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POWER TO REQUIRE INFORMATION AND PROTECTION CLAUSES: SECTIONS 20-22

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11.1 *Section 20: Information, reports or returns*

Section 20 gives power to the Central Government "in relation to its functions under this Act", to require any person, officer, State Government or other authority to furnish reports etc. It is further provided that such person, *officers, state Government* or other authority shall be bound to do so. Section 3(2) (xii) also empowers the Central Government to collect and disseminate information relating to environmental pollution. It may be pointed out that section 20 is one of the very few sections in which a duty enforceable by penal sanctions is imposed on the State Government. The penal sanctions in this case are provided by section 15(1) under which (*inter alia*) failure to comply with any order, issued under the Act is punishable with imprisonment upto five years or fine upto one lakh of rupees or both. Of course, if the order of the Central Government is issued to the Head of a Department, then section 17 would also apply.

11.2 *Section 21: Members etc. of authorities*

By section 21, members, officers etc. of the authority constituted under section 3(3) are declared to be public servants. One consequence of this is that the Prevention of Corruption Act, 1988 becomes applicable to them.

11.3 *Section 22: Bar of jurisdiction-Deletion suggested*

Section 22 provides that no civil court shall have jurisdiction to entertain any suit etc. in respect of anything done etc. by the Central Government or any other authority or officer "in pursuance of any power conferred by or in relation to its or his functions under this Act". An analysis of the relevant part of the section brings out that the bar created by the section operates in respect of anything done etc. by the Central Government etc.-

- (i) in pursuance of any power conferred by this Act; or

(ii) in relation to its or his functions under this Act.

As regards action falling under category (i) above, the bar of jurisdiction can be understood, though (assuming that the act is within the four corners of the statutory power) it is not needed. As regards action falling in category (ii) above, the provision appears to go too far. If every action taken "in relation to" statutory functions is placed beyond challenge in the civil courts, then it would amount to virtually putting the stamp of legality on all illegal acts. The moment a nexus of the challenged act with a statutory function is established, the act becomes a forbidden territory for the court — which means that (in practice, though not in theory) the act becomes legally protected. And this is so, even though there is no "good faith" on the part of the Government, officer or authority. For this reason, the section is open to objection as giving excessive protection.

In fact, there is a case for suggesting that the section should be deleted. For, the first category of acts as analysed above, the section is not needed. For the second category of act, the section goes too far. There is no justification for going beyond the protection conferred by section 18. This aspect is particularly important, when one bears in mind some of the striking features and wide range of the powers conferred by various provisions of the Act, such as the following:-

(a) Section 3, under which the whole gamut of environmental law, comes within the power of the Central Government to "take measures".

(b) Section 5, under which far-reaching directions can be issued, including directions to close an industry etc. or to supply any service etc. (the directions being non-appealable).

(c) Section 10 (powers of entry and inspection, including seizure).

(d) Section 11 (power to take samples).

(e) Section 20 (power to call for information etc.).

(f) Section 23, under which (with minor exceptions) almost every power of the Central Government can be delegated "to any officer, State Government or other authority."

(g) Section 24(1), which gives an overriding effect not only to the Act, but also to the rules or orders thereunder.