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POWER TO GIVE DIRECTIONS: SECTION 5

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5.1 *Section 5: the power*

By section 5, it is provided that 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 the latter shall be bound to comply with such directions. Non-compliance with the direction becomes an offence under section 15. The matters on which directions may be issued, are not set out in the section. However, the words "in the exercise of its powers and performance of its functions under this Act" imply a limitation that the directions must be (i) confined to implementation of the Act, and (ii) (presumably), auxiliary or incidental to a specific power conferred on the Central Government by a specific provision of the Act.

The section does begin with the words "Notwithstanding anything contained in any other law," but those overriding words are themselves followed by the phrase "subject to the provisions of this Act." The latter phrase (though not very intelligible in itself), can be taken as indicating that the "directions" (section 5) must be auxiliary to some other section.

5.2 *Section 5, Explanation: closure of industries*

It is declared by the Explanation to section 5 that the power to issue directions under the section includes the power to direct –

- (a) the closure, prohibition or regulation of any industry, operation or process; or
- (b) stoppage or regulation of electricity or water or any other "service".

5.3 *Section 5: its amplitude*

The power under section 5 is obviously a far-reaching power for more reasons than one. In the first place, any industry etc. may be closed, prohibited or regulated. The power can thus extend to an order for a countrywide closure of *all* enterprises in a particular industry. Or, the

Government can stop electricity, water or other "service". The word "service" may include a large number of activities-e.g. even telephone or gas. Secondly, so far as the power to stop any service is concerned, it is not even provided in section 5, Explanation (b) that it must be a service provided to *an industrial establishment*. Literally, it would cover supply to even residences or hospitals or schools. Of course, as provided in the main paragraph of section 5, the power of the Central Government to issue directions is "in the exercise of its powers and performance of its functions under this Act". But even these words are not very definite, except that they imply that the directions must have some connection or nexus with some other specific power or function of the Act.¹ Thirdly, by virtue of the provisions of section 3(3), 4 and 23, the power under section 5 can be delegated—

- (i) to the "authority" constituted under section 3(3); or
- (ii) to the "officers" appointed under section 4(1); or
- (iii) to the State Government, officer or authority, as provided in section 23.

5.4 *Section 5: requirement of natural justice and need for appeal*

In the light of the above extremely far reaching consequences of the power to issue directions conferred by section 5 of the Environment Protection Act, it seems eminently desirable that certain requirements of natural justice be observed, when a proposal to exercise the power under section 5 is made. This is all the more desirable, because a breach of the direction is punishable under section 15. Moreover, as the scheme of the Act stands at present, no appeal is provided against the direction issued by the Central Government. In particular, the wide scope of the direction that can be issued as elaborated in the Explanation to section 5 justifies an apprehension that challenges to the constitutional validity of the wide and somewhat undefined power conferred by section 5 may have a reasonable chance of success, unless some safeguards are inserted. The minimum amendment that can be suggested is to insert a provision to the effect, that no direction shall be issued under this sub-section unless—

- (a) the person, officer or authority to whom it is proposed to be issued is given by the Central Government, written notice of its intention to do so; and

¹ See para 5.1 *supra*

- (b) such person, officer or authority is afforded a reasonable opportunity of showing cause why the direction should not be issued.

It should further be provided that where the direction is of the nature referred to in clause (a) or clause (b) of the Explanation to section 5, the person, officer or authority shall be given an opportunity of presenting its case orally. The period of notice should be clear 15 days, save in cases of exceptional urgency.

These safeguards are suggested, having regard to three constitutional aspects. First, the implication of article 14 of the Constitution is that State action interfering with private rights should be reasonable. Secondly, the requirement of article 19(1) (g) of the Constitution is that (*inter alia*) a citizen's right to carry on a trade or business should not be restricted, except by a law which imposes a restriction which is reasonable and in the interest of the general public. Thirdly, in the present case, the legislation (section 5) confers a broad power, apparently authorising variety of measures. The legislature itself has not very precisely enumerated the kinds of directions that can be issued. It has left it to the Central Government which, in its turn, can delegate it to the Central Government which in its turn, can delegate it to a variety of agencies¹ as contemplated by sections 3(3), 4(1) and 25. The cumulative effect of all these features of the power exercisable under section 5 is that it is highly desirable to introduce in section 5 some such safeguards as have been suggested above.

5.5 *Comparison with the Public Liability Insurance 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 empowers the Central Government to issue directions in writing to any "person, officer or any authority". In the Public Liability Insurance Act, the power to give directions to any "agency" is an additional power conferred by the Act not found in the Environment (Protection) Act. On the other hand, while the

¹ See para 5.3, *supra*.

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

It will also be noticed, that 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.

¹ See P.M. Bakshi, *Public Liability Insurance Act* (I.L.I.) (1992), pages 49-50, para 10.2, 10.3