

**CHAPTER 5**  
**PREVENTION AND CONTROL OF AIR**  
**POLLUTION:**  
**SECTIONS 19 TO 31A**

## CHAPTER 5

### PREVENTION AND CONTROL OF AIR POLLUTION SECTIONS 19-31A

#### 5.1. *Air pollution: prevention and control*

Sections 19-31A (Chapter 4) contain provisions which deal with the major regulatory mechanism contemplated by the Air Pollution 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 deals with automobile pollution-a matter now dealt with in 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. sections 23 to 25 deal with information etc. Power to take samples of air or of "emission", for analysis, had also to be provided for. Accordingly, sections 26 to 30 devote themselves to the taking of such samples, their analysis in recognised laboratories by Government Analysts and connected matters. 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.

#### 5.2. *Air pollution control areas: section 19*

One of the pivotal sections in the Air pollution Act is section 19, whose scheme needs to be analysed. 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.

*5.3. Instructions for ensuring emission standards: section 20*

Under section 20, 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). It is further provided that such authority shall, notwithstanding anything contained in that Act etc., be bound to comply with such instructions. No penalty for non-compliance is laid down in the section; and sections 37 and 39 (which are the two *general* penal provisions) may not cover such instructions. In any case, no penalty is needed also, since the instructions are issued to a public authority which is subject to other sanctions.

*5.4. Restrictions on establishment or operation of certain industrial plants: section 21*

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. Sub-sections (2) to (4) of section 21 deal with matters of detail regarding the grant of consent by the Board. 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.

*5.5. Emission of air pollutants: section 22*

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).

*5.6. Restraint order: section 22A: Need for amendment*

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 or excessive air pollutant is likely to occur in any air pollution control area, either by 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-section (3) and (4) deal with enforcement of the judicial order and expenses thereof.

Two comments are in order, on section 22A. First, the words "court not inferior to that of a Metropolitan Magistrate etc." are somewhat wide and may take in even the Court of Session. That could not be the intention and would not be in conformity with the set up of courts. It would be better to revise this part of section

22A as "the court of Metropolitan Magistrate or Judicial Magistrate of the first class"<sup>1</sup>.

The second point relates to the procedure to be followed by the Magistrate. The brief provision in section 22A(2) to the effect that the court "may make such order as it deems fit" does not appear to be quite sufficient.<sup>2</sup> The minimum that can be done to make the provision more explicit, is to provide that so far as may be, the procedure laid down in section 133 (and connected sections) of the Code of Criminal Procedure, 1973 shall be followed by the Magistrate. This is not to be taken as a draft section, but as indicating the lines on which the additional provision may read.<sup>3</sup>

5.7. *Information, entry and inspection etc.: sections 23 to 25: Need for amendment*

Sections 23 to 25 of the Air Pollution Act contain certain provisions relating to powers to obtain information, entry and inspection. The only suggestion that needs to be made is that the empowerment under section 24(1) (entry and inspection) and section 25 (power to obtain and inspection) should be in writing. The powers to be conferred affect important rights of citizens.<sup>4</sup>

Besides this, the form in which section 24(3) appears at present is technically defective. It provides as under:-

"(3) If any person wilfully delays or obstructs any person empowered by the State Board under sub-section (1) in the discharge of his duties, he shall be guilty of an offence under this Act."

Now, there is no provision in the Air Pollution Act punishing "an offence under this Act". In substance, of course, section 39 may be attracted and section 38(b) also may appear to be worth resorting to. But, linguistically, section 24(3) is not linked with these provisions. It is therefore suggested<sup>5</sup> that section 24(3) should be revised as under:-

"(3) If any person wilfully delays or obstructs any person empowered by the State Board under sub-section (1) in the discharge of his duties, he shall be deemed to be guilty of an offence under clause (b) of section 38."

The same point applies to section 24(2) of the Air Pollution Act also.

5.8. *Samples, laboratories and analysts: sections 26 to 30: Need for amendment*

Sections 26 to 30 of the Air Pollution Act deal with the taking of samples, the analysis thereof, the laboratories to be established or specified for the purpose, and the reports of Analysts. Following minor points need to be made regarding these sections<sup>6</sup>:-

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1 Point for amendment

2 Section 33, Water Pollution Act also is subject to same comment.

3 Point for amendment.

4 Point for amendment.

5 Point for amendment.

6 Point for amendment.

(i) By section 26(1), power to take samples is given to a State Board "or any officer empowered by it in this behalf". The empowerment given by the Board should be in writing.

(ii) By section 30, it is provided that a document purporting to be signed by a Government Analyst etc. may be used as evidence of the facts stated therein "in any proceeding under this Act".

There does not appear to be any reason why the utility of this provision should be confined to "any proceedings under the Act". Proceedings under other laws should also be brought within its scope. The relevant portion should be replaced by the words "any legal proceeding, *whether* under this Act or under any other law".

#### 5.9. Appeals: section 31: Points for consideration

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. The use of the word "order" raises the question whether "directions" issued under section 33A are also appealable. The matter needs attention. Apparently, the legislature had mainly in mind orders refusing or cancelling consent under section 21. But the position is not clear. It is doubtful (for example) whether standards laid down under section 17(1) (g) are appealable. Really speaking, the standards are not in the nature of orders. These are really sub-legislative in nature.

There also arises the question as to what is to happen, if the power of the State Board is delegated (section 15) to an officer etc. Will the order *of the officer* be appealable? In principle, it should be, because the order of the delegate is really an order of the Board.

An equally important point arises out of section 31(2) which deals with the composition of the Appellate Authority. It is to consist of "a single person or three persons as the State Government may think fit, to be appointed by the State Government".

The provision in section 31(2) is silent about several important points, such as-

- (i) qualifications of the member or members;
- (ii) consultation by the State Government with the High Court, while making the appointment;
- (iii) whether, in the case of a three member Authority, there shall be a Chairman;
- (iv) whether the members can sit in Bench or singly.

These are only examples of some points that need to be considered. Although they may appear to be mere matters of detail at the first sight, they relate to matters of policy concerning a quasi-judicial authority and are worth attending to.<sup>1</sup>

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<sup>1</sup> Points for consideration.

5.10. *Power to give directions: section 31A: Need for amendment*

(a) The last section in this Chapter is section 31A which deals with power to give directions. The marginal note to this section is the same as the marginal note to section 18. It would be appropriate if, in section 31A, the marginal note is revised so as to read as under:-

"Power of *Board* to issue directions".

(b) 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".

(c) Explanation to section 31A declares that the power to issue directions includes power to direct the closure etc. of any "*industry, operation or process*". It appears better to replace the word "industry" by the words "industrial plant". Closure of an entire "industry" could not have been contemplated.

(d) The Explanation, clause (b), confers power to direct the stoppage of "electricity, water or *any other service*". The words "any other service" are rather vague. There must be some connection of the stoppage with the running of the industry. This aspect needs to be brought out.

(e) Section 31A does not provide for the issue of show cause notice.<sup>1</sup>

(f) Finally, the directions can be issued by a "Board", that is, the Central or State Board.

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1 Points for amendment.