

Constitution of India and Environmental Governance: Administrative and Adjudicatory Process

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Lecture 17

Pollution Control Boards: Its Constitution and Roles

(Refer Slide Time: 00:15)

IV. POLLUTION CONTROL BOARDS



- *COMPOSITION : (Ss.3,4,5WA & AA AND S.14 WA)-HIGHLY BUREAUCRATISED- 3 NON-OFFICIAL MEMBERS REPRESENTING AGRIL. TRADE/INDUSTRY & OTHERS, IN THE 17 MEMBERS BODY THAT INCLUDES A CHAIRMAN AND A MEMBER SECRETARY- LOCAL BODIES REPRESENTED-3 YEARS TERM-EXCEPT MEMBER SECRETARY , ALL THE NOMINATED MEMBERS WILL HOLD THE OFFICE FOR A PERIOD OF 3 YEARS AND CONTINUE IN THAT POSITION TILL THEIR SUCCESSORS TAKE THEIR PLACE -HOWEVER, WILL CEASE TO BE A MEMBER , EVEN EARLIER THAN THE TERM, AS SOON AS ONE CEASES TO HOLD AN OFFICE IN THE GOVT., ETC., BY VIRTUE OF WHICH NOMINATION FOR MEMBERSHIP WAS MADE (S.5 WA & S.7 AA)*
- *-#DISQUALIFICATIONS:INSOLVENCY,UNSOOUND MIND,CONVICTION(- OFFENCE INVOLVING MORAL TURPITUDE, OFFENCE UNDER THESE LAWS)*



Now we move on to an examination of the Pollution Control Boards, their composition, their role, their responsibilities and their functions. In fact, the heart and soul of governance of the pollution control laws lies in the hands of generally the state pollution control board. Although I put it in very general terms as pollution control board in the slide is actually dealing with both the central and state pollution control boards.

I have already explained the relative statuses and positions of the central and state pollution control boards. Without repeating that, let me say that the real operating functional arm of pollution control regime is the state pollution control board and I focus primarily on its functions here. How is the pollution control board composed? Look into the relevant provisions mentioned here.

In terms of the composition, it is bureaucracy heavy body. As many as 17 members are there, which includes the chairman and a member secretary. A member secretary is a representative of one of those departments in the government and hence is the part of the governments. The chairman is a different person. In addition to these two there are 15 other members and they are drawn from so many departments of the government; except 3 non-official members they represent agriculture, trade and industry and other expert groups.

There is a representation provided for local bodies also. The term of membership of each member is 3 years. All the members who are there, the 3 expert members or non-official members they are the nominated members by the government, they hold their office for a period of 3 years. Interestingly, there is a provision that at the end of the third year, if there is no provision made for some new person taking over their position, there is nothing like a renewal given of an extension by another 3 years for themselves, they will continue in that position till their successor takes their place.

So, there are times and it has happened. In many of the state pollution controls boards, even after the expiry of the 3-year period if fresh appointments are not made, these experts will continue to hold the same position and discharged the same function under the law. The idea is that this board, since it takes care of the entire state on all matters concerning the pollution, it shall not be found wanting in performance of its functions.

It should not be found wanting in taking decisions in the absence of a member or anything like that. And so, it should always be represented and it should always be full. And for that, this has been provided. Then it is quite possible that the member can be removed from that office or cease to hold the office because of some disqualification he has or he himself has withdrawn I for my own personal reasons, I am not in a position to continue as a member, so there can be such situations.

So even before the end of the 3-year period, the term may be cut short for a variety of reasons. There are some disqualifications if anyone wants to be a member of this body the basic object is that person should be of such a character, of such a calibre, of such an ability, he is

unimpeachable, that kind of character is what is accepted as a qualification for becoming a member. Look at the disqualifications; insolvency, unsoundness of mind, conviction for the offences involving moral turpitude offenses under these laws so a criminal cannot be the member.

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- A PARTNER /HOLDER OF A SHARE OR INTEREST IN A FIRM INVOLVED IN CARRYING ON A BUSINESS OF SALE, MANF., HIRING ETC. OF EQUIPMENTS FOR TREATMENT OF SEWAGE OR TRADE EFFLUENTS, ASSOCIATED WITH AN ORGANIZATION OR AN ENTITY OWNED, CONTROLLED OR MANAGED BY GOVT, HAVING A CONTRACT WITH THE BOARD FOR CARRYING OUT OF SEWAGE SCHEMES OR FOR INSTALLATION OF PLANTS ETC. FOR THE SAME PURPOSE OR GUILTY OF ABUSE OF HIS POSITION AS A MEMBER AS TO AFFECT PUBLIC INTEREST (- S.6 WA; S.8 AA)
- # MEMBER SECRETARY: FULL TIME; POSSESSING QUALIFICATIONS, KNOWLEDGE AND EXPERIENCE OF SCIENTIFIC, ENGINEERING OR MMT. ASPECTS OF POLLUTION CONTROL--GOVT. APPOINTEE(-Ss.3(f), 4(f),14(f) WA; 5(f) AA)



It also extends to somebody who is a partner, a holder of a share or an interest in a firm involved in carrying out a business of sale, manufacture, hiring, etc of the equipment for the treatment of sewage or trade influence associated with an organization or an entity owned, controlled or managed by government, having a contract with the board for carrying out of sewage schemes or for installation of plants, etc. for the same purpose the detailed provision actually means that I should not become an interested party when I become the decision maker.

Because the pollution control board takes decision, it is like quasi-judicial body, a very important and a very peculiar kind of an authority. It is not just like a governmental agency where only administrative actions are taken, it takes administrative actions. But much more than that, it takes decisions. It gives judgments, its orders are equal to the orders of a court of law.

And so, the member of the body should be of that character, of that calibre, of that quality, that he should not be an interested party, that if I am manufacturing a particular candidate, which is to be used for controlling pollution. And that is what the government has recommended that please get that brand from that particular company and use it. In that event, if I am a partner, if I have a company which is interested in doing business under this law, I should be kept out of any decision making.

In law, there is a use of expression called 'conflict of interest'. An interested party cannot be a decision maker. And for that, this provision has been used, a beautiful provision or the disqualification can also be who is a contractor, who is a contractor listed as a contractor engaged for doing certain works for the Pollution Control Board, then in that event you have business dealings with the Pollution Control Board, so you cannot be a part of the pollution control board to take decisions.

So those who are disqualified cannot continue as members of this body. Members secretary, a member secretary is a full-time member possessing the qualifications and knowledge and experience of scientific engineering or management aspects of pollution control, is a government appointee and his term of office is determined by the order of appointment given by the government.

It is not 3 years; it is not 2 years or whatever. The government can transfer him, the government can stipulate that you are here only for 6 months. So as per the order, the government order issued by the government from time to time his tenure get determined. That is the member secretary for you.

(Refer Slide Time: 08:23)



CHAIRMAN: WHO CAN BE?-(Ss.3(2(a)),4(2(a)), 14(1(a),2(a)) WA; 5(2(a)).

#CURRENT PROFILE OF CHAIRMEN OF PCBs - CASELAW:

- **#JAGANNATH PILLAI V. GOVT. OF KARNATAKA, WRT. PTN. 3982/1995, ORDER DT. 17.3.1997**
- **# CASE OF JHARKHAND SPCB CHAIRMAN (2004)**
- **# DELEGATION OF POWERS (S.11A WA &S.15 AA)- SUMA TRADERS V. KSPCB AIR 1998 KAR 8**
- **MEETINGS OF THE BOARD:(Ss.8 & 11 WA and Ss.10 & 13 AA)- ONCE IN 3 MONTHS- CHAIRMAN CAN CONVENE EMERGENCY MEETINGS- VACANCY IN MEMBERSHIP , NO BEARING ON THE LEGALITY OF PROCEEDINGS**
- **COMMITTEES & TEMPY. ASSNS. (Ss.9 &10 WA & 11 and 12 AA)**



- A PARTNER /HOLDER OF A SHARE OR INTEREST IN A FIRM INVOLVED IN CARRYING ON A BUSINESS OF SALE, MANF., HIRING ETC. OF EQUIPMENTS FOR TREATMENT OF SEWAGE OR TRADE EFFLUENTS, ASSOCIATED WITH AN ORGANIZATION OR AN ENTITY OWNED, CONTROLLED OR MANAGED BY GOVT, HAVING A CONTRACT WITH THE BOARD FOR CARRYING OUT OF SEWAGE SCHEMES OR FOR INSTALLATION OF PLANTS ETC. FOR THE SAME PURPOSE OR GUILTY OF ABUSE OF HIS POSITION AS A MEMBER AS TO AFFECT PUBLIC INTEREST (- S.6 WA; S.8 AA)
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The most important position in the pollution control board is the chairman, the chairman of the Pollution Control Board. Who can be the chairman? The qualifications of a chairman are stipulated, the relevant provisions are mentioned here. But interestingly it is the same kind of a qualification as that of a member secretary that he is someone who has the knowledge and experience of scientific engineering or management aspects of pollution control.

A very general qualification has been prescribed for a very important position or perhaps the most important position in pollution administration. Someone who has the knowledge and experience and an expertise in this field, there is nothing like an academic qualification being fixed, like you should be an MSC in biochemistry or you should be someone who has a master's degree or a doctorate in environmental sciences. Nothing of that kind.

In fact, if you just look into the profile of the chairman of the pollution control boards, several studies are carried out, the Centre for Science and Environment, the Delhi based non-governmental research organization carried out a very detailed analysis of the profile of the pollution control boards all over India in different states.

Even the National Law School of India University somewhere around 1997-98 carried out similar exercise and the gist of it is simply this. That since there is no definite qualification that has been prescribed. The government has always the discretionary power because it is a

nominated position and so the government can use the discretion to appoint anyone. Mark the word anyone to become the chairman of the pollution control board.

And, you know, in a country like India we have this common tendency of the people here that anyone can speak on anything that anyone can advise on anything, free advice. Unfortunately, this provision has been used rather abused in creation of the position of the chairman. And in making nominations many a time, state governments are bound by political compulsions of a political functionary of a particular party.

A worker of a political party for whatever reason, may be appointed to the chairman, this has happened in many states in India. And we have two case law, just to drive home that point that this is the weakest qualification that have been prescribed under any law that one can think of, especially when the position holds enormous powers.

In fact, there are many times you will be seeing a little later that many a time the chairman would indeed be the Pollution Control Board in a different way, even when other members are there, he can decide for the pollution control board. Such being the clout in the power to the chairman, the lawmaker should have taken a little bit more care as these cases reveal. The first cases is the case of Jagannath Pillai versus Government of Karnataka.

This was decided by the Karnataka high court in 1997. The facts of the case are simply this. Here is a lecturer in natural sciences appointed as the chairman of the State Pollution Control Board by the government through an order. What is the qualification? He is a lecturer in natural sciences in a college. Other than that, there was no other qualification for him. And the problem was his appointment was done in very opaque circumstances.

How was it done? As was revealed to the court of law it was found that a selection committee was nominated which is called as a search committee, of very eminent people that shortlist 3 names and submitted to the government. The government returned that file of 3 nominations to the search committee informing them that look these 3 names are insufficient we are including a fourth name, consider this candidate's name also for selection and then take a decision and come

up with your recommendation.

The search committee looked into their list and found that the fourth name was not even among the top 10 shortlisted by them. And so, they refused to change the recommendation other than the three that are listed. Overlooking the recommendation, the government appointed this man as the chairman of the State Pollution Control board. There were two problems here.

Problem number one was a particular procedure that was laid down whereby the government would pick and choose among the three recommendations made, the government did not follow the recommendation. The second one was going beyond the list and coming up with someone just out of the blue and nominating him as a Chairman. whether the government could do that? There is also a problem here.

The case dragged on for a lot of time because so many explanations were asked by the court, the government took its own time. And when once the government made a submission that in the process of selection, even the secretary to the government dealing with environment and forests had given a dissenting note to the decision of the government, saying that this is not the proper procedure to follow. Defying that, the government took the decision because it is governmental decision, it can make any nomination. The court said that is not the proper thing to look to it and then come up with a fresh appointment. That is what the court instructed the government to think of a new person who will take over this position and they gave them a very short period of time before the term ended. The 3 years period elapsed and 3 years is the term for the chairman.

And the term was over and the government had not acted. The matter came up before the court of law again and the court was aghast and the court said, look this is very bad. You are actually guilty of contempt of court, but will not take action against you if you are going to comply with our instructions immediately. And we do not give you more than 3 months time to act. And you know what happened?

At the end of the third month, the government came up with a new appointment. That means what? Here was someone who did not have the approval of the search committee appointed who

not only completed 3 years term but also an extended 3 months lease of time to continue to be in office because till the next man takes over he was under the law, entitled to continue as the chairman. A very unfortunate development.

But you have a worse development in another state, and that was in Jharkhand. The case of Jharkhand state pollution control board chairman. This happened in the year 2004. There was a case that was going on in the high court concerning pollution control. The court had certain doubts, and every time they had a doubt, they wanted a clarification. And the chairman was present there in the court. They asked the chairman and the chairman said, "We will revert back to you after getting the advice."

And for a number of occasions when these clarifications were sought, the chairman used to buy time. Suddenly the court got suspicious, the court asked the question, "Mr. Chairman, every time we pose you questions and this time, they posed you simplest of questions and you want time, maybe no. How you are selected? What are your qualifications? How did you get into this particular position as the chairman of the State Pollution Control Board?"

To cut a long story short, it was revealed that this gentleman was not even a matriculate, was not even a matriculate. Not only that, he was actually the follower of a minister, which minister? The minister of environment and forest in that particular state and as a follower who was actually helping his leader to get elected or whatever, the chairman was nominated by the minister and the appointment was made, and lo and behold it was this gentlemen, the court was very upset.

It is a very specialized position. Why are you making this kind of an appointment? Why do not you make a proper appointment? The government when the order was given was reluctant to follow the instructions of the high court. It said that it was a discretionary power that very much within our powers we can make this appointment. But luckily, better sense prevailed on the part of the government.

The friction with the court ended and the government made a fresh appointment. The long and short of this particular story is since there is no fixed qualification for holding a very specialized

position, the governments have played all kinds of games.

And at one point of time just to give a profile to the chairman of the pollution control board, if you have about 30 state pollution control boards, some 15 of them are appointed by the government, drawn from the general service, the IAS people, IFS, the forest officers become the chairman of the pollution control board that is one.

The other one is among the remaining 15. It could be anybody. It can be a scientist. It can be an activist. It can be a political heavyweight. It can be even a minister. It can be somebody who was denied ministership and made into the chairmanship, whatever that is possible. And this is a little bit of a weak position in the working of this law.

The law makes it very general. Maybe it is time to revise this particular provision as to limit the discretion upon the government to limit it to those who have the knowhow, the knowledge, the skill and the expertise in this particular area to hold this important position, a very important position as that of the chairman of the Pollution Control Board.

Yet another aspect of the status of the chairman comes to light with greater degree of force. To make the states rethink about their decisions before they zero on somebody to become the chairman of the pollution control board. In terms of the clout that they have and the kind of power they wield, and that comes through yet another case decided by the Karnataka High Court in year 1998, the case is that of Suma Traders versus Karnataka State Pollution Control Board.

All that happened was, there was an industry which was releasing into the atmosphere from the chimney of that industry, certain gaseous substances which had disturbed the neighbouring people, the people who are living in the neighbourhood. They felt that the dark cloud like fumes that are coming out of this industry has contaminated the entire atmosphere. And they are finding things very difficult even to breathe.

And so, what they did was they complained to the chairman just over the telephone. And here was a chairman, very enthusiastic, who wanted to act in a no-nonsense manner without any

delay, he comes to the spot and looks at the situation, summons the occupier of the premises, commands them that look, what you are doing is not right. You should have ensured that from the chimney, such dark clouds of fumes should not have escaped, affecting and inconveniencing all the people around and so now I order for the closure of this industry.

The occupant was aghast. You have not sent any notice to me. You have not asked for any explanation from me. You have just gone by the hearsay of the people and you have just passed an order. I do not have an opportunity of even an explanation. The chairman said' "Nothing doing. Do as I say." And so, the industry goes to the court. Pleads before the court of law; that can a chairman take a decision like that?

The court enquires, the chairman says under the law the Pollution Control Board can take any decision. And then issue such orders and the orders of the pollution control board is equal to the orders of a court of law, and there is no appeal to the decision given by the Pollution Control Board.

And I have acted in strictly in accordance with the law. Here, before I get into the decision given by the court of law, let me refer to one provision in this particular law to test and verify as to what can be done by the pollution control board and what is the status of the chairman. Here is a provision which says the meetings of the board section 8 under the Water Act and Section 10 and 13 of the Air Act.

It says that once in 3 months, the pollution control board should take a call on convening a meeting and is only the meeting to take decisions and action should be initiated following those decisions. Now, the full-fledged meeting of the company (of the sorry) of the pollution control board is not what is being contemplated because there is a provision which says that the chairman can convene an emergency meeting.

Vacancy in membership has no bearing on the legality of the proceedings there. It actually means that there can be a meeting of the pollution control board with a very few members there, there is no need for a quorum of membership. In the meetings, minimum number of members to be there

in a meeting and by so doing, the chairman and those who are present there can take a decision, and that is the decision of the board.

And the decision of the board becomes binding and final. And whomsoever against to whom the order passed has no choice other than following it. This is what the law is about. Here, the court was asked to decide on the plea that was submitted before the court of law that how did the Pollution Control Board act the way it did? And the chairman asserting that he has acted within his powers of taking any action and those actions taken are binding on everyone.

What one needed to note here is, it is the Pollution Control Board that takes the decision. And no individual can take a decision including the chairman. The power of the chairman is to convene meetings, to chair the proceedings there and in the board issues are deliberate and decisions taken, and among the decisions, the board can assign the task of executing the decision to any individual.

And that individual would implement the orders of the pollution control board that you submit substance of the law here and what did the chairman do? Instead of convening a meeting he took a decision and he acted on that decision and what is his submission? Look there was no time for convening a meeting. It was an emergency situation.

People were inconvenienced and I had to act in public interest and so on the spur of the moment, I acted and took a decision. Acting in the spur of the moment, going to investigate and to find out for oneself what exactly is happening is perfect. It is very much within the bounds of the chairman. But here, the chairman erred in his overenthusiasm that even if it is an emergency, he should have convened an emergency meeting. How can you do that?

Well, the law does not prohibit it that there is a full time member in the form of the member secretary, in going to that very spot, he could have taken the member secretary along with him and on the spot because there is no need of that the meeting should take place only in the headquarters of the court. It can take place anywhere, no such requirement of the venue of the meeting, no such a requirement as to the minimum number of members.

The chairman and the member secretary can meet in an emergency. And there is a meeting. And for a meeting you require more than one person and chairman with the member secretary could have met and there were anywhere there together and he would have said that I am drawing up the proceedings of the meeting here and the minutes of the meeting says that we have taken note of the fact we have personally examined it.

And here is the board taking a decision that such and such an action need to be taken and we authorize the chairman here to carry it to affect this particular decision or the decision on the same moment, at the same moment, he could have issued instructions because I am empowered under this law, under this particular procedure, I could have acted. Instead of doing that, he acted not following the procedure.

So, there is so much of power that the chairman can convene a meeting at an instant. He did not have to be bound by numbers. And he can take a call on any problem situation on the spur of the moment, the only requirement is that whatever he decides, he should have one more with him. And when the other one disagrees with him, he can have a casting vote as the chairman and thereby the majority will be with them and that becomes the decision of the board and he can authorize himself under this decision to execute that.

This, the chairman did not do and the court said that whatever may be your intent, whatever may be your idea of administering quick justice, justice should not be hurried as to bury justice. And so, it is very necessary that clear procedure laid down under the law. You have enormous powers, you could have exercised that power in the way it has been prescribed under the law, which you did not do.

And as an exemplary punishment in order that you shall not act in such a hurry, we are imposing a penalty of 250 rupees on you that henceforth you shall act quickly but in accordance with the letter and the spirit of the law. Now had the court not intervened, this decision would have been final and there was no appeal at all.

And so the havoc that the chairman can cause by assuming certain functions which, for which there will not be any opposition within the board is a little dangerous, and that is exactly the reason why it has been submitted that the position and the status of the chairman needed to be made a little bit more clear, especially when it comes to the decisions that are going to be taken by him.