

CHAPTER 8
MISCELLANEOUS
SECTIONS 51 TO 64

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8.1. Scope.

Chapter 8 (Sections 51-64) of the Water Pollution Act contains miscellaneous provisions. The topics covered sectionwise are the following:-

Section 51, 52	Water Laboratories.
Section 53, 54	Analysts and their Reports.
Section 55	Assistance by local authorities.
Section 56	Compulsory acquisition of land for State Board.
Section 57	Return and Reports.
Section 58	Bar of jurisdiction.
Section 59	Protection of action.
Section 60	Overriding effect of the Act.
Section 61, 62	Supersession of the Boards.
Section 63	Power of Central Government to make rules.
Section 64	Rules by the State Government.

8.2. Sections 51 and 52: Laboratories: Need to amend.

Sections 51 and 52 empower the Central Government and the State Government to establish Water Laboratories or to recognise them for the purpose of the Act. By Section 51(2) and 52(2), power is conferred on the appropriate Government to make rules. But curiously it is not laid down¹ that the power should be exercised through notification in the Official Gazette. This defect occurs also in Sections 63 and 64 - the sections conferring general power to make rules. The sections stand in need of amendment on this point. Contrast Section 53(1), whereunder even the appointment of Government analysts has to be notified.

8.3. Sections 53 and 54: Analysts: Need to amend.

Section 53 provides for the appointment of Government Analysts. Section 54 deals with their reports and reads as under:-

1. Point for amendment.

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

It needs to be pointed out that such reports may be useful for proceedings under other laws also. Hence it would be desirable to amend² Section 54 by adding at the end, the words "*or any other enactment for the time being in force relating to the pollution of the environment.*"

8.4. Section 55: Assistance by local authorities.

Section 55 provides that all "local authorities" shall render the specified assistance to the Board in the shape of furnishing of information and supply of documents.

8.5. Section 56: Compulsory acquisition of land.

Section 56 relates to compulsory acquisition of land.

8.6. Section 57: Returns and Reports.

Section 57 requires the Boards to furnish to the appropriate Government etc. information, reports etc.

8.7. Sections 58 to 60: Need to amend.

Sections 58, 59 and 60 make provisions regarding -

- (a) bar of jurisdiction of civil courts in respect of matters under the Act (Section 58);
- (b) protection of action taken in good faith in pursuance of the Act or rules thereunder (Section 59);
- (c) overriding effect of this enactment over all other enactments (Section 60).

A comment is necessary in regard to the latter part of Section 58, reading as under:-

"...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."

It is difficult to appreciate the need for this provision. If the words "action taken in pursuance of any power conferred by this Act" etc. are intended to cover action falling within the four corners of the Act, then there is no need for an express provision against the grant of an injunction. The

2. Point for amendment.

reason is that if an act is not illegal and is authorised by statute, then an injunction cannot be granted even under the general law.

But if the words quoted above from Section 58 are to be taken in a more extended sense as covering action not authorised by the Act or rules, more fundamental questions arise. Is it proper for the legislature to bar the issue of such action? The answer must be in the negative, particularly when Section 58, latter half, does not even insist on the presence of good faith. The better course³ would be to delete the latter half of Section 58.

8.8. Section 61 and 62: Supersession.

Section 61 and 62 deal with the supersession of the Boards.

8.9. Section 63 and 64: Rules: Need to amend.

Section 63 empowers the Central Government to make rules in respect of specified matters. Section 64 empowers the State Government to make rules to carry out the purposes of the Act in respect of other matters. In both these sections, it is necessary to provide that the rules shall be made through notification in the Official Gazette.⁴ Besides this, it seems desirable to draw attention to the verbal flaw in Section 63(2).⁵ It reads under:-

"(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....."

Now, when one turns to Section 63(1), one finds that the power thereunder is to make rules "in respect of the matters specified in sub-section (2)". Thus, there is no "generality" in sub-Section (1). It is therefore desirable that Section 63(2), opening words (quoted above) be revised suitably. Here is a suggested form:-

"(2) The matters in respect of which the Central Government may make rules under this section are the following namely, -"

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3. Point for amendment.
 4. Point for amendment.
 5. Point for amendment.

