

Constitution of India and Environmental Governance: Administrative and Adjudicatory Process

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Lecture 18

Powers and Functions of Various Authorities-I

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- **POWERS & FUNCTIONS :**
- **CG & SG: UNDER WA & AA: RULE MAKING POWER (Ss.63 &64 WA and Ss.53 & 54AA) ; ISSUE DIRECTIONS TO PCBs(s.18 WA &AA)**
- **CPCB: PROMOTE CLEANLINESS OF STREAMS & WELLS(S.16 WA)**
- **IMPROVE AIR QUALITY AND PREVENT, ABATE AND CONTROL AIR POLLUTION (S.16 AA)**
- **SPCB :**
- **1. GENERAL: (S.17 WA &AA)- EDUCATIVE, CAPACITY-BUILDING FUNCTION ETC.**
- **2.ENTRY, INSPECTION, SECURE INFO., TAKE SAMPLES ETC.**
- ❖ **OBTAIN INFORMATION: (S.20 WA, S.25 AA) ; FURNISHING INFORMATION (S.31 WA)**
- ❖ **ENTRY & INSPECTION: (S.23 WA, S.24 AA)**
- ❖ **TAKE SAMPLES-PROCEDURES: (S.21 WA,S.26 AA) –**



We move on. We looked to the powers and functions, the other functions, as has been mentioned earlier, the rule making power is more the central and state government both under the legislation that we have seen, the CPCB is the brain trust and the think tank. It has all the research work to do and help enable and facilitate promotional of cleanliness sub-streams and wells, come up with improved air quality and come up with new devices, mechanisms and suggestions for different entities to act on that, including the state pollution control board.

Similarly, the State Pollution Control Board has certain general powers of educating people, building capacity in all to comply with the regulations and also build the capacity of its own functionaries to perform their functions. Here is a very important procedural function, which is as important as the substantive function that the Pollution Control Board performs.

Any time, the Pollution Control Board can authorize any member of its staff to enter, inspect, secure information, take samples, get it analysed and take action based upon the findings from the analysis that has been made of the samples so taken. But for that, there is a procedure that has been laid down under this law, entry and inspection, taking samples and procedures are very elaborately laid down under these provisions, as you see on the screen here.

And to put it in a nutshell, it is something like this, supposing a particular decision has been made by the pollution control board to carry on the inspection and verification of whatever that has been claimed by an industry, it can enter it any time. The premises of the industrial establishment. Any time is any time. Should there be an advancement notice given? No, there is no need to give a notice to this.

In fact, you should not give an advance notice for the simple reason, the scope for mischief that if there is a gap between the time of notice and the time of entry, if it is, if there is a time lapse, there is a possibility that the records and other things may be set right. The idea is to see at that instant whether the provisions of the law are conformed to or not, the terms under which the permissions are being given are being followed strictly ideal to or not is what they have to examine.

And so, they can enter any time. At the moment they enter, they should have notice instantly, this is the first stage. The moment the notice is issued the occupier has an obligation to cooperate. And make available all records, all information sought and demanded by the functional view of the pollution control board. It is like a fact-finding body just like that has been created through a, an order of a court of law.

They perform the functions and instructions of a court of law just like that the order of the pollution control board. So, armed with that they can inspect any document, they can take samples if it is an effluent that is being discharged, they can take samples whenever they feel like. And when they take the samples, the occupiers should always be present there. And if it is a water sample that is taken, it should be taken in two bottles.

And the samples have to be marked as sample 1 and 2. Sample one is what the Pollution Control Board can send it to a laboratory which has been established by the board itself or recognized by the board to get the analysis done. Sample 2; if the occupant of the premises demands that “Please send the sample for a government established or the government recognized lab”, the Pollution Control Board has to send the second sample to the government recognized and government created laboratory which may not be the same as the Pollution Control Board laboratory. So, two samples, two different laboratories. Now the samples have to be analysed and the samples so analysed, the report will be made available to the board and the board will compare both the samples and I mean the findings and if there is uniformity between that, there is no problem. It can proceed with actions. But should there be a disparity in the finding of the report that has been given by the laboratory and recognized or established by the government with that of the pollution control board, whatever finding that are there by the government established or government recognized laboratory will prevail. Based on that, the pollution control board can act. That is the sub and substance of this particular law.

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❖ LABORATORY(Ss.51,52 WA,S.28AA –S.12 EPA); ANALYSTS(S.53 WA, S.29 AA- S.13 EPA);REPORT (Ss.22,54 WA, Ss.27,30AA- S.14)

-*CASE LAW: DELHI BOTTLING CO.PVT.LTD. v. CBPCWP(1986)

• **POWER TO GIVE DIRECTIONS (S.33A WA ,S.31A AA): - SUBJECT TO CG 'S DIRECTION(#),PCB, IN THE EXERCISE OF ITS POWERS & FUNCTIONS , EMPOWERED TO ISSUE ANY DIRECTION IN WRITING TO ANY PERSON / OFFCR. /AUTHORITY-SUCH PERSON IS BOUND TO COMPLY WITH SUCH DIRECTIONS - -POWER INCLUDES ISSUANCE OF DIRECTION FOR-**

CLOSURE/ PROHIBITION / REGULATION OF ANY INDUSTRY/ OPERATION/PROCESS OR STOPPAGE/REGULATION/SUPPLY OF ELECTRICITY/ WATER/ ANY OTHER SERVICE – INSERTED BY 1987 AMENDMENT THAT GAVE IT THE POWER OF INSTRUCTING ANY AUTHORITY CREATED UNDER ANY OTHER LAW IN FORCE

-- (#) DIRECTION FROM CG(-S.5 EPA)



Now the reason why this elaborate provision is being mentioned is because this became an issue in a particular case decided by the Delhi High Court in the year 1986. The case is Delhi Bottling Company Private Limited. And this is a case where the CPCB had its own agency to go and

inspect this particular industry.

And the facts of this particular case, almost the same as the water sample that I was mentioning, but the only thing that was done was not observing one procedure. And the procedure is that despite the objection by the occupier of the premises, the Pollution Control Board people did not send the second sample to the government run or the government recognized lab, they relied upon only one bottle.

And that sample that was sent to the laboratory established by the board and based upon the findings there they started taking action against the industry. The company complained and brought in an action in the court of law that your action, your decision is not based upon the procedure laid down under the law. And so, it is in factious, it cannot be valid. You have acted ultra vires the law.

You have acted beyond the powers established under the law. And so, action initiated against us does not really get the support of law. The court agreed and the court said every procedure laid down under the law need have to be followed and the pollution control body aired it. When such a demand has been made, if they have not made any demands, your action is perfect.

But once the demand has been made to send the second sample for the second analysis and for data verification, not doing that is actually not following the procedure, which is a mandatory procedure to be followed by you. And so, your action fails, that is the importance or the procedure laid down under this law.

Normally in any law that we know, procedures are step by step implementation of the law which is something which is left to the administrative discretion and convenience. And one is not following a hard and fast rule, fast rule of observing every procedure and courts have also law also does not bother much about it.

But here, when it has been laid under the law that these are the stage by stage implementation of the law, it becomes binding. It becomes binding on the authority to observe both the letter and

the spirit of the law and observe every procedure laid down by the law as to justify its action.

Anything short of it would make that action ineffective, non-operative. I will not stand the scrutiny of law. There is also another very important power that is vested in the pollution control law and this is done through an amendment made to Water Act and Air Act that is by insertion of two provisions, Section 33 A under Water Act and 31 A under Air Act. The amendment came because of, this happened in 1987.

In 1986 you remember that Environment Protection Act had come into existence and it was given additional powers to the Pollution Control Board to perform their functions more effectively. And this provision was there under that law. So, to internalize whatever that has been provided there, this amendment was made. What is the provision? The provision simply says subject to the directions of the central government.

The Pollution Control Board, in the exercise of its powers and functions, is empowered to issue any direction in writing to any person, officer or authority and such person is bound to comply with such directions, look at that. Here is an authority which has been given an extraordinary power. “In the discharge of our functions we as a pollution control board”, the pollution control board can say “we are instructing you, another government agency, to these many things. “

Like a direction, that gives you the local authority, close an industry prohibit certain actions by somebody or if you are electricity supplying outfit like the electricity board, you cut off power supply because this is an industry which is not conforming to our conditions for permission, and so they have violated our directions. And so, you cut off the power supply, these are extraordinary power. These are extraordinary powers because normally any authority created under any law is bound by whatever that has been prescribed under that law.

But here what you have that whatever that has been prescribed here will become binding on an authority created under another law. Why So? It is precisely for this reason that this law has an overriding effect on all matters concerning pollution control, it is the final word. And so the authority here can override the authority of any other authority and non-observance of this power

would lead to that head of the department, the manager there, or anyone who is in charge of that non-observing it instructions, be held criminally liable for not complying with his instructions.

Remember what has been said in Environment Protection Act, the same law is here also. So, this is a wonderful power. It is just like a court of law. Orders are to be complied with. It is not just like an administrative office it is an autonomous body and autonomous body can implement the law and give instructions to anyone, can educate anyone. So, it is an inspector, it is a monitor, it is an educator, it is a judge.

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- **3. CONSENT:** (S.25 WA & S.21 AA)-: #APPLICATION:(cl.1)- #NEW OUTLETS; #NEW DISCHARGES; # PROVISO: EXISTING ONES—(WITH IN) 3 MONTHS #PROCEDURAL FORMALITIES—INQUIRY(cis.2 &3)#GRANT: -
CONDITIONAL (cls.4&5 WA and cls.4,5,6 AA);
DEEMED(proviso to cl.1 and cl.7 of WA,- although not expressly stated in AA, can be inferred from a reading of the proviso to cl.2, and cls.4 and7 of AA);
S.27 #REFUSAL/WITHDRAWAL/CANCELLATION:(S.27 OF WA AND PROVISOS TO (S.21(4) OF AA)
- **4. SETTING STDs.:** Ss.16 &17 WA &WA- **DISCUSSED IN THE LECTURE ON ENVIRONMENT PROTECTION ACT**
- **NOISE POLLUTION:-**
- **NOISE POLLUTION(Regulation & Control) RULES, 14 feb.2000-**
- **2 TYPES OF STDs.:**
- **1.AMBIENT AIR QUALITY STDs.- for industries,commercial areas and residence-'Silence Zones' ;)**



All rolled into one that is what has been provided under this law. Then there is a very important function that has been assigned to this. In fact, that is a primary function that all pollution control boards perform, and that is giving permission that anyone who comes under the purview of this law, who is that, who would come under the purview of this law? Anybody who is involved in discharge of water.

To ensure that water is discharged from his premises or an industrial premises would confirm to the specifications under this law or anybody who discharges fumes into the atmosphere from his industry, whether it confirms to the requirements of the air pollution control law, well they need to apply to the pollution control board and seek their permission to carry on their activities, this seeking permission is through an application as prescribed under this law.

And the approval or the permission that has been given is what is referred to as technically in law as consent. The consent that can be given by the pollution control board is of wide variety of things. You have the whole set of provisions; I am giving you the gist of it now. The Pollution Control Board, upon being satisfied, all its requirements are satisfied, may grant the consent or it can make its consent conditional.

Look, we are going to give you consent, but we want certain gadgets to be installed in your

industry to confirm to our requirements and till this grant or permission is given, I mean, till this particular gadget is installed and reported to us, you cannot start the industrial activity, it is the conditional concept, or they may say well you can carry on whatever that you are doing, but in another 2-3 months' time there is the latest technology that is made available, you follow that and unless you follow that, will not allow you to carry on your business 2 months later or 3 months later. So, it can be a conditional consent. I had given my application as an industry. I am waiting for the consent by the Pollution Control Board. The pollution control board does not act with me, what shall I do? Well, you did not have to wait for long. There is something called as a deemed consent provision.

The law says that after the application has been made within 3 months' time the pollution control board should act, it should either grant the permission it should lay down the conditions for permission or it should refuse to give consent, withdraw a consent or consent that has been given earlier cancelled, whatever. A consent order that it has to give need have to be done within 3 months' time.

Supposing it does not act within 3 months, then the industry can assume that it has been impliedly given to it. It is called as deemed consent. Well this is applicable to all new outlets, but what about those that have already been in existence even before the law came into force? Then the law states that those institutions that have been in existence earlier, those industries that are operating before the coming to existence of this particular law and operationalization of this law.

Remember Water Act was made in the 1974, Air Act was made in 1981, but industries were there even before that. Then within 3 months' time they have to follow this procedural formality. And that means after this law was made 3 months' time is being given as a kind of a moratorium. Within 3 months, you have to make this application. So the old ones 3 months' time, the new ones even before they start they have to give an application.

And after 3 months' time the activities can go on as per the directions issued by the pollution control board. So, this is the sum and substance of this law, very important provision, the consent permission.

