

**CHAPTER 3**  
**CENTRAL AND STATE BOARDS:**  
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*3.1. Sections 3 and 4: The Boards*

Sections 3 to 15 of the Air Pollution Act, contained in Chapter 2, provide for Central and State Boards for the prevention and control of air pollution. As regards the Central Board, section 3 provides that the Central Pollution Control Board constitute under section 3 of the Water (prevention and Control of Pollution) Act, 1974, shall exercise the powers and perform the functions of the Central Board for the prevention and control of pollution under this Act. The link with the Water Pollution Act is also to be found in section 4 of the Air Pollution Act. The gist of that section is that, in any State where the Water Pollution Act is in force, the State Pollution Control Board constituted under section 4 of that Act shall be deemed to be the State Board for the prevention and control of air pollution constituted under section 5 of the Air Pollution Control Act.

*3.2. Section 5(2): State Boards constituted under this Act*

As regards States in which the Water Pollution Act is not in force, or in which the State Government has not constituted a State Board, section 5(1) of the Air Pollution Act comes into operation. It provides that the State Government shall, with effect from the notified date, constitute a State Board for the prevention and control of air pollution under a specified name. The Board so constituted is to exercise the powers conferred on, and perform the functions assigned to, that Board under this Act. This part of section 5(1) is important and possesses a significance extending much beyond its own limited purpose. The concept of a "State Board constituted under this Act" recurs frequently in the Air Pollution Act-for example, section 5(2), sections 7(1) to 7(7), 8(1), 9, 14(1), 14(2), 14(3) and 14(5). (The list is not intended to be exhaustive).

It may not be pedantic to point out that in the scheme of the Act (as represented by the sections mentioned above), there is a distinction between-

- (a) State Boards not constituted under the Air Pollution Act itself, but functioning by virtue of the deeming provision under section 4; and
- (b) State Boards constituted directly under the Air Pollution Act itself, vide section 5(1).

The former classes of Board are, in regard to their composition, membership, disqualifications and vacancies and connected matters, governed by the Water Pollution Act. These topics are regulated by the section enumerated above, *only in relation to* State Boards constituted under the Air Pollution Act-i.e. category (b) above.

*3.3. Section 5(2): Composition of State Boards: Amendment needed*

Section 5(2) of the Air Pollution Act sets out the composition of State Boards "constituted under this Act". The sub-section is a lengthy one. However, for the

present purpose, it is enough to mention that the sub-section makes a distinction between (i) members (including the Chairman), who are to be "nominated" and (ii) the Member-Secretary, who is to be "appointed" by the State Government. The nominated members themselves may be officials or non-officials. Section 5(2) (a) relates to the Chairman (he may be whole time or part time), while section 5(2) (b) relates to official members. Section 5(2) (c) provides for not more than five persons to be nominated by the State Government from among the members of the "local authorities" functioning within the State. Section 5(2) (d) is concerned with non-official members (not exceeding three) to be nominated to represent one of the following interests:-

- (i) agriculture;
- (ii) fishery;
- (iii) industry;
- (iv) trade;
- (v) labour;
- (vi) any other interest which, in the opinion of the State Government, ought to be represented.

Section 5(2) (e) provides for the nomination of two persons to represent the companies or corporations owned, controlled or managed by the State Government. Section 5(2) (f) relates to the Member-Secretary. Section 5(2), proviso is important, because it provides for at least two specialists. But what needs to be pointed out is, that the Board is not required to have a person who would be able to represent the point of view of sections of the public which are interested in the preservation of the environment. No doubt, they can be nominated under section 5(2) (d), under the residuary category of non-officials to be nominated, *inter alia*, to represent "any other interest .... not .... represented". But a more specific provision in this regard is preferable. A possible solution would be (i) to reduce the number of persons representing local authorities - section 5(2) (c) - from five to four and (ii) to increase the number of officials - section 5(2) (d) - from three to four, with the addition of a specific provision in section 5(2) (d) to the effect that at least one of the non-officials shall be a person actively interested in the preservation of purity of the environment. One may be too small a number. But the beginning can be a modest one.<sup>1</sup>

#### 3.4. Section 6: Central Board and Union territories: Amendment needed

By section 6 of the Air Pollution Act, it is provided that in relation to a Union territory, the Central Board shall exercise the powers etc. of the State Board "for that Union territory". The words quoted in the last sentence really repeat what is already covered by the words "in relation to a Union territory". The proviso to section 6 is curiously worded, reading as under:-

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1 Point for amendment.

"Provided that in relation to any Union territory, the Central Board may delegate all or any of its powers and functions *under this section* to such persons or body of persons as the Central Government may specify."

The words "under this section", occurring in the proviso, are not quite accurate. The main paragraph does not *confer any powers*. It only vests the Central Government with the powers of State Boards. A drafting change could be suggested to substitute "under this Act" for the above words.<sup>1</sup>

It may also be mentioned that the analogous provision for delegation of powers by State Boards (section 15) is more detailed.<sup>2</sup> Also, it makes it clear that delegation may be by a general order or by a special order. These points may appear to be of minute detail, but they are of importance for the day-to-day working of the Act. At the same time, for reasons mentioned<sup>3</sup> while discussing section 15, certain aspects of too wide delegation also require attention. This point is applicable as much to section 6, as to delegation under section 15.

### 3.5. Section 7: *Terms and conditions of service of members: Amendment needed*

Section 7 deals with the terms and conditions of service of members. Section 7(1) is important. Its main part provides as under:-

"(1) Save as otherwise provided by or under this Act, a member of a State Board constituted under this Act other than the member secretary shall hold office for a term of three years from the date on which his nomination is notified in the Official Gazette.

....

The sub-section is silent as to *who is to notify the nomination*. For this, one has to go back to section 5(2) (a) to (d), whereunder the nominations are to be made by the state Government. It would be convenient<sup>4</sup> if at the end of section 7(1), appropriate words are added to make this explicit, say, by adding at the end of section 7(1), main paragraph, the words "by the State Government under sub-section (2) of section 5".

### 3.6. Section 8: *Disqualifications: Amendment needed*

The disqualifications which render a person incapable of holding office as member of a State Board constituted under the Air Pollution Act are dealt with in section 8(1). Section 8(2) requires the State Government to remove a member so disqualified, after giving him a reasonable opportunity of showing cause. When a member is so removed, he becomes, by virtue of section 8(3), ineligible to continue to hold office or for re-nomination.

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1 Point for amendment.

2 Point for amendment.

3 Para 3.9, *infra*.

4 Point for amendment. See paragraph (b), (c), (d), 3.9 *infra* for section 15.

One of the grounds on which a member becomes disqualified is that mentioned in section 8(1) (d), reading as under:-

"(d) is, or at any time has been, convicted of an offence *under this Act*.

....

This is apart from conviction of an offence involving moral turpitude—a situation already dealt with in section 8(1) (c). As regards section 8(1) (d), it is worth consideration if its scope should not be expanded to cover offences *under pollution laws*. It may be proper for this purpose to revise section 8(1) (d) as under<sup>1</sup> :-

"(d) is, or at any time has been, convicted of an offence under this Act, or under any law for the time being in force, providing for the prevention, control or abatement of pollution of the environment or for protection of the environment or for protection against hazardous substances.

*Explanation:* - In this clause, 'environment' has the same meaning as in the Environment (Protection) Act, 1986."

### 3.7. Section 9: Vacation of seats by members: Amendment needed

Section 9 of the Air Pollution Act provides that if a member of a State Board constituted under the Air Pollution Act becomes subject to any of the disqualifications specified in section 8, his seat shall become vacant.

Taken literally, this would mean that the disqualification of the member concerned is automatic. But one has also to keep in mind the provisions of section 8(2), which contains two mandates. First, it contemplates that there shall be a written order by the State Government, directing the removal of a disqualified member. Secondly, under the proviso to section 8(2), such an order must be preceded by a notice to show cause. It would therefore appear that in the scheme of section 8(2), the following stages are contemplated:-

- (a) Incurring of disqualification by the member concerned.
- (b) Show cause notice to the member.
- (c) Hearing (if necessary).
- (d) Express order of removal of the member by the State Government.

These stages are implicit in section 8. But the cryptic language of section 9 would seem to obliterate the stages (b), (c) and (d) mentioned above. Obviously, this could not be the intention. The want of harmony between section 8(2) and section 9 on the point mentioned above, therefore, needs to be remedied.<sup>2</sup> A possible method of harmonising the two provisions would be to redraft section 9, as under:-

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1 Point for amendment.

2 Point for amendment.

"9. *Vacation of seats by members declared to be disqualified.* - If, in respect of a member of a State Board constituted under this Act, the State Government passes an order under sub-section (2) of section 8, his seat shall thereupon become vacant."

3.8. *Sections 10 to 14: Meetings, vacancies and staff: Amendment needed*

Sections 10 to 14 of the Air Pollution Act deal with a number of matters relating to meetings and staff of State Boards. These sections do not require any detailed comment. However, it may be mentioned that section 14(4) contemplates "regulations made by the State Board under this Act", regarding the appointment, conditions of service etc. of officers and employees of State Boards. It would be convenient if the section under which regulations are to be made, is mentioned in section 14(5).<sup>1</sup>

3.9. *Section 15: Delegation of powers: Amendment needed*

(a) Section 15 of the Air Pollution Act, which relates to delegation of powers by State Boards, raises a point of substance. The Section reads as under:-

"15. *Delegation of powers:* - A State Board may, by general or special order, delegate to the chairman or the Member-Secretary or any other officer of the Board, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Act as it may deem necessary."

(b) Three features of this section stand out. First, the delegation may be to Chairman, Member-Secretary or any other officer of the Board. Secondly, the delegation can be conditional or limited, though that is not legally mandatory.

Note the words "if any". Thirdly, the section itself does not lay down any restrictions as to the powers and functions that may be delegated. The Board can delegate such powers and functions under the Air Pollution Act as it may deem necessary.<sup>2</sup>

(c) Taking into consideration this wide language of the section, the delegation under section 15 can be as wide as the Board chooses. Even the lowest "officer" of the Board can be vested with the most drastic power, if the Board deems it necessary and such delegation may not be subject to any condition or limitation, if none is "specified in the order" of the Board in that regard.

A list (not intended to be exhaustive) of the powers and functions of State Boards under the Act, is given below for ready reference:-

#### Powers of State Boards

<i>Section</i>	<i>Power</i>
Section 11(1)	Power to constitute Committees.

<sup>1</sup> Point for amendment.

<sup>2</sup> c.f. paragraph 3.4, *supra*.

Section 12	Power to associate persons with the Board temporarily.
Section 14(3)	Appointment of officers etc.
Section 14(4)	Power to make regulations as to appointment, conditions of service etc. of officers and employees.
Section 14(5)	Appointment of consultants.
Section 17(1)	Various functions to implement the Act (10 in number).
Section 17(2)	Recognition of directions.
Section 19-20	Tendering advice to State Government as to declaration of Air Pollution Control Areas and emission standards.
Sections 21-22	Consent order for use of industrial plants in air pollution control areas.
Section 22A	Applying to court for restraint order.
Section 23-25	Information, entry and inspection.
Section 26	Samples.
Section 29(2)	Appointment of Board analysts.
Section 31A, read with the Explanation	Power to give written directions to "any person, officer or authority", including directions to close, prohibit or regulate any industry, operation or process or to stop the supply or regulate the supply of "electricity, water or any other service".

(d) It may be added that the Board's powers under section 17(1) are very vast and comprehensive.<sup>1</sup> Its powers under section 31A (inserted in 1987) are also very drastic<sup>2</sup>. It does not sound quite appropriate that the Act should give an unconfined authority to delegate such vast and drastic powers, without any limitations as to period, purpose or conditions of delegation or as to the status of the delegate. Apart from any constitutional objections that may arise, uncanalised delegation defeats the general scheme of the Act. The legislature has contemplated an elaborately constituted Board, representing a variety of interests, on the assumption that there will be a balanced approach to the exercise of powers after due consideration. Delegation thwarts this objective. The matter needs attention<sup>3</sup> from the point of view of the period, purpose and conditions of delegation and the status of the delegate.

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1 Paragraph 14.7 *infra*  
 2 Paragraph 5.10 *supra*  
 3 Point for amendment