

CHAPTER 7

CRIMINAL LAW (SPECIAL) :

PROSECUTIONS UNDER THE AIR POLLUTION ACT

7.1 Air pollution prevention and control

In India, sections 19-31A (Chapter 4) of the Air Pollution Act contain provisions which deal with the major regulatory mechanism contemplated by the Act. The pivotal section is section 19, relating to declaration of certain areas as "Air pollution control areas" and providing for connected regulatory measures. Section 20 of the Act deals with automobile pollution- a matter now dealt with the detail by rules made under the Motor Vehicles Act, 1988. Section 21 provides for restrictions on the establishment of industrial plants in air pollution control areas without the consent of the State Board. Emission of pollutants in excess of the notified standards is dealt with in section 22. Section 22A creates an additional procedure, whereunder a Pollution Control Board can apply to the competent court to pass orders restraining a person from causing air pollution. Section 23 to 25 deal with information etc. Power to take samples of air, or of "emission", for analysis, is provided for in sections 26 to 30. Section 31 provides for appeal against orders made by a State Board. Section 31A empowers a Board to issue, in the exercise of its powers and performance of its functions under the Act, "directions". These directions must be complied with, on pain of penalty which can be imposed under section 37 of the Act.

7.2. Air pollution control areas

One of the pivotal sections in the Air Pollution Act is section 19. Sub-section (1) empowers the State Government, after consulting the State Board, to declare any area to be "air pollution

control area”, whose limits can be altered or merged under sub section (2). With section 19(3) begins the substantive part of the section, which goes on upto sub-section (5). In any air pollution control area, the State Government, after consultation with the State Board, may -

- (i) prohibit the use of fuel other than the approved fuel ;
- (ii) prohibit the use of an appliance other than an approved appliance ;
- (iii) prohibit the burning of any material (not being fuel) if its burning may cause air pollution.

Notifications are required for all these purposes. Further, the notification laying down prohibition of non-approved fuel cannot, for its commencement, fix a date earlier than 3 months from its publication.

7.3. Instructions for ensuring emission Standards

Under section 20 of the Air Pollution Act, in order to ensure that standards for the emission of air pollutants as laid down by the State Board under section 17(1) are complied with, the State Government, in consultation with the State Board, can give necessary instructions to the registration authority under the Motor Vehicles act, 1939 (which should now be read as the Motor Vehicles Act, 1988). Such authority shall be bound to comply with such instructions.

7.4. Restrictions on the establishment or operation of certain industrial plants

Section 21(1) provides that no person shall establish or operate any industrial plant in an air pollution control area, without the consent of the State Board. By section 2(k). “industrial plant” is defined as meaning any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere. If consent is granted by the State Board, then the detailed obligations imposed by section 21(5), 21(6) and 21(7) come into operation. Contravention of the section is punishable under section 37 of the Act.

7.5. Emission of air pollutants

Section 22 prohibits the discharge or emission of any air pollutant by any person operating any industrial plant in any air pollution control area in excess of the prescribed standards. Contravention of the section is punishable under section 37. The standards are laid down by the State Board under section 17(1)(g).

7.6. Restraint Order

The prohibition imposed by section 22 against the emission of air pollutants in excess of the prescribed standards not only carries criminal penalties, but also attracts the provisions of section 22A. Under section 22A(1), if "a Board" has an apprehension that the emission of excessive air pollutant is likely to occur in any air pollution control area, either by the operation of any industrial plant or otherwise, the Board may make an application to a court "not inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class", for restraining such person from emitting such air pollutant. Section 22A(2) provides that on receipt of the application, "the court may make such order as it deems fit". Sub-sections (3) and (4) deal with enforcement of the judicial order and expenses of such enforcement.

7.7. Information, entry and inspection etc.

Sections 23 to 25 of the Air Pollution Act contain certain provisions relating to power to obtain information, entry and inspection. The powers to be conferred affect important right of citizens.

7.8. Samples, Laboratories and Analysis

Sections 26 to 30 of the Air Pollution Act deals with the taking of samples, the analysis thereof, the laboratories to be established or specified for the purpose, and the reports of Analysts. Following points emerge :-

- (i) By section 26(1), power to take samples is given to a State Board" or any officer empowered by it in this behalf."
- (ii) By section 30, it is provided that a document purporting to be signed by a Government Analyst etc. may be used as evi-

dence of the facts stated therein “in any proceeding under this Act”.

7.9. Appeals against the State Board

Section 31(1) of the Air Pollution Act gives a right of appeal to any person aggrieved by an order made by the State Board under this Act.

7.10. Power to give directions

Section 31A of the Air Pollution Act confers power to give directions. The purpose for which directions can be issued under section 31A is described in the section by the general words “in the exercise of its powers and performance of its functions under this Act”.

The Explanation to the section also confers power to direct the stoppage of “electricity, water or *any other services*”.

7.11. Penalties

Sections 37 to 39 of the Air Pollution Act lay down penalties for contravention of various provisions of the Act. Sections 40 and 41 deal with offences by companies and offences by Government departments respectively. By section 44, members and officers of the Board are declared public servants.

7.12. Cognizance of offences

It is important to note at this stage, section 43 of the Air Pollution Act, which deals with the cognizance of offences. Under section 43(1) a court cannot take cognizance of an offence under the Act, except on a complaint made by -

- (a) a Board or any officer authorized in this behalf by a Board, or
- (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or officer authorised as aforesaid,

and no court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try any offence punishable under this Act.

It is further provided that the Board shall, on demand by such person, make available the relevant reports in its possession to that person. But the Board may refuse to make any such report available to such person, if the same is, in its opinion, against the public interest.