

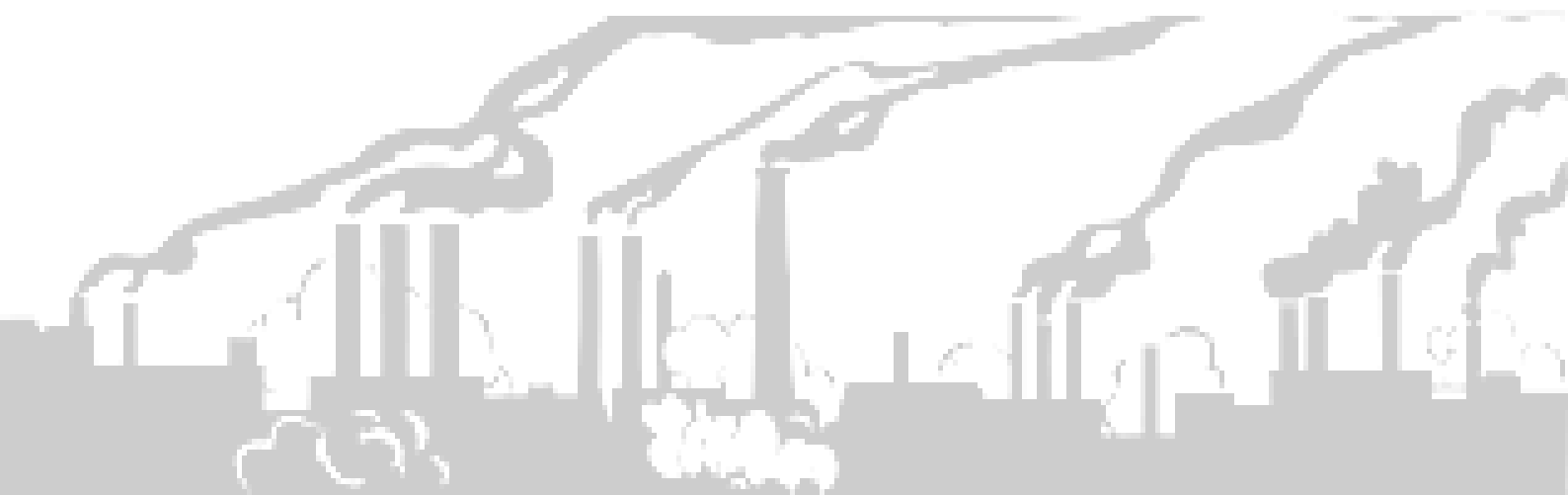


PROSECUTION OF OFFENCES

WATER 1974 AND AIR ACT 1981

APRIL 2023

Centre for Environmental Law, Education, Research and Advocacy
National Law School of India University, Bengaluru



DISCLAIMER

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The Report is compiled by Centre for Environmental Law, Education, Research and Advocacy, National Law School of India University, Bengaluru.

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April 2023

Bengaluru

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PART I:

**PROCEDURE TO BE FOLLOWED
BY OFFICERS OF THE
KARNATAKA STATE POLLUTION
CONTROL BOARD (KSPCB)
BEFORE FILING OF COMPLAINT**

1 PROCEDURE TO BE FOLLOWED BY OFFICERS OF THE KARNATAKA STATE POLLUTION CONTROL BOARD KSPCB BEFORE INTIATION OF A COMPLAINT

Prior to filing a complaint there are several procedures that may be required to be kept in mind by the officers of the board. These procedures may pertain to the manner in which evidences are collected, the practicality in which the evidences or samples is required to be stored, the duration within which testing of these samples must be carried out including a brief understanding of the shelf life and other characteristic features of various pollutants chemicals hazardous or otherwise. Initially, the Board sends notice to the defaulting industry and asks it to **rectify any violations** being committed by it. Further, the Board also asks the entity to send a **compliance report** to the Board, once the violation is remedied. If the entity does not respond or act and the violation is not corrected even after 2-3 such notices are sent, then a **show-cause notice** is issued by Board to the industry or entity. Moreover, a notice to **shut down the water/power supply** of the industry or a **notice for closure of the defaulting/ accused industry** may also be sent by the Board.

Subsequent to the above a notice may be sent to the defaulter/accused persons, which deliberates the initiation of criminal proceedings and the filing of a criminal complaint by the Board against the defaulter/accused persons, before the relevant jurisdictional Court. Rule 34 of the Karnataka State Board for the Prevention and Control of Water Pollution (Procedure for Transaction of Business and the Water (Prevention and Control of Pollution) Rules, 1976 deals with the procedure and format to be



followed by the Board while issuing such notices and directions under Section 31A of the Air Act and Section 33A of the Water Act. These procedures are particularly pre-trial procedures that may have to be followed necessarily by the offices at the time of institution of a complaint.

1.1 Procedural aspects to be followed in Collection of samples/evidence

Procedural aspects to be followed while collecting samples are given in Section 21 of Water Act, Section 26 of Air Act and Section 11 of Environmental Protection Act. The procedure followed is largely the same.

First, a notice has to be served to the occupier or his agent or person in charge of the place about the collection of samples.

Second, samples have to be collected in the presence of that occupier or his agent or the person in charge of the place.

Third, the samples collected have to be placed inside a container or containers which have to be marked and sealed and signed by both the person taking the sample and the occupier or his agent. The samples have to be sent to the Board lab as urgently as possible.

Fourth, by the Water Act, the sample may be divided into two at the desire of the occupier with one sample container handed over to the occupier or his agent. The samples collected are to be sent to laboratory established or recognised by the Central Board or State Board as the case may be, and that of the laboratory established or specified by the Central Government or State Government in the provisions of the said enactment.

Fifth, in the event that the occupier or agent willfully absents themselves or refuses to sign the sample container, the samples have to be signed by the person taking the sample and the samples have to be sent to a government laboratory as established under the respective acts and the government analyst has to be informed. However, it may be noted that under the

Water Act, the Board has the power to collect the money incurred by collecting the sample in such a scenario.

In the case of ***Delhi Bottling Co. Pvt. Ltd. v. Central Board for the Prevention and Control of Water Pollution***¹, a sample of trade effluent was taken by the board from bottling company's discharge stream and after the analysis was found not confirming the requirements of the consent order granted to the company. The Board filed a suit under the Water (Prevention and Control of Pollution) Act, 1974 and accordingly an injunction was issued by the court requiring the company to establish a treatment plant which the bottling company challenged. The Court held that the sample was not taken in strict compliance with the procedure as under Section 21 of the Water (Prevention and Control of Pollution) Act, 1974 and this evidence cannot be regarded as admissible.

In the case of ***Abdul Hamid v. Gwalior Rayon Co.***², the Court pointed out that Section 21 of the Water (Prevention and Control of Pollution) Act, 1974 is meant for protection of the industries and industrialists ensuring a proper balance between the hazards to the citizens and conflicting claims of the nation's industrial progress.

1.2 Practical aspects to be kept in mind by officers at the time of collection of samples/evidence

Firstly, it needs to be ensured that the site of inspection is secured. This is important because otherwise, the samples which have to be taken might be tampered with. In the context of environmental inspections, this is usually done by ensuring surprise inspections, etc. Then, samples are taken in airtight bottles to ensure that the samples are not contaminated. In the case of certain material which is taken (such as chlorinated matter), certain preservatives are also used. Since the holding time for this material is very short, generally it is sent to the lab as soon as possible.

In addition, other precautionary measures also have to be taken to ensure that the sampling is done appropriately. Hence, gloves must be worn. Other measures are as follows-

¹ AIR 1986 Delhi 152

² 1989 CrLJ 2013 M.P



- Do not rinse the bottles.
- The bottles are sterile so care must be taken not to contaminate the bottle or cap.
- Once the distribution line is flushed and the flow reduced, quickly open the bottle (but do not set the cap down), hold the cap by its outside edges only, and fill the sample bottle to just above the 100 ml line leaving a one inch headspace.
- Cap the bottle immediately and place it into an ice box with ice for transportation to the laboratory.

The type of bottle to use, and other details, change depending upon the type of material which is being sampled.

1.3 Procedure to conduct Spot Mahazar: Steps to be followed during inspection; Witnesses for Spot Mahazar

Mahazar is proof of procedures followed and observed in the process of inspection of an establishment, often called an inquest report or panchnama. All the details relating to the search and collection of evidence is brought down in writing in a *mahazar*. As a pollution control board officer, Mahazar is a crucial tool in ensuring compliance with environmental laws and regulations. It is a document that serves as evidence of an inspection or survey conducted by the pollution control board officer. Here are the key steps to prepare a Mahazar: There are certain guidelines as to the procedure to be followed in the process of inspection at the time of collection of samples and preparation of spot *mahazar*. There is a need for the presence of at least five independent witnesses (usually "five" persons of reputed behaviour/ reliable") who can testify as to the process of collection of samples and investigation of the said establishment and the location and circumstances of collection of relevant samples/evidence.

As per various police manuals, the procedure to conduct an inspection roughly contains the following steps. However, there may be notable variations in some states.

(1). The purpose of the search of the crime scene is to determine the facts of the crime and identify its perpetrator.

(2). If the scene of crime is thoroughly and carefully examined, it gives a clear picture of the MODUS OPERANDI of recorded criminals, which may subsequently result in the identification of the accused responsible for the crime.

(3). After closely observing the scene and noting down all the details, the investigating officer should look out for any marks of struggle in the place.

A spot mahazar is conducted when the inspecting Environmental officer reaches the said establishment for inspection purposes. It is recommended that the investigating Environmental officer undertakes/makes note of the following, among other things, during the course of his inspection or collection of samples.

The Spot Mahazar is to be prepared in the said establishment, and can either be hand-written or typed on a Laptop, if feasible for the officer to carry a laptop along at the time of inspection. Thereafter, the same is to be signed by five independent witnesses and these witnesses are later required to appear in court and prove this document in order to be admitted into evidence.

In the context of environmental cases and the role of the Pollution Control Board in lieu of the police officers, the spot mahazar will disclose the sites where pollution is recorded and the source of this pollution. It will, in the instance of wastewater streams for example, show the place of discharge, the rivers and streams in which the flow occurs, the colour and smell of the water and other observations.

The Spot Mahazar may be drawn using the following key-indicators:



- 1.3.1 **Purpose:** The first step in preparing a Mahazar is to define its purpose. It is essential to **identify the type of inspection or survey being** conducted and the parameters that need to be evaluated. The purpose of the Mahazar can be to assess the air quality, water quality, or any other environmental parameter.
- 1.3.2 **Form:** The next step is to choose the appropriate form for the Mahazar. There are different types of forms available for different purposes, and it is important to select the one that suits the specific needs of the inspection or survey.
- 1.3.3 **Sections:** The Mahazar should be divided into sections, each corresponding to a specific parameter being evaluated. For example, if the purpose of the inspection is to assess the air quality, the sections could include parameters such as particulate matter, sulfur dioxide, nitrogen dioxide, etc.
- 1.3.4 **Details:** Each section of the Mahazar should contain details of the inspection or survey, including the following:
- Date and time of the inspection;
 - Entry into the registers of the establishment by all persons from the Board and Independent witnesses present for the inspection at the time of entry and exit;
 - Identity card of the person carrying out the day to day affairs/ occupier of the organization being sought;
 - Documents pertaining to the organization in regard to the affairs of the Company and Key personnels of the organization having been sought;
 - Whether the establishment was operating at the time of inspection?
 - Photos of the establishment to be taken at the time of collecting samples using certain Camera mobile applications: Dishaank or GPS Maps, wherein the Latitude and Longitude of the location of establishment being visible
 - Timing of sample collection: Start Time and End Time;

- Name and details of the Independent Photographer during the course of inspection; if any
- The equipment used, if any for the purpose of inspection;
- Marking and sealing of containers wherein the sample is stored;
- Document stating the details of the sample collection to be prepared and signed by the person collecting the samples, the occupier or his agent or person and the Independent witnesses to the inspection;
- Time of dispatch of samples collected for analyses;
- Other details, if any.\

1.3.5 **Observations:** The pollution control board officer should record their observations in each section of the Mahazar. This could include the readings obtained, any deviations from the standard parameters, and any other relevant observations.

1.3.6 **Recommendations:** The Mahazar should also contain recommendations for corrective action, if necessary. This could include suggestions for reducing pollution levels, improving waste management practices, or any other necessary steps.

1.3.7 **Signatures:** The final step in preparing the Mahazar is to obtain signatures from all relevant parties. This includes the pollution control board officer conducting the inspection or survey, the company or individual being inspected, the witnesses and any other relevant parties. Document stating the details of the sample collection to be prepared and signed by both the person taking the samples, the occupier or his agent or person and the Independent witnesses to the inspection.



1.4 Testing of samples:

1.4.1 Which labs may be accessed?

Section 11 of the Environment (Protection) Act, 1986 empowers the Central Government or its authorized officers to collect samples of air, water, soil, or other substances from any factory, premises, or other place for the purpose of analysis. However, the result of any analysis of such samples is not admissible as evidence in any legal proceeding unless the provisions of sub-sections (3) and (4) of section 11 are complied with. According to sub-section (3) of section 11, Sub-section (4) of section 11 specifies that and send them **without delay** to the laboratory established or recognized by the Central Government under section 12.

Prior to taking the sample, the Inspecting officer should provide a notice to the occupier or his agent or person in charge of the place, in the prescribed form, of his intention to have it analyzed, and should collect the sample for analysis in their presence. Once collected, the sample should be placed in a container or containers that are marked, sealed, and signed by both the person taking the sample and the occupier or his agent or person. If the occupier, his agent, or person willfully absents himself or refuses to sign the container or containers, the person taking the sample should collect the sample for analysis, mark and seal the container or containers, sign them,

Thereafter, the samples should be sent forthwith/without delay by such person for analyses to the laboratory established or recognised by the Central Board or as the case may be, State Board. If there is any inconsistency or discrepancy between, or variation in the results of the analysis carried out by the laboratory established or **recognised** by the Central Board or the State Board, as the case may be, and that of the laboratory established or specified by the Central Government or State Government under the said Environmental Statutes, as Central laboratory or State Laboratory, as the case may be, the report of the latter shall prevail.

1.4.2 Time duration by which samples collected should be
dispatched for testing

The samples should be sent forthwith/without delay by such person/Inspecting Officer for analyses to the laboratory established/recognised/specified/notified by the Central Board or as the case may be, State Board as Central laboratory or State Laboratory, depending on whether sample is taken from any area situated in a Union territory or a State. If there is any inconsistency or discrepancy between, or variation in the results of the analysis carried out by the laboratory established or recognised by the Central Board or the State Board, as the case may be, and that of the laboratory established/specified/notified by the Central Government or State Government under the said Environmental Statutes, as Central laboratory or State Laboratory, as the case may be, the report of the latter shall prevail.

In respect of sending the samples collected to laboratory for analyses, it is to be noted in regard to the below enactments:

- The Environment (Protection) Act, 1986: Section 11(3)(d) and Section 11(4) contain the words "without delay".
- The Water (Prevention and Control of Pollution) Act, 1974: Section 21(4)(a) and Section 21(5) of contains the word "forthwith" therein; and
- The Air (Prevention and Control of Pollution) Act, 1981: Section 26(3)(d) and Section 26(4) of contain the words "without delay".

Therefore, there is no specific time duration mentioned for dispatching the samples for testing. However, the samples should be sent as soon as possible and there shouldn't be an inordinate delay after they are collected to ensure accurate testing and analysis.



PART II

**PROCEDURE TO BE FOLLOWED
BY OFFICERS OF THE
KARNATAKA STATE POLLUTION
CONTROL BOARD (KSPCB) AT
THE TIME OF FILING OF
COMPLAINT**

2 PROCEDURE TO BE FOLLOWED BY OFFICERS OF THE KARNATAKA STATE POLLUTION CONTROL BOARD (KSPCB) AT THE TIME OF FILING OF COMPLAINT

2.1 Permission and Authorization to File Complaints

As per Section 19(a) of the Environment (Protection) Act, 1986, Section 49(a) of the Water (Prevention and Control of Pollution) Act, 1974 and Section 43(a) of the Air (Prevention and Control of Pollution) Act, 1981, which deal with the cognizance of offences, no court shall take cognizance of any offence under these Acts, except on a complaint made by a Central or State Pollution Control Board or any officer authorised in this behalf by it.

This was as per the changes introduced through the Amendments brought in the years 1987 and 1988 respectively. Prior to this, instead of the requirement of authorisation of an officer by the Board, there was requirement of sanction by the Board to file the complaint.

The Board in its **165th meeting** held on 13.02.2007 had authorized Deputy Environmental Officer and Assistant Environmental Officer of the Regional Officers to file cases on behalf of the Board in the courts for violations under the Water (Prevention and Control of Pollution) Act, 1974 and the Air ((Prevention and Control of Pollution) Act, 1981, after obtaining approval from the Chairman.

Thereafter, the Board in view of creation of new posts of different cadres of officers in the Regional Offices, the Board at its 165th meeting held on **13.02.07** deliberated the issue in detail regarding delegation of powers and decided to delegate powers to file cases to Deputy Environmental Officers and Assistant Environmental Officers in this regard. Further, in pursuance of the decision of the Board, the **Deputy Environmental Officers and Assistant Environmental Officers of the Regional Officers** were thereby authorized, to file cases on behalf of the Board for violations under the Water (Prevention and Control of Pollution) Act, 1974 and the



Air ((Prevention and Control of Pollution) Act, 1981, **after getting approval from the Chairman.**

Further, as per an Office Memorandum of the KSPCB dated March 24, 2007, issued by the Member Secretary, the Board deliberated and decided to delegate powers to file Criminal and Criminal Miscellaneous cases before the jurisdictional Courts on behalf of the Board for violations under the Water Act and the Air Act, to DEOs and AEOs of the Regional Offices, after getting the approval from the Chairman.

Thereafter, the Board in its **186th Meeting** held on 28.12.2012 discussed the subject in detail and approved to authorize **Environmental Officers** in addition to the **Deputy Environmental Officer and Assistant Environmental Officer** to file cases on behalf of the Board in the Courts after obtaining approval from the Chairman. In pursuance of the decision of the Board, the **Environmental Officers** of the Regional Office are **authorized to file cases** on behalf of the Board in the Courts **after obtaining approval from the Chairman.**

Section 15 of the Air Act and **Sections 11A and 12** of the Water Act, which deal with 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 any conditions and limitations specified in the order, such of its powers and functions under these Acts as it may deem necessary. Thus, any work can be delegated to any officer by the Board.

The authorisation to an officer of the Board for the purposes of filing private criminal complaints against violators is different from the authorisation given to officers for conducting visits and inspections at industries suspected of violating the law or committing environmental offences etc., sending samples collected to laboratories etc. (see Rule 27 of the Water Rules, 1975 and Rule 15 of the Air Rules, 1983).

In the case of **BV Byre Gowda v. State of Karnataka** (Criminal Petition No. 8067 of 2019), decided by the Karnataka HC on September 2, 2022, criminal proceedings were initiated against the petitioner under Section 200 of the CrPC for offences punishable under Sections 21, 22 and 37 of the Air Act. The

learned Magistrate had taken cognizance of the said complaint. However, a petition under Section 482 of the CrPC was filed by the petitioner to get the complaint quashed. It was argued that the DEO was not authorised to file the complaint, since as per the Board Resolution and the Office Memorandum, no such complaint could be filed without prior approval of the Chairman of the Board. There being no such approval by the Chairman of the Board, the initiation of criminal proceedings is bad in law. Hon'ble Suraj Govindaraj J. held that the DEO or the AEO is an officer of the Board cannot be disputed. Thus the delegation *per se* would have to be made by the Board in favour of the DEO or AEO. A reading of the Resolution along with Section 16 of the Air Act indicates that there has been in fact a delegation made to the DEO and AEO and there is a condition and limitation which has been imposed upon the said delegatee that the filing of the cases can be done only after getting approval from the Chairman. This condition and limitation is also authorized to be imposed in terms of Section 15 of the AIR Act.

Thus, any criminal action required to be taken by DEO and AEO can be taken after getting prior approval of the Chairman for initiation of such action against the defaulter on a case-to-case basis. Without obtaining approval from the Chairman, no such proceedings could be initiated even though the delegate is otherwise authorized to do so. Thus, the approval of the Chairman is not administrative decision but is a condition precedent and/or limitation imposed by the Board on the delegatee exercising power under Section 15 of the Air Act. The court also set aside the cognizance taken by the Magistrate. Interestingly, the Court also directed the Chairman to initiate action against the said DEO and any other official responsible for filing such a defective complaint without proper verification, which has resulted in its quashing by this Court.

Another important precedent in this connect is that of ***Rairu Distillers Ltd. v. MP Pollution Control Board***³, where a petition was filed under Section 482 of the CrPC for quashing the complaint filed under Sections 33, 41 and 43 of the Water Act. The petitioners submitted that the trial Court committed an error in

³ (2005 SCC OnLine MP 317)



taking cognizance, as the complaint could not be filed by the Regional Officer on behalf of the MP PCB unless the PCB has specifically designated him to file complaint on its behalf. They submitted that *in the absence of such authorisation by the Board*, the complaint is not maintainable and should be dismissed. It was also submitted that such authorisation should be for a particular case and general authorisation is not permissible. The respondents submitted that under Section 12(3) of the Act, the Board may appoint such officers and employees as it considers necessary for the efficient performance of its functions, and that officers so appointed can perform on behalf of the Board. They also referred to a Resolution of the Board whereby the Board has authorised and empowered the Chairman, Member-Secretary, Zonal Officer and the Regional Officer for initiating judicial proceedings. The court held that these officers are competent to file complaint on behalf of the Board. Moreover, authorisation under Section 49 can be general or specific. The Board had passed a resolution and issued general authorisation to its officers to file complaint on its behalf. So, the complaint was maintainable.

Similarly, in ***Gujarat Pollution Control Board v. Nicosulf Industries & Exports (P) Ltd.***⁴, a complaint under Sections 24, 25, 43, 44 and 47 of the Water Act was filed by the Assistant Environmental Engineer (AEE) on behalf of the Gujarat PCB against a company alleging that the accused are producing Nicotine Sulphate in their factory and are discharging polluted water during the course of production, in breach of the conditions imposed by the PCB while granting consent. The learned Magistrate convicted the accused under the Act. This was challenged before the HC on the ground that the complainant had no authority to file the complaint. It was submitted that the AEE had no delegated authority as required under Section 49 of the Act and as such the complaint was filed by an incompetent person. Hence, the entire prosecution structure collapsed and order of conviction cannot be maintained. The HC held that the complaint had not been filed by the Board as defined under Section 2(h) of the Act, and that the complaint was illegal since it was not duly authorized.

⁴ [(2009) 2 SCC 17]

The SC, however, held that there is no substantial difference in the language of the amended Section 49. Both the amended as well as unamended provisions require the State Board to file a complaint or to authorize any of its officers to file the complaint. The authorization has to be by the State Board. According to the Board, under Section 11-A of the Act, it had delegated to the Chairman the power to authorize an officer to file a complaint. Further, Resolution dated 27.3.1984 refers to the delegation of power to sanctioning prosecution. The view that the power to sanction is distinct from the power to authorize a complaint is unsustainable. If the provisions are construed as a check over the complaint filed, then the grant of sanction to file a complaint would be in law an authorization to file the complaint.

Lastly, in ***P. Pramila v. State of Karnataka***,⁵ the appellants, engaged in the business of stocking iron ore, had allegedly violated certain norms prescribed under Section 22 of the Air Act. So, criminal proceedings had been initiated against them in 2006. These were challenged by a petition under Section 482 of the CrPC, seeking quashing of proceedings on the ground of inadequate authorisation to file complaint. The SC referred to Section 43 of the Air Act. It held that the notification/resolution of the KSPCB dated 29.3.1989 indicate that the officer authorised to initiate legal action was the Chairman of the Board. The Board could delegate the power to the Chairman, because Section 43(1) of the Act authorised the Board to do so. Hence, either the Board or the Chairman of the Board could have filed the complaints. The power to file the complaint could not be exercised by any other authority/officer. Under the principle of *delegatus non potest delegare*, the delegatee (the Chairman) could not have further delegated the authority vested in him, except by a clear mandate of law. The Chairman was not authorised by Section 43 or any other provision, to further delegate the authority to file complaints, to the Regional Officer or the DEO. So, the complaint was quashed.

⁵ [(2015) 17 SCC 651]/ CRIMINAL APPEAL NO. 152 OF 2012 WITH CRIMINAL APPEAL NO. 153 OF 2012 CRIMINAL APPEAL NO. 154 OF 2012 CRIMINAL APPEAL NO. 155 OF 2012, (9-04-2015- SC)



These cases indicate how crucial and significant the issue of authorisation to file complaint on behalf of the KSPCB is. An official can even be made personally liable for improper filing of a complaint without proper authorisation etc. Further, considerable time is wasted and delays are caused when cognizance of a matter is vitiated solely due to inadequate authorisation of an officer to file a complaint. This is evident as criminal action in the Byre Gowda case was first initiated by the Board against the defaulter in 2013, but the entire case got thrown out in the year 2022, after a period of 9 years. Similarly, criminal action in the P. Pramila case was first initiated in 2006, but the complaint got quashed in 2015 and the entire case had to be re-initiated.

The procedure for authorisation seems to vary across SPCBs. For instance, in Karnataka, an additional requirement of the Chairman's approval seems to have been created by the Board through administrative processes.

For instance, under Section 19(a) of the **Environment Protection Act, 1986**, no court shall take cognizance of any offence under the Act except on a complaint made by the Central Government or any authority or officer authorised in this behalf by that Government. Further, Section 23 refers to the power of the Central Government to delegate, its powers and functions under this Act, to any officer, State Government or other authority. In exercise of powers conferred under Section 19(a), the Central Government has authorised the officers and authorities listed in the Table of Notification No. S.O. 394 (E) published in the Gazette No. 185 dated 16-4-87, and in other notifications.

In addition to the authorisation of the officer of the Board, appropriate **Vakaalat** is required to be given by the Board to the lawyer/counsel to file the criminal complaint on behalf of the Board. General delegation to counsel is impermissible for criminal matters. There needs to be specific delegation or *vakaalat* for each

matter, to indicate the application of mind by the Board or the authority.

PROSECUTION OF GOVERNMENT DEPARTMENTS FOR VIOLATION

In **VC Chinnappa Goudar v. Karnataka State Pollution Control Board** (2015)⁶, it has been held that no sanction is required under Section 197 of the CrPC to prosecute the head of a government department under the Air and Water Acts, as special law overrides the general law. However, it has been noted that courts often disregard this judgement and state that the decision is not applicable to cases filed under the EPA etc.

2.2 Contents of a complaint

There are no prescribed or designated formats for the filing of a private complaint before the magistrate under the board of criminal procedure in India. It is generally to be noted that the burden of proof is on the complaint to prove the Commission of offences hand satisfy the magistrate the need and necessity to take cognizance of the offences thereof. as such following are a list of good practices at the time of drafting of a Complaint:

- 2.2.1 **Long Cause Title** – This includes the name of the relevant Court having the territorial and subject-matter jurisdiction to entertain the matter; the names, age, and addresses of the parties (both the complainant and the accused persons). The addresses are required later on for the issuance of process, delivery of legal communication etc. by the Magistrate.

⁶ Criminal Appeal No. 755 of 2010 and Criminal Appeal No. 464 of 2015 (Arising out of S.L.P. (Crl.) No. 7732 of 2010), (10.03.2015 - SC) : MANU/SC/0320/2015



2.2.2 Delegation and Authorisation to file the complaint –

The Complainant should mention that he/she has been delegated powers to file the complaint or is the authorised representative or officer, who is filing the complaint on behalf of the concerned Board. This is especially relevant in cases involving the private prosecution of environmental offences and violations, in light of Section 49 of the Water Act etc.

2.2.3 Administrative Approval of Chairman- The complaint needs to state and provide with the complaint, a prior administrative approval from the Chairman as obtained by the officer for filing of the complaint.

2.2.4 Details of accused persons – This includes the names, ages, professions and designations of the persons accused or suspected of committing the offences alleged in the complaint. The accused persons may be both natural and artificial/juridical persons (for instance, corporate entities and their employees or officers, govt. departments etc). It will also include any previous criminal history of the accused persons, with respect to similar or different offences, which is relevant for the purposes of determining higher punishment for repeated offences.

2.2.5 Details of the incident/ events in chronological order – This includes the place where the offence has been committed, the time and date at which it took place, and the details of how the events transpired, in what sequence or order etc. It will also include if the offence has been continuing for a certain duration, and the nature of the offence committed etc.

2.2.6 Source of information – The complainant may also include the source through which it came to know about the commission of the alleged persons by the accused persons. This is especially relevant if the complainant is a regulatory/statutory/governmental authority.

- 2.2.7 **Details of Complainants and Victims** – A brief description is to be added about who the complainant and/or the victim is, their names, places of residence, professions. In case of regulatory authorities, this will also include the relevant legal framework under which the authority has been set up, its scope and ambit of work, its powers and functions etc.
- 2.2.8 **Essential Ingredients of the Offence** – The complaint should establish and highlight the linkage between the facts mentioned in the complaint and the essential ingredients of the offences being alleged to have been committed by the accused persons. These ingredients can include the presence of mens rea (intention, knowledge, negligence etc.) on the part of the accused and also commission of the requisite actus reus by them.
- 2.2.9 **Communications and correspondences** - The Complaint should also provide for any communications made by the Board with the accused persons through letters, emails along with any documents exchanged between the parties to comply with any notices/orders served/issued by the Board to the accused persons.
- 2.2.10 **Notices/Orders served and issued** – The Complaint should also state the various notices served on the accused persons to comply with the directions of the Board and also further notices issued to the accused persons in case of non-compliance. The Complaint shall also further state and produce the notices issued to the accused person. The Complaint shall also further state and produce the notices issued at the time of collection of samples. In case any closure orders have been issued against the accused persons, the same should also be included in the complaint and copies should be annexed to the complaint. Any legal notice, if issued, should also be produced.



- 2.2.11 **Details of Inspection conducted, samples taken and Spot Mahazar** -The Board shall also provide details of the manner in which the inspection was conducted for collection of samples and make note of all details right from entry into the premises of the establishment to the exit in the spot mahazar, including sending of samples collected for analyses to laboratories.
- 2.2.12 **Nature of Offence-** The Complaint should also state the nature of the offence(s) committed by the accused persons.
- 2.2.13 **Steps taken and Collection of evidence -** Since a police investigation is not triggered in cases of private complaints, the complainant has to bear the burden of presenting the requisite oral, documentary, and material evidence that supports the allegations in the complaint. This can take the form of expert evidence, laboratory tests and reports, witness testimonies etc. This can also include any show cause notices sent by the Board to the defaulter to ensure compliance with the law, any legal notices etc. The steps taken by the Authorized Officers of the Board to collect evidence should also be stated in detail in the complaint.
- 2.2.14 **Jurisdiction -** The Complaint should very clearly state the jurisdiction under which the complaint is being filed before the said Hon'ble Court.
- 2.2.15 **Explanation for Delay -** In case there has been a delay on the behalf of the complainant in filing the complaint or taking steps to initiate the criminal process against the accused persons, the complaint must include the reasons explaining the same. This is necessary to satisfy the Magistrate on the absence of any bad faith/ mala fide prosecution or negligence on the part of the complainant.

- 2.2.16 **Statutory Provisions and Case Laws** – The complaint must also include the relevant sections of the statutes, pertaining to the offences alleged to have been committed. Moreover, relevant and important case laws, that favour and support the complainant, can also be included, to exercise persuasive effect on the Magistrate when he takes decisions of cognizance, investigation etc. However, care must be taken to mention all the relevant provisions.
- 2.2.17 **Prayer to take cognizance and conviction**– Lastly, the complaint must mention the relief that the complainant seeks from the court for taking cognizance of the complaint and to hold the trial. This may include arrest of the accused persons, issuance of summons to them, commencement of trial etc.
- 2.2.18 **Affidavit** – An affidavit needs to be submitted by the complainant stating that the facts mentioned and documents submitted in support of the accusations made are true and correct to the best of their knowledge.

2.3 Submission of Samples and Evidences

As per Section 22(2) of the Water Act and Section 27 of the Air Act, on receipt of the report of the result of analysis on samples collected by the Board under Section 21 of the Water Act and Section 26 of the Air Act, one copy of the report shall be sent by the Central Board or the State Board to the occupier or his agent, another copy shall be preserved for production before the court in case any legal proceedings are taken against him and the other copy shall be kept by the concerned Board. Hence, one of the most prominent evidence to be submitted to the Court is the report of laboratory established or recognised by the Central Board or, as the case may be, the State Board, as submitted by the concerned Board Analyst etc. that has analysed the collected samples. These reports have to be in the format specified in the Karnataka State Board for the Prevention and Control of Water Pollution (Procedure for Transaction of Business and the Water (Prevention and Control of Pollution) Rules, 1976 etc.



The other category of evidence that may be submitted to the Court can include any plant, record, register, document or other material object which was seized from the premises of the industry etc. at the time of inspection under Section 10 of Environment (Protection) Act, 1986, Section 23 of the Water Act and Section 24 of the Air Act and indicates the commission of an offence under the relevant Act by the accused persons.

However, a supporting spot mahazar document is required to be mandatorily submitted to the court for the aforementioned types of evidence. This is because without such a mahazar, the evidence collected may not be considered to be admissible by the court.

If any documentary evidence from abroad has to be produced and submitted before the court, then the relevant document has to be apostilled, i.e. an apostille certificate issued by the competent authority of the foreign country should accompany the main document.

2.4 Documents to be produced in the Court

- 2.4.1 **Complaint(s)** - This document or set of documents refers to the complaints filed to the board by a person, group of persons, entities, organizations etc. It typically involves allegations of harm or damage to the environment caused by a company or individual. The complaint is a legal document that outlines the nature of the alleged harm and the legal claims being asserted by the Board (the party bringing the suit) against the defendant (the party being sued).
- 2.4.2 **Show-Cause Notice** - A show-cause notice in the context of environmental litigation is a legal notice issued by the Board to an individual, organization, or government agency that has allegedly violated environmental laws, regulations, or guidelines. The notice requires the recipient to show cause why legal action should not be taken against them for the violation. Issuing a show-cause notice is often one of the earliest steps taken by the Board towards enforcing environmental laws and regulations. If the recipient of the notice fails to provide a satisfactory response or fails to respond within the given time frame, legal action may be taken against them, which may include fines, penalties, or other measures to compel compliance with environmental laws and regulations. The show-cause notice typically includes details of the alleged violation, the legal provisions that have been violated, and a demand for an explanation from the recipient as to why legal action should not be taken against them. The recipient is usually given a specific time frame within which to respond to the notice.
- 2.4.3 **Application to the Court** - Along with producing copies of the complaint(s), the Board also has to draft and produce an application highlighting the nature of the offence and why the application is being submitted in the first place.



- 2.4.4 **Closure Order (if issued)** - The closure order, if given, may be relevant evidence in the case. A closure order is an official directive from the Board ordering a company or individual to cease certain activities that are deemed to be harmful to the environment. If a closure order has been issued against the accused persons in the case, it can be used as evidence to support the Board's claims.
- 2.4.5 **Lab Reports** - Lab reports may also be relevant evidence in environmental litigation cases. These reports may contain data or analyses related to the alleged harm to the environment, such as air, soil or water contamination. The reports may be used to support or refute the Board's claims.
- 2.4.6 **Any Communications/Correspondences** - These could include letters, emails, or other documents exchanged between the parties involved in the case or between the parties and regulatory agencies or other third parties. These communications may help to establish the facts of the case and the actions taken by the parties involved.
- 2.4.7 **Documents such as the Resolution of the Board, Office Memorandum** - Documents which indicate that the complaining officer has the requisite authorisation from the Board to file the complaint, and that the officers conducting the inspection etc. were also authorised by the Board.
- 2.4.8 **Documents showing the registered address of the entity** - Documents replied upon to state that the registered address of the entity being prosecuted against by the Board which to the best of their knowledge is the registered office of the said entity..
- 2.4.9 **Spot Mahazar** - Any spot mahazars drawn up during inspection of the industry premises and collection of samples.
- 2.4.10 **Copies of any notices issued to the concerned organization for compliance** The mandate of the KSPCB is to encourage compliance with and adherence to the environmental laws in India. Hence, when the Board comes across any violation of the law, it does not initiate criminal action or proceedings against the defaulter as the first step.

2.5 Aspects of Jurisdiction

A complaint by the KSPCB against accused persons is required to be filed before the relevant court having the territorial and subject-matter jurisdiction to entertain the matter, take cognizance, conduct trial and decide the case. As per Section 49 of the Water Act and Section 43 of the Air Act, no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under these Acts. Moreover, it shall be lawful for any Judicial Magistrate of the first class or for any Metropolitan Magistrate to try any offence punishable under the Water Act and Air Act and to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees on any person convicted of an offence punishable under the Water Act.

Thus, a complaint can be filed by KSPCB for an environmental violation before a Judicial Magistrate of the first class, the Chief Judicial Magistrate or the Sessions Court, depending on the seriousness of the offence and the amount of punishment that may be given for the offence. Also, Chapter XIII of the CrPC will be applicable to determine which Court or Magistrate has the territorial jurisdiction to try the matter. This will depend on the place where the offence has been committed, the place where the office of the defaulting/accused entity is located etc. Further, in accordance with Section 58 of the Water Act and Section 46 of the Air Act, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an appellate authority constituted under these Acts is empowered by or under



these Acts to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under these Acts. A similar bar on jurisdiction exists under Section 22 of the Environment (Protection) Act.

2.6 Limitation Period

In the course of enforcement of various environmental protection-related Acts and Rules, a large number of Writ Petitions, Writ Appeals, Criminal Cases, Criminal Petitions, Original Suits and Appeals are filed by industries against the orders of the Board. At the same time, the Board also files criminal cases against erring industries for non-compliance with the Environmental Laws and Rules.

The limitation period for filing of these complaint is governed by Chapter XXXVI of the Code of Criminal Procedure, 1973. Section 468 of the CrPC prescribes the period of limitation for a court to take cognizance of certain criminal offences, as follows:

- a) For offences that are punishable with fine only – 6 months;
- b) For offences that are punishable with imprisonment for a maximum term of 1 year – 1 year;
- c) For offences that are punishable with imprisonment for a term exceeding 1 year, and upto 3 years – 3 years.

Upon expiry of the limitation period, a court cannot take cognizance of such offences, except where, on the basis of facts and circumstances, the delay is explained to the court or that the extension would be in the interests of justice. In such a case, the court extends the period of limitation and accordingly takes cognizance. There is no limitation period for offences punishable

with imprisonment of more than 3 years. Moreover, Sections 470-473 of the CrPC also state that the limitation period can be extended in certain cases and that the period will start afresh at every moment, when an offence of a continuing nature is involved. This is especially relevant for environmental crimes, which often continue for long periods.

However, it is essential that there should not be any inordinate delay in initiation of prosecution by the PCBs and that the same should be undertaken within a reasonable period of time, failing which the court may refuse to take cognizance of the matter.



PART III

COMPLIANCE BY OFFICERS DURING THE COURSE OF THE PROCEEDINGS

3 COMPLIANCE BY OFFICERS DURING THE COURSE OF THE PROCEEDINGS

On close reading of the KSPCB notifications and guidelines, along the lines of the general understanding of the aforementioned Acts, it is very clear that regulatory authorities possess and are empowered to engage in investigative exercises on receiving complaints, towards mitigation of environmental damage or even the prevention of it. These exercises may range from conducting site visits, collection of evidence, etc., for assessment purposes, in determining the appropriate legal action to be taken.

For this purpose, in the event that there is a complaint, evidence may be required to be furnished. Albeit, procedural requirements, may differ from jurisdiction to jurisdiction under the relevant acts, and also on the merits of the case, officers are governed by general obligations spanning through these acts and are to aid and facilitate the court during trial or proceedings. Hence, these obligations naturally mirror duties that fall on such officers to observe, as also has been noted by its mention by the Pollution Control Board, etc. It can also be a regulation passed as a general or special order by the Central or the State Board.⁷

Even more so, Rule 16 under Chapter II of the 1976 Rules defines the power and duties of the Board's Member Secretary, wherein sub-rule (4) entitles him to call for any officer of the State Board at any time for inspection, and the purpose of checking records or documents, wherein even more so, there is no mention in the Sub-rule that it cannot be during and for a hearing/proceeding. This also alludes and points us to the open ended obligations and duties of the Officer that require compliance. As also mentioned in the KSPCB, and also otherwise, Section 23 of the Water (Prevention and Control of Pollution) Act, 1974 as amended, Section 24 of the Air ((Prevention and Control of Pollution) Act 1981, as amended and Section 10 of the Environment (Protection) Act, 1986 also empowers any offices authorized by the State Pollution Control Board, the right to enter any industry at reasonable times with assistance for the process of performing any duties or functions of the State Board or if so, instructed and ordered by the Court. By this it is very clear that Officers bear a duty to assist the court and carry out their functions as empowered by the law, through the aforementioned Sections.

⁷ The Water (Prevention and Control of Pollution) Act 1974, s 12(1),(2),(3); The Air (Prevention and Control of Pollution) Act 1981, s 14.



Even more so on receiving complaints, or even during trial, officers are tasked with the duty to comply with inspection procedures for verification of a complaint which range from ascertaining whether the complaint is within the jurisdiction of the Regulatory activities of KSPCB, to ensuring transparency of findings post inspection. Officers are also to seek out appropriate and correct technical officers and zonal senior officers, etc., as per procedure laid down by the KSPCB, inspection policy and guidelines, when carrying out their duties and functions as mentioned above.

3.1 Whether Officers are to Attend all proceedings/hearings?

Pollution Control Board officers under the Water Act and Air Act may be required to attend hearings or proceedings related to those complaints, depending on the specific requirements of the Act and the procedures followed by the relevant regulatory authorities. However, it is to be remembered that there is no provision that explicitly mandates an officer to attend 'every' hearing or proceeding, it's only inferential, and may be beneficial if they attend every hearing.

In general, under these Acts, the regulatory authorities have the power to investigate complaints and take action to prevent or mitigate environmental harm. This may involve conducting site visits, collecting evidence, and holding hearings or other proceedings to consider the evidence and determine appropriate actions.

If a government officer has filed a complaint, they may be required to provide evidence or testimony related to the complaint. However, the specific requirements and procedures will vary depending on the jurisdiction and the circumstances of the complaint. It is important for government officers to be aware of their obligations under the relevant Acts and to comply with any requirements related to attending hearings or other proceedings.

Section 33A of the Water Act and Section 31A of the Air Act empower the CPCB to take steps to control or prevent pollution in any area and to investigate complaints of pollution. Even though 33A says that the power of the Central Government to issue directions to any officer includes sub-clauses (a) and (b), it does not prescribe these subject matters as exhaustive. So it might order officers to attend all hearings/proceedings and the officers will be bound to comply with such directions. Rule 34 under Chapter II of The Karnataka State Board for the Prevention and Control of Water Pollution (Procedure for Transaction of Business and

The Water (Prevention and Control of Pollution) Rules, 1976 only mentions that the direction should specify the nature of action to be taken and the time within which the action has to be complied with.

Additionally, Section 24 of the Water Act and Section 23 of the Air Act provide for any person empowered by the State Board the right to investigate any place and the power to investigate and take samples of any pollutant.

Section 12 of the Water Act and Section 14 of the Air Act describe the Member Secretary and officers and other employees on the Board, the terms and conditions of their membership, powers and duties. Sub-section (1) says that the terms and conditions of service of the member-secretary shall be such as may be prescribed; and (2) The member-secretary shall exercise such powers and perform such duties as may be prescribed or as may, from time to time, be delegated to him by the Board or its chairman. The requirement of attending every hearing and proceeding can hence be conferred as a duty, or term and condition on the officers to be exercised, prescribed as such by the Pollution Control Board or the Chairman itself. The Board may also be bound by a regulation passed as a general or special order by the Central or the State Board.

Moreover, Rule 16 under Chapter II of the 1976 Rules defines the power and duties of the Board's Member Secretary, wherein sub-rule (4) entitles him to call for any officer of the State Board at any time for inspection, and the purpose of checking records or documents. The Sub-rule does not mention that it cannot be during and for a hearing/proceeding.

3.2 Who are the officers empowered to attend the trial process?

As per the information available on Karnataka State Pollution Control Board's website, to deal with Legal related matters there is a Legal Section in the Central Office headed by Law Officer and assisted by 2 Legal assistants. Criminal cases and Criminal Misc. cases filed by the Board are attended by the Board and its legal representatives. However, Technical Officers or Senior Environmental Officers may be called upon to assist in the proceedings as expert witnesses.

In the 202nd Board Meeting of Karnataka State Pollution Control Board held on 25th February, 2016 roles and responsibilities of all cadres of Technical Officers were decided and approved. As decided in the meeting



certain officers are empowered to file cases through Board empaneled advocates under the Water, Air and Environmental (Protection) Act for which necessary approval has been issued by the competent authority and attend cases regularly in the courts. To attend and follow up the pending cases in the jurisdiction. These officers are:

- The Environmental Officer at Regional Office
 - The EO is the field/executive level officer in the Board. At the Regional Office they function as Executive Officer and have technical/administrative and financial responsibilities of their jurisdiction as delegated by the Board.
- The Deputy Environmental Officer at Regional Office
 - The DEOs at Regional Office would either function as EO or would be subordinate to the EO. Their roles and responsibilities depend on where they are posted.
- The Assistant Environmental Officer at Regional Office
 - They assist their higher officers (CEO, SEO, EO & DEO).

3.3 Whether Mahazar witnesses can be used as corroborative evidence?

The three primary environmental laws in India provide for the power to and the procedure of entry and inspection of units. Section 23(2) of the Water Act 1974, Section 24(4) of the Air Act 1981 and Section 10(4) of the Environment (Protection) Act 1986 state that the provisions of the Code of Criminal Procedure 1973 would apply to the search and seizure proceedings.

As far as the mandatory presence of witness is concerned under the Code, Section 100, i.e. 'Persons in charge of closed place to allow search', is relevant. In ***Yakub Abdul Razak Memon v. State of Maharashtra***,⁸ it was observed by the Apex Court that "Section 100 CrPC was incorporated in order to build confidence and a feeling of safety

⁸ 2013 SCC OnLine SC 257.

and security amongst the public.” Section 100(4) to (8) stipulate the procedure with regard to search in the presence of two or more respectable and independent persons preferably from the same locality.

Section 100(5) CrPC states that: “100(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.” This Section clearly states that the no search witness shall be required to attend Court as a witness, unless specially summoned by the Court. This highlights that in the usual course of procedure, mahazar witnesses cannot be used as corroborative evidence.

These facets of the law regarding mahazar report in pollution cases were discussed in the ***Sri S T Ramesh v. The Karnataka State Pollution Board***,⁹ where the Hon’ble High Court dismissed the case in the favour of the accused ***due to the absence of sufficient prima facie material evidence in the mahazar report in order to satisfy the taking of cognizance by the Magistrate*** under Section 200 CrPC. The Court also observed that the Mahazar was signed by official witnesses, and not ‘independent’ witnesses as required under Section 100(4) CrPC.

However, there exist multiple Supreme Court judgments which have relaxed this criteria, recognizing the general unwillingness of the local public to appear as witnesses.¹⁰ The principle is well settled that though ordinarily seizure is to be witnessed by two independent and respectable witnesses of the locality as mandated by Section 100(4), CrPC, the prosecution will not be vitiated if policemen or officials of the Board witnessed the seizure unless of course it can be shown that they had a history of enmity towards the accused or were interested in seeing him getting convicted.

⁹ Karnataka High Court, CRIMINAL PETITION NO.5043 OF 2016.

¹⁰ Nagaon Judiciary, ‘Compilation of Supreme Court Cases on Independent Witnesses and Seizure’

<<https://nagaonjudiciary.gov.in/study%20material/Independent%20Witnesses%20and%20Seizure.pdf>>;

‘Official witnesses have to be treated at par with independent witnesses: Punjab and Haryana High Court’ (Indian Express, 14 January 2020)

<https://indianexpress.com/article/cities/chandigarh/official-witnesses-have-to-be-treated-at-par-with-independent-witnesses-punjab-and-haryana-hc-6215099>.



PART IV

**GENERAL GUIDING POINTS FOR
OFFICERS ENGAGED IN
PROSECUTION OF OFFENCES
RELATING TO ENVIRONMENTAL
POLLUTION**

4 GENERAL GUIDING POINTS FOR OFFICERS ENGAGED IN PROSECUTION OF OFFENCES RELATING TO ENVIRONMENTAL POLLUTION

4.1 Prior to arrival at the establishment:

- Prior to arrival at the establishment, the officer should have a rough idea or plan to inspect the establishment and have confirmation of the address of the establishment;
- Secure the attendance of two eminent persons as witness to the creation of spot mahazhar during the investigation process.

4.2 After arrival at the establishment:

- Ensure that there is no interference by the persons from the establishment with the officers.
- Ensure that inspection is thorough and the smallest details being noted down.
- Ensure that the establishment is thoroughly searched
- Prepare a map/rough sketch of the place of occurrence of pollution.

4.3 In Preparation of map/ Rough sketch:

- Ensure that the sketch is drawn to scale with mentioning of all angles and status of all articles at the establishment
- Providing a detailed description of all articles at the establishment inspected
- Mention the position of witnesses if any
- Mention any other details as necessary

4.4 After Investigation of establishment:

- Any clues/ evidence collected at the establishment to be duly sealed and sent to the laboratory for analyses.
- Referring and cross-checking the details in the spot mahazhar with the witnesses if any.



4.5 Grounds on which cases have been disposed:

On perusal of various cases decided on environmental issues, below are some of the reasons that have been cited by the Hon'ble Courts in dismissing/disposing cases filed by the Karnataka State Pollution Control Boards:

- No proper authorization to the officer of the Board to file complaints;
- No administrative approval provided wherein a particular officer named therein is authorized to file complaints on behalf of the Board;
- No prior approval of the Chairman obtained by the authorized officer for filing complaint against the accused persons;
- No proper address of the accused furnished;
- No steps taken by Complainant even after sufficient opportunity was given
- Complainant not present before the Hon'ble Court for long time and not showing interest to prosecute.
- Case dismissed as withdrawn by the Advocate without seeking consent of the authorized officer of the Board;
- Accused pleaded guilty and paid fine/accused convicted and sentenced to pay fine.
- Industry closed and accused left the address of the establishment;
- Discharge on the ground of no prima-facie materials to frame charges,

4.6 Steps to rectify the grounds on which cases have been disposed/dismissed previously by the Hon'ble Courts

- **Authorization:** Section 49 (1) (a) of Water Act and Section 43 (1) (a) of Air Act provides for taking of cognizance for the violations of the provisions of the respective acts. As such complaint may be made either by a Board or any officer authorized in this behalf by it with the prior approval of the Chairman.
- **Administrative Approval :** It is to be noted that an administrative approval needs to be provided specifying the name and designation of the officer of the Board to file complaints and proceed against the accused persons thereby empowering him to file complaints on behalf of the Board. As such, **prior approval** of chairman is a condition precedent for filing of complaints by an officer of the Board and without such approval no proceedings should be initiated.
- **Address/es of the accused to be furnished:** It is pertinent to furnish proper name and addresses of the accused persons. along with, the address of the place of business and the name and designation of other persons named as accused. for issuance of process and securing his presence. In the same way furnishing address of the complainant Board being represented by the authorized officer along with his name, designation and address his place of residence. Offences for the contravention of provision of Water Act or Air Act for which punishment prescribed is not less than one year and six months up to



six years and with fine. In such offences accused can be secured even by issuance of warrant and by issuing of proclamation and attachment.

- **Steps to be taken:** The officers upon having initiated proceedings against accused persons, should follow up with the concerned counsel on case to case basis. In case where the presence of accused needs to be secured before the Hon'ble court, the complainant should press for issuance of summons, warrants or proclamation.
- **Complainant is to be present before the court:** For the purpose of presenting his complaint and conducting case the presence of complainant before the court is necessary. His presence is necessary when the Hon'ble court demands his presence, for the purpose of taking steps, objecting bail petitions or for giving evidence. The complainant may pray for leave of the Hon'ble court for his absence and case may be represented through Board's counsel.
- **Accused pleaded guilty and paid fine/accused convicted and sentenced to pay fine:** Punishment prescribed for the contravention of Section 24, 25 or 26 of Water Act and Punishment prescribed for the contravention of Section 21 or 22 of Air Act is not less than one year and six months which may go up to six years and with fine. It mandates the Hon'ble courts that if the guilt of the accused is proved the courts are not supposed to award punishment not less than one year and six months. But in some of the cases the Hon'ble courts have awarded sentence to pay only fine. This lesser punishment awarded by the courts are fit to

be challenged by way of appeal. During the discussion in the panel it was brought to the notice of all the participants and they were asked to obtain certified copies of the court order and prefer appeal.

- **Prior sanction for filing complaint:** Sanction stating that while filing complaints against public servants Section 48 of Water Act, section 41 of Air Act and section 21 of Environment (Protection) Act deals with Offences by Government Department more so, sanction stating that while filing complaints against public servants . For the purpose of launching prosecution under the Water Act, Air Act and the Environment (Protection) Act, 1986 against a public servant, section 197 of Cr.P.C states that it need not be invoked in view of the fact that, these are special enactments having over-riding effect over any other General Law. As such it is clear that Code of Criminal procedure is a general law and Water Act, Air Act and the Environment (Protection) Act, 1986 are special enactments. In all perspective, section 48 of Water Act, section 41 of Air Act and section 24 of The Environment (Protection) Act, 1986 clear the cloud to hold that the provisions of these Special Enactments have over-riding effect over any other Act including the Cr.P.C. Since there are no provisions in the above said special enactments to obtain the prior sanction to prosecute any Government servant for the offences committed under the provisions of these Acts, the provisions of section 197 of Cr.P.C cannot be invoked for the reason



that these being Special Enactments have over-riding effect over the General Law i.e., Cr.P.C.

4.7 Steps to curb non-compliances

- An officer of the Board should conduct routine visits and inspection of the industries /projects within his jurisdiction by conducting fact finding spot inspection, sample drawing and testing to be sent to laboratory.
- If any violations of consent conditions is found, a notice for rectification and compliances should be issued for the same. On receipt of compliance reports, a subsequent inspection should be conducted by the officer to ensure that the compliances have been met with.
- If the violations are still found, a show cause notice should be issued asking them to show cause why action should not be initiated against them by way of withdrawal of consent, issuance of closure directions and / or launching prosecution against them.
- It is also necessary to state in the complaint that, the complainant is a public servant and thus the Hon'ble court may be asked to exempt the complainant from recording sworn statement

4.8 Relevant Administrative Decisions Undertaken By The Karnataka State Pollution Control Board

DATE	NOTIFICATION No./ MEETING No.	SUBJECT	CONTENTS
20.02.1984	41 st Meeting	Empowering officers and officials of the Board to perform functions under Section 24,25 and 25 of the Air (Prevention and Control of Pollution) Act, 1981	<p>POINT IN QUESTION: Subject No.41.19: Empowering officers and officials of the Board to perform functions under Section 24,25 and 25 of the Air (Prevention and Control of Pollution) Act, 1981.</p> <p>POINTS FOR CONSIDERATION: The Board approved empowering the following officers and officials of the Board to perform functions under Section 24, 25 and 25 of the Air (Prevention and Control of Pollution) Act, 1981:</p> <ol style="list-style-type: none"> 1. Chairman 2. Member Secretary 3. Board Engineer 4. Assistant Executive Engineer 5. Regional Officer 6. Assistant Engineers



DATE	NOTIFICATION No./ MEETING No.	SUBJECT	CONTENTS
22.10.1990	76 th Meeting	Empowering officers and officials of the Board to perform functions under Section 20,21 and 23 of the Water (Prevention and Control of Pollution) Act, 1974-reg.	<p>POINT IN QUESTION: Subject No. 76.6: Empowering officers and officials of the Board to perform functions under Section 20,21 and 23 of the Water (Prevention and Control of Pollution) Act, 1974.</p> <p>POINTS FOR CONSIDERATION: After discussions it was resolved to empower the Regional Officers and Assistant Engineers of the Board to exercise powers under Section 20 (Power to obtain information), Section 21 (Power to take samples of effluents and procedure to be followed in connection therewith), and Section 23 (Power of entry and inspection) of the Water (Prevention and Control of Pollution) Act, 1974.</p>
25.03.1998	124 th Meeting	Delegation of Powers under Section 41,43,44 of Water (Prevention and Control of Pollution)	<p>POINT IN QUESTION: Subject No.:124.5- Delegation of Powers under Section 41,43,44 of Water (Prevention and Control of Pollution) Act, 1974 to Chairman, Karnataka State Pollution Control Board,</p>

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DATE	NOTIFICATION No./ MEETING NO.	SUBJECT	CONTENTS
		Act, 1974 to Chairman, Karnataka State Pollution Control Board, for filing consent cases against Defaulting coffee Pulping units	<p>for filing consent cases against Defaulting coffee Pulping units.</p> <p>POINTS FOR CONSIDERATION:</p> <p>(i) The Board resolved to delegate the following powers under Water (Prevention and Control of Pollution) Act, 1974 and as amended in 1987 to the Chairman to take decision on initiation of legal action under the following sections against industries, local bodies, coffee estates and all other establishment/organization which are falling within the purview of Water (Prevention and Control of Pollution) Act, 1974.</p> <ul style="list-style-type: none"> • To file a case in the appropriate court under Section 41 of Water (Prevention and Control of Pollution) Act, 1974 for failure to comply with sub-section 2 and 3 of Section 20 (Power to obtain information) and also for violation of direction issued



DATE	NOTIFICATION No./ MEETING No.	SUBJECT	CONTENTS
			<p>under Section 32(1)(c) and Section 33(A) of the Water (Prevention and Control of Pollution) Act</p> <ul style="list-style-type: none">• To file a case in the appropriate court under Section 43 of the Water (Prevention and Control of Pollution) Act, 1974 for contraventions of provisions of Section 24 (Prohibition on use of stream or well for disposal of polluting matter, etc) of Water (Prevention and Control of Pollution) Act, 1974.• To file a case under Section 44 (Penalty for contravention of section 25 [Restrictions on new outlets and new discharges] or section 26 [Provision regarding existing discharge of sewage or trade effluent]) for not applying for consent, for not installing effluent treatment plant and for discharging

**Report on Prosecution of Offences
Relating to Pollution Control**

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			<p>effluents in excess of the standards stipulated and violations of conditions/conditions of consent granted etc.</p> <p>(ii) The Board also authorized the jurisdictional Deputy Environmental Officer to file the above said cases in the appropriate court on behalf of the Board</p>
18.09.2006	KSPCB/Legal-Cell/2006	Filing of Criminal cases for Violation of Provisions of EIA Notification	<p>POINT IN QUESTION: Whether Regional Officers are entitled to file complaints before the Jurisdictional Courts in respect of violation of provisions contained in the E (P) Act, 1986 without there being due authorization either by Central/State Government or the Board</p> <p>POINTS FOR CONSIDERATION: (i) Reference made to Government of India notification No. SO.394 (E) dated 16.04.1987, on reading of which it is</p>



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			<p>patent that Regional Officers of the State Board who have been delegated with powers under Section 20 (Power to obtain information), Section 21 (Power to take samples of effluents and procedure to be followed in connection therewith) and Section 23 (Power of entry and inspection) of the Water (Prevention and Control of Pollution) Act, 1974 are authorized by Central Government to file complaints in respect of violations of the provisions of the E(P) Act and Rules so far as the area as laid down by the State Board.</p> <p>(ii) It was noted that the provisions mentioned in (i) empower the Regional Officers of the State Board to file complaints in respect of violation of the provisions of the E (P) Act on which the jurisdictional court is entitled to take cognizance.</p>

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			<p>(iii) It was further noted that the Central Government has delegated separate powers in respect of different violations committed under the EP Act falling under various rules under the provision of the EP Act authorising different officials to complain about the said violation for the purpose of taking cognizance by the concerned courts.</p> <p>(iv) In event of specific violations for which the Board/officers are authorized to complain directly, the Government of India has framed various rules under the provision of the EP Act and such violations falling outside the scope of the said rules, the Government of India authorizes specifically when the said violations come to their notice.</p> <p>(v) The R. O's (for that matter the MS, Chairman and also Government) are authorised u/s 19 of EP</p>



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			<p>Act, it is in respect of various rules under the provision of the EP Act, which are framed by the Government of India and in so far as any other violation the cases are being filed only as per the instruction received from the Government of India or Government of Karnataka.</p> <p>(vi) Therefore, it is suggested that since EIA Clearance is given by the MOEF it is desirable to bring any violation under EIA notification to the Government of Karnataka and Government of India and await instruction from them for taking further course of action. On receipt of instruction from these authorities, the Board <i>may instruct (not authorise)</i> the RO to file Criminal case.</p>
13.02. 2007	165th Meeting Proposed by: Legal Section	Delegation of power to Eos/DEOs/AEOs to file criminal cases under various Acts	POINT IN QUESTION: Subject No. 165:09: Decision on the Board is required to authorize the jurisdictional DEOs and AEOs to file criminal cases against industries,

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	Approved for placing by: Member Secretary and Chairman	and Rules enforced by the Board	<p>local bodies and others under various Acts and Rules enforced by the Board.</p> <p>POINTS FOR CONSIDERATION:</p> <p>(i) At its 124th meeting held on 25.03.1998, the Board authorized the Chairman to take decision to file Criminal cases against industries, local bodies etc.; under Section 41 (1) [41. Failure to comply with directions under sub-section (2) or sub-section (3) of section 20, or orders issued under clause (c) of sub-section (1) of section 32 or directions issued under sub-section (2) of section 33 or section 33A) ,43 (Penalty for contravention of provisions of section 24) and 44 (Penalty for contravention of section 25 or section 26) of the Water (Prevention and Control of Pollution) Act, 1974 for various violations under the said Act and also the Board authorized the jurisdictional DEO's to file cases in the</p>



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			<p>appropriate courts on behalf of the Board.</p> <p>(ii) The reason for the Board to authorize DEOs to file cases was that at that period the Regional Offices used to be headed by the DEOs only.</p> <p>(iii) Currently, the Regional Offices are headed by Eos, and the EOs are assisted by DEOs or AEOs or both depending on the workload.</p> <p>(iv) Every time it is difficult for the Eos to attend the Court. Therefore, it is felt necessary to authorize both DEOs and AEOs to file cases under different Acts and Rules being enforced by the Board. However, the decision to authorize the filing of cases will rest with the Chairman.</p> <p>(v) The issue was discussed and after verifying the provisions contained in the Water and Air (Prevention and Control of Pollution)</p>

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			Acts, it was decided to authorize the DEOs and AEOs of Regional Offices, to file cases on behalf of the Board under the said Acts only after getting approval from the Chairman.
24.03.2007	KSPCB/14/ LEG- 07/4010	Delegation of power of DEO's and AEO's of the Board to file cases (Criminal and Criminal Miscellaneous) before the jurisdictional courts for violations of various provisions of Water and Air Acts and Rules made thereunder	<p>POINT IN QUESTION: Delegation of power of DEO's and AEO's of the Board to file cases (Criminal and Criminal Miscellaneous) before the jurisdictional courts for violations of various provisions of Water and Air Acts and Rules made thereunder</p> <p>POINTS FOR CONSIDERATION: (i) In view of creation of new posts of different cadres of officers in the Regional Offices, the Board at its 165th meeting held on 13.02.07 deliberated the issue in detail regarding delegation of powers and decided to delegate powers to file cases to Deputy Environmental Officers and Assistant Environmental Officers in this regard.</p>



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			<p>(ii) Therefore, in pursuance of the decision of the Board, the Deputy Environmental Officers and Assistant Environmental Officers of the Regional Officers are hereby authorized, to file cases on behalf of the Board for violations under the Water (Prevention and Control of Pollution) Act, 1974 and the Air ((Prevention and Control of Pollution) Act, 1981, after getting approval from the Chairman.</p>
<p>02.04. 2008</p>	<p>KSPCB/81 (Vol-II)/CC/200 7-08/39</p>	<p>Obtaining prior approval of draft petitions from Board Office legal cell-reg Ref: 1. Regional offices meeting held on 9th and 10th Jan 2008 at Head office.</p>	<p>POINT IN QUESTION: (i) It has come to the notice of the Board office that complaints/cases filed in JMFC by the Regional Officers are not standing scrutiny in the court reasons stated under: 1. The cases are not filed against the appropriate person 2. The cases do not highlight the provisions of the Act, or the Rules</p>

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		2. Board circular dated 14.1.2003	<p>violated, and the nature of violations committed, and the impacts of such violations.</p> <p>3. The Regional Officers are not producing proper evidence before the court either written or oral (like mahazar, analysis report, etc).</p> <p>4. Regional Officers have not produced proper witnesses in the court.</p> <p>5. Improper drawing of mahazar, etc.</p> <p>(ii) In such circumstances the Board not only loses the case but also considerable time will be wasted without any results.</p> <p>POINTS FOR CONSIDERATION:</p> <p>(i) The issue was discussed at length during the special regional officers meeting held on 9th and 10th January 2008 and as emerged in the said meeting following instructions are issued:</p>



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			<p>Henceforth, (i) SEO at the Head Office before proposing prosecutions should ensure that proper evidence have been collected by the Regional Officers; and also, before the cases are filed by the Regional Officers/Designated Officers in the court, (ii) the draft complaint should get approved by the legal cell of the Board office.</p>
<p>11.03.2013</p>	<p>KSPCB/238 (Vol-II)/CC/7/2012-13/7451</p>	<p>Authorizing Environmental Officers to file cases on behalf of the Board in Courts-reg. Ref: 1. Office Memorandum No. KSPCB/14/leg-07/4010 dated 24.03.2007 2.186th Board Meeting Proceedings issued on 11.01.2013</p>	<p>POINT IN QUESTION: (i) The Board in its 165th meeting held on 13.02.2007 has authorized Deputy Environmental Officer and Assistant Environmental Officer of the Regional Officers to file cases on behalf of the Board in the courts for violations under the Water (Prevention and Control of Pollution) Act, 1974 and the Air ((Prevention and Control of Pollution) Act, 1981, after obtaining approval from the Chairman.</p>

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			<p>(ii) The present structure at Regional Offices is headed by Environmental Officers and Deputy Environmental Officers and Assistant Environmental Officers assist him. At present in some of the Regional offices, only the Environmental Officer post is filled without DEO and AEOs.</p> <p>POINTS FOR CONSIDERATION:</p> <p>(i) The Board in its 186th Meeting held on 28.12.2012 discussed the subject in detail and approved to authorize Environmental Officers in addition to the Deputy Environmental Officer and Assistant Environmental Officer to file cases on behalf of the Board in the Courts after obtaining approval from the Chairman as provided in the Minutes of the Meeting under 186:08- Revised delegation of powers for filing cases in Courts.</p> <p>(ii) In pursuance of the decision of the Board,</p>



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			the Environmental Officers of the Regional Office are authorized to file cases on behalf of the Board in the Courts after obtaining approval from the Chairman.

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