

A STUDY EXAMINES ENVIRONMENTAL LAWS AND THE ROLE PLAYED BY THE MAHARASHTRA POLLUTION CONTROL BOARD.

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1. Introduction:

The statutory attempts in India to control pollution Can be treated to the legislation of the local bodies. One of the traditional responsibilities of a local body is to ensure the cleanliness of the concerned territories. Local bodies exercised all such powers, as were necessary for the suitable disposal page of waste. They exercised regulatory control to prevent and abate. nuisance from water which adversely affected agricultural contaminated water Supply, noxious Vegetation, harmful dust and smoke Unsanitary conditions of buildings were of much concern to the local bodies, and Sanctions were imposed against persons who violated the regulations.

The Water Act provides for the constitution of central and state pollution control board empowered to Carry out a variety of functions to promote the cleanliness of streams and wells and to prevent and control pollution of water. The central pollution Board advises the central Government to co-ordinate the activities of the state pollution control Board, provides them with technical assistance and guidance, organises training of personnel for pollution control, collects and compiles, technical and statistical data, lays down water Quality Standards and executes nationwide pollution Control program.

The state pollution control Board carries out programs identical to those of the central pollution control Board within the territory of the state. They plan a Comprehensive program, advise the State Government, and collect and disseminate information. They collaborate with the central pollution control Board in organizing training programmes and inspecting Sewage and Trade effluent treatment plants. They lay down standards for water quality, and evolve methods of treatment and disposal of sewage and trade effluent the most significant power of the state Pollution Control Board is to make, vary or revoke an order for prevention or control of discharge.

Maharashtra Pollution Control Board (MPCB) was formed Under the provision of section 4 of the Water (Prevention and Control of Pollution) Act 1974 and The Air (Prevention and Control) Act, 1981 was adopted in Maharashtra in 1983 and initially, some areas were declared as Air pollution control Area on 2-5-1983. Maharashtra Pollution Control Board operates from its Head office in Sion West Mumbai. The board consists of the chairman and member-secretary as laid down Under the provision of Section 4 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 5 of the Air (Prevention and Control of Pollution) Act 1981. The Role of the Board is to support and encourage the development in the field of pollution control, waste recycling reuse, eco-friendly practices, etc. To educate and guide the entrepreneurs in improving the environment by suggesting appropriate pollution control

technology and techniques.

2. Methodology:

2.1 Objective of Study

The objective of the present study is Undertaken with the following points.

- To analyse the concept of environment Identify the problem and Causes, and findways to protect the environment.
- To Study and Analyse the Role played by the Maharashtra Pollution Control Board.
- To refer to Various Courts Judgement for the protection of the environment.
- To observe and verify briefly general laws and other laws bearing the provision for the protection of the environment.

2.2 Hypothesis:

To Verify the result achieved in the protection of the environment, the role played by the Maharashtra Pollution Control Board (MPCB).

2.3 Research Methodology and Source of Data:

The Research project study is Completely done in Doctrinal Study. The Secondary Source is also done in the form of Doctrinal Research. The Secondary Sources of Data are books available on Environmental Laws, Articles published in Various Journals, and website information available.

3. Pollution Control Board - Environmental Regulator:

3.1 Policy Since Mid-1980s

The continuing decline in the Quality of the environment together with the tragedy at Bhopal in which a leak of (MIC) gas from a plant of Union Carbide killed more than 3000 people and injured several thousand others has given a jerk to the Central Government and State Government to adopt stronger environmental policies, to enact fresh legislation and to create recognize and expand administrative agencies.

In December 1988 the Union Ministry of Environment and Forest constituted a Committee to recommend a framework and an action plan for the conservation of Resources. The Committee comprised of eminent scientists, Journalists, environmentalists and Senior officials of Government, prepared a draft policy Statement for a national conservation strategy and invited Comments and suggestions on the draft from hundreds of respondents across the Country. After Compiling the report on Government and Non-Government organizations, the Committee Submitted the report to the Union Govt. in April 1992¹.¹ Based on the recommendation of the Committee the Government of India adopted a National Conservation Strategy and policy statement on Environment and Development in June 1992.

3.2 Conservation and Sustainable Development:

In February 1992 the Union Govt published its policy for the reduction of pollution². This statement declares the objective of the Govt. to integrate environmental consideration into decision-making at all levels. To achieve this goal, the statement adopts fundamental guiding principles namely.

1. Prevention of pollution at Source.
2. The adoption of the best available Technology.
3. The polluter pays principle.

¹ Environmental Law by Dr Rakesh Kumar Singh- Second Edition 2017 University Book House(Pvt) Ltd. Jaipur.

² Environment Law by Dr S.C. Shastri, 11th Edition ERC Publication, Lucknow.

4. Public participation in decision-making.

In early 1997 Maharashtra announced a policy to restore the quality of its River Water and achieve ambient water Quality standards. The policy classifies River Stretches into zones and designates permissible industrial use within the zone³.

Despite the progress made Under India's environmental Command and control regulations. India's environment is degrading rapidly. The 1995 economic Survey of the government of India indicates that 90 percent of water in 241 larger cities is polluted. Moreover, 54 percent of Urban and 97 percent of rural population have no Sanitation facilities. The Quality of life for many citizens, particularly those residing in Urban areas is at an unacceptable level. The most challenging environmental problem facing India stems from the rapid growth of large, polluting industries in Urban areas. For years, industrial development came without either planning or environmental control.

4. Air Pollution:

The Air (Prevention and Control of Pollution) Act 1981 was enacted in line with the provision of the Water Act. The central and state pollution control Boards created Under the Water Act carry out the function of Boards envisaged Under the Air Act. As far as the functions of the Board are concerned, the two laws make identical provisions about criminal and administrative Sanctions and power of government i.e. the Action of the Board and the Rule-making power of the central and state Govt.

The distinguishing characteristics of the Air Act can be seen in the provision for the declaration of Air pollution control zones, the inclusion of noise within the definition of Air pollution and control of pollution caused by motor Vehicles on Consultation with Boards, the State Govt. Can declare Air Pollution Control Area within the State.⁴ The Air Act attempts to bring noise pollution within the Ambit by including noise within the definition of Air pollution⁵. After the introduction of the Environment Protection Act 1986, the Rule framed there under lay down not only the Standard of emission of discharge of pollutants but also the ambit of Air Quality standard⁶.

4.1 Strengthening the Hands of Agencies:

The Ganga pollution case⁷ is a specific example where the Supreme Court noticed the utter indifference of tanneries, and ordered to stop the discharge of trade effluent into river Ganga. Specific directions were issued to the tanneries either to set up primary treatment plants (P.T.P.) or to stop their functioning. The Central Government, state pollution control Board and the District Magistrate were asked to monitor the enforcement of its orders⁸. Water Act empowers the Board to grant consent to discharge effluent after laying down, certain conditions. In Narula Dyeing and printing works⁹. The problem relates to textile factories that discharged effluent either without Consent or in violation of conditions of Consent. Gujarat High Court Stressed the need to comply with all conditions.

³ Environmental Laws in India by P. Lela Krishnan –Third Edition – LexisNexis

⁴ Environmental Laws and Policy in India by Shyam Divan and Armin Rosencranz- OXFORDPRESS, Edition, 2nd Edition.

⁵ Environmental Law by Dr. Paramjit S. Jaswal. Edition 2019 Allahabad Law Agency

⁶ Ministry of Environment & Forest G.O.I. Report of core Committee for National Strategy for Environment-

⁷ Ministry of Environment G.O.I. Policy statement for Abatement of pollution (12 Feb 1992)

⁸ MPCB classification of River water and Guidelines for location of industrial activity (1997).

⁹ Air (Prevention and control of pollution) Act 1981, SCC 1(g)

In M.R. Pillai V Executive Officer Pathiyoor Panchayat¹⁰ the petitioner complained that black smoke emitted from the respondent Cashew factory increased his Asthma and adversely affected the health of all the people in the locality. It was found that the respondent factory had not obtained consent from the Board.

5. Pollution Control Board: Powers and Responsibility:

The amendment to the Air and Water Acts subsequent, to the passing of the Environment Protection Act gave teeth to the functions of pollution control Boards. The power to issue direction is a notable example in Stella Silks Ltd V State of Karnataka¹¹. The Karnataka high Court went into range of this power in closing an industry if it violates condition of consent Under the water Act. The Court said “The cost to the Society is more important than any other factor. The Court said that the very object of the water Act is to ensure that the water which is an essential natural resource available to the society, is maintained in its purity.”

The Court further stated: The interest of a particular person or a particular industry is not the concern with which the Act has been enacted by the Legislature. It is for the protecting the interest of society and for ensuring the ecological preservation of nature such enactment is made¹².

The Judgement placed the pollution control Board on a higher pedestal. Their Social Duties Were Stressed. They are endowed with specific powers and responsibilities to protect society and are not expected to Safeguard the erring industry. The Court put it in an ambiguous word that it will not tolerate the insensitive and inactive attitude of the Board.

5.1 Collection and Analysis of Sample: Safeguard:

The entry and inspection clause in the Water Act empowers the Pollution Control Board to enter and inspect any premises to oversee the implementation of the law. By Sub Section (2) of Section 23 of the Water Act, those Safeguards that are provided Under the Criminal Procedure Code (cr. p.c) for search and seizure insulate this action. The question arises whether the safeguard for Search and Seizure be extended to the process of taking Samples Under the Water Act. The provision of taking samples is a Self-Contained code to collect Samples for Analysis. The provisions in the Act for entry and or inspection are distinct and Separate. The Court held that taking Samples need not be done with all safeguards provided for entry and inspection of the premises of the plant.

5.2. Maharashtra Pollution Control Board (M.P.C.B):

5.1.1 Implementation of Enforcement Policy

As per the direction vide Judgement dated 16/05/2014 of the Hon'ble Nation Green Tribunal Western Zone Bench. PUNE. MPCB has formulated the draft enforcement policy to integrate various aspect including inspections, Monitoring standards, compliance, directions, remedial measures and filing of complaints before various court as per the provisions of the Environmental Laws based on culpability, environmental damage, severity of pollution, repeated violations etc.

The board has finalized and published the enforcement policy after obtaining comments from the central pollution control Board and refining it by conducting a one-day workshop on

¹⁰ Air (prevention and control of pollution) Act 1981 Sec. 2(g)

¹¹ Stella Silks Ltd V State of Karnataka

State Pollution Control. Therefore, to comply with the direction of the Hon'ble National Green Tribunal, Western Zone Bench, Pune vide judgment dated 16/05/2014 is to implement the Enforcement policy. The Draft enforcement policy prepared by MPCB was placed on the website of MPCB in the public domain, calling objections/suggestions or recommendations for necessary notification in October 2014. Draft enforcement policy was further communicated vide letter dated 03/11/2014 to the Environment Department, Urban Development Department, Public Health Department and Director of Municipal Administration, Government of Maharashtra. A public Notice was issued calling the objection, suggestion, and recommendation from the public at large within a stipulated period.

The Draft Enforcement policy was further placed before the MPC Board in the 163 meeting which was held on 03/02/2015 for necessary approval, and after necessary approval, it was further placed on the website of the board. The board has taken into consideration the enforcement Mechanism suggested in the Draft Enforcement Policy placed before it and decided to approve the norms laid down under the provisions of the Environment (Protection) Act, 1986, and Rules made there under by effective implementation thereof through consent management, subject to the condition that based on adopting further change in the policy taking into consideration experience and legal tools, necessary modifications can be done with the approval of the Member-Secretary, MPCB from time to time.

In compliance with the direction issued by the Hon'ble National Green Tribunal in the disposed of application No. 30 THC/2013 (WZ) the Board has further revised its policy and therefore, constituted a committee for covering all the aspects of compliance verification, pollution intensity and impact of legal action, culpability and remediation efforts in an integrated manner, of all Head of Departments.

The Draft Enforcement policy duly modified by the committee was further circulated to NEERI. It was submitted to the central pollution control Board for necessary comments and was further placed before the 165th Meeting of the MPCB held on 14/10/2015 for kind perusal. Revised Draft enforcement policy after amendment, further placed on the website of the Board and public Notices were issued in the Newspaper Indian Express dated 17/11/2015.

A Joint workshop was conducted on 23/02/2016 at the MPCB office by circulating the comments received from the central pollution control Board. In the workshop officials of Tamil Nadu, Gujarat and Maharashtra state pollution control board along with experts from NEERI and pollution control area participated. After due deliberation, the board has finalized the enforcement policy after perusal and other details pointed out by both the board and taking into consideration the comments of the central pollution control board on the enforcement policy as under

MPCB has decided to take into consideration pollution potential, pollution load, and serious damage caused or likely to cause based on the verification report in respect of visits, surprise inspection, monitoring and sampling concerning environmental Standard/consented standard, compliance of consent conditions, environmental norms, etc. The Board has further decided to concentrate more on highly polluted 17 categories of industry operation or processes. MPCB has framed the Enforcement policy to integrate various aspects including inspections, monitoring standards, compliance directions, remedial measures, and filing of complaints before various courts as per provisions of various environmental laws based on culpability, environmental damage, severity of pollution, repeated violation of laws, etc.

The Board will also take into consideration complaints, investigations, and reports more particularly recurring serious complaints in respect of serious environmental pollution causing nuisance or apprehended pollution for redressal of such complaints based on facts and circumstances of each case. The Board will further carry out cumulative and comprehensive environmental impact studies in appropriate cases to identify various contributing factors responsible for causing damage to the environment through reputed institutions like IIT Powai-Mumbai, NEERI, M.S. Baroda University, G.S.D.A to decide remedial and restoration measures to be undertaken along with the cost of remediation to be borne by the polluter for taking time-bound remedial measures. After due deliberations with the representative of Tamil Nadu and Gujrat state pollution control board, experts in the pollution field as well as comment of the central pollution board (C.P.C.B) the Amended Draft Enforcement policy by MPCB has been finalized. Specific Enforcement Mechanism to be followed on a case-to-case basis.

5.2 Effective Consent Management:

The consent is the basic document through which stringent conditions are being imposed for preventing, controlling and abatement of pollution at source, to minimize and mitigate any such envisaged potential impact on the environment / receiving bodies, consent not only regulates the establishment of new industry, expansion or modification of existing Industry, Operation or process but also ensure compliance of existing industry, operation, or process by imposing more stringent conditions to adopt advanced cleaner technologies. The Board will concentrate more on precautionary principles while granting consent to the industries imposing the concept of conservation, the possibility of incorporating Life- A cycle approach, and finally disposal of waste in an environmentally sound and scientifically safe manner. The Board has already established a Technology Development cell for the identification of the above techniques.

5.3 MPBC Initiative in Effective Consent Management:

The Board has taken the following effective measure concerning the "Make-in-India initiative" under the state of Maharashtra for expediting the statutory permission. The simplified application form has been devised to obtain consent for the Green category of industries. The period for scrutiny of consent application and grant of consent has been reduced to 60 days from that of 120 days. The visit and sampling norms have been made easier to follow and reliance has been kept on self-certification at the time of grant of renewal of consent. The auto-renewal scheme based on self-certification has been made applicable to all categories of industries, more particularly for green and orange category industries it has been made more simplified;

The online submission scrutiny of the Application for consent and online grant thereof have been adopted in the M.P.C.B. The renewal of consent has been granted for a minimum of five years and a maximum of up to 10 and 15 years for the Green, Orange and Red category of industries respectively. MPCB has joined the "Single Window" system scheme at MAITRI cell to consider the grant of consent after a statutory period of 120 days from authority at a single window. A randomized Risk Based inspection and sampling scheme has been introduced for monitoring various polluting activities, where the field officer from another area will cause 25% visit inspection and sampling from the randomized computer-generated list, to bring the element of 3rd person monitoring into the regular system to bring more

reliability and transparency in monitoring. In compliance with the Maharashtra Right to Service Act, 2015 the provision for Appeals against Non-grant of consent up to Regional officer level consent has been introduced in the MPCB.

5.4 Refusal/Revocation of the Consent and Forfeiture of Bank Guarantee:

In case the compliance is not secured within the stipulated time provided to the concerned industry, the Board shall initiate action for forfeiture of the Bank Guarantee and wherever there is evidence of substantial compliance provision for considering an extension of time for securing complete and thorough compliance by forfeiting proportionate bank guarantee only. The Uniform procedure for imposing bank guarantee and its forfeiture concerning the degree of Non- Compliance has been already adopted from 2011 onwards wherever there is continual non-compliance despite sufficient opportunity and with the extension of time given by the Board after ~~the~~ third extension, further stringent action such as refusal/revocation of consent and further final direction of closure, etc. shall be initiated. However, in cases of serious violations, no second opportunity and extension of time will be granted.

5.5 Uniform Integrated Approach for Consent Management:

The M.P.C.B has adopted a "Uniform integrated approach for consent Management." The said policy is under implementation. This policy takes into consideration the material balance aspect to ensure that nothing is finding its way into the environment in contravention of consent conditions and to extend possible, the most conservative approach will be adopted in the use of natural resources like water, raw material, energy, etc. The sector-specific approach by identifying highly vulnerable. Pollution streams and imposing more stringent conditions in the consent to regulate such streams have been adopted. Here, the classification of industries by CPCB based on pollution potential, various directives issued by the CPCB and other forums as well as various statutory guidelines and circulars issued by the competent authorities from time to time shall be taken into consideration. The following specific measures are taken by the Board for effective consent management for prevention, control and abatement of pollution.

5.6 Specific Approach for Consent Management:

The CAC had taken a review of legal action and decided to adopt a Uniform integrated approach not only in the grant of consent but also in the issuance of direction and accordingly, decided to implement an Enforcement Mechanism in respect of procedure to be followed uniformly while granting of consent and also about compliance matrix. Maharashtra Pollution Control Board (MPCB) has identified sector-specific industries to impose stringent conditions to regulate highly polluted streams of pollution from such activity by adopting sector-specific approaches for sugar and distilleries, textile processing, steel industries, cement industries, power plants, etc. For compliance with those important conditions, a reasonable period is prescribed in the consent granted to such units to ensure time-bound compliance with such conditions. While imposing such conditions the aspects of waste minimization, recycle/reprocess/reuse/recirculate and recovery of material taken into consideration. The Bank Guarantee (BG) regime will be followed as a last resort to secure the compliance, but ensuring that the compliance will be cheaper than the submission of bank Guarantee and forfeiture thereof so that the industries will prefer to comply with the conditions rather than facing forfeiture of Bank

Guarantee and continuing non-compliance. The element of remedial measure and

restoration along with the cost thereof will be incorporated in the Bank Guarantees so that in case of failure to take remedial measures, out of forfeiture of Bank Guarantee through reputed institutions, remedial measures can be taken with the cost of forfeiture of Bank Guarantee.

5.7 Stringent Condition for Pollution Prevention:

The present approach is to impose and implement industry-specific conditions for pollution prevention based on its pollution potential in a time-bound manner. While imposing conditions, the consent-granting Authorities focus more on waste minimization, by adopting waste reduction by insisting on providing cleaner Technologies consisting of recycling, reuse reprocessing and recovery to the extent possible wherever possible, the lifecycle approach is adopted by keeping proper material balance, etc. The necessary guideline has been formulated concerning the implementation of the Bank Guarantee regime for both the old and new power plant concerning the exceeding percentage of Non-Compliance with the standard conditions stipulated in the consent, based on compliance percentage concerning the time frame given for compliance, taking into consideration verification report and how the Non-Compliance is to be confirmed. The forfeiture regime for various bank guarantees in respect of the Bank Guarantee regime for power plants has been defined. Similarly, the Bank Guarantee Regime for old and new power plants, as per Environmental (Protection) Rules 1986 has been specified on the line of the above forfeiture matrix.

5.8 Target for Securing Sector-Specific Compliance:

In the Sector-Specific approach for consent Management, the MPC Board has identified highly vulnerable aspects of pollution being caused by the identified sectors such as sugar and Distillery, Textile processing, cement plants, steel plants, and power plants respectively. To regulate a highly vulnerable waste stream, MPCB has prepared an Action plan to secure compliance of 80% initially and targeted compliance level up to 95% in a time-bound manner by imposing necessary conditions granting a reasonable period in the renewal of the consent for taking improvement measures. After the expiry of the period granted for making improvements. MPCB takes action to secure the above compliance level through grant or refusal or revocation of consent of non-complied industries, and initiating other stringent actions like issuance of prohibitory orders, filing of applications before appropriate courts of Law for various directions including restraining apprehended pollution, filing of prosecution and issuance of various direction including closure, prohibition or regulation of polluting activities.

More thrust has been given to the enforcement of conditions stipulated while granting consent through effective monitoring and surveillance at the field level. After the expiry of the period granted for the implementation of the said condition based on monitoring reports further action shall have to be initiated including forfeiture of Bank Guarantee, and regulation of highly polluting activities concerning the best available technology. However, depending upon seriousness, the Competent Authority may decide for refusal/revocation of consent concerning the degree of pollution/impact on the environment after giving one opportunity of hearing.

5.9 Implementation of Polluter Pays Principle:

The Regime for forfeiture of bank guarantee based on the "polluter pay principle" subject to the degree of Non-compliance, will be costlier than securing compliance so the project will prefer to secure compliance, rather than "pay for pollution". In case substantial

compliance is secured, up to 25% of the bank guarantee is to be forfeited and topped up with double the amount of forfeiture by granting additional time of 25% proportionate time for securing total compliance as per earlier direction. In case medium compliance is secured as defined above, above 25% up to 50% of the bank guarantee is to be forfeited based on a percentage of non-compliance and top up with double the amount of forfeited bank guarantee and granting 50% proportionate time of total period granted as per the earlier direction. In case of non-compliance below 25%, above 50% unto 100% bank guarantee to be forfeited based on the percentage of non-compliance and top up with double the amount of forfeited bank guarantee proportionality and giving additional proportionate period about the earlier total period granted by the board. In case of 100% compliance, the earlier direction given for Non-compliance will be withdrawn and the bank guarantee will be returned immediately.

6. Conclusion:

Under this chapter constitution and Function of Maharashtra State Pollution Control Board (MPCB) Mumbai carries out various functions. It is the main regulator for various environmental laws and pollution control in the state of Maharashtra. It carries out its operation whenever any complaint is received by a person or group of persons regarding air pollution, water pollution, or discharge of trade effluent in rivers or wells. The concerned officer will be deputed on-site to investigate the matter within its jurisdiction and report to the concerned authorities. MPCB has its enforcement policy which was laid down in the year 2006. MPCB inspects, monitors, and standard compliance of various manufacturing units, regarding the implementation of various environmental laws under the Water Act 1974, Air Act 1981 and Environmental Protection Act 1986.

Consent is the basic document through which stringent conditions are being imposed for preventing, controlling, and abatement of pollution. The Board will concentrate more on precautionary principles while granting consent to the industry imposing the concept of conservation, the possibility of incorporating a life cycle approach and finally disposal of waste in an environmentally sound and scientifically safe manner.

Under the Water (Prevention and Control of Pollution) Act, 1974 and Air Prevention and Control or Pollution Act, 1981 State water Laboratory and central water laboratory are to be established under the act to carry out samples of air or water and to analyze in the laboratory to find out Air Pollution or water pollution. Offences by companies and offences committed by Government departments are discussed.