

CHAPTER 4
POWERS AND FUNCTIONS OF BOARDS:
SECTIONS 16 TO 18

CHAPTER 4

POWERS AND FUNCTIONS OF BOARDS

SECTIONS 16- 18

4.1. *Functions of the Boards, overlapping and conflict*

Sections 16 to 18 of the Air Pollution Act deal with the powers and functions of Central and State Boards for the prevention and control of air pollution. The functions of the Central Board and of the State Board may tend to overlap in certain cases. But, to some extent, the possibility of conflict is avoided, by virtue of the provision (section 18), relating to the power to give directions. These directions regulate inter- Board relations. They should not be confused with directions issued under section 31A, which are in the nature of compulsory measures that can be issued by a 'Board' to citizens, non-compliance with which is punishable under section 37. Under section 18(1), the State Board is, in the performance of its functions under the Act, bound by the written directions of the Central Government. Section 18(2) to 18(4) of the Act make further provisions to deal with matters consequential on default in complying with such directions. Section 18(1) (b), *inter alia*, provides that every State Board shall be bound by the written directions of the Central Board. In this manner, what may be called "inter Board" conflicts are, to some extent, avoided.

4.2. *Functions of the Central Board: Section 16*

Section 16(1) of the Air Pollution Act declares that the "main" function of the Central Board shall be to improve the quality of air and to prevent, control or abate air pollution in the country. In section 16(2), certain specific functions are enumerated, but this is without prejudice to the generality of the above main function.

The main function under section 16(1) itself is subject to the provisions of this Act (the Air Pollution Act) - a limitation which was perhaps considered necessary in order to ensure that coercive powers under the Act are to be exercised only in accordance with the relevant provisions, dealing with the specific subject. Section 16(1), at the same time, also makes it clear that the functions laid down for the Central Board under the Air Pollution Act shall be without prejudice to the performance of its function under the Water Pollution Act.

4.3. *Functions analysed: section 16(2)*

The long list of functions of the Central Board, as particularised in section 16(2) of the Air Pollution Act, can perhaps be better understood if one bears in mind that they fall under five principal groups:

- (i) Advice, planning and co-ordination in section 16(2) (a), (b) and (c). The co-ordinating function includes the function of resolving disputes amongst State Boards. A dispute can conceivably arise if polluted air in one State travels to another State across the borders and, as regards the measures to be taken for checking such pollution, there is a difference of opinion amongst the two or more Boards concerned with the subject.

- (ii) Technical guidance and training - section 16(2) (d) and (e).
- (iii) Standardisation - section 16(2) (f).
- (iv) Emergency powers - section 16(2) read with section 18.
- (v) Information, statistics and miscellaneous - section 16(2) (g), (i) and (j).

Two important powers (not mentioned in section 16) are the powers to issue directions under section 18(1) (b)¹ and 31A².

4.4 *Laboratories: section 16(3)*

The Central Board is empowered to establish or recognise laboratories for the purposes of the Act: Section 16(3). Similar power is given to State Board by section 17(2).

4.5. *Delegation by Central Board to Committees: section 16(4) (a): Amendment needed*

Section 16(4) (a) of the Air Pollution Act empowers the Central Board to delegate "any of its functions under this Act" generally or specially to any of the committees appointed by it. The appointment of committees is provided for, by section 11. Taken literally, section 16(4) (a) would seem to authorise the delegation of certain very important functions of the Central Board, including the following:-

- (i) Power to give directions to State Boards under section 18(1) (b).
- (ii) Power to issue directions of a regulatory nature under section 31A.

As these powers are of a far-reaching character, it is suggested that they should be preferably exercised by the whole Board, rather than by its committees. It is also desirable that the declaration should be in writing. If this suggestion is found acceptable, section 16(4) (a) can be revised as under³:-

"(a) by a written order delegate any of its functions under this Act (other than those under sections 18 and 31A), generally or specially, to any of the committees appointed by it."

4.6. *Incidental powers: section 16(4) (b)*

Section 16(4) (b) of the Air Pollution Act provides, that the Central Board may do such other things and perform such other acts, as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

4.7. *Functions of State Boards: section 17*

Section 17 sets out the functions of State Boards. Sub-section (1) enumerates them, while sub-section (2) deals with the establishment of laboratories for the

1 Paragraph 4.9 *infra*.
 2 Para 5.10 *infra*.
 3 Point for amendment.

purposes of the Act, at the State level. Attention should be drawn to a few important functions of the State Boards.

First, section 17(1) (e) empowers the State Board to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and "to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution". Breach of any such direction would be punishable under section 39. These directions are apart from the directions issued under section 31A, whose breach is punishable under section 37 of the Act.

Secondly, section 17(1) (i) empowers the Board to perform such other functions as may be prescribed or as may from time to time, be "entrusted" to it by the Central Board or the State Government.

Thirdly, section 17(1) (f) empowers the Board to do such other things and perform such other acts as it may think necessary for the proper discharge of its functions and "generally for the purpose of carrying into effect the purposes of this Act"-language comparable to section 16(4) (d), which applies to the Central Board.

4.8. Directions by and entrustment to State Boards: Need for amendment

It seems proper to make two suggestions as regards section 17(1). First, in clause (e), the words "by order give such directions" should be revised so as to read "by a written order give directions". Secondly, section 17(1) (i), in so far as it empowers the State Boards to perform such other function "as may from time to time be entrusted to it by the Central Board or the State Government" requires consideration¹. The scope of such entrustment needs to be defined. Presumably, it could not be the intention that the various powers of the State Government under several sections of the Air Pollution Act could be delegated to the State Board. The following is a select list of the relevant provisions (not necessarily exhaustive):

Chart of powers of the State Government

<i>Section</i>	<i>Powers</i>
Section 19(1)	State Government, after consultation with the State Board, may declare air pollution control areas, alter them etc.
Section 19(2), (3) and 19(4)	State Government, after consulting the State Board, may prohibit in the air pollution control areas, the use of non-approved fuel or non-approved air control equipment.
Section 19(5)	State Government, after consulting the State Board, may, in any air pollution control area, prohibit the burning of any material (other than fuel) being material which may cause air pollution.

¹ Points for amendment.

Section 20	State Government, in consultation with the State Board, may issue instructions to registration authority for motor vehicles, in order to ensure that the standards laid down under section 17(1) (g) are complied with.
Sections 28, 29 and 30	State Government may establish State Air Laboratories and appoint (Government) analysts.
Section 31	State Government may constitute an appellate Authority, for the purposes of the Air Pollution Act.
Sections 33A, 34 to 36	State Government performs certain functions relating to fund budget accounts etc. of the State Board.
Section 45	Certain reports and returns are dealt with.
Section 47	State Government may supersede the State Board, in specified situations.
Section 54	State Government may make rules on specified matters.

Some of the powers of the State Government mentioned above are exercisable after consulting the State Board or are otherwise of such a nature that in practice their entrustment to the State Board would not be thought of. But, as regards other powers, the position with reference to section 17(1)(j) remains somewhat obscure and needs to be clarified. The position as to what functions can be entrusted by the Central Board to the State Board under section 17(1)(j), also needs clarification.¹

4.9. *Power to give directions: section 18(1). Need for amendment*

Section 18, which carries the marginal note "Power to give directions", essentially envisages directions to the Central Board, or to the State Board. Its marginal note should really read "Power to give directions to the State Boards". It may be mentioned that section 31A of the Act (inserted by Act 47 of 1987) also bears the marginal note "Power to give directions". This, of course, is a matter of form. Coming to matters of substance, section 18(1) provides for three types of directions, as under:-

- (i) Directions by the Central Government to the Central Board.
- (ii) Directions by the Central Board to the State Board.
- (iii) Directions by the State Government to the State Board.

In case of conflict between directions issued under (ii) and (iii) above, the matter shall be referred to the Central Government for its decision, as provided by section 18(1), proviso. Of course, it is implied that after the decision of the Central Government, the relevant directions would be cancelled or modified to bring them in conformity with that decision. It appears to be desirable that this implication

1 Points for amendment.

should be brought out explicitly in section 18(1), proviso in a suitable manner. Here is a possible re-draft of the proviso:¹

"Provided that (i) where a direction given by the State Government under clause (b) is inconsistent with a direction given by the Central Board under that clause, the matter shall, on the request of the Central Board or the State Government, be referred to the Central Government for its decision; and (ii) on such decision being given by the Central Government, the direction affected by the decision shall thereafter stand cancelled or stand modified in conformity with the decision so, however, that such cancellation or modification shall be without prejudice to the validity of anything previously done under that direction."

4.10. Non-compliance by State Board: Section 18(2), 18(3) and 18(4): Need for amendment

On non-compliance by the State Board with the directions given by Central Board under section 18(1), the provisions of section 18(2), section 18(3) and section 18(4) come into operation. In the event of such default, the Central Government can direct the Central Board to perform any of the functions of the State Board, in relation to a specified area, for a specific period and for a specified purpose. The order to that effect can be passed only if a "grave emergency" has arisen and it is necessary or expedient to pass the order in the public interest. Under section 18(3), the expenses can be recovered by the Central Board in certain cases.

By section 18(4), it is clarified that the Central Government's direction under section 18(2) does not preclude the State Board from performing such functions in any other areas in the State, or from performing any of its other functions in that area. Section 18(4) needs a small verbal change. It reads, at present, as under:-

"(4) For the removal of doubts, it is hereby declared that any direction to perform the functions of any State Board given under sub-section (2) in respect of any area would not preclude the State Board from performing such functions in any other area in the State or any of its other functions in that area."

For better readability, the sub-section can be slightly re-cast, as under:²

"(4) For the removal of doubts, it is hereby declared that any direction issued by the Central Government under sub-section (2) to the Central Board to perform any of the functions of the State Board in relation to any area, shall not preclude the State Board from performing -

- (a) such function in any other area in the State, or
- (b) any of its other functions in that area."

1 Point for amendment.

2 Point for amendment.