

# **8**

## **ENTRY INSPECTION AND ANALYSIS : SECTIONS 10-14**

# 8

## ENTRY INSPECTION AND ANALYSIS : SECTIONS 10-14

### 8.1 *Sections 10-14: Provisions for enforcement*

Substantive provisions or any enactment cannot suffice by themselves. They need provisions for their enforcement. Such enforcement is generally dealt with, by two kinds of provisions, namely, –

- (i) Provisions intended directly to secure enforcement of the substantive provisions-mainly, those laying down, criminal, civil or administrative sanctions.
- (ii) Provisions of an *indirect* nature which, while not laying down sanctions for the breach of substantive provisions, are designed to act as auxiliary measure to aid and facilitate enforcement of the substantive provisions.

In the Environment (Protection) Act, provisions of the first category are to be found in sections 15,16 and 17 while provisions of the second category are to be found in sections 10-14.

### 8.2 *Section 10: entry and inspection: need for amendment.*

Section 10 provides that subject to the provisions of the section, any person empowered by the Central Government in this behalf shall have the right to enter any place at all reasonable times and for a purpose specified in the section, with such assistance as he considers necessary. Rules on the subject can be made under section 3(2)(c). It would appear desirable to provide that the empowerment under section 10(1) should be *in writing*.

The power to enter any “place” may not cover a vehicle. For proper enforcement of the Act, in section 10, the word “any place” should be followed by the “including anything used for the conveyance of passengers or goods by land, water or air”.

### 8.3 *Section 11: samples: need for amendment*

The next section-section 11-empowers the “Central Government or any officer empowered by in this behalf” to take, for analysis, samples of -

- (a) air
- (b) water
- (c) soil, or
- (d) other substance.

The sample can be taken, in the prescribed manner, from any-

- (i) factory,
- (ii) premises, or
- (iii) other place.

A few changes are suggested in the section. First, the power should be reformulated as power to take sample of “any solid, liquid or gaseous substances or preparation”. As to the various types of substance, compare section 2(b), which defines “environmental pollutant”. As to the word, “preparation”, see section 2(e), which defines “hazardous substance”. Secondly, “place” should be amplified<sup>1</sup> by adding the words “including anything used for the conveyance of “passengers or goods by land, sea or air”.

These two changes are desirable to re-inforce the effectiveness of the section.

Thirdly, the empowerment under section 11(1) should be in writing.<sup>2</sup> Fourthly, the mention of “Central Government” in the very opening words of section 11(1) is somewhat inappropriate. The subject of the section is the power “to take, for purpose of analysis, samples.....” Such a power to take samples requires physical action, which the Central Government itself cannot take. Hence, in section 11(1), the words “The Central Government or any officer empowered by it in this behalf” should be replaced by the words “Any officer empowered by the Central Government in writing in this behalf shall have power to take.....” It would also be proper to provide that the power under section 11(1) is meant to be exercised for the purposes of this Act.

#### 8.4 *Section 12: Environmental laboratories : Amendment suggested*

Section 12(1) provides for the establishment or recognition by the Central Government of Environmental Laboratories “to carry out the functions entrusted to environmental laboratories under this Act”.

---

1 Compare paragraph 8.3, *supra*.

2 Compare comment on section 10, para 8.2, *supra*.

Those functions are not set out in any specific section of the Act. They are left to be laid down in rules. What needs to be pointed out is, that two overlapping provisions are to be found in the Environment Protection Act, as regards power to make such rules. Section 12(2) empowers the Central Government, by notification in the Official Gazette, to make rules specifying to following matters:-

- "(a) the functions of the environmental laboratories;
- (b) the procedure for the submission, to the said laboratory of samples of air, water, soil or other substance for analysis or tests, the form of the laboratory report there on and the fees payable for such report;
- (c) such other matters as may be necessary or expedient to enable that laboratory to carry out its functions."

Substantially, the same area is covered by section 25(2)(f) under which rules can be made to provide for :-

- "(f) the functions of the environmental laboratories, the procedure for the submission to such laboratories of samples of air, water, soil and other substances for analysis or test; the form of laboratory report. The fees payable for such report and other matters to enable such laboratories to carry out their functions under sub-section (2) of section 12;"

It will be noticed that notwithstanding verbal differences, the ground covered by section 12(2) and section 25(2) (f), both of which relate to environmental laboratories, their functions and procedure, is substantially the same. The appropriate course therefore would be to delete section 12(2) and leave the matter to be dealt with by section 25(2)(f). At the same time, in section 25(2)(f), the words "air, water, soil and other substance" should be replaced<sup>1</sup> by more comprehensive phraseology, similar to that suggested in the comments on section 11.<sup>2</sup> The phraseology there suggested is "any solid, liquid or gaseous substance or preparation." The deletion of section 12(2) will also necessitate consequential verbal changes in section 25(2)(f) - say, the words "sub-section(2) of" should be deleted from section 25(2)(f).

---

1 Point relevant to section 25(2)(f).

2 Paragraph 8-3, *supra*.

8-5 *Section 13: Government analyst : Amendment needed*

The appointment or recognition of Government Analysts is dealt within section 13. While not suffering from any defect of substance, this section needs improvement in point of its language. The points on which the improvements are possible, will be best understood, if the present section is quoted in full. The section reads as under: —

"13. The Central Government may, by notification in the Official Gazette, appoint "or recognise such persons as it thinks fit and having the prescribed qualifications to be Government Analysts for the purpose of analysis of samples of air, water, soil or other substance sent for analysis to any environmental' laboratory established or recognised under sub-section (1) of section 12".

The phrase "and having the prescribed qualifications" is an adjectival phrase qualifying the noun "persons" and does not go well with the preceding phrase "appoint such persons as it thinks fit". The conjunction "and" (used in this part of the section) does not sound appropriate. Besides this, the words "samples of air etc." can be better replaced by more comprehensive words.<sup>1</sup>

Finally, it would be conducive to better understanding of the law by the citizen, if section 13 refers to the specific provision—section 11(3)(d)—under which samples are sent to the laboratory. The points made above can be concretely carried out by re-drafting section 13 as under: —

"13. The Central Government may, by notification in the official Gazette, appoint or recognise such persons as it thinks fit, being persons having the perscribed qualifications, to be Government Analysts for the purpose of analysis of samples of solid , liquid or gaseous substances or preparations sent for analysis under clause (d) of sub section (3) of section 11 to any enviormental laboratory established or recognised under sub-section (1) of section 12."

8.6 *Section 14: Report of Government Analysts. Amendment Suggested.*

Section 14 provides that any document purporting to be a report signed by a Government Analyst may be used as evidence of the facts stated therein, in any "proceeding under this Act". The report referred to in this

---

1 Cf. comments on sections on sections 11,12.

section is a report recorded as a result of an analysis under section 13. The "Government Analyst" mentioned in section 14 is the Government Analyst appointed or recognised under section 13. These two points can be made clear by making necessary-verbal amendments in section 14. But there also remains a point of substance. Section 14 confines itself to a proceeding under this Act. Presumably, it has in mind prosecutions under sections 15, 16 and 17. But it needs to be pointed out, that there are other proceedings in which Government Analyst's report can be useful. A few examples of such proceedings are -

- (i) Suits, prosecutions and other legal proceedings referred to in section 18.
- (ii) Suits and proceedings of the nature referred to in section 22.
- (iii) Proceedings under the Public Liability Insurance Act, 1991.
- (iv) Proceedings under other enactments relating to pollution of the environment, such as those relating to pollution of the air or water.
- (v) Prosecutions under the Indian Penal Code, sections 268 to 290 (public nuisance).
- (vi) Proceedings claiming preventive relief under section 133, Code of Criminal Procedure, 1973.
- (vii) Proceedings under section 91, Code of Civil Procedure, 1908 whereunder either the Advocate General or two or more persons acting with the leave of the Court can sue for injunction or other appropriate relief where a question of public nuisance or other public wrong is at issue.

The above list, which is not intended to be exhaustive, shows the variety of proceedings in which questions of the nature investigated by the Government Analyst under the Environment (Protection) Act may be relevant.

Finally, the provisions of section 14 are obviously subject to those of section 11(2) - an aspect which can be usefully made clear in section 14.

On the basis of the points made above, one can suggest that section 14 can be revised somewhat on the following lines:-

*"14. Subject to the provisions of sub-section (2) of section 11, any document purporting to be a report recording the result of an analysis done or test conducted or experiment performed for the purposes of this Act by a Government Analyst appointed or recognised under section 13 may be used as evidence of the facts stated therein in any legal proceeding."*

As to the expression "legal proceeding". compare section 11(2).