

CHAPTER TEN

**DIRECTIONS BY THE CENTRAL
GOVERNMENT:
SECTION 12**

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10.1 Directions by the Central Government

With Section 12 one comes to a provision conferring fairly wide powers on Central Government, and the drift of the section can be better understood if its provisions are analysed as under:-

(i) Power is conferred on the Central Government by Section 12 to issue such directions in writing as the Central Government may deem fit for the purposes of the Act.

(ii) Such directions can be issued to any owner or to any person, officer, authority or agency.

(iii) The directions will be operative, notwithstanding anything contained in any other law.

(iv) However, they must be subject to the provisions of the Act.

(v) The Explanation to the section declares, "for the removal of doubt," that the power to issue directions under this section includes the power to direct:-

- (a) prohibition or regulation of the handling of any hazardous substance; or
- (b) stoppage or regulation of the supply of electricity, water or any other service.

10.2 Comparison with the Environment Protection Act

It will be of interest to mention that Section 12 of the Public Liability Insurance Act very closely follows the language of Section 5 of the Environment Protection Act, 1986, though there are certain points of difference between the two provisions. Section 5 of the latter Act is in the following terms:-

"5. Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, 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".

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) stoppage or regulation of the supply of electricity or water or any other service."

So far as can be seen, the power to give direction to any "agency" is an additional power conferred by the Public Liability Insurance Act, in comparison with the Environment Protection Act. On the other hand, while the Environment Protection Act confers power to give a direction to close any industry, operation or process, a similar power has not been taken by the Public Liability Insurance Act.¹

10.3 Comments on Section 12

It will be noticed that while Section 12 of the Public Liability Insurance Act, unlike Section 5 of the Environment Protection Act, describes the power of the Central Government by the words "*such directions.....as it may deem fit for the purposes of this Act*". Similar words do not appear in the Environment Protection Act. The language used in the Public Liability Insurance Act is at once expansive and restrictive. On the one hand, it amplifies the power by the words "as it may deem fit". On the other hand, it restricts the power by the words "for the purposes of this Act". Even without the restrictive words, the power would be confined to matters necessary for the enforcement of the Act, because normally, subordinate legislation has to be construed as giving only those powers which are relatable to the parent Act.

The question, however, arises whether a power to give direction is at all needed for the purposes of the Public Liability Insurance Act. The only substantive provisions of the Act are Sections 3 and 4. Section 3 lays down a principle of liability and would hardly need any coercive enforcement. Its main function would be to act as the criterion for the arising of the cause of action when the matter is pursued in the appropriate forum. Under Section 4, the owner must take out the insurance policy before handling any hazardous substance. It is not very easy to see what "directions" would be needed to enforce Section 4, apart from the powers already conferred on the authorised officers by Section 9 (power to call for information), Section 10 (power of entry and inspection) Section 11 (power of search and seizure).

In any case, the declaration in the Explanation to Section 12, taking power to direct the prohibition or regulation of the handling of any hazardous substance or stoppage or regulation of the supply of electricity etc. would hardly be needed for enforcing Section 4. Not only does Section 4 itself prohibit the handling of any hazardous substance without insurance, but also Section 13 gives power to the Central Government to seek an injunction from the appropriate Magistrate in this regard, and further, Section 14(1) lays down a punishment for the violation of Section 4. In the circumstances, a direction to prohibit or regulate the handling of any hazardous substance can hardly add anything to the mandatory provisions contained in the Act. Since the Explanation to Section 12 begins with the words "for the removal of doubts"—compare the words "for the avoidance of doubts" employed in Section 5 of the Environment Protection Act— one may presume that it is not the object of the legislature to depart from the general restriction that the direction must be "for the purposes of this Act". This point definitely needs to be looked into.

1. See also para 10.3, *infra*