

CHAPTER 5
PREVENTION AND CONTROL
OF WATER POLLUTION
SECTIONS 19 TO 33A

CHAPTER 5

PREVENTION AND CONTROL OF WATER POLLUTION:

SECTIONS 19 TO 33A

5.1. Scope.

Chapter 5 of the Water Pollution Act (Sections 19 to 33A), contains various provisions relevant to the prevention and control of pollution of water. The Chapter does not begin with the important and substantive provisions. These begin only with Section 25. The first five sections of the Chapter (Sections 19 to 24) deal with incidental matters or ancillary powers (such as information, sampling, entry and inspection etc.). Sections 25 to 33A deal with restrictions connected with water pollution and enforcement of those restrictions. Even these sections are interspersed with provisions dealing with procedural matters (appeal and revision - Sections 28 and 29 - and power to obtain information - Section 31).

5.2. Section 19: Power of State Government to restrict the application of the Act to certain areas.

Section 19 empowers the State Government to restrict the application of the Act to certain areas.

5.3. Section 20: Power to obtain information: Amendment needed.

Section 20(1) of the Water Pollution Act empowers the State Board etc. to make surveys. Section 20(2) empowers the State Board to give directions requiring information on certain matters (obstruction of water, discharge of effluents etc.). Section 20(3) also empowers the Board to require the furnishing of information on certain other matters. In neither of these sub-sections is there a requirement to specify the time limit for furnishing information. This appears to be necessary because, if no time limit is specified, then the penal provision in Section 41 cannot come into operation. Hence Section 20(2) and 20(3) are in need to appropriate amendment.¹

5.4. Sections 21-22: Samples.

Sections 21 and 22 deal with the taking of samples.

5.5. Section 23: Powers of entry and inspection: Need for amendment.

The only comment that needs to be made in regard to Section 23 is relatable to Section 23(1), which provides that any person *empowered* by a State Board in this behalf "shall have a right *at any time* to enter any place". Under the proviso, entry for the inspection of a well shall be exercised only at

1. Point for amendment .cf. paragraph 7.3 *infra*.

reasonable time, in cases where the well is situated in residential premises. The proviso is good so far as it goes. But there appears to be a need for extending the same safeguard to every exercise of power of entry under the section.² Besides this, it is desirable to provide that the empowerment by the Board under this section shall be in writing.³

5.6. Section 24: Prohibition on use of stream or well for disposal of polluting matter: Need for amendment.

Section 24 prohibits the use of stream or well for the disposal of polluting matter. Punishment for violation of this section is dealt with in Section 43. The section should be extended to cover other sources of the water.⁴

A case relevant to Section 24 may be noted. In an Allahabad case, having regard to the undertaking given on behalf of the petitioner factory, a complete stoppage forthwith, of the discharge of effluents from the petitioner's factory (even into the lagoons) was ordered, till all the lagoons had polythene layering. Even after this, when the effluents were discharged in polythene layered lagoons, the effluents, it was ordered, shall be tested by the petitioner through the agency of the Water Pollution Board. If the effluents were not found to be within permissible standard, then stoppage of discharge would continue till the petitioner's treatment plant was complete.⁵

5.7. Sections 25-26: Restrictions on new outlets and new discharges.

Section 25 imposes restrictions on new outlets and new discharges, without the consent of the Board. Violation of the restrictions is punishable under Sections 44 and 45. Section 25 deals with existing discharges.

5.8. Section 27: Appeal: Need for amendment.

Section 27 provides for appeal against 'any order' made by the State Board under Sections 25, 26 and 27 (consent to new outlets and new discharges etc.). The right to appeal is given to 'any person aggrieved by' such orders. The question is bound to arise, whether a member of the public (interested in the environment) can appeal against an order *granting* consent of the Board. The matter needs clarification.⁶

2. Point for amendment.

3. Point for amendment.

4. Point for amendment. (See para 1.6. *supra*)

5. *Sir Shadilal Enterprises Ltd. v. Chief Judicial Magistrate, Saharanpur*, (1990) Cri. L.J. 522, (1989) All. L.J. 7 (V.P. Mathur, J.).

6. Point for amendment.

5.9. Section 28: Appellate authority: Need for amendment.

An equally important point arises out of Section 28(2), which provides that 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. There is no guidance as to the qualifications and experience of the persons to be appointed to the appellate authority. The matter needs to be looked into.⁷

Finally, some comments are called for regarding Section 28(5). It empowers the appellate authority to interfere with a condition imposed by the State Board, or its variation, 'if the same is unreasonable'.⁸ Section 28(5) is silent about cases where -

- (i) the Board has imposed, under Section 25(4), a condition which is totally illegal (say, an extraneous condition) which may not be unreasonable in itself, or
- (ii) the Board has refused consent under Section 25(4)(b).

The total refusal of consent is probably assumed to be implied within the powers of the appellate authority. But an express provision would be preferable on both the points mentioned above.⁹

It may be mentioned that Section 29(1), dealing with revision, expressly mentions "legality" of the order.

5.10. Section 29: Revision.

Power to revise orders of the State Board is given to the State Government by Section 29, subject to certain conditions.

5.11. Section 30: Power of State Board to carry out certain works.

Section 30 empowers the State Board to carry out certain works.

5.12. Section 31: Furnishing of information.

Section 31 relates to the power of furnishing of information to the State Board and to certain other agencies.

5.13. Section 32: Emergency measures: need for amendment.

Section 32 provides for emergency measures in case of pollution of stream or well. Here also other sources of water should be covered.¹⁰

7. Point for amendment.

8. Point for amendment.

9. Point for amendment.

10. Point for amendment.

5.14. Section 33: Restraining pollution.

Section 33 covers restraint on pollution.

The Board may make an application to a court not inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class, for restraining a person from polluting a stream or well. On receipt of the application "the court may make such order as it deems fit".

Two comments are in order, on the section. First, the words "court not inferior to that of a Metropolitan Magistrate" etc. are somewhat wide and may take in even the Court of Session. That could not be the intention. It would be better to revise this part of the section,¹¹ by substitution of the words "the court of a Metropolitan Magistrate or Judicial Magistrate of the first class". The second point¹² relates to the procedure to be followed by the Magistrate. The brief provision to the effect that the court may make such order as it deems fit, does not appear to be quite sufficient. It may be proper to provide that as far as may be, procedure laid down in Section 133 etc. of the Code of Criminal Procedure, 1973 shall be followed.

5.15. Section 33A: Directions by the Board.

Section 33A of the Water Pollution Act deals with the power of the Board to give directions.

11. Point for amendment.

12. Point for amendment.