person aggrieved by an order made by the State Board under this Act may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the Appellate Authority) as the State Government may think fit to constitute:

2051

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The Appellate Authority shall consist of a single person or three persons as the State Government may think fit to be appointed by the State Government.

(3) The form and the manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the Appellate Authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under sub-section (1), the Appellate Authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.”

“31A. Power to give directions.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give in this behalf a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

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

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

2052

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

17. The relevant Sections of the NGT Act are as follows:

“2. Definitions.—(1) In this Act, unless the context otherwise requires,—

xxx xxx xxx

(m) “substantial question relating to environment” shall include an instance where,—

(i) there is a direct violation of a specific statutory environmental obligation by a person by which,—

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

(B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable;

(ii) the environmental consequences relate to a specific activity or a point source of pollution;

xxx xxx xxx”

“14. Tribunal to settle disputes.—(1) The Tribunal shall have the jurisdiction over all civil cases where a

2053

substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”

“15. Relief, compensation and restitution.—(1) The Tribunal may, by an order, provide,—

- (a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);
- (b) for restitution of property damaged;
- (c) for restitution of the environment for such area or areas,

as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

2054

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.”

“16. Tribunal to have appellate jurisdiction.—Any person aggrieved by,—

- (a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under Section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

2055

- (c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);
- (e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);
- (f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);
- (g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986);
- (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);

2056

- (i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);
- (j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.”

xxx xxx xxx

“29. Bar of jurisdiction.—(1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.

(2) No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken

2057

by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court.”

xxx xxx xxx

“33. Act to have overriding effect.—The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

18. It is important now to advert to both the orders dated 08.08.2013 and 15.12.2018, insofar as they deal with the maintainability of the appeals before them.

19. By the judgment of the NGT dated 08.08.2013, the NGT disposed of the plea on maintainability as follows:

“62. Another aspect that would support the view that we are taking is the doctrine of necessity. Wherever in the facts and circumstances of the case, it is absolutely inevitable for a person to exercise another right available to it under the statute and where it is unable to exercise the preliminary right of appeal because of non-existence or non-proper constitution of the appellate authority and for its effective and efficacious exercise of right, it becomes necessary for the appellant-company to invoke another remedy, then the same would be permitted unless it was so specifically barred by law governing the subject and the rights of the parties. It was upon the appellant-company, particularly keeping in view the emergent

2058

situation created by issuance of the order dated 29th March, 2013, to avail of its right to appeal without any undue delay and as was rightly done by it within two days of the passing of the order. The unit of the appellant-company had been directed to be shut down and the appellant-company obviously could not have taken recourse to the remedy under Section 31 of the Air Act as the authority itself was not properly constituted and was not functional. Besides the aid of the doctrine of necessity, the appellant-company has also placed its reliance on Section 31B of the Air Act. An appeal against the order passed by the appellate authority in exercise of its powers under Section 31 of the Air Act lies to the NGT in terms of Section 31B of the Air Act. In other words, the appellate order passed by the proper authority under Section 31 of the Air Act is appealable to the NGT in terms of Section 31B. Thus, the NGT is the appellate authority of the appellate authority constituted under Section 31 of the Air Act by the State Government. The appellant-company has itself given up its right of first appeal before the appellate authority in view of the peculiar facts and circumstances of the case. The respondents have placed reliance upon the judgment of the Supreme Court in *Manohar Lal v. Union of India*, (2010) 11 SCC 557 where the Court had taken the view that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor the superior authority can mortgage its wisdom and direct the statutory authority to act in a particular manner. Firstly this judgment on facts and law has no application to the present case. Secondly, the non-constitution of the authority itself would bring the present case outside the application of the judgment of the Supreme Court in the case of *Manohar Lal* (supra).

63. We are unable to contribute ourselves to the contention raised that a direction passed under

2059

Section 31A of the Air Act is not covered under the expression 'order' used in Section 31 of the Air Act. Any direction essentially would contain an element of order as it requires and calls upon the parties to comply with the same. 'Direction' itself means an order; an instruction how to proceed, like the judge's direction to the jury, while 'Order' is defined as a command, direction or instruction. This is how the *Black's Law Dictionary*, 9th Edition, refers to these two expressions. In other words, they can be used as synonyms. They are not conflicting terms and one can be read into the other. Thus, we find no substance in this contention raised on behalf of the respondents.

64. An appellate authority, which is constituted under the statute, is completely distinct and different from an administrative authority constituted otherwise even to deal with adjudicatory proceedings. In the case of an appellate authority, it must satisfy the existence *de facto* and must function *de jure*, in accordance with law. If the appellate authority itself was not in conformity with the notification, it cannot be said that it could function in accordance with law without constitution of the three Member appellate authority. The cumulative effect of this discussion is that the objection in regard to maintainability is without any substance and is liable to be rejected. In view of this finding, it is not necessary for us to examine whether this could be treated as a petition under Section 14 of the National Green Tribunal Act (for short 'the NGT Act') even if it was not maintainable in view of the objection taken by the respondent in regard to maintainability of the present appeal."

20. Insofar as the judgment dated 15.12.2018 is concerned, the NGT, on maintainability, held as follows:

2060

44. It is undisputed that this Tribunal is an Appellate Authority as far as orders of closure under the Air Act and the Water Act are concerned. The impugned orders dated 12.04.2018, 23.05.2018 and 28.05.2018 are such orders. Mere fact that an appeal against the order declining renewal of Consent to Operate is provided for and was filed cannot be in the facts and circumstances of the present case, be a bar to exercise of powers of the Appellate Authority by this Tribunal. As already noted, the Appellate Authority has declined to proceed with the matter. The grounds in the impugned orders dated 09.04.2018, 12.04.2018, 23.05.2018 and 28.05.2018 are identical. If the appeals are held to be not maintainable, the appellant will be without any remedy against the order of closure. Order of the Appellate Authority is also appealable before this Tribunal under Section 16(f) of the NGT Act, 2010. We, thus, do not find any merit in this case in the objections of the respondent.

45. Mere fact that the State of Tamil Nadu also endorsed the order of the TNPCB and that order of the State is not appealable to this Tribunal, does not deviate from the legal position that order of TNPCB is appealable to this Tribunal. Moreover, order of the State of Tamil Nadu is not a policy matter but mere endorsement of order of the TNPCB.

46. The judgments relied upon by the respondents are distinguishable. Unlike *Educanti Kistamma v. Deokar's Distillery* [(2003) 5 SCC 669], this is not a case where the first order has not been challenged. Challenge before us is to the first order as well as subsequent orders. Basis for all the orders is common.

xxx xxx xxx

48. The order of the Government of Tamil Nadu issued under Section 18(1)(b) of the Water Act also cannot be said to be an independent order but relied on and endorsing the views of the TNPCB which is under

2061

challenge and that are not sufficient for ordering closure or refusal to grant even consent. If there are no other materials for the Government of Tamil Nadu to arrive at conclusion of closure on the ground of irreversible pollution being caused to the environment allowing the unit to function, then it cannot be said to be a policy decision to close down the industry permanently and if any order was passed based on the order by the Pollution Control Board, without independent application of mind and arbitrarily, then that can also be incidentally considered by the Tribunal for the purpose of deciding the question of legality of that order. So, under the present circumstances, it is not a case of this Tribunal entertaining the appeals where there is inherent lack of jurisdiction to entertain the same.

49. In the present proceedings, as already noted, the Appellate Authority having declined to proceed with the matter and the order of closure being appealable before this Tribunal, there is no ground to reject the appeal on the ground of maintainability so as to deprive the appellant any judicial remedy in the matter.”

(I) RE: ORDER DATED 09.04.2018

21. This order is an order which rejected renewal of consent to operate, and therefore, is traceable to Section 27 of the Water Act and Section 21 of the Air Act. There is no doubt whatsoever that an appeal against an order made under Section 27 of the Water Act is appealable to the appellate authority under Section 28 of the said Act. Under Section 33B(a) of the said Act, if a person is aggrieved by an

2062

order or decision of the appellate authority under Section 28, it is then appealable to the NGT. This is made clear also by Section 16(a) of the NGT Act. Equally, an order refusing consent under Section 21 of the Air Act is appealable to the appellate authority under Section 31 of the Air Act, and thereafter, from the said appellate authority's order, to the NGT, under Section 31B of the Air Act and Section 16(f) of the NGT Act.

22. As has been stated hereinabove, it is clear that an appeal to the appellate authority under the Air Act and the Water Act was, in fact, preferred, being Appeal Nos. 36-37 of 2018. While these appeals were pending before the appellate authority, the composite Appeal No. 87 of 2018 was filed on 22.06.2018 before the NGT *inter alia* against the order of refusal of consent to operate dated 09.04.2018. Shri Sundaram, however, argued before us that the order dated 06.06.2018 made by the appellate authority, which we have set out hereinabove, makes it clear that the appeals could not be heard since the State Government had passed an order dated 28.05.2018 directing the TNPCB to close down the plant permanently. What is missed by Shri Sundaram is the fact that the said order expressly states that the

2063

appeals could not be decided at this juncture and were hence adjourned to 10.07.2018. The said appeals on 10.07.2018 were further adjourned, and it is only on 18.12.2018 that they were finally withdrawn as being infructuous in view of the fact that the NGT had passed its order on 15.12.2018 in which it had set aside the order dated 09.04.2018.

23. What becomes clear from the above narration of facts is the fact that while an appeal was still pending before the appellate authority, the NGT took up a matter directly against the original order dated 09.04.2018 which was challenged before the appellate authority even before the appellate authority could decide the same. However, Shri Sundaram referred to Section 28(4) of the Air Act and Section 31(4) of the Water Act to argue that appeals to the appellate authority must be decided expeditiously, and if they were not so decided, an appeal would lie to the NGT against a decision by the appellate authority not to decide the matter before it expeditiously. This argument must also be negated as, in point of fact, no appeal was preferred from any orders of the appellate authority adjourning the

2064

proceedings. As we have seen, an appeal was directly filed from the order of the TNPCB dated 09.04.2018.

24. At this point, it is important to advert to a few judgments of this Court. In **Kundur Rudrappa v. Mysore Revenue Appellate Tribunal and Ors.**, (1975) 2 SCC 411, this Court, while dealing with Section 64 of the Motor Vehicles Act, 1939, stated:

“4. The point that arises for consideration is whether any appeal lay under Section 64 of the Act to the State Transport Appellate Tribunal against the issue of a permit in pursuance of an earlier resolution of the Regional Transport Authority granting the permit. It is only necessary to read Section 64(1)(a) which is material for the purpose of this appeal:

“64. (1)(a) Any person aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him

. . .

may within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.”

We are not required to consider the other clauses of Section 64(1) which are admittedly not relevant. Section 64 has to be read with Rule 178 of the Rules which prescribes the procedure for appeal to the various authorities.

5. Appeal is a creature of the statute. There is no dispute that Section 64 of the Act is the only section creating rights of appeal against the grant of permit and other matters with which we are not concerned here. There is no appeal provided for under Section 64 against an order issuing a permit in pursuance of the order granting the permit. Issuance of the permit is only a ministerial act necessarily following the grant of the permit. The appeals before the State Transport Appellate Tribunal and the further appeal to the Mysore Revenue Appellate Tribunal are, therefore, not competent under Section 64 of the Act and both the tribunals had no jurisdiction to entertain the appeals and to interfere with the order of the Regional Transport Authority granting the permit which had already been affirmed in appeal by the State Transport Appellate Tribunal and further in second appeal by the Mysore Revenue Appellate Tribunal. There was, therefore, a clear error of jurisdiction on the part of both the Tribunals in interfering with the grant of the permit to the appellant. The High Court was, therefore, not right in dismissing the writ application of the appellant which ought to have been allowed.”

(emphasis supplied)

25. Similarly, in a concurring judgment of Sinha, J., in **Cellular Operators Association of India and Ors. v. Union of India and Ors.**, (2003) 3 SCC 186, the learned Judge observed:

“27. TDSAT was required to exercise its jurisdiction in terms of Section 14-A of the Act. TDSAT itself is an expert body and its jurisdiction is wide having regard to sub-section (7) of Section 14-A thereof. Its jurisdiction extends to examining the legality, propriety or correctness of a direction/order or decision of the authority in terms of sub-section (2) of Section 14 as

also the dispute made in an application under sub-section (1) thereof. The approach of the learned TDSAT, being on the premise that its jurisdiction is limited or akin to the power of judicial review is, therefore, wholly unsustainable. The extent of jurisdiction of a court or a tribunal depends upon the relevant statute. TDSAT is a creature of a statute. Its jurisdiction is also conferred by a statute. The purpose of creation of TDSAT has expressly been stated by Parliament in the amending Act of 2000. TDSAT, thus, failed to take into consideration the amplitude of its jurisdiction and thus misdirected itself in law.”

(emphasis supplied)

26. In **B. Himmatlal Agrawal v. Competition Commission of India**, Civil Appeal No. 5029/2018 [decided on 18.05.2018], this Court, while dealing with Section 53B of the Competition Act, 2002 held:

“7. The aforesaid provision, thus, confers a right upon any of the aggrieved parties mentioned therein to prefer an appeal to the Appellate Tribunal. This statutory provision does not impose any condition of pre-deposit for entertaining the appeal. Therefore, right to file the appeal and have the said appeal decided on merits, if it is filed within the period of limitation, is conferred by the statute and that cannot be taken away by imposing the condition of deposit of an amount leading to dismissal of the main appeal itself if the said condition is not satisfied. Position would have been different if the provision of appeal itself contained a condition of pre-deposit of certain amount. That is not so. Subsection (3) of Section 53B specifically cast a duty upon the Appellate Tribunal to pass order on appeal, as it thinks fit i.e. either confirming, modifying or setting aside the direction, decision or order appealed against. It is to be done after giving an

2067

opportunity of hearing to the parties to the appeal. It, thus, clearly implies that appeal has to be decided on merits. The Appellate Tribunal, which is the creature of a statute, has to act within the domain prescribed by the law/statutory provision. This provision nowhere stipulates that the Appellate Tribunal can direct the appellant to deposit a certain amount as a condition precedent for hearing the appeal. In fact, that was not even done in the instant case. It is stated at the cost of repetition that the condition of deposit of 10% of the penalty was imposed insofar as stay of penalty order passed by the CCI is concerned. Therefore, at the most, stay could have been vacated. The Appellate Tribunal, thus, had no jurisdiction to dismiss the appeal itself.”

(emphasis supplied)

27. In **Raja Soap Factory v. S.P. Shantharaj**, (1965) 2 SCR 800, the plaintiffs instituted an action in the nature of passing off against the defendants in the High Court of Mysore, stating that they are exclusive owners of a particular trade mark. This Court found that exercise of jurisdiction by the High Court of Mysore is governed by Mysore Act 5 of 1962. Holding that the said High Court does not exercise any original jurisdiction, this Court held:

“The High Court of Mysore is by its constitution primarily a court exercising appellate jurisdiction: it is competent to exercise original jurisdiction only in those matters in respect of which by special Acts it has been specifically invested with jurisdiction. The High Court is competent to exercise original jurisdiction under Section 105 of the Trade and Merchandise Marks Act

43 of 1958 if it is invested with the ordinary original civil jurisdiction of a District Court, and not otherwise, and the High Court of Mysore not being invested by any statute of under its constitution with that jurisdiction was incompetent to entertain a passing off action.

But it was urged that in a State the High Court is at the apex of the hierarchy of civil courts and has all the powers which the subordinate courts may exercise, and it is competent to entertain all actions as a Court of original jurisdiction which may lie in any court in the State. For this exalted claim, there is no warrant in our jurisprudence. Jurisdiction of a court means the extent of the authority of a court to administer justice prescribed with reference to the subject-matter, pecuniary value and local limits. Barring cases in which jurisdiction is expressly conferred upon it by special statutes, e.g. the Companies Act; the Banking Companies Act, the High Court of Mysore exercises appellate jurisdiction alone. As a court of appeal it undoubtedly stands at the apex within the State, but on that account it does not stand invested with original jurisdiction in matters not expressly declared within its cognizance.”

(at page 802)

28. In **Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd. and Ors.**, (1997) 4 SCC 452, Section 129-D of the Customs Act, 1962 was referred to, under which, the Board of Excise and Customs may direct a Collector to apply to the Appellate Tribunal for determination of points which arise out of an order or decision. In

repelling an argument that even without such direction, the Union of India may file an appeal directly, this Court held:

“10. The aforesaid provisions of the Act leave no room for doubt that they represent a complete scheme or code for challenging the orders passed by the Collector (Customs) in exercise of his statutory powers. So far as departmental authorities themselves are concerned including the Collector of Customs no direct right of appeal is conferred on the Collector to prefer appeal against his own order before the CEGAT. However there is sufficient safeguard made available to the Revenue by the Act for placing in challenge erroneous orders of adjudication as passed by the Collector of Customs by moving the Central Board of Excise and Customs under Section 129-D(1) for a direction to the Collector to apply to the CEGAT for determination of such point arising out of the decision or order as may be specified by the Board of Revenue in this connection.....”

xxx xxx xxx

“12. But even if it is so, the statutory procedure laid down by Parliament in its wisdom for enabling the challenge to the adjudication order of the Collector of Customs by way of appeals or revisions as per the aforesaid relevant statutory provisions, to which we have made a mention, has got to be followed in such an eventuality. Bypassing the said statutory procedure a direct frog leap to CEGAT is contra-indicated by the statutory scheme of the Act. If such direct appeals are permitted the very scheme of Section 129-D(1) would get stultified. It must, therefore, be held that direct appeal filed by the Union of India through Industries Ministry to CEGAT under Section 129-A(1) was clearly incompetent. It may be added that the Union of India

2070

could have used the mode set out in Section 129-D, but it did not do so.”

29. In **Manohar Lal v. Ugrasen**, (2010) 11 SCC 557, one of the questions involved, under sub-paragraph 2(a) of the judgment, was as follows:

“2. In these appeals, three substantial questions of law for consideration of this Court are involved. They are, namely:

(a) As to whether the State Government, a revisional authority under the statute, could take upon itself the task of a lower statutory authority?

xxx xxx xxx”

After reviewing a number of cases, this Court then concluded:

“23. Therefore, the law on the question can be summarised to the effect that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor can the superior authority mortgage its wisdom and direct the statutory authority to act in a particular manner. If the appellate or revisional authority takes upon itself the task of the statutory authority and passes an order, it remains unenforceable for the reason that it cannot be termed to be an order passed under the Act.”

30. In **Arcot Textile Mills Ltd. v. Regional Provident Fund Commissioner**, (2013) 16 SCC 1, appeals lay to the Tribunal constituted under the Employees’ Provident Funds and Miscellaneous

2071

Provisions Act, 1952, under Section 7-I of the Act. Whereas appeals lay against orders passed under Section 7-A of the Act, which provided for determination of monies due from employers, no appeal lay against orders made under Section 7-Q of the said Act, which spoke of interest payable by the employer. This Court held:

“20. On a scrutiny of Section 7-I, we notice that the language is clear and unambiguous and it does not provide for an appeal against the determination made under Section 7-Q. It is well settled in law that right of appeal is a creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. This being the position a provision providing for appeal should neither be construed too strictly nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute. (See *Ganga Bai v. Vijay Kumar* [(1974) 2 SCC 393], *Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad* [(1999) 4 SCC 468], *State of Haryana v. Maruti Udyog Ltd.* [(2000) 7 SCC 348], *Super Cassettes Industries Ltd. v. State of U.P.* [(2009) 10 SCC 531 : (2009) 4 SCC (Civ) 280], *Raj Kumar*

2072

Shivhare v. Directorate of Enforcement [(2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712], *Competition Commission of India v. SAIL* [(2010) 10 SCC 744].”

In paragraph 21, this Court further went on to hold that in case an order under Section 7-A speaks of delay in payment as well as interest, a composite order passed would be amenable to appeal under Section 7-I, as interest is only parasitic on the principal sum due under Section 7-A. However, if an independent order is passed under Section 7-Q for interest alone, the same was held to be not appealable.

31. From the above authorities, it is clear that an appeal is a creature of statute and an appellate tribunal has to act strictly within the domain prescribed by statute. It is obvious that an appeal would lie from an order or decision of the appellate authority under Section 28 of the Water Act to the NGT only under Section 33B(a) of the Water Act read with Section 16(a) of the NGT Act. Similarly, an appeal would lie from an order or decision of the appellate authority under Section 31 of the Air Act to the NGT only under Section 31B of the Air Act read with Section 16(f) of the NGT Act. Obviously, since no order or decision had been made by the appellate authority under either the Water Act

2073

or the Air Act, any direct appeal against an original order to the NGT would be incompetent. NGT's jurisdiction being strictly circumscribed by Section 33B of the Water Act, read with Section 31B of the Air Act, read with Section 16(a) and (f) of the NGT Act, would make it clear that it is only orders or decisions of the appellate authority that are appealable, and not original orders. On the facts of the present case, it is clear that an appeal was pending before the appellate authority when the NGT set aside the original order dated 09.04.2018. This being the case, the NGT's order being clearly outside its statutory powers conferred by the Water Act, the Air Act, and the NGT Act, would be an order passed without jurisdiction.

32. In fact, in the United Kingdom, there are several Acts under which a leapfrog appeal is permitted if a point of law of general public importance is involved. Thus, the Administration of Justice Act, 1969 states that such a leapfrog appeal directly to the Supreme Court may be filed on grant of certificate by the Trial Judge in the following terms:

“12. Grant of certificate by trial judge.

(1) Where on the application of any of the parties to any proceedings to which this section applies the judge is satisfied—

2074

- (a) that the relevant conditions are fulfilled in relation to his decision in those proceedings or that the conditions in subsection (3A) (“the alternative conditions”) are satisfied in relation to those proceedings, and
- (b) that a sufficient case for an appeal to the Supreme Court under this Part of this Act has been made out to justify an application for leave to bring such an appeal, ...
- (c)

the judge, subject to the following provisions of this Part of this Act, may grant a certificate to that effect.

(2) This section applies to any civil proceedings in the High Court which are either—

- (a) proceedings before a single judge of the High Court (including a person acting as such a judge under section 3 of the Judicature Act 1925), or
- (b)
- (c) proceedings before a Divisional Court.

(3) Subject to any Order in Council made under the following provisions of this section, for the purposes of this section the relevant conditions, in relation to a decision of the judge in any proceedings, are that a point of law of general public importance is involved in that decision and that that point of law either—

- (a) relates wholly or mainly to the construction of an enactment or of a statutory instrument, and has been fully argued in the proceedings and fully considered in the judgment of the judge in the proceedings, or
- (b) is one in respect of which the judge is bound by a decision of the Court of Appeal or of the Supreme Court in previous proceedings, and was fully considered in the

2075

judgments given by the Court of Appeal or the Supreme Court (as the case may be) in those previous proceedings.

xxx xxx xxx”

33. To similar effect are sections of the Tribunals, Courts and Enforcement Act, 2007, and the Employment Tribunals Act, 1996. Such appeals in the U.K. are referred to as “leapfrog appeals” [see **S Franses Ltd. v. The Cavendish Hotel (London) Ltd.**, [2018] UKSC 62 (at paragraph 7)].

34. It is, therefore, clear that no such provisions, as are contained in the U.K. Acts, being present in any of the Acts that we are concerned with, such leapfrog appeals to the NGT would necessarily be without jurisdiction.

(II) RE: ORDERS PASSED UNDER SECTION 33A OF THE WATER ACT AND SECTION 31A OF THE AIR ACT

35. We have referred to the orders dated 12.04.2018, 23.05.2018, and 28.05.2018 passed by the TNPCB under Sections 33A and 31A of the Water Act and Air Act respectively. At this juncture, it is important to state that Section 33B of the Water Act and Section 31B of the Air

2076

Act were both enacted on 18.10.2010, which is the very date on which the NGT Act came into force. What is important to note is that whereas Section 33B(c) of the Water Act read with Section 16(c) of the NGT Act make it clear that directions issued under Section 33A of the Water Act are appealable to the NGT, directions issued under Section 31A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given under Section 31A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders. Shri Sundaram's argument that these orders being substantially relatable to the Water Act would, therefore, not hold, as such orders are composite orders made both under the Water Act and the Air Act. Equally disingenuous is the reference to Section 14 of the NGT Act which only refers to the original jurisdiction of the NGT and not to its appellate jurisdiction. Also, to state generally that the subject matter of environment lies with the NGT, is an argument of despair that must be dismissed for the reason that as held by us hereinabove, an appeal

2077

being a creature of statute, a statute either confers a right of appeal or it does not. In the present case, we have seen that so far as directions issued under Section 31A of the Air Act are concerned, there is no right of appeal conferred by the Air Act read with the NGT Act. The ingenious argument made by Shri Sundaram that, in any case, a “direction” under Section 31A of the Air Act is nothing but an “order”, and would, therefore, be appealable as such under Section 31B of the Air Act read with Section 16(f) of the NGT Act would drive a coach-and-four through the statutory scheme that has just been adverted to. We have seen how all the appellate proceedings to the NGT, whether under the Air Act, the Water Act, or the NGT Act have been brought into force on the same date. Whereas the identical power to give directions by the Board under the Water Act is appealable to the NGT, the same power to give directions by the Board under the Air Act is not so appealable. The absence of any mention of Section 31A in Section 31B of the Air Act, given the statutory scheme as aforesaid, makes it clear that even this argument must be rejected. Also, “directions” that are issued under Section 31A of the Air Act are of a different quality from “orders” referred to in Section 31 of the same Act. Directions are issued in the exercise of powers and performance of functions under

2078

the Act and are not quasi-judicial in nature, whereas orders that are appealed against under Section 31 are quasi-judicial orders made, *inter alia*, under Section 21 of the Air Act. For this reason also, we cannot accept the aforesaid argument of Shri Sundaram. However, Shri Sundaram argued, with particular reference to the explanation to Section 31A of the Air Act that “directions” partake of the nature of “orders” when closure of any particular industry or stoppage of supply of electricity *qua* any single industry is made, and therefore, such directions are appealable as orders under Section 31 of the Air Act. This argument is also of no avail as Section 33A of the Water Act contains an identical explanation to that contained in Section 31A of the Air Act. Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable. Hence, reference made to P. Ramanatha Aiyer’s Law Lexicon and Black’s Law Dictionary, which state that in certain circumstances, orders are also directions and vice versa, would not apply to the present case, given the express statutory scheme. In this connection, Shri Sundaram cited **Kanhiya Lal Omar v. R.K. Trivedi**, (1985) 4 SCC 678, and relied upon

paragraph 17, where this Court held, referring to Article 324(1) of the Constitution of India, that a “direction” may be equated with a specific or a general order. The context of Article 324 being wholly different, it is obvious that this authority also has no application, given the statutory scheme in the present case.

36. Shri Sundaram then cited **Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth**, (1984) 4 SCC 27. In this judgment, the High Court had struck down Regulation 104 of the Maharashtra Secondary and Higher Secondary Boards Regulations, 1977, by which, no re-evaluation of an answer book given in an examination can be undertaken. In setting aside the High Court judgment, this Court stated that the process of re-evaluation of answer papers is extremely time consuming, would involve several thousand man-hours, and is bound to throw the entire system out of gear. Further, it is in public interest that the results of public examinations, when published, should have some finality attached to them [see paragraph 27]. It is in this context that this Court held:

“29. It is equally important that the Court should also, as far as possible, avoid any decision or

interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice.”

To bodily lift the aforesaid sentence and apply it to the fact situation here would be a huge leap which we are not prepared to make. Further, given the statutory scheme as aforesaid, it is not possible for us to provide an appeal where there is none in the guise of making an appellate system workable in practice.

37. Shri Sundaram then relied upon this Court’s judgments in **Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd.**, (2016) 14 SCC 161 and **Allokam Peddabbayya v. Allahabad Bank**, (2017) 8 SCC 272 for the proposition that the right of appeal is a statutory right, and like all other statutory rights, it can be waived, unless its waiver is detrimental to public interest. The question in these appeals is not whether an appellant may waive a statutory right of appeal. The question is whether the NGT, which is only invested with the jurisdiction of entertaining an appeal from an order of an appellate authority, is jurisdictionally capable of entertaining an appeal directly from the original authority. It is clear, as has been held by us, that the NGT possesses no such jurisdiction.

2081

38. One further argument was made that these matters are only procedural, and therefore, substantially, an appeal to the NGT would be maintainable. It is well settled that the right to appeal is not a procedural matter but a substantive one. In **Garikapati Veeraya v. N. Subbiah Choudhury**, 1957 SCR 488, this Court held:

“From the decisions cited above the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the *lis* commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at *the* date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so

2082

provides expressly or by necessary
intendment and not otherwise.”

(at pp. 514-515)

This argument must, therefore, be rejected.

(III) RE: ORDER PASSED UNDER SECTION 18 OF THE WATER ACT

39. So far as the order dated 28.05.2018 is concerned, this order is expressly stated to be made under Section 18 of the Water Act. There is no doubt whatsoever that such an order is not appealable to the NGT either under the Water Act or under the NGT Act. However, Shri Sundaram has argued that Section 18 is referable to orders generally made, and falls under Chapter IV of the Water Act, which deals with powers and functions of Boards, as opposed to the Sections that follow in Chapter V, which deals with prevention and control of water pollution, which orders are made against individuals and individual industries. On the assumption that Shri Sundaram is correct in this argument, it is clear that such order can only be set aside in a suit by a Civil Court, or under Article 226 of the Constitution of India by a High Court. It is not possible to agree with the argument of Shri Sundaram that such orders can be ignored, being *non est*. It is settled that an administrative order, when made, does not bear the brand of invalidity

on its forehead, as has been held in **Smith v. East Elloe Rural District Council**, [1956] 1 All E.R. 855 (at page 871), which has been followed by this Court in **State of Punjab v. Gurdev Singh**, (1991) 4 SCC 1 (at page 6); **Tayabhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.**, (1997) 3 SCC 443 (at page 455); **Pune Municipal Corpn. v. State of Maharashtra**, (2007) 5 SCC 211 (at page 225); **Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group**, (2011) 3 SCC 363 (at page 369); and **Kandla Port v. Hargovind Jasraj**, (2013) 3 SCC 182 (at page 193). Therefore, this order can only be set aside either in a suit, or by the High Court in the exercise of judicial review. Faced with this, Shri Sundaram then argued that though the said order states that it is traceable to Section 18 of the Water Act, it can, in fact, be traced to Section 29 of the same Act. Section 29 deals with the revisional power, in which the State Government is to pass a quasi-judicial order after hearing both the State Board and the person who is affected. Quite obviously, this order is not a quasi-judicial order as the State Government has not found it necessary to hear either the State Board, or any person affected by such order. Further, such order does not purport to be an order which either affirms or sets aside any order made under Sections 25, 26, or

27 of the Water Act. This argument of despair, therefore, must also be rejected.

40. Shri Sundaram then argued that this Court in **L. Chandra Kumar** (supra) made it clear that Tribunals that are set up, generally have the power of judicial review, save and except a challenge to the vires of the legislation under which such Tribunals are themselves set up. For this, he relied strongly upon paragraphs 90 and 93 of the judgment in **L. Chandra Kumar** (supra). It is important to notice that **L. Chandra Kumar** (supra) pertained to a Tribunal that was set up under Article 323A of the Constitution of India. Under Article 323A(2)(d), the Administrative Tribunal so set up would be able to exercise the jurisdiction of all courts except the jurisdiction of the Supreme Court under Article 136 of the Constitution. This would mean that the Administrative Tribunal so set up could exercise the jurisdiction of all High Courts when it came to the matters specified in Article 323A. This is further made clear by a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985, which read as follows:

“14. Jurisdiction, powers and authority of the Central Administrative Tribunal.—(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the

2085

appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to—

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning—

(i) a member of any All-India Service; or

(ii) a person not being a member of an All-India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian not being a member of an All-India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (i) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State

2086

Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

Explanation.—For the removal of doubts, it is hereby declared that references to “Union” in this sub-section shall be construed as including references also to a Union Territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to—

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

2087

(b) all service matters concerning a person other than a person referred to in clause (a) or clause (b) of sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.”

XXX XXX XXX

“28. Exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution.—On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, no court except—

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force,

shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or matters concerning such recruitment or such service matters.”

Article 323B of the Constitution of India also provides for Tribunals for certain other matters which are specified by sub-clause (2) thereof. Suffice it to say that the NGT is not a Tribunal set up either under Article 323A or Article 323B of the Constitution, but is a statutory

Tribunal set up under the NGT Act. That such a Tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act (supra). Thus, a conjoint reading of Section 14 and Section 29 of the NGT Act must be contrasted with a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985.

41. It is in the context of Article 323A and the Administrative Tribunals Act, 1985 that this Court in **L. Chandra Kumar** (supra) has observed in paragraph 93 as follows:

“93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be

unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.”

42. In **Bharat Sanchar Nigam Limited v. Telecom Regulatory Authority of India and Ors.**, (2014) 3 SCC 222 [“BSNL”], this Court had to construe the appellate power that is contained in Section 14 of the Telecom Regulatory Authority of India Act, 1997, by which, the TDSAT was conferred with the power to hear and dispose of appeals against any direction, decision, or order of the TRAI. In this context, after distinguishing the judgment in **L. Chandra Kumar** (supra), this Court held:

“**108.** Before the 2000 Amendment, the applications were required to be filed under Section 15 which also contained detailed procedure for deciding the same. While sub-section (2) of Section 15 used the word

2090

“orders”, sub-sections (3) and (4) thereof used the word “decision”. In terms of sub-section (5), the orders and directions of TRAI were treated as binding on the service providers, Government and all other persons concerned. Section 18 provided for an appeal against any decision or order of TRAI. Such an appeal could be filed before the High Court. The Amendment made in 2000 is intended to vest the original jurisdiction of TRAI in TDSAT and the same is achieved by Section 14(a). The appellate jurisdiction exercisable by the High Court is also vested in TDSAT by virtue of Section 14(b) but this does not include decision made by TRAI. Section 14-N provides for transfer to all appeals pending before the High Court to TDSAT and in terms of clause (b) of sub-section (2), TDSAT was required to proceed to deal with the appeal from the stage which was reached before such transfer or from any earlier stage or de novo as considered appropriate by it. Since the High Court while hearing appeal did not have the power of judicial review of subordinate legislation, the transferee adjudicatory forum i.e. TDSAT cannot exercise that power under Section 14(b).”

xxx xxx xxx

“**114.** From the above-extracted portion of the order it is evident that the Bench, which decided the matter, felt that the view taken by TDSAT would encourage rampant violation of the orders without any penal consequence and the entire scheme of the TRAI Act would become unworkable. The word “directions” used in Section 29 of the TRAI Act was interpreted to include orders and regulations in the context of the factual matrix of that case and the apprehension of the Court that Section 29 would otherwise become unworkable, but the same cannot be read as laying down a proposition of law that the words “direction”, “decision” or “order” used in Section 14(b) would

2091

include regulations framed under Section 36, which are in the nature of subordinate legislation.”

xxx xxx xxx

“**123.** In *Union of India v. Madras Bar Assn.* [(2010) 11 SCC 1] and *State of Gujarat v. Gujarat Revenue Tribunal Bar Assn.* [(2012) 10 SCC 353 : (2012) 4 SCC (Civ) 1229 : (2013) 1 SCC (Cri) 35 : (2013) 1 SCC (L&S) 56 : (2012) 10 Scale 285], this Court applied the principles laid down in *L. Chandra Kumar case* [*L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] and reiterated the importance of tribunals created for resolution of disputes but these judgments too have no bearing on the decision of the question formulated before us.

124. In the result, the question framed by the Court is answered in the following terms: in exercise of the power vested in it under Section 14(b) of the TRAI Act, TDSAT does not have the jurisdiction to entertain the challenge to the regulations framed by TRAI under Section 36 of the TRAI Act.”

In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(b) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a

2092

High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in **Re: Special Reference**, (1965) 1 SCR 413, made in the following words:

“We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a Court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction. “*Prima facie*”, says Halsbury, “no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [*Halsbury’s Laws of England*, vol. 9, p. 349]”.

(at page 499)

For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject matter of any appeal under Section 16 of the NGT Act, cannot be “judicially reviewed” by the NGT. Following the judgment in **BSNL** (supra), we are of the view that the NGT has no general power of

judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17.07.2014 in **Wilfred v. Ministry of Environment and Forests** must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected.

43. Shri Sundaram then argued that, in any case, this order is an order made by the State Government against the TNPCB, and is therefore, a direction to the TNPCB and not a direction to his client. If this were so, and the order had no effect on his client, there would have been no necessity to file an appeal before the NGT against such order. We have seen, however, that this order has been challenged on merits by the respondent before the NGT. To then say that this order which is challenged would be defended on certain grounds, as a result of which, the NGT then gets vested with the jurisdiction to decide the same, is again to put the cart before the horse. It is clear that no appeal is provided against orders made under Section 18 of the Water Act, and the attempt to bring the NGT in by the backdoor, as it were, would, therefore, have to be rejected. Also, to argue that as against a

2094

writ court acting under Article 226 of the Constitution of India, the NGT is an expert body set up only to deal with environmental matters, again does not answer the specific issue before this Court. As we have held earlier, an appeal being a creature of statute, an order passed under Section 18 of the Water Act is either appealable or it is not. If it is not, no general argument as to the NGT being an expert body set up to hear environmental matters can be of any help.

44. Equally, so far as the order dated 08.08.2013 is concerned, we have seen how the NGT stated that the doctrine of necessity would take over if an appellate authority under the Act is not properly constituted so that no appeal can then be effectively preferred. This, again, is an argument that cannot be countenanced. If an appellate authority is either not yet constituted, or not properly constituted, a leapfrog appeal to the NGT cannot be countenanced. As has been held by us *supra*, the NGT is only conferred appellate jurisdiction from an order passed in exercise of first appeal. Where there is no such order, the NGT has no jurisdiction.

2095

45. In conclusion, we are cognizant of the fact that the respondent's plant has been shut down since 09.04.2018. Since we have set aside the impugned judgments of the NGT on the ground of maintainability, the order dated 22.01.2019 passed by the TNPCB, being a consequential order, is also set aside. The respondents are relegated to the position that the six orders impugned before the NGT, dealt with by the impugned judgment dated 15.12.2018, and the order dated 29.03.2013, dealt with by the final judgment dated 08.08.2013, are alive and operative. Given the fact that we are setting aside the NGT judgments involved in these appeals on the ground of maintainability, we state that it will be open for the respondents to file a writ petition in the High Court against all the aforesaid orders. If such writ petition is filed, it will be open for the respondent to apply for interim reliefs considering that their plant has been shut down since 09.04.2018. Also, since their plant has been so shut down for a long period, and they are exporting a product which is an important import substitute, the respondent may apply to the Chief Justice of the High Court for expeditious hearing of the writ petition, which will be disposed of on merits notwithstanding the availability of an alternative remedy in the

2096

case of challenge to the 09.04.2018 order of the TNPCB. The appeals are disposed of accordingly.

.....J.
(R.F. Nariman)

New Delhi
February 18, 2019

.....J.
(Navin Sinha)

2097

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

APPEAL NO. 28/2023

IN THE MATTER OF:

ANJUM

Son of Latafat,
Naya Gaon
Nangla Bujurg,
P.S Bhopa,
District-Muzaffar Nagar,
Uttar Pradesh - 251308

...Appellant

Versus

- 1. Uttar Pradesh Pollution Control Board
through Chief Environment Officer Circle-3**
Building no. TC-12V,
Vibhuti Khand,
Gomti Nagar, Lucknow- 226010

...Respondent

COUNSELS FOR APPELLANT (S):

Mr. Saurabh Rajpal and Mr. Shaiem, Advocates

COUNSELS FOR RESPONDENT(S):

Mr. Pradeep Misra and Mr. Daleep Dhyani, Advocates for UPPCB (Through VC)

CORAM:

**HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

**RESERVED ON: JANUARY 12, 2024
PRONOUNCED ON: FEBRUARY 21, 2024**

JUDGMENT**BY HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER**

1. This is an appeal under Section 16 of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act 2010**') filed by Anjum son of Latafat, being aggrieved by order dated 14.07.2023 issued by Chief Environment Officer, Circle-3, Uttar Pradesh Pollution Control Board (hereinafter referred to as '**UPPCB**') imposing environmental compensation of Rs.87,10,000/- for 1742 days i.e., $365 \times 5 - 83$ which has been computed at the rate of Rs.5,000/- per day.

2. The facts in brief are that First Information Reports (hereinafter referred to as '**FIRs**') No. 179/2022 dated 10.07.2022 (case crime no. 179/2022) under Section 278, 285 and 338 IPC and No. 193/2022 under Section 283, 278 and 338 IPC were registered at P.S. Bhopa, Muzaffarnagar, UP against appellant. During investigation, Investing Officer in General diary no. 031 noted that on 13.11.2018, chemical drums were recovered from village Kasampura which contained hazardous chemicals and buried in the field but caused sharp odour in the atmosphere. Those drums were disposed of in presence of Sub-Divisional Magistrate, Jansath, Muzaffarnagar. Regional Officer, UPPCB, Muzaffarnagar vide letter dated 31.01.2023 recommended imposition of environmental compensation of Rs.4,15,000/- upon appellant for violation of 83 days i.e., from 09.07.2022 to 29.09.2022 at the rate of Rs.5,000/- per day. Pursuant thereto, a final order was issued on 08.02.2023 by Officer Incharge, Circle-3, imposing environmental compensation of Rs.4,15,000/- upon appellant and directing him to deposit the same within 15 days. Copy of the order dated 08.02.2023 is on record as annexure A-3 at page 32.

3. Thereafter, a show cause notice dated 11.02.2023 was issued proposing environmental compensation of Rs.87,10,000/- upon the appellant for a total period of 1742 days. Copy of show cause notice is not on record but copy of the recommendation/proposal made by Regional Officer, UPPCB, Muzaffarnagar to Chief Environment Officer, Circle-3, UPPCB, Lucknow for computing environmental compensation of Rs.87,10,000/- is on record at page 91 of paper book. It is stated therein that in the industrial generated fly ash, hazardous chemical was added which caused exothermic reaction resulting in death of one person and burn injuries to two persons. It also refers to earlier letter dated 08.02.2023 wherein environmental compensation of Rs.4,15,000/- was imposed but then referring to Tribunal's order dated 29.04.2019 passed in **OA 116/2014, Meera Shukla vs. Municipal Corporation, Gorakhpur & Ors.** and dated 10.01.2023 passed in **OA 744/2022, Moharram Ali vs. State of Uttar Pradesh**, period of violation was increased from 83 days to 1742 days and compensation was enhanced from Rs.4,15,000/- to Rs.87,10,000/-, in addition to environmental compensation of Rs.4,15,000/- which was already imposed.

4. Appellant replied show cause notice, copy whereof has been filed at page 105 of the paper book. Thereafter final order was passed on 14.07.2023 imposing environmental compensation of Rs.87,10,000/- upon appellant.

5. Order dated 14.07.2023 has been assailed on the ground that firstly, there is nothing to implicate appellant for alleged violation and order dated 14.07.2023 is entirely based on conjectures and surmises, shows non-application of mind and malicious in law; and secondly, UPPCB has no power of review and once an earlier order was passed on 08.02.2023 imposing environmental compensation of Rs.4,15,000/-, another order

raising a further demand of environmental compensation to Rs.87,10,000/- could not have been passed and the same is wholly without jurisdiction as no power of review has been conferred upon UPPCB under any Statute relating to environment i.e., Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as '**Water Act 1974**'), Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as '**Air Act 1981**') and Environment (Protection) Act, 1986 (hereinafter referred to as '**EP Act 1986**') or any rules framed thereunder.

6. It is also urged that the land on which fly ash and hazardous chemicals allegedly was stored, belong to Irrigation Department in Village Nangla Bujurg and there was no material before UPPCB to co-relate appellant for alleged violation of environmental laws or for resulting in accident/incident in which three persons sustained burn injuries causing death of one and serious injuries to the remaining two.

7. On behalf of UPPCB, response/reply dated 02.01.2024 has been filed, stating that drums containing chemicals belong to appellant which emitted some gas. On the complaint of villagers, Sub-Divisional Magistrate, Jansath got the said drums buried near the canal which ultimately caused burning injuries resulting in death of one person. Appellant was found guilty of storing hazardous chemicals, led to the accident in which a person died and two got burn injuries. For this reason, compensation of Rs.4,15,000/- was imposed. Later, a notice was issued to appellant for imposing a further liability of environmental compensation of Rs.87,10,000/- by computing the period of violation as 04 years and 282 days i.e.5 years (365 x 5) wherefrom 83 days were deducted. This is pursuant to the findings recorded in Criminal Case as also Joint Committee's Report dated 13.02.2023 filed before Tribunal in **OA 744/2022 (supra)**. Copy of Joint Committee Report has been placed on

record as annexure-1 to reply at page 75 of paper book. It is further said that appellant had stored the drums containing chemicals and also dropped chemicals out of drums which caused accident.

8. Learned Counsel appearing for UPPCB has also produced original record for our perusal.

9. We have heard Learned Counsel for the parties and perused the record.

10. Contention of appellant is that there is no material or evidence to show that appellant is guilty of violation of any environmental law and, therefore, imposition of environmental compensation upon appellant, vide impugned order dated 14.07.2023, is patently illegal. He further contended that once an order has been passed on 08.02.2023, imposing environmental compensation of Rs.4,15,000/- upon appellant, quantum of environmental compensation could not have been reviewed, revised and enhanced by subsequent order dated 14.07.2023 as power of review is not *suo-moto* or inherent but must exist in some statute but no environmental laws confer any such power upon UPPCB to review, therefore, order dated 14.07.2023 is wholly without jurisdiction.

11. Per-contra, Shri Pradeep Mishra, Learned Counsel appearing for UPPCB has referred to order impugned in this Appeal and said that criminal investigation as also earlier Joint Committee Report shows that appellant was guilty of storage and mis-handling of hazardous chemicals, for which he has no consent or authorisation under the relevant laws and since illegal storage and handling of hazardous waste on the part of appellant caused a serious incident in which one person died and two sustained severe burn injuries, hence environmental compensation for the entire period of violation i.e., five years has been imposed upon appellant.

ISSUES:

12. Two issues which require adjudication in this Appeal and have arisen in the light of rival submissions, are:

- (I) Whether the conclusion drawn by UPPCB, holding appellant guilty of violation of environmental laws, is based on evidence and justified in law?
- (II) Whether UPPCB has any power of review and revise an earlier determination of environmental compensation by enhancing it, passing a subsequent order?

13. **The first question deals with fundamental issue**, whether conclusion drawn against appellant, holding him guilty of violation of environmental laws, justifying imposition of environmental compensation, is based on any evidence or material, which justify his implication.

14. Original record shows that entire interference has been drawn by UPPCB with reference to proceedings of Case Crime No. 193/2022 and 179/2022. Copies of FIR are not part of original record and, therefore, it is evident that FIRs have not been perused by the concerned authorities. There is an official note prepared by a team of 04 officers namely Mr. Jitender Kumar, Scientific Assistant, Mr. Ritesh Kumar Maurya, Assistant Environment Engineer, Mr. Bhuvan Prakash Yadav, Environment Engineer and Mr. Imran Ahmad Khan, Environment Engineer on 03.02.2023 which shows that Case Crime No. 179/2022 under Section 278, 285 and 338 IPC was registered against Naushad Ali son of Mr. Parvash resident of village Nangla Bujurg, Thana Bhopa, Muzaffarnagar, UP and Case Crime No. 193/2022 was registered under Section 283, 278 and 338 IPC against Mohd. Ehsan son of Shri Riyazuddin resident of village Bhikki, Thana Sikheda, Muzaffarnagar, UP. The case diaries prepared by Investigating Officers were examined and therefrom, it was found that appellant was

primarily guilty and a case was registered in the Competent Court against him. From that, an inference was drawn that the land at village Nangla Bujurg belong to Irrigation Department. On 12.11.2018, some chemical was poured on already dumped fly ash by appellant. After about 4 years, chemical reaction giving rise to exothermic heat resulted in the accident in which one person namely Mohd. Nabi son of Parvash resident of village Nangla Bujurg died and two others namely Saif Ali son of Moharram and Momin son of Munna, resident of village Bhikki, Thana Sikheda, Muzaffarnagar sustained burn injuries. Therefrom UPPCB drew inference that appellant has violated the provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (hereinafter referred to as '**HOWMTM Rules 2016**') and liable for payment of compensation which was initially determined for the period of 83 days i.e., from 09.07.2022 to 29.09.2022 and Rs. 4,15,000/- was computed as environmental compensation. The above proposal was approved by Member Secretary and Chairman UPPCB on the same day i.e., on 03.02.2023. Thereafter, order dated 08.02.2023 was issued.

15. Original record further shows that on 11.02.2023, another note was prepared by a team comprising three officials namely Mr. Jitender Kumar, Scientific Assistant, Mr. Ritesh Kumar Maurya, Assistant Environment Engineer and Mr. Imran Ahmad Khan, Environment Engineer in which earlier facts are similar as contained in the note dated 03.02.2023 but thereafter, it refers to Tribunal's order dated 29.04.2019 passed in **OA 116/2014 (supra)** and in reference thereto, it recommended environmental compensation for five years i.e., 365 days × 05 years = 1825. Then deducting 83 days for which order was already passed, liability of 1742 days was imposed for which a further sum of Rs.87,10,000/- was computed as environmental compensation. This note was also approved on

the same date i.e., 11.02.2023 by Member Secretary as also Chairman, UPPCB.

16. It is said that show cause notice was issued to appellant on 11.02.2023 itself which was replied by appellant vide representation/reply received in the office of UPPCB, Lucknow on 21.04.2023. Thereafter, order was passed on 14.07.2023 by Chief Environment Officer, Circle-2, UPPCB, Lucknow.

17. When questioned, Learned Counsel appearing for UPPCB could not show that any enquiry or investigation conducted on the part of respondent's authorities to find out whether there was any fault on the part of appellant or he has any role in the matter. Shri Mishra, learned counsel refers to case diary document particularly Parcha No. 34 in case crime no. 179/2022 but even such document is not part of original record, hence we do not find as to what was the material considered by respondent authorities in passing the impugned order holding appellant guilty of non-compliance of HOWMTM Rules 2016.

18. Appellant on its part has filed a copy of general diary no. 31 dated 13.11.2018 which shows that in village Kasampura, PS Bhopa, an information of sharp chemical odor was received whereupon the officials reached the site along with drug inspector Muzaffarnagar and found drums emitting sharp smell. Drug Inspector checked the drums and found that no live drug was present in the drum and sharp odor may have emitted due to strong chemical and liquid pesticide etc. All the drums were got buried in the soil with the help of JCB in the presence of Sub-Divisional Officer, Jansath. This happened in 2018. No material has been shown that appellant come into picture till that time. Thereafter, when in 2022, the incident of burning occurred, the authorities came into action, reached the site, got the drums dug out and, thereafter, disposed the same through

Treatment, Storage and Disposal Facility (hereinafter referred to as **'TSDF'**). This shows that in 2018, when the hazardous material was recovered and buried, the authorities themselves did not follow the procedure of disposal of hazardous material by complying with the provisions of HOWMTM Rules 2016 and they had to be blamed for this violation. The incident occurred in 2022 is direct consequence of the above illegal act of the authorities in violation of environmental laws. In the entire process, there is no material whatsoever on record to bring in appellant showing his active involvement in the matter at any stage. The implication of appellant, therefore, is patently perverse and based on no evidence.

19. Appellant has also placed on record a copy of analysis report of CSIR, Indian Institute of Toxicology Research recording its possible conclusion that there might be Calcium Chloride, Calcium Sulphate or Potassium Chloride and Potassium Sulphate which may have reacted with the moisture leading to exothermic reaction generating huge amount of heat and dissipated horizontally and temperature rose due to chemical reaction. However, no chemical filled drum were found on the sampling site but hazardous chemical was found according to Gas Chromatograph.

20. It is not the case of respondents that in any trial or court proceedings, appellant has been found guilty of storing hazardous chemicals or handling it. No document has been placed before us including the alleged case diary showing involvement of appellant in storing and handling of hazardous chemical and thereby violating the provisions of HOWMTM Rules 2016. The GD no. 031 shows that during investigation by Police it was found that on 13.11.2018, hazardous substance was found and the same was buried in the presence of Sub Divisional Officer, Jansath. That means the hazardous substance was not disposed in compliance of HOWMTM Rules 2016. The apparent default was on the part

of the officers who buried hazardous substance in such negligent manner in 2018.

21. Moreover, how the appellant was involved in the matter is totally unexplained. He is neither the manufacture, nor producer, nor trader nor transporter of alleged material. At least, no record shows that he had any occasion to handle hazardous substance in any manner or actually handled it. His implication therefore, is wholly erroneous.

22. In any case, a case diary prepared during the course of investigation by itself is not evidence to draw an inference of guilt against a person even in criminal case, hence, on that basis, in our view, respondents have committed manifest error in holding appellant guilty of committing any violation of environmental laws. In fact, there is no Iota of evidence, whatsoever, to show that appellant has stored and handled any hazardous chemicals and, therefore, in our view, impugned order is founded on no evidence, hence, perverse and unsustainable in law.

23. **Issue I is answered accordingly and in favour of appellant.**

24. **Now coming to issue no. II,** Learned Counsel appearing for appellant at the outset stated that it has not challenged order dated 08.02.2023, whereby he was penalised with environmental compensation of Rs.4,15,000/- due to lack of awareness and by not approaching appropriate forum in time.

25. Be that as it may, he contended that once an order has already been passed imposing environmental compensation, no further order having the effect of review and revision of earlier order by enhancing environmental compensation can be passed by respondent since an order of imposition of environmental compensation is a quasi-judicial order having adverse effect upon appellant and such an order cannot be reviewed or revised unless

specific power to this effect has been conferred upon the concerned authority under the Statute. Here, no such power in fact has been conferred.

26. When questioned, Learned Counsel appearing for respondent could not dispute that there is no power either under Water Act 1974, Air Act 1981 and EP Act 1986 to review or revise an order demanding environmental compensation, once already passed.

27. Learned Counsel for respondent, however, sought to argue that order computing environmental compensation is an administrative order referable to section 5 of EP Act 1986 and not quasi-judicial or judicial order hence law that power of review cannot be exercised, unless conferred by Statute, is not attracted. He further contended that direction relating to computation or demand for environmental compensation can be issued by Pollution Control Board in exercise of its powers under Section 5 of EP Act 1986 and the said provision nowhere requires PCB to exercise judicial or quasi-judicial powers, therefore, the principle of review as argued by Learned Counsel for appellant would not be attracted in the case in hand.

28. In our considered view, this question is also liable to be returned in favour of the appellant.

29. It is not disputed before us that for violation of provisions of HOWMTM Rules 2016, impugned order of environmental compensation has been passed by respondent in exercise of the power u/s 5 of EP Act 1986.

30. HOWMTM Rules 2016 have been framed in exercise of power under Sections 6, 8 and 25 of EP Act 1986. HOWMTM Rules 2016 provides that for management, handling and storage etc. of hazardous waste,

authorisation from Competent Authority is necessary. HOWMTM Rules 2016, as such, do not make any provision for imposing environmental compensation. Rule 21, however, confers power upon various authorities specified in Column (3) of Schedule VII to perform duty as specified in Column III of the said Schedule subject to the provisions of HOWMTM Rules 2016. For violation of HOWMTM Rules 2016, an action can be taken by State PCB as mentioned at Serial no. 4 of Schedule VII which reads as under:

“SCHEDULE VII

[See rules 13 (6) and 21]

List of authorities and corresponding duties

S. No.	Authority	Corresponding Duties
(1)	(2)	(3)
4.	<i>State Pollution Control Boards or Pollution Control Committees constituted under the Water (Prevention and Control of Pollution) Act, 1974</i>	(i) <i>Inventorisation of hazardous and other wastes</i> (ii) <i>Grant and renewal of authorisation</i> (iii) <i>Monitoring of compliance of various provisions and conditions of permission including conditions of permission for issued by Ministry of Environment, Forest and Climate Change for exports and imports</i> (iv) <i>Examining the applications for imports submitted by the importers and forwarding the same to Ministry of Environment, Forest and Climate Change</i> (v) <i>Implementation of programmes to prevent or reduce or minimise the generation of hazardous and other wastes.</i>

		<p>(vi) Action against violations of these rules.</p> <p>(vii) <i>Any other function under these Rules assigned by Ministry of Environment, Forest and Climate Change from time to time.</i></p>
--	--	---

31. HOWMTM Rules 2016 have been made under EP Act 1986 for giving effect to the provisions of the said Act i.e., EP Act 1986. Section 5 of EP Act 1986, notwithstanding anything contained in any other law but subject to the provisions of EP Act 1986, confers power upon Central Government to issue directions in writing to any person, officer, or any authority and such person, officer, or authority shall be bound to comply with such directions. These directions, as per the explanation, may also include directions with regard to the closure, prohibition or regulation of any industry, operation or process or stoppage or regulation of the supply of electricity or water or any other service.

32. The power to frame HOWMTM Rules 2016 has been conferred upon Central Government by Rule 6. It says that Rules in respect of all or any of the matters referred to in Section 3 can be made. Section 3 confers power upon Central Government to take all such measures as it deem necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution. In particular and without prejudice to the generality of the provisions of sub-section (1), measures may include measures with respect to all or any of the matters enumerated in sub-section (2), given in detail and we reproduce the same from (i) to (xiv) as under:

“3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT.-

...

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:--

(i) co-ordination of actions by the State Governments, officers and other authorities—

(a) under this Act, or the rules made thereunder, or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever: Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.”

33. It is not disputed that power to give directions under Section 5 of EP Act 1986 includes power to issue similar directions for giving effect to the provisions of HOWMTM Rules 2016 or any other similar rules or directions under EP Act 1986. Environmental compensation was recognised, in the context of environmental laws, being consequence and effect of the Principle of ‘Polluter Pays’.

34. This Principle was recognized as part of environmental law in India in ***Indian Council for Enviro-Legal Action vs. Union of India, (1996) 3 SCC 212***. Certain industries producing assets were dumping their waste. Even untreated waste water was allowed to flow freely polluting atmosphere and sub-terrain supply of water which ultimately caused darkening and dirtiness of wells and the streams water rendering it unfit for human consumption. Certain environmentalists’ organizations broadly alleging severe damage to villager’s health, filed a Writ petition as PIL in 1989 before Supreme Court. By that time, some of the units were already closed. Referring to Article 48-A in Directive Principles of State Policy and 51-A in the Fundamental duties of citizens, Supreme Court observed that said provisions say that State shall endeavour to protect and improve environment and to safeguard the forest and wildlife of the country. One of the fundamental duties of citizens is to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creature. Where a Proponent has established its

commercial unit and operate contrary to law flouting norms provided by law, Statutory Regulator is bound to act and if it fails, a judicial forum can direct it to act in accordance with law. Referring to Oleum Gas leak case, i.e., *M.C. Mehta vs. Union of India, (1987) 1 SCC 395*, Court observed in para 58 that the constitution bench held that **enterprise must be held strictly liable for causing such harm as a part of social cost of carrying on the hazardous or inherently dangerous activity**. Hazardous or inherently harmful activities for private profits can be tolerated only on the condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of carrying on of such hazardous or inherently dangerous activity, regardless of whether it is carried on carefully or not.

35. Court also referred to its earlier decision in *Indian Council for Enviro Legal action vs. Union of India, (1995) 3 SCC 77*, wherein concerned PCB identified about 22 industries responsible for causing pollution by discharge of their effluent and a direction was issued by Court observing that they were responsible to compensate the farmers. It was the duty of State Government to ensure that this amount was recovered from the industries and paid to the farmers. In para 67 of the judgment, Court said that the **question of liability of respondent units to defray the costs of remedial measures can also be looked into from another angle which has now come to be accepted universally as a sound principle, for example, 'Polluter Pays' principle**. On this aspect, Court further observed as under:

“67. ...The Polluter Pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the

*financial burden of the pollution incident to the taxpayer. **The ‘Polluter Pays’ principle was promoted by the Organization for Economic Co-operation and Development (OECD) during the 1970s when there was great public interest in environmental issues.** During this time there were demands on government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialized society. Since then, there has been considerable discussion of the nature of the polluter pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactory agreed.*

*Despite the difficulties inherent in defining the principle, the European Community accepted it as a fundamental part of its strategy on environmental matters, and it has been one of the underlying principles of the four Community Action Programmes on the Environment. The current Fourth Action Programme ([1987] OJC 328/1) makes it clear that **the cost of preventing and eliminating nuisances must in principle be borne by the polluter**, and the polluter pays principle has now been incorporated into the European Community Treaty as part of the new Articles on the environment which were introduced by the Single European Act of 1986. Article 130-R(2) of the Treaty states that **environmental considerations are to play a part in all the policies of the Community, and that action is to be based on three principles: the need for preventative action; the need for environmental damage to be rectified at source; and that the polluter should pay.**”*

36. Reading the power to give effect to the ‘Polluter Pays’ principle and impose compensation and its recovery under Sections 3 and 5 of EP Act 1986, Supreme Court further said in **Indian Council for Enviro Legal action vs. Union of India, (supra)** that according to the ‘Polluter Pays’ principle, responsibility for repairing the damages is that of offending industry. Sections 3 and 5 of EP Act 1986 empower Central Government **to give directions and take measures for giving effect principle.** Court further said:

*“...In all the circumstances of the case, **we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment [Protection] Act, 1986.** It is, of course, open to the Central*

Government to take the help and assistance of State Government, R.P.C.B. or such other agency or authority, as they think fit.”

37. For demanding compensation by applying principle of ‘Polluter Pays’, the principle of natural justice must be followed. The polluter should be given opportunity. It was recognised specifically by Supreme Court in **Vellore Citizen Welfare Forum vs. Union of India, 1996 (5) SCC 647** wherein para 25, direction no. 2, Court said:

“2. The authority so constituted by the Central Government shall implement the “precautionary principle” and the “polluter pays” principle. The authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.”

38. ‘Polluter Pays’ principle implies liability of the polluter to pay for the damage caused. In **Research Foundation for Science vs. Union of India & Others (2005) 13 SCC 186**, in para 26 and 29, Court said as under:

“26. The liability of the importers to pay the amounts to be spent for destroying the goods in question cannot be doubted on applicability of precautionary principle and polluter-pays principle. These principles are part of the environmental law of India. There is constitutional mandate to protect and improve the environment. In order to fulfill the constitutional mandate various legislations have been enacted with attempt to solve the problem of environmental degradation.

29. The polluter-pays principle basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environmental cost as well as direct cost to the people or property, it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible. The principle also does not mean that the polluter can pollute and pay for it. The nature

and extent of cost and the circumstances in which the principle will apply may differ from case to case.”

39. The directions issued by Competent Authority under Sections 3 and 5 may be of different nature and characteristics. Some may be for execution of functioning of the concerned proponent and some may have adverse effect upon his right to carry on process/operation including fastening liability, financial or otherwise. The directions which would have adverse effect upon proponent in the matter of running of its process or project or industry or operation or otherwise confer any liability upon it, such directions, in our view, cannot be issued without complying with the principle of natural justice.

40. Section 5 of EP Act 1986 confers power upon Central Government to issue directions in writing to any person, officer or authority of such person is bound to comply the same. Such directions can be issued by Central Government in exercise of its power and performance its functions under EP Act 1986. Explanation makes it clear that such directions may be penal in nature also for example, it may include direction for closure or prohibition or regulation of any industry, operation or its process or stoppage or regulation of electricity or water or any other services. Such directions may also include computation of environmental compensation by application of principle of 'Polluter Pays'. The power conferred upon the Central Government can be delegated to any officer, State Government or other authority under Section 23 of EP Act 1986 which provide such power of delegation clearly stating that only the power of constitution of authority under Section 3(3) or Rule making power under Section 25 shall not be delegated. Therefore, power to issue directions under Section 5 can be delegated under Section 23 of EP Act 1986.

41. *Pari-materia* provisions to Section 5, we find in Section 33A of Water Act 1974 wherein such power has been conferred upon PCB whether State or Central and under Section 31A of Air Act 1981.

42. In our view, such directions when are adverse to any person who is to comply the same, such directions are quasi-judicial in nature for the reason that the authority which exercise such power not only is supposed to follow the principle of natural justice but the exercise of function is analogous to judicial authorities but exercised by non-judicial authorities.

43. Explaining the meaning of the term 'quasi-judicial', Supreme Court in ***Namit Sharma vs. Union of India, (2013) 1 SCC 745*** has observed that it involves deciding a dispute and ascertaining the facts and any relevant law, but differs in that it depends ultimately on the exercise of an executive discretion rather than the application of law. When law commits to an officer, the duty of looking into certain facts not in a way which it specially directs, but after a discretion in its nature judicial, the function is quasi-judicial.

44. Supreme Court in ***Namit Sharma (supra)*** refers to the meaning of quasi-judicial in 'Advanced Law Lexicon' (3rd Edn., 2005) by P. Ramanathan Aiyar, wherein it explains the expression 'quasi-judicial' stating that 'of, relating to, or involving an executive or administrative official's adjudicative acts'. Considering the provisions of Right to Information Act, 2005 and the power exercised by Information Commissioner etc., Supreme Court held that Information Commissioner performs adjudicatory functions and a hierarchy of Appeal is also provided. The orders of Information Commission may have the effect of affecting rights of a person and, therefore, it decides a lis also. It thus, can be said that Information Commission is essentially quasi-judicial in nature.

45. In ***State of Himachal Pradesh & Ors. vs. Mahendra Pal, 1995 Supp (2) SCC 731***, Supreme Court said that expression 'quasi-judicial' is a term which stands midway a judicial and an administrative function. If an authority has any express statutory duty to act judicially in arriving at the decision in question, it would be deemed to be quasi-judicial. Where the function to determine a dispute is exercised by virtue of an executive discretion rather than the application of law, it is a quasi-judicial function. A quasi-judicial act requires that a decision is to be given not arbitrarily or in mere discretion of the authority but according to the facts and circumstances of the case as determined upon an enquiry held by the authority after giving an opportunity to the affected parties of being heard or wherever necessary of leading evidence in support of their contention.

46. In ***Harbhajan Singh vs. Karam Singh and Others, AIR 1966 SC 641***, Court held that power of review cannot be exercised unless conferred by Statute and any order of review passed in absence of a statutory power of review is without jurisdiction.

47. Under EP Act 1986, Water Act 1974 and Air Act 1981, while exercising power of issuing directions, Competent Authority may issue such directions which may affect the proponent's right of carrying on business i.e., industry etc. and such directions, therefore, must precede with application of principle of natural justice and whenever such power is exercised, it can be said to be an exercise of quasi-judicial power and to that extent, the authority exercising such power would act as a quasi-judicial authority.

48. In order dated 21.07.2020 passed in ***Appeal No. 9/2020(SZ), Piramal Enterprises Limited vs. Telangana Pollution Control Board*** in para 23 of the judgment, it is said as under:

23. Since, compensation being a monetary liability, before fixing the same, an opportunity ought to have been given by the Pollution Control Board to the appellant unit which is the basic principle of following the principles of natural justice of being heard before final orders are being passed.”

49. Therefore, we have no manner of doubt that an order passed by respondent imposing environmental compensation and requiring the person to pay the same by applying principle of ‘Polluter Pays’ is a quasi-judicial order as it imposes financial liability upon it and without giving an opportunity of hearing and complying with the principle of natural justice, such liability cannot be fastened upon it.

50. That being so, the question would be whether an order imposing environmental compensation after considering the entire facts and circumstances, determining a particular period or liability is passed, can such order be reviewed or revised by re-looking into the facts and increasing liability by adding number of days as also enhancing financial liability.

51. Here, it is not the case that an order was passed for some past violation and thereafter, subsequently for subsequent period, violations had continued and for that subsequent period, fresh order has been passed.

52. In the present case, on 08.02.2023, all the earlier facts claimed to have been examined by respondent and thereafter, in its wisdom, it held that environmental compensation should be imposed for a period of 83 days i.e., from 09.07.2022 to 29.09.2022 and appellant should be liable to pay environmental compensation of Rs. 4,15,000/-. Subsequently, by reviewing the same said facts, period has been extended for 05 years prior to the date of disposal of hazardous waste i.e., 29.09.2022 and thereby, taking 1742 days i.e., $365 \times 5 - 83$, which means the compensation earlier

imposed was reduced from the extended period, further liability has been imposed.

53. This clearly shows that impugned order dated 14.07.2023 is a review/revision of the earlier order dated 08.02.2023.

54. It is not disputed before us that there is no power of review conferred either under EP Act 1986 or HOWMTM Rules 2016 in respect of order passed with reference to Sections 3 and 5 of EP Act 1986 applying principle of 'Polluter Pays' for imposing environmental compensation. However, it is admitted that against a direction issued under Section 5 of EP Act 1986, any person aggrieved may file an appeal before this Tribunal under Section 16(h) of EP Act 1986. In other words, a direction issued under Section 5 of EP Act 1986 if quasi-judicial in nature and no Appeal is preferred, the same would attain finality. In this backdrop, we have to examine whether the subsequent order dated 14.07.2023 passed by respondent enhancing environmental compensation amounts to review of its earlier order and whether such power is inherent with the respondent or cannot be exercised unless conferred by Statute.

55. In **Anantharaju Shetty vs. Appu Hegada, AIR 1919 Mad. 244**, it was said by Madras High Court that law is well settled that a case is not open to appeal unless Statute gives such a right. Power to review must also be given by Statute. A review is practically hearing of an appeal by the same officer who decided the case. Thus, it can be said that such power should not be exercised unless the Statute gives it. The above judgment of Madras High Court has been referred with approval by Supreme Court in **Harbhajan Singh vs. Karam Singh and Others (supra)**.

56. In **Patel Chunibhai Dajibhai etc. vs. Narayanrao Khanderao Jambekar & Anr., AIR 1965 SC 1457**, exercising revisional power,

application was rejected. Later Collector re-considered its previous decision. Supreme Court said that in absence of any power of review, Collector could not subsequently re-consider his previous decision and re-opening of matter was illegally ultra vires and without jurisdiction.

57. In ***Patel Narshi Thakershi & Ors. vs. Shri Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844***, the above principle was reiterated and Court said:

*“4. ...It is well settled that the **power to review is not an inherent power**. It must be conferred by law either specifically or by necessary implication...”*

58. In that case, power to pass order had vested in the State Government which delegated its power to Commissioner. The earlier order was passed by State of Saurashtra but subsequently. State of Gujarat came into existence covering the area concerned and thereupon, Commissioner passed orders setting aside the orders passed by Saurashtra Government taking a different view holding that the Government had no competence to make that orders. Since power of review was not vested with Government, Supreme Court held, even its delegate could not have exercised power of review in absence of provisions conferring power of review.

59. In ***Major Chandra Bhan Singh vs. Latafat Ullah Khan & Ors., (1979) 1 SCC 321***, Court said,

*“13 ...It is well settled that **review is a creature of statute** and cannot be entertained in the absence of a provision therefor...”*

60. In ***Dr. (Smt.) Kuntesh Gupta vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) & Ors., (1987) 4 SCC 525***, Court said,

*“11. It is now well established that a **quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute** under which it derives its jurisdiction...”*

61. In **S. Nagaraj & Ors. vs. State of Karnataka & Anr., 1993 SUPP (4) SCC 595**, Court said that review literally and even judicially means re-examination or re-consideration. A small corrective approach was permitted and it was observed that rectification of order to remove the clerical or arithmetical error to remove accidental mistakes or clerical or arithmetical orders is always permissible. However, review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility yet in the realm of law, Courts and even the Statutes lean strongly in favour of finality of decision legally and properly made. Thus, correction or mistake may be made but an order cannot be substituted by taking a different view as such a review is not permissible unless power is conferred by Statute.

62. In **State of Orissa vs. Commissioner of Land Records and Settlement, (1998) 7 SCC 162**, it was held that in absence of provisions in the Statute, power once exercised by a delegate, cannot be reviewed either by the delegator or the delegatee.

63. In **Lily Thomas & Ors. vs. Union of India & Ors., (2000) 6 SCC 224**, in the concurring judgment, it was observed that dictionary meaning of the word “**review**” is “*the act of looking; offer something again with a view to correction or improvement.*” It cannot be denied that the review is the creation of a statute.

64. In the context of provisions of Cr.P.C., Supreme Court in **Sunita Jain vs. Pawan Kumar Jain & Ors., (2008) 2 SCC 705** said,

“**33.** ... power of review is not an inherent power and must be conferred on a Court by a specific or express provision to that effect...”

65. In **Kalabharati Advertising vs. Hemant Vimalnath Narichania & Others (2010) 9 SCC 437**, Court said,

“12. *It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed is ultra-vires, illegal and without jurisdiction.*

13. *...Jurisdiction of review can be derived only from the statute and thus, any order of review in absence of any statutory provision for the same is nullity being without jurisdiction.”*

66. In ***Haryana State Industrial Development Corporation Ltd. vs. Mawasi & Others (2012) 7 SCC 200***, in para 26 of judgment, Court said,

“26. *... power of review is a creature of the statute and **no Court or quasi-judicial body or administrative authority can review its judgment or order or decision unless it is legally empowered to do so...**”*

67. Recently, in ***Naresh Kumar & Others vs. Govt. of NCT of Delhi, (2019) 9 SCC 416***, referring to various earlier judgments of Supreme Court, it has said in para 12, as under:

“12....power of **Review can be exercised only when the statute provides for the same. In the absence of any such provision in the concerned statute, such power of Review cannot be exercised by the authority concerned...”**

68. In the present case, initially order dated 08.02.2023 was passed holding that appellant is liable to pay environmental compensation at the rate of Rs.5,000/- per day for a period of 83 days i.e., from the date of inspection on 09.07.2022 till the date of disposal of fly ash containing chemicals on 29.09.2022. Thereafter, by means of impugned order dated 14.07.2023, respondent’s authority has taken a different view holding appellant liable to pay environmental compensation for a period of 05 years i.e., for 1742 days (after deducting 83 days of earlier order for which compensation was already imposed). Consequently, respondent in the impugned order dated 14.07.2023 deducting 83 days for which environmental compensation was determined by order dated 08.02.2023, further determined liability upon the appellant for environmental

compensation for remaining 1742 days. This is nothing but a clear review of an order causing serious civil consequences to the appellant and in absence of any power of review vested with the respondent, we find it difficult to uphold the order dated 14.07.2023 and this is wholly without jurisdiction.

69. It is contended before us that show cause notice dated 11.02.2023 shows that respondent authority adopted the approach of imposing environmental compensation for previous 05 years pursuant to the directions given by this Tribunal vide order dated 29.04.2019 passed in **OA 116/2014 (supra)** and order dated 10.01.2023 passed in **OA 744/2022 (supra)**.

70. We find from record that order dated 29.04.2019 was passed considering two OAs i.e., **OA 116/2014 (supra)** and **OA 437/2015, Vishwa Vijay Singh vs. U. P. Pollution Control Board & Ors.** The dispute related to the violation of environmental norms and pollution of Ramgarh lake, Ami River, Rapti River and Rohani River, in and around Gorakhpur in Uttar Pradesh. Therein, no compensation was determined by UPPCB in exercise of its statutory powers but a Committee constituted by Tribunal has made recommendation for imposition of compensation computed by it based on the guidelines evolved by Central Pollution Control Board (hereinafter referred to as '**CPCB**'). This Tribunal noted in para 8 that it was brought to its notice that in addition to the amount of compensation determined by CPCB, the quantum may need revision depending on number of days of default. CPCB had fixed the amount only for days after inspection while violation is for longer period. This Tribunal observed that let number of days be calculated and on that basis, further amount be recovered by SPCB and then, in para 9, Tribunal said that UPPCB may assess the amount of compensation applying the formula laid

down by CPCB not only for the days mentioned in the Report of CPCB but for the actual days of violation from the beginning but not beyond 05 years from the date of calculation. The above facts show that direction was not for a fixed period of 05 years but for actual number of days of violation. However, if the actual days of violation exceed 05 years then the above order restricted computation of environmental compensation for 05 years. We may also notice that this was not a final order passed in the above matter.

71. Tribunal, therefore, had insisted upon to find out actual days of violation based on material on record and evidence and not founded on conjecture or surmises. Unfortunately, respondent in this case, instead of taking pains to find out firstly, whether appellant was actually involved, and secondly, if so, what was the actual period of violation, has attempted to draw support from here and there without appreciating whether such support is actually available or not and this has rendered the entire exercise bad in law which also comes within the ambit of malice in law. In ***Kalabharti Advertising (supra)***, Supreme Court has said that State is under an obligation to act fairly, without ill will or malice-in fact or in law. Legal malice or malice in law means something done without lawful excuse. It is an act done wrongfully or wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. Where malice is attributed to a state, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of a statutory power for “purposes foreign to those it is in law intended”. Supreme Court further said,

“It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts.”

72. Here, in a mechanical way, the directions contained in para 9 in the order dated 29.04.2019 in **OA 116/2014 (supra)** and other connected matters has been referred by respondent without considering that neither it was a final order nor it was in relation with appellant nor it had held that for whatever reason, environmental compensation has to be determined for 05 years irrespective of whether there was actual violation for such period or not.

73. Nothing has been brought on record by respondent to show that there was actual violation on the part of appellant for 05 years prior to the disposal of chemically contained fly ash through TSDF on 29.09.2022 and in absence of any material, evidence and finding to this effect, a mere arbitrary application of the above direction contained in para 9 of the order dated 29.04.2019 in **OA 116/2014 (supra)** is nothing but a sheer mis-application and mis-appreciation of the facts and law and it vitiates the impugned order.

74. Coming to the order dated 10.01.2023 passed in **OA 744/2022 (supra)**, there is no finding in the said order that appellant Anjum is guilty of causing violation of any environmental laws or norms. On the contrary, in para 8, this Court has said:

*“8. We find that illegal dumping of hazardous chemical and fly ash at site in question has been admitted in the said report. It is also stated that said illegal dumping has resulted in one death of an individual and injuries to some others. But **neither person or authority or proponent who caused said dumping, has been identified and disclosed in the report** nor it is stated as to what action has been taken for payment of compensation to injured and dead persons by District Magistrate, Mujaffarnagar was also member of the Committee. This is very unfortunate.”*

75. It is in this backdrop, this Tribunal observed that report does not disclose entire facts as required by Tribunal and no appropriate action was taken by the authorities concerned in the matter though damage to

environment was confirmed as also loss to the people residing in the area has occurred. Consequently, Tribunal required UPPCB and District Magistrate, Mujaffarnagar to submit a further Action Taken Report about the person responsible for alleged dumping etc. Para 11 to 14 of the order dated 10.01.2023 reads as under:

“11. Let a further action taken report be submitted by State PCB and District Magistrate, Mujaffarnagar **clearly stating about the person responsible for alleged dumping**, including compliance of consent conditions with respect of Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 and authorizations granted under Hazardous & Other Wastes (Management and Transboundary Movement) Rules, 2016. The report needs to clarify on fly ash management plan with respect of each industry and management of hazardous waste as per authorizations granted. **Further, report should state about action taken against such person/proponent for remediation and prevention of further damage to environment and also with regard to payment of compensation to the victims/heirs of deceased persons.** The report may be submitted before the next date by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

12. Member Secretary, UP PCB, District Magistrate, Mujaffarnagar and Regional Officer, UP PCB, Mujaffarnagar shall remain present in person on the next date before Tribunal to explain as to what action has been taken by them and why delay has been caused in taking appropriate remedial and preventive action in the matter.

13. OA No. 277/2022, *Liyakat Ali & Ors vs. State of U.P.* may also be listed alongwith this matter on the next date.

14. List for further consideration on 17.02.2023 alongwith OA No. 277/2022, *Liyakat Ali & Ors vs. State of U.P.*”

76. The said order nowhere held the appellant guilty nor recorded any finding against him nor held that appellant is responsible for causing damage to environment and liable to pay environmental compensation. On the contrary, this fact had to be ascertained by respondent as also District Magistrate, Mujaffarnagar and thereafter, against the person found responsible, action was required to be taken. There is nothing to show in the above order relying whereto respondent would have been justified in

proceeding against appellant without recording its own finding based on evidence against the fault of appellant. The respondent was not expected to act in a mechanical and arbitrary manner. The reference to order dated 10.01.2023 in **OA 744/2022 (supra)** to substantiate that the order dated 14.07.2022 has been passed pursuant to the directions of this Tribunal is clearly incorrect and, therefore, the very basis on which impugned action has been passed disappears.

77. It appears that instead of identifying the actual responsible person, respondent in a clandestine manner, had tried to implicate appellant for the damage to environment as to the people in the area concerned due to burn injuries and the responsibilities have been shouldered upon the order of Tribunal without appreciating that those orders nowhere issue any such directions as have been read by respondent. May be, this exercise has been undertaken to evade accountability on the part of respondent in taking appropriate action against the actual and really guilty person. This kind of exercise of power on the part of respondent is vitiated by another principle of law i.e., malice in law. We have already discussed as to when the principle of 'malice in law' is attracted and here is such a case.

78. Respondent UPPCB is a statutory regulator for protection of environment. It is supposed to act with due diligence, devotion, objectivity and accountability. It cannot arbitrarily issue directions or pass orders imposing heavy financial liabilities upon individuals, natural or juristic. Due care, caution and consideration of relevant material to show act of violation on the part of a person is mandatory in the exercise of power by respondent particularly when it is likely to affect civil rights of the person or may cause civil consequences upon him. Abrupt, unmindful and unsubstantiated orders do more injustice than helping the pious cause of protection of environment. Statutory regulator must demonstrate its

impartiality, reasonableness and non-arbitrariness in its act. Unfortunately, here is a case where these attributes are seriously wanting. This is nothing but failure on the part of a statutory regulator in discharge of statutory obligations. Its orders which are vitiated in law not only affects the fundamental rights of an individual conferred by Articles 14, 21 and constitutional right under Article 300A but also causes serious inconvenience to the person concerned to which he may be entitled for damages in law. We, therefore, find it appropriate to direct respondent to remain more careful in future while exercising such drastic powers and to ensure that such action should be taken when solidly backed by evidence, demonstrate intelligible discussion of facts and law and leaves no scope of non-compliance of settled legal principles.

79. In the backdrop of the above discussion, we find no hesitation in holding that the impugned order is vitiated in law and cannot be sustained. In the entirety of the facts and circumstances and the discussion made above, we hold that impugned order dated 14.07.2023 whereagainst, the present Appeal has been filed is patently illegal, without jurisdiction and unsustainable in law.

80. Appeal is accordingly allowed. Impugned order dated 14.07.2023 is set aside.

PRAKASH SHRIVASTAVA,
CHAIRPERSON

SUDHIR AGARWAL,
JUDICIAL MEMBER

DR. A. SENTHIL VEL,
EXPERT MEMBER

February 21, 2024
Appeal No. 28/2023
R