# Appendix – D

## THE WATER (PREVENTION AND CONTROL OF POLLUTION) AMENDMENT ACT, 1988

**No. 53 OF 1988**

*[29th September, 1988]*

An Act further to amend the Water (Prevention and Control of Pollution) Act, 1974

WHEREAS in pursuance of clause (1) of article 252 of the Constitution, the Water (Prevention and Control of Pollution) Act, 1974 had been passed by Parliament;

AND WHEREAS some administrative and practical difficulties in effectively implementing the provisions of the aforesaid Act have come to light it is considered necessary to make certain amendments thereto;

AND WHEREAS, in pursuance of clause (1) of article 252 of the constitution read with clause (2) thereof, resolutions have been passed by the Legislative Assemblies of the States of Himachal Pradesh, and Tripura to the effect that the said Act should be amended by an Act of Parliament for the purposes hereinafter appearing.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:

1. *(1)* This Act may be called the Water (Prevention and Control of Pollution) Amendment Act, 1988.

*(2)* It applies, in the first instance, to the whole of the States of Himachal Pradesh, and Tripura and the Union territories; and it shall apply to such other State which adopts this Act by resolution passed in that behalf under clause (1) of article 252 of the Constitution read with clause (2) thereof.

*(3)* It shall come into force, at once in the States of Himachal Pradesh and Tripura and the Union territories and in any other Statewhich adopts this Act under clause (1) of article 252 of the constitution read with clause (2) thereof on the date of such adoption.

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Source : *The Gazette of India*, Extraordinary, Part II-Section 1, No. 69, October 3, 1988.

2. In section 2 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the principal Act)-

(a) for clause (b), the following clause shall be substituted, namely:—

"(b) "Central Board" means the Central Pollution Control Board constituted under section 3."

(b) for clause (d), the following clause shall be substituted, namely:—

"(d) "occupier", in relation to any factory or premises, means the person who has control over the affairs of the factory or the premises, and includes, in relation to any substance, the person in possession of the substance";

(c) for clause (h), the following clause shall be substituted namely:—

"(h) "State Board" means a State Pollution Control Board constituted under section 4";

(d) in clause (k), for the words "trade or industry", the words "industry, operation or process or treatment and disposal system" shall be substituted.

3. In section 3 of the principal Act,-

(a) in sub-section (1), for the words "Central Board for the Prevention and Control of Water Pollution", the words "Central Pollution Control Board" shall be substituted;

(b) in sub-section (2), for clause (f), the following clause shall be substituted, namely:-

"(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government."

4. In section 4 of the principal Act,-

(a) in sub-section (1), for the words "State Board", the words "State Pollution Control Board" shall be substituted:

(b) in sub-section (2), for clause (f) the following clause shall be substituted, namely:—

"(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the State Government."

5. In section 5 of the principal Act, in sub-section(7), for the words "shall not be eligible for renomination for more than two terms", the words "shall be eligible for renomination" shall be substituted.

6. In section 12 of the principal Act, after sub-section (*3A*), the following sub-section shall be inserted, namely:—

"(*3B*) The Board may, by general or special order, and subject to such conditions and limitations, if any, as may be specified in the order, delegate to any officer of the Board such of its powers and functions under this Act as it may deem necessary."

7. In section 14 of the principal Act,—

(a) in sub-section (1) for clause (f), the following clause shall be substituted, namely:—

"(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government."

(b) in sub-section (2), for clause (f), the following clause shall be substituted, namely :—

"(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government."

8. In section 16 of the principal Act, in sub-section (2), after clause (e), the following clause shall be inserted, namely:—

"(ee) perform such of the functions of any State Board as may be specified in an order made under sub-section (2) of section 18;"

9. Section 18 of the principal Act shall be renumbered, as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:—

"(2) Where the Central Government is of the opinion that any State Board has defaulted in complying with any directions given by the Central Board under sub-section (1) and as a result of such default a grave emergency has arisen and it is necessary or expedient so to do in the public interest, it may, by order, direct the Central Board to perform any of the functions of the State Board in relation to such area, for such period and for such purposes, as may be specified in the order.

(3) Where the Central Board performs any of the functions of the State Board in pursuance of a direction under sub-section (2), the expenses, if any incurred by the Central Board with respect to the performance of such functions may, if the State Board is empowered to recover such expenses, be recovered by the Central Board with interest (at such reasonable rate as the Central Government may, by order, fix) from the date when a demand for such expenses is made until it is paid from the person or persons concerned as arrears of land revenue or of public demand.

(4) For the removal of doubts, it is hereby declared that any directions 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."

10. In section 20 of the principal Act, in sub-section (3), for the words "industry or trade", the words "industry, operation or process or treatment and disposal system" shall be substituted.

11. In section 24 of the principal Act, in sub-section (1), in clause (a), for the words "stream or well", the words "stream or well or sewer or on land" shall be substituted.

12. In section 25 of the principal Act, —

(a) for sub-sections (1) and (2) the following sub–sections shall be substituted namely;

"(I) subject to the provisions of this section, no person shall, without the previous consent of the State Board,-

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompained by such fees as may be prescribed."

(b) for sub-sections (4), (5) and (6), the following sub-sections shall be substituted, namely:—

(4) The State Board may-

(a) grant its consent referred to in sub-section (1), subject to such condition as it may impose, being-

(i) In cases referred to in clauses (a) and (b) of sub-section (1) of section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) In the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order.

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions."

13. In section 27 of the principal Act,"

(a) for sub-section (1) the following sub-section shall be substituted, namely:—

"(1) A State Board shall not grant its consent under sub-section (4) of section 25 for the establishment of any industry, operation or process, or treatment and disposal system or extension or addition thereto, or to the bringing into use of a new or altered outlet unless the industry, operation or process, or treatment and disposal system or extension or addition thereto, or the outlet is so established as to comply with any conditions imposed by the Board to enable it to exercise its right to take samples of the effluent.";

(b) in sub-section (2), for clause (a), the following clause shall be substituted, namely:—

"(a) any condition imposed under section 25 or section 26 and may serve on the person to whom a consent under section 25 or section 26 is granted a notice making any reasonable variation of or revoking any such conditions;"

14. In section 30 of the principal Act, for sub-section (1), the following sub-section shall be substituted namely:—

"(1) Where under this Act, any conditions have been imposed on any person while granting consent under section 25 or section 26 and such conditions require such person to execute any work in connection therewith and such work has not been executed within such time as may be specified in this behalf, the State Board may serve on the person concerned a notice requiring him within such time (not being less than thirty days) as may be specified in the notice to execute the work specified therein."

15. In section 31 of the principal Act, for sub-section (1), following sub-section shall be substituted, namely:-

"(1) If at any place where any industry, operation or process, or any treatment and disposal system or any extension or addition thereto is being carried on, due to accident or other unforeseen act or event, any poisonous, noxious or polluting matter is being discharged, or is likely to be discharged into a stream or well or sewer or on land and, as a result of

such discharge, the water in any stream or well is being polluted, or is likely to be polluted, then the person incharge of such place shall forthwith intimate the occurrence of such accident, act or event to the State Board and such other authorities or agencies as may be prescribed."

16. In section 32 of the principal Act, in sub-section (1).

(a) in the opening portion, for the words "any stream or well" , the words "any stream or well or on land by reason of the discharge of such matter in such stream or well or on such land" shall be substituted;

(b) in clause (a), for the words "stream or well"., the words "stream or well on land" shall be substituted:

(c) in clause (c) for the words "into the stream or well" the words "into the stream or well or on land" shall be substituted.]

17. In section 33 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Where it is apprehended by a Board that the water in any stream or well is likely to be polluted by reason of the disposal or likely disposal of any matter in such stream or well or in any sewer or on any land, or otherwise, the Board may make an application to a court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class, for restraining the person who is likely to cause such pollution from so causing."

18. In Chapter V of the principal Act, after section 33, the following section shall be inserted, namely:

"33A, Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such direction.

*Explanation.*-For the avoidance of doubts, it is hereby declared that the power to issue direction under this section includes the power to direct-

(a) the closure, prohibition or regulation of any industry, operation or process, or

(b) the stoppage or regulation of supply of electricity, water or any other service."

19. After section 37 of the principal Act, the following section shall be inserted, namely:-

"37A. A Board may, with the consent of, or in accordance with, the terms of any general or special authority given to it by the Central Government or, as the case may be, the State Government, borrow money from any source by way of loans or issue of bonds, debentures or such other instruments, as it may deem fit, for the performance of all or any of its functions under this Act."

20. For section 39 of the principal Act, the following section shall be substituted, namely:-

"39.(1) The Central Board shall, during each financial year, prepare, in such form as may be prescribed, an annual report giving full account of its activities under this Act during the previous financial year and copies thereof shall be forwarded to the Central Government within four months from the last date of the previous financial year and that Government shall cause every such report to be laid before both Houses of Parliament within nine months from the last date of the previous financial year.

(2) Every State Board shall, during each financial year, prepare, in such form as may be prescribed, an annual report giving full account of its activities under this Act during the previous financial year and copies thereof shall be forwarded to the State Government within four months from the last date of the previous financial year and that Government shall cause every such report to be laid before the State Legislature within a period of nine months from the last date of the previous financial year."

21. For section 41 of the principal Act, the following section shall be substituted, namely:-

"41. (1) Whoever fails to comply with any direction given under sub-section (2) or sub-section (3) of section 20 within such time as may be specified in the direction shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during with such failure continues after the conviction for the first such failure.

(2) Whoever fails to comply with any order issued under clause (c) of sub-section (1) of section 32 or any direction issued by a court under sub-section (2) of section 33 or any direction issued under section 33A shall, in respect of each such failure and on conviction, be publishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six year and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.

(3) If the failure referred to in sub-section (2) continues beyond a period of one year after the date of conviction, the offender shall, on conviction, be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine."

22. In section 42 of the principal Act, for the words "one thousand rupees", wherever they occur, the words "ten thousand rupees" shall be substituted.

23. In section 43 and 44 of the principal Act, for the words "six months" the words "one year and six months" shall, respectively, be substituted.

24. In section 45 of the principal Act, for the words "one year", the words "two years" shall be substituted

25. After section 45 of the principal Act, the following section shall be inserted, namely:-

"45A. Whoever contravenes any of the provision of this Act or fails to comply with any order or direction given under

this Act, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of a continuing contravention or failure, with an additional fine which may extend to five thousand rupees for every day during which such contravention or failure continues after conviction for the first such contravention or failure."

26. In section 49 of the principal Act,-

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) No court shall take cognizance of any offence under this Act except on a complaint made by-

(a) a Board or any officer authorised in this behalf by it; 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 Megistrate or a Judicial Magistrate of the First Class try any offence punishable under this Act."

(b) sub-section (2) shall be renumbered as sub-section (3) and before sub-section (3) as so renumbered, the following sub-section shall be inserted, namely:—

"(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest."

27. In section 63 of the principal Act, in sub-section (2),-

(a) for clause (1), the following clauses shall be substituted, namely:-

" (I) the form in which and the time within which the budget of the Central Board may be prepared and forwarded to the Central Government under section 38.

"(II) the form in which the annual report of the Central Board may be prepared under section 39."

(b) after clause (m), the following clause shall be inserted, namely:-

"(mm) the manner in which notice of intention to make a complaint shall be given to the Central Board or officer authorised by it under section 49."

28. In section 64 of the principal Act, in sub-section (2),-

(a) for clause (n), the following clause shall be substituted, namely:-

"(n) the form in which and the time within which the budget of the State Board may be prepared and forwarded to the State Government under section 38.

(nn) the form in which the annual report of the State Board may be prepared under section 39;"

(b) after clause (o), the following clause shall be inserted, namely:-

"(oo) the manner in which notice of intention to make a complaint shall be given to the State Board or officer authorised by it under section 49:"