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DELEGATION OF POWERS : SECTION 23

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12.1 *Section 23: Power to Delegate*

Section 23 of the Environment (protection) Act empowers the Central Government to delegate (with certain exceptions) such of its powers and functions "as it may deem necessary or expedient". The delegation under this section can be to—

- (a) any officer
- (b) any state Government or
- (c) any other authority

This power of entrustment is expressly declared to be without prejudice to the provisions of section 3(3). It would further appear that by virtue of section 23, even the power conferred on the Central Government by section 4(1) to "entrust" powers and functions under the Act can itself be delegated so that there may arise what can be called "double delegation" by virtue of the combined operation of section 4(1) and section 23. To illustrate the point, the Central Government may, under section 23, delegate to officer A its own power under section 4(1). That officer can then under section 4(1), entrust, to officer B, specified powers and functions under the Act. Officer A would be standing in the shoes of the Central Government to the extent of the delegation. Or, to put the matter in a different form, the Central Government may, under section 4(1), entrust, to officer A, its own power under section 23. Thereafter, officer A can, acting under section 23, "delegate" the specified power of the Central Government to officer B, because, by virtue of the entrustment, officer A would be standing in 'he shoes of the Central Government.

12.2 *Powers that can be delegated: chart of delegation*

Even apart from the situation of (i) delegation, followed by (ii) entrustment or entrustment followed by delegation (discussed above),¹

1 Paragraph 12.2 *Supra*

section 23, taken singly, permits delegation of large number of powers and functions. The position can be put in the form of a chart (which, however, is not necessarily exhaustive):¹

Chart relating to delegation of powers
permissible under section 23

Section	Power	Whether delegable under section 23	
Section 3(1) and 3(2)	Power to take measures to protect and improve the environment.	Delegable under section 23.	under
Section 3(3)	Power to constitute authority.	Not delegable under section 23. (But can be entrusted under section 4).	
Section 4(1)	Power to appoint officers and to entrust powers and functions to them.	Delegable under section 23.	under
Section 5	Power to issue directions including directions to stop any industry etc.	Delegable under section 23	under
Section 6	Power to make rules as to standards of quality of air etc., permissible limits of pollutants (including noise), procedures for handling hazardous substances, Prohibition regarding location of industries, procedures for preventing accidents etc.	Delegable under section 23.	under
Section 10	Power to empower any person to "enter any place" for the specified purpose (including power of seizure etc.)	Delegable under section 23	under
Section 11(1)	Power to empower any officer to take samples.	Delegable under section 23	under
Section 12(1)	Power to establish environmental laboratories.	Delegable under section 23	under
Section 12(2)	Power to make rules as to functions of environmental laboratories, procedures for submitting samples, fees payable for reports etc.	Delegable under section 23	under
Section 13	Power to appoint or recognise qualified persons as Government Analysts.	Delegable under section 23	under
Section 19	Power to make complaint, or to authorise any authority or officer to make a complaint.	Delegable under section 23	under
Section 20	Power to require any person, officer, State Government or other authority to furnish reports, returns etc.	Delegable under section 23.	under

¹ See also paragraph 15.4 *infra*

Section 25	Power to make rules.	Not delegable under section 23. (But it can be entrusted under section 4(1)).
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12.3 Constitutional position regarding delegation

The question is bound to arise, at some stage or other, whether the delegation provided for by section 23 is constitutionally permissible. One must experience a serious doubt in this regard, having regard to the following very vital considerations:-

(i) The powers and functions that can be delegated, cover a very large area.¹

(ii) Some of the powers relate to matters that are, in themselves of great importance, inasmuch as they contemplate regulatory, restrictive or other measures that touch the citizen's affairs at various points. Even certain rule-making powers can be delegated.²

(iii) Many of the powers can affect the carrying on of trade, business or industry, and the question will naturally arise whether the imposition of such restrictions under a delegated power can, in every case, meet the test of reasonableness envisaged by article 19 of the Constitution, particularly in the light of what is stated in (iv), (v), (vi), (vii) below.

(iv) Under section 23, delegation by the Central Government is permissible "as it may deem necessary or expedient". There are no other guidelines.

(v) The delegation can be made in favour of "any officer, State Government or other authority".

(vi) The purported exercise of a power under the Act enjoys the protection conferred by section 18, bars the jurisdiction of courts under section 22, overrides other laws under section 23 and attracts penal consequences under section 15 to 17.

(vii) In the scheme of the Act, "double delegation" can arise.³ In fact there can be a multilateral delegation.⁴

1 Paragraph 12.2, *Supra*

2 Paragraph 12.2 *Supra* and Sections 6, 12(1), 23.

3 Paragraph 12. 1, *Supra*.

4 Paragraph 12.6, *infra*

12.4 *Other problems arising from delegation*

Apart from constitutional aspects of delegation¹, there are certain other aspects that should receive consideration. In principle, such a blanket delegation of powers is not desirable, as it may lead to non – uniform (and even arbitrary) application of the law, creating situations likely to cause embarrassment. This is particularly so, when one bears it in mind that in the scheme of the Act, there are possibilities of (i) delegation by the Central Government to A, followed by entrustment by A to B, or (ii) entrustment by the Central Government to A, followed by delegation by A to B.²

Besides all this the present scheme is likely to lead to multiplicity of authorities.

12.5 *Suggestion to delete section 23.*

It is because of these important aspects of delegation and its possible consequences,³ that one is compelled to make the suggestion that section 23 of the Environment Protection Act should be deleted.

12.6 *The impact of section 3(3): Multilateral delegation*

While on the subject of delegation of powers under the Environment Protection Act, one should also take note of the provisions of section 3(3) of the Act. Under that sub-section (so far as is material), the Central Government can constitute "an authority or authorities"⁴ for exercising the powers and performing the functions of the Central Government which may be specified in the order. When one reads this in conjunction with sections 4(1) and 23, one finds that there can be a "multilateral" delegation of powers in the scheme of the Act, as under:-

(a) A power of the Central Government can be made to devolve on the authority or *authorities* constituted under section 3(3).

(b) The same power can be entrusted to an officer appointed under section. 4(1).

(c) The same power can be delegated by the Central Government to any officer, State Government or other authority, under section 23.

1 Paragraph 12.3, *supra*.

2 Paragraph 12.1, *supra*.

3 Paragraphs 12.1, to 12.4, *supra*.

4 An important point in the context of multiplicity of authorities.

The devolution under (a), the entrustment under (b) above and the delegation under (c), can obviously lead to a trilateral delegation of the same power. It is to be noted that with a few exceptions, most powers contemplated by the Act¹ fall under section 3(3), section 4(1) and also under section 23. Even the adjective "trilateral" is not sufficient to picture the situation. The reason is, that under some of the relevant provisions, power can be made to descend in favour of more than one person or authority, for example, section 3(3), by its express wording, makes this amply clear, by using the words "authority or authorities". Again, section 4(1), by providing that "the Central Government may appoint *officers*..... and may entrust to *them* such of powers and functions under this act as it may deem fit," appears to permit the vesting of the same power in a number of officers.

One need not pause to examine the further complication created by the fact that after the entrustment by Central Government under section 4(1), duality of control can arise because section 4(2) provides that the officers appointed under section 4(1) shall be subject to the general Control and direction of the Central Government or, (if so directed by that government) "also of the authority or *authorities*, if any, constituted under sub-section (3) of section 3 or of any other authority or officer".²

1 Point material for multiplicity.

2 Point material for multiplicity.