

## CHAPTER - 5

### DISPUTE REDRESSAL SYSTEM UNDER SPECIAL LAWS

To solve the problems and disputes arising out of environmental issues certain laws have been enacted by the Parliament. They provide dispute redressal mechanism and thereby lessen the burden of judiciary. Speedy disposal of cases, award of compensation to the victims of environmental disasters and clearance of project are some of the matters covered under these enactments. To understand the nature and efficacy of such enactments a brief study of such Acts viz., the Public Liability Insurance Act, 1991 (hereinafter referred as PLI Act), the National Environment Tribunal Act, 1995 (hereinafter referred as NETA) and the National Environment Appellate Authority Act, 1997 (hereinafter referred as NEAA Act) is necessary.

#### 5.1. The Public Liability Insurance Act, 1991 :

The Public Liability Insurance Act, 1991 envisages mandatory insurance for the purpose of providing immediate relief to the victim of accident arising out of hazardous process and operation. As we know the growth of industries has been accompanied by the inherent risk not only to workmen employed in such undertakings but also to the innocent members of public who may be in the vicinity. "The Act mainly protects the members of weaker sections of society who by reason of their limited resources cannot afford the prolonged litigation in a court of law. To achieve this goal, it envisages for the mandatory public insurance based on the principle of no fault liability".<sup>1</sup> The liability of insurance companies are limited under the Act only to the amount of the insurance policy though, the owner's liability remains unlimited.

The preamble of the Act itself makes it clear that the Act is applicable only to accidents or incidents resulting from the handling of hazardous substances. An 'accident' is defined under section 2(a) of the PLI Act as "a fortuitous or sudden or unintended occurrence while handling any hazardous substance resulting in continuous or intermittent or repeated exposure to death of, or injury to, any person or damage to any

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1. Md. Z. M. Nomani, "Law Relating to Environmental Liability and Dispute Redressal: Emergence and Dimension", XXIII (1 & 2) *Indian Bar Review* 153 (1996).

property but does not include an accident by reason only of war or radio-activity."

The word 'handling' has been defined under Section 2(c) of the PLI Act as the manufacture, processing, treatment, package, storage, transportation by vehicle, use, collection, destruction, conversion, offering for sale, transfer or the like of hazardous substance. Section 2(d) of the PLI Act defines hazardous substance as "any substance or preparation which is defined as hazardous substance under the Environment (Protection) Act, 1986 and exceeding such quantity as may be specified, by notification, by the Central Government." Therefore the definition of hazardous substance will be applicable under the PLI Act only when the substance in question exceeds in such quantity as is specified by the Central Government.

Thus, even if a substance is hazardous and causes death, injury to living beings or damage to properties, no compensation under the PLI Act would be payable unless that substance is covered in the Central Government's notification. This does not seem to be proper. When a substance is considered hazardous for the purpose of one legislation dealing with environment, it does not appeal to reason why that substance should not be treated hazardous for another legislation on the same subject.<sup>2</sup>

#### 5.1.1. Liability and Duty of Owner :

Section 3 of the PLI Act lays down no fault liability for the owners, it provides that where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in the schedule for such death, injury or damage. Sub Section (2) of Section 3 makes it very clear that in any claim for relief, the claimant shall not be required to plead and establish that the death, injury or damage in respect of which claim has been made was due to any wrongful act, neglect or default of any person.

The PLI Act does not cover workmen as they are compensated under the ordinary labour laws which are not as tight as the PLI Act and offer the employer certain defences, through which liability can be avoided. Whereas the PLI Act is based on no-fault liability. "It would have been more prudent if the PLIA, had allowed workmen to claim under it and thereafter disentitled the person, of pursuing the ordinary remedy

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2. S.N. Singh, "Public Liability Insurance Act, 1991 - Scope for Making Provisions More Effective", 5 *Corporate Law Adv.*, 234 (1991).

under the labour laws".<sup>3</sup> Section 4 of the PLI Act makes it mandatory for every owner, before he starts handling any hazardous substance, to take one or more insurance policies providing for contracts of insurance where by he is insured against liability to give relief under sub-section (1) of section 3 of PLI Act.

The insurance policy required under the Act is to be equivalent to amount of paid-up capital of undertaking or an amount not exceeding fifty crore rupees. Further, coverage by insurance must be continuous and subject to the periodic renewal.<sup>4</sup> The amount of premium received under the insurance policy is required to be credited to environment relief fund.<sup>5</sup> However, according to sub-section 3 of Section 4 of the PLI Act the Central Government has discretion to exempt the Central, State and Local Governments and Public Corporations from taking out an insurance policy provided a fund has been created and maintained by the owner in accordance with the rules made in this behalf for meeting any liability under sub-section(1) of Section 3. This exemption provision unnecessarily dilutes the concept of compulsory insurance. Moreover the discretionary power of Central Government may lead to arbitrariness.

#### **5.1.2. Procedure for Award of Relief :**

The PLI Act cast duty on the collector of the place where an accident has occurred, to verify the occurrence of such accident and cause publicity to be given for inviting applications for claim for relief.<sup>6</sup> An application for claim for relief can be filed by a person who sustained injury, an owner whose property has been damaged and their legal representatives and agents. No scope has been left for the social action groups, public interest litigation and participation of public in claiming the compensation. However, the payment of award in recorded times following the summary procedure, within three months of filing such claim is a welcome provision. No application for relief can be entertained under the PLI Act unless it is made within five years of the occurrence of the accident.<sup>7</sup>

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3. V. Raghavan, "Public Liability Insurance Act : Breaking New Ground", 39 *JILI* 109 (1997).

4. Section 4 (2 A).

5. Section 4 (2) (c) and (d).

6. Section 5.

7. Section 6.

According to Section 7(1) of the PLI Act, the collector is to hold an inquiry into the claim after giving the parties an opportunity of being heard. He may make an award determining the amount of relief which appears to him to be just, specifying the persons to whom such amount of relief has to be paid. This provision clearly provides some discretionary powers to be exercised by the collector and therefore, creates scope of misuse of power as well. Referring section 7(1) Dr. Mehdi points out -

Contrary to this provision, Section 3 outlines the criterion for payment of the relief amount. If the Schedule annexed to the Act has prescribed the amount to be given in different circumstances of the case, the Collector should not be given the power to determine the amount of relief. The administrative authorities should not be given discretionary powers to the extent of overriding the express provisions of law. Further, this section makes even no reference to the preceding section 3, and the interpretation of these two clauses, independently, may cause conflicts and controversies.<sup>8</sup>

When the award is made under Section 7 of the PLI Act, the insurer is required to deposit the amount within a period of thirty days of the date of announcement of the award, in the manner prescribed by the collector.<sup>9</sup> The Collector has been conferred with all the powers of a Civil Court for the purpose of taking evidence in oath, enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed.<sup>10</sup>

Section 7A makes a provision for the establishment of 'Environmental Relief Fund' by the Central Government, the fund is to be utilised for paying, in accordance with the provisions of the PLI Act and the Scheme made under Section 7A(3) of the Act, relief under the award made by the Collector under Section 7 of the PLI Act. The PLI Act allows victims to seek redressal for a larger quantum of benefits available under any other law. Where the owner is liable to give claim for relief as well as liable to pay compensation under any other law, the PLI Act provides that the amount of such compensation shall be reduced by the amount of relief paid under the PLI Act.<sup>11</sup>

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8. Ali Mehdi, "The Public Liability Insurance Act, 1991 - A Critical Appraisal", *AIR Jour.* 38 (1992).

9. Section 7 (3) (a).

10. Section 4 (5).

11. Section 8.

### 5.1.3. Preventive Measures :

For ascertaining the compliance of the PLI Act, any person authorised by the Central Government may require any owner to submit necessary information.<sup>12</sup> Any person authorised by the Central Government has a right to enter any place, premises or vehicle, where hazardous substance is handled for the purpose of determining whether any provision, rule or direction given under the PLI Act is being or has been complied with.<sup>13</sup>

If a person, authorised by the Central Government believes that handling of any hazardous substance is taking place, he may enter into and search such place, premises or vehicle. If it is found that such handling is in contravention of Section 4(1) of the PLI Act, the authorised person may seize such hazardous substance and other useful or relevant things for any proceeding under the PLI Act. He may dispose of the seized hazardous substance if he feels it necessary to prevent an accident.<sup>14</sup> The Central Government has power to issue directions under the PLI Act to any owner or any person, officer, authority or agency in exercise of its powers and performance of its function under the Act. Such directions include the power to direct prohibition or regulation of the handling of any hazardous substance and stoppage or regulation of the supply of electricity, water or any other service.<sup>15</sup>

The power to make application to Courts for restraining owner from handling hazardous substances has been given under section 13 of the PLI Act to the Central Government or any person authorised by it. On receipt of such application the Court may pass appropriate order restraining any owner from handling hazardous substance. All expenses incurred in such proceeding is recoverable from the owner.<sup>16</sup>

### 5.1.4. Offence and Punishment :

According to Section 14 of the PLI Act, the Contravention of any of the provisions of Section 4 which provides for taking of insurance policies and their renewal from

12. Section 9.

13. Section 10.

14. Section 11.

15. Section 12.

16. Section 13.

time to time, shall attract minimum punishment of one and half-year imprisonment which may extend to six years or a minimum fine of Rs. 1 Lakh or with both. Similar punishment has been provided for the owner or any person, authority or agency who fails to comply with any direction issued by Central Government under Section 12 of the PLI Act, i.e. in regard to prohibition or regulation of the handling of any hazardous substance or stoppage of supply of electricity, water etc. The PLI Act prescribes harsher punishment for the habitual offender. If the person having already been convicted of an offence mentioned above, commits the second or subsequent offence he will face more deterrent punishment. The punishment provided for the second or subsequent offence is, imprisonment for a term not less than two years but it may extend to seven years and fine, which can not be less than one lakh rupees.<sup>17</sup>

Minor lapses like default in compliance with directions issued under section 9 or failure to comply with orders issued under sub-section (2) of Section 11 or creating obstruction to any person in discharge of his duties under Section 10 or Section 11 (1) and 11(3), are punishable with imprisonment which may extend to three months or with fine which may extend to 10,000 rupees or with both.<sup>18</sup>

Though the PLI Act prescribes punishment in a graded manner, but in effect this has resulted into low deterrent effect. "The chance of non-compliance exists in all probability especially in cases where the amount of total compensation awarded exceeds Rs. 1 Lakh. Moreover, no punishment has been prescribed to deal with the cases of non-compliance of liability to pay immediate relief under Section 3. This provision keeps the no-fault or strict liability principle in abeyance".<sup>19</sup>

Where the offence has been committed by a company, every person who, at the time of the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be liable to be proceeded against and punished accordingly under the PLI Act. If any Director, Manager, Secretary or other Officer of the company is connected to the offence they are also liable to be proceeded against and punished accordingly.<sup>20</sup>

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17. Section 14.

18. Section 15.

19. *Supra* note 1 at 155.

20. Section 16.

In case where the offender is a Government Department, the Head of the Department is deemed guilty of the offence and is liable to be proceeded against and punished accordingly.<sup>21</sup> However, the aforesaid officials of the company and the Government are not liable under the PLI Act if they prove that the offence was committed without their knowledge or that they exercised all due diligence to prevent the commission of such offence.

The Court shall take cognizance of any offence under the PLI Act only on a complaint made by the Central Government or any authority or officer authorised in this behalf by that Government. The Court may entertain a complaint by any person who has given notice of not less than sixty days of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.<sup>22</sup>

The Central Government has been conferred the authority to delegate its powers and functions under the Act to any person.<sup>23</sup> Section 20 of the PLI Act protects the government or any agency acting in relation to the provisions of the Act from legal proceedings in respect of acts that were committed by them in good faith. Further the PLI Act also envisage for the establishment of an 'Advisory Committee' by the Central Government on the matters relating to the insurance policy under the PLI Act.<sup>24</sup> The Advisory Committee may comprise of representatives of the Central Government, insurers, owners and experts of insurance of hazardous substances. Section 22 of the PLI Act makes it clear that the provisions of PLI Act shall have effect not with standing anything inconsistent there with contained in any other law.<sup>25</sup> The PLI Act confers the power to make rules for carrying out the purposes of the Act on the Central Government.<sup>26</sup>

## **5.2. The National Environment Tribunal Act, 1995 :**

The NETA is an comprehensive piece of legislation which provide for strict liability

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21. Section 17.

22. Section 18.

23. Section 19.

24. Section 21.

25. Section 22.

26. Section 23.

for damages arising out of any accident occurring while handling any hazardous substance. To achieve this objective the Act proposes an idea for creation of a National Environment Tribunal to effectively and expeditiously dispose of the cases arising from such accidents by giving relief and compensation for damages to persons, property and environment.

The NETA consist of five chapters and thirty one sections dealing with the liability to pay compensation and procedure of it; composition of the tribunal, jurisdiction of the tribunal, offences and punishment etc. The preamble of the NETA clearly states that the Act has been created to implement the decisions taken at the United Nations Conference on Environment and Development, held at the Rio de Janeiro in June, 1992. The preamble itself states that the legislation provides for 'Strict liability' for damages arising out of any accident occurring while handling any hazardous substance. The principle of strict civil liability suitable for Indian condition was evolved by the Supreme Court in *Oleum Gas Leak Case*.<sup>27</sup> There were two main justifications in favour of the strict liability rule; firstly, the enterprise authorised to carry hazardous activity should indemnify all those who suffer on account of such activity; secondly, the enterprise alone has resources to discover and guard against such activity.

Section 2 of the NETA defines various terms including the 'hazardous substance', hazardous substance for the purpose of NETA means any substance or preparation which is defined as a hazardous substance in the Environment (Protection) Act, 1986, and exceeding such quantity as specified by the Central Government under the Public Liability Insurance Act, 1991.

### 5.2.1. Compensation and Damage :

Section 3 of the NETA incorporates provision with respect to liability to pay compensation in certain cases on principle of no fault liability. According to this the owner of an enterprise is liable to pay compensation for death or injury to any person, other than a workman, or damage to any property or environment resulting from any accident.<sup>28</sup> Moreover, the petitioner is not required to plead and establish that the death, injury and damage were due to wrongful act, neglect or default of any person.<sup>29</sup> On this

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27. *M.C. Mehta v. Union of India*, AIR 1987 SC 1086.

28. Section 3(1).

29. Section 3 (2).

count the section commits to the principle of no fault liability. Where the death, injury or damage due to an accident cannot be attributed to any individual activity but is the combined or resultant effect of several such activities, the Tribunal may apportion the liability for compensation amongst those responsible for such activities.<sup>30</sup>

Section 4 of the NETA lays down the requisites of application for claim for compensation. The claim for compensation may be made by a person who has sustained the injury, by the owner of the damaged property; legal representatives of the deceased; by any agent duly authorised by aforesaid persons; by any recognised representative body or organisation; or by the Central Government or a State Government or a local authority. The Tribunal may, in appropriate cases, take up the cases for claims for compensation *suo motu*. The claimant may also claim before the Tribunal, the relief as provided under the Public Liability Insurance Act, 1991 provided, no relief has been received by the claimant earlier or no application before the collector is pending under the PLI Act. Every application for claim for compensation has to be made to the Tribunal along with prescribed documents and fee within five years of the occurrence of the accident.

On receipt of an application for claim for compensation, the Tribunal may, after inquiry, reject the application summarily or it may hold an inquiry into the claim and may make an award determining the compensation which appears to be just, specifying also the persons to whom such amount of compensation is to be paid. In doing so the Tribunal shall be guided by the principle of natural justice and it will follow its own procedure. While trying a suit, the Tribunal shall have powers of civil court, in respect of certain matters.<sup>31</sup> Section 6 of the NETA provides for conditions as to making of interim orders. Section 7 makes it clear, wherein the owner, liable to pay compensation under NETA, is also liable to pay any amount as relief under the PLI Act or any other compensation under any other law, the amount of compensation payable under NETA shall be reduced by the amount of relief and other compensation paid under any other law.

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30. Section 3 (3).

31. Section 5.

### 5.2.2. Establishment of Tribunal :

The Central Government may establish the National Environment Tribunal by notification, the Tribunal is required to exercise the jurisdiction, powers and authority conferred on it by the NETA.<sup>32</sup> The Tribunal is to consist of a chairperson and such number of Vice-Chairpersons, Judicial Members and Technical Members as the Central Government may deem fit. The jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof.<sup>33</sup> A Bench of the Tribunal must consist of one Judicial Member and one Technical Member.<sup>34</sup> According to section 9(4) of NETA, it shall be competent for the chairperson or any other member authorised by the chairperson in this behalf to function as a Bench consisting of a single member and exercise the jurisdiction, power and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the chairperson may specify. In case where it appears to the single member bench that the case is fit to be decided by two members bench, the case may be transferred to such bench as the chairperson may deem fit.

The Principal bench of the Tribunal may ordinarily sit at New Delhi and the situation of other Benches is to be specified by the Central Government by notification.<sup>35</sup> The provisions of NETA tries to abolish the multi-tier judicial system which have been proved insufficient in the matters relating to environmental justice. However, the Bench of the Tribunal at a distant place is likely to create problems for the litigants. In this regard Prof. C.M. Jariwala rightly suggests -

...like the administrative tribunal, the environmental tribunal must be divided into two : the National and the State tribunals. The national tribunal shall have the seat at New Delhi and the State tribunal may ordinarily sit in the capital city of the state and, if needed, may have additional seat or seats in the state as the Central Government may, in consultation with the Chief Justice of India, decide. There should also be a provision for the joint state tribunal for two or more states.<sup>36</sup>

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32. Section 8.

33. Section 9 (1).

34. Section 9 (2).

35. Section 9 (5).

36. C.M. Jariwala, "The National Environment Tribunal Bill - 1992 : A Critical Appraisal" (unpublished paper).

Section 10 of the NETA prescribes the qualifications for appointment as chairperson, Vice Chairperson and other members. Section 11 enumerates circumstances, when the Vice-chairperson can act as chairperson or discharge his functions. The chairperson, vice-chairperson and other members may hold office as such for a term of five years and are eligible for re-appointment for another term of five years. In no case, however, the chairperson can hold the office after attaining the age of seventy years. The age of superannuation for vice-chairperson is sixty five years and for other members it is sixty two years.<sup>37</sup>

The procedure for resignation and removal of the chairperson, vice-chairperson or other member has been given under section 13 of the NETA. The salaries and allowances payable to, and other terms and conditions of service of the chairperson, vice-chairperson and other members shall be such as may be prescribed, however, neither the salary and allowances nor the other terms and conditions of service can be varied to disadvantage after the appointment.<sup>38</sup>

The Central Government has power to determine the nature and categories of the officers and other employees required to assist the Tribunal in the discharge of its functions.<sup>39</sup> Section 18 of the NETA provides, where any Benches of the Tribunal are constituted, the Central Government may, from time to time make provisions as to the distribution of the business of the Tribunal amongst the Benches and specify the matters which may be dealt with by each Bench.

### **5.2.3. Jurisdiction and Proceedings of the Tribunal :**

The NETA imposes a bar on all civil courts from entertaining any application or action for any claim or compensation which may be entertained or dealt with by the tribunal.<sup>40</sup> This provision is a flaw in the present Act, because it bars the jurisdiction of 'any court' or 'other authority'. Does the expression 'any court' would include the jurisdiction of the Supreme Court and the High Courts under Article 32 and 226 of the constitution respectively? Section 24 of the NETA, however, provides that an appeal

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37. Section 12.

38. Section 14.

39. Section 17.

40. Section 19.

shall lie against any award or other order, not being an interlocutory order, of the Tribunal to the Supreme Court. After the decision of *L. Chandra Kumar v. Union of India*,<sup>41</sup> now it is clear that the power of judicial review vested in the High Courts under Article 226 and in the Supreme Court under Article 32 of the Constitution are integral and essential features of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the Constitutional validity of legislation can never be vested or excluded. Further the Court has pointed that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and tribunals within their respective jurisdiction is also part of the basic structure of the constitution. Therefore, the jurisdiction of the Supreme Court and High Courts cannot be ousted, other courts and tribunals may perform a supplemental role in discharging the powers conferred by Article 226 and 32 of the Constitution. It is recommended that section 19 of the NETA should be amended appropriately to include the jurisdiction of the Supreme Court under Articles 32 and 136, and of the High Courts under Article 226 of the Constitution.

The Chairperson has been empowered under the NETA to transfer any case pending before one Bench, for disposal, to any other Bench on the application of any of the parties or on his own motion.<sup>42</sup> Where there is difference of opinion amongst the Members of a Bench the decision of majority shall prevail.<sup>43</sup> Where any amount of compensation is ordered to be paid under any award by the tribunal on the ground of any damage to environment, the amount is required be remitted to the authority specified under section 7A(3) of the Public Liability Insurance Act, 1991 for being credited to the Environment Relief Fund, this amount may be utilised by such person or authority, in such manner and for such purposes of environment as may be prescribed.<sup>44</sup>

The award of the Tribunal is executable as a decree of civil court, and for this purpose, the tribunal has got all the powers of a civil court. Where the owner fails to comply with the award of the tribunal, the amount of award can be recovered from the owner arrears of land revenue or of public demand.<sup>45</sup>

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41. AIR 1997 SC 1125.

42. Section 20.

43. Section 21.

44. Section 22.

45. Section 23.

Section 24 of the NETA declares that no appeal can lie against an award order made by the tribunal with the consent of the parties. However, sub-section (2) of section 24 provides for an appeal against any award or other order, not being an interlocutory order, of the Tribunal to the Supreme Court. Every appeal under section 24 should be preferred within a period of ninety days from the date of the award or other order appealed against, the Supreme Court may condone the delay in filing the appeal if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.<sup>46</sup>

#### 5.2.4. Offence and Punishment :

The penal provision, under the NETA, derives its nourishment from the principle of 'Strict Liability.' Failure to comply with the orders of the tribunal invites imprisonment upto three years, or with fine which may extend to ten lakh rupees, or with both.<sup>47</sup> Unlike the Water Act, 1974 and the Air Act, 1981 and the Environment (Protection) Act, 1986 where separate punishment are prescribed for different offences, the NETA has no such provision. The maximum fine imposed under the NETA is only Rs. 10 lakhs and no additional fine is prescribed for successive non-compliance or continuance of offence. Therefore, in a situation where the amount of compensation awarded exceeds Rs. 10 lakhs, the erring industrial unit might prefer non-compliance. The provision of section 25 of the NETA has created the opportunity for big industrial houses to escape from the clutches of the Act. The corporate executive has also not been held absolutely liable, if the officer proves that the offence was committed without his knowledge or that he exercised due diligence to prevent such offence he can be exonerated from the liability.<sup>48</sup>

The NETA also declares that the proceedings before the tribunal shall be deemed to be judicial proceedings within the meaning of section 193, 219 and 228 of the Indian Penal Code, 1960.<sup>49</sup> The members and staff of tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1960.<sup>50</sup> The Central

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46. Section 24 (3).

47. Section 25.

48. Section 26.

49. Section 27.

50. Section 28.

Government, members and staff of tribunal are immune from the legal proceedings for anything which is in good faith done or intended to be done in pursuance of NETA or any rule or order made under it.<sup>51</sup>

Section 30 of the NETA makes it clear that except as provided in the Public Liability Insurance Act, 1991, the provisions of NETA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The power to make rules for carrying out the purposes of the NETA has been conferred on the Central Government.<sup>52</sup>

The NETA was passed by the Indian Parliament to achieve very important objective of establishment of Environmental Tribunal, but after so many years the Act has yet to be fully operative and requires effective implementation, as not a single bench of the Tribunal has been established till date. Even the Supreme Court has time and again expressed the need of such expert adjudicating bodies in the matters relating to environmental disputes.<sup>53</sup>

### **5.3. The National Environment Appellate Authority Act, 1997 :**

The NEAA Act makes provisions for the establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industry, operations or processes or class of industries, operations or process can not be carried out or can be carried out subject to certain safeguards under the Environment (Protection) Act, 1986.

#### **5.3.1. Establishment of Authority :**

The Central Government has the power to establish the National Environment Appellate Authority (NEA Authority) by notification in the Official Gazette. The head office of the Authority is situated at Delhi. The NEA Authority is required to exercise the powers conferred upon, and to perform the functions assigned to under the NEAA Act.<sup>54</sup>

51. Section 29.

52. Section 31.

53. *A.P. Pollution Control Board v. M.V. Nayudu*, AIR 1999 SC 812.

54. Section 3.

The NEA Authority consists of a Chairperson, a vice-chairperson and not more than three other members.<sup>55</sup> Section 5 of the NEAA Act lays down the qualifications for Chairperson, Vice-chairperson and other members. Only a former Judge of the Supreme Court; or the former Chief Justice of a High Court can be appointed as the Chairperson of the Authority. A person who has held the post of a Secretary to the Government of India for at least two years or any other post under the Central or State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India; and is having the expertise or experience in administrative, legal, managerial or technical aspects of problems relating to environment is qualified for the post of the Vice-Chairperson. Person having professional knowledge or practical experience in the areas pertaining to conservation, environmental management, law or planning and development is qualified to be appointed as a member of the Authority.

The Vice-Chairperson may act as Chairperson or discharge his functions under certain circumstance enumerated in section 6 of the Act. The term of office for the chairperson, the vice-chairperson and members is three years from the date of assuming the office, they are also eligible for re-appointment for another term of three years. The Act prescribes the retirement age of seventy years for the Chairperson. The Vice-Chairperson and other members may hold the office till they reach the age of sixty five years.<sup>56</sup> The appointment of all the members including chairperson and vice chairperson are made by the President of India. In case the Chairperson, Vice-Chairperson or a member wants to resign his office he may do so by addressing his resignation letter to the President in accordance with the provisions prescribed under section 8 of the NEAA Act. All members of the Authority gets the salaries and allowances prescribed by the Central Government.<sup>57</sup> Section 10 of the NEAA Act makes it clear that no act or proceedings of the authority can be questioned or can be invalid merely on the ground of existence of any vacancy or defect in the establishment of the Authority.

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55. Section 4.

56. Section 7.

57. Section 9.

### 5.3.2. Jurisdiction and Powers of Authority :

Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes can not be carried out or can be carried subject to certain safeguards may prefer an appeal before the Authority within thirty days from the date of such order. If the Authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time the aforesaid period of thirty days may be extended upto ninety days.<sup>58</sup> The NEAA Act enumerates five category of persons who may prefer an appeal to the Authority they are as follows -

- (a) any person who is likely to be affected by the grant of environmental clearance;
- (b) any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance;
- (c) any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the field of environment;
- (d) the Central Government, where the environmental clearance is granted by the State Government and the State Government, where the environmental clearance is granted by the Central Government; or;
- (e) any local authority, any part of whose local limits is within the neighbourhood of the area wherein the project is proposed to be located.<sup>59</sup>

Thus it is evident that appellate jurisdiction of the Authority is restricted to cases where environmental clearance is granted and does not extend to cases where clearance is refused. Only the person or association of persons likely to be affected by the grant of environmental clearance have been accorded standing, it is doubtful whether non-governmental organisation working in the field of environmental protection is allowed to prefer an appeal before the Authority or not?

The Authority is required to dispose of the appeal within ninety days from the date of filing the appeal, after giving the appellant an opportunity being heard. The Authority may take thirty more days in disposing the case if it has sufficient reason to

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58. Section 11(1).

59. Section 11 (2).

do so. It is not clear from the provisions of the NEAA Act what will be the fate of the appeal, in case the Authority fails to decide the case within the maximum allowable time of 120 days?

The Authority is to follow rules of natural justice and it is free to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private. The Authority have the powers of a civil court under the code of Civil Procedure, 1908, in respect of the following matters :

- a) Summoning and enforcing the attendance of any person and examining him on oath;
- b) requiring the discovery and production of documents;
- c) receiving evidence on affidavits;
- d) subject to the provisions of section 123 and 124 of the Indian Evidence Act, 1972, requisitioning any public record or document or copy of such record or document from any office;
- e) issuing commissions for the examination of witness or documents;
- f) reviewing its decisions;
- g) dismissing a representation for default or deciding it, *ex parte*;
- h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
- i) any other matter which is required to be, or may be, prescribed by the Central Government.<sup>60</sup>

Section 13 of the NEAA Act empowers the chairperson of the NEA Authority to exercise such financial and administrative powers as may be vested in him under the rules, he may also delegate such powers to the Vice-chairperson and other officer. It is Central Government's responsibility to determine the nature and categories of the officers and other employees required to assist the Authority and provide the Authority with such officers and other employers. Such officers and employees are required to discharge their functions under the general superintendence of the Chairperson.<sup>61</sup>

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60. Section 12.

61. Section 14

The jurisdictions of a civil court or other authority have been bared, they cannot entertain any appeal in respect of any matter with which the NEA Authority is so empowered under the NEAA Act.<sup>62</sup> All proceedings before the Authority are deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.<sup>63</sup> All the members, officers and other employees of the NEA Authority are deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.<sup>64</sup> The Central Government, the Chairperson, the Vice-chairperson, a member of the Authority or any other person authorized by the Chairperson, the Vice-chairperson or a member are immune from a suit, prosecution or other legal proceeding, for anything done or intended to be done in good faith in pursuance of the NEAA Act or any rule or order made under the Act.<sup>65</sup>

### 5.3.3. Offence and Punishment :

The sole offence which is punishable under section 19 of the NEAA Act is 'non-compliance with any order made by the Authority'. The punishment for this offence is, imprisonment for a term which may extend to seven years or with fine which may extend to one lakh rupees, or with both. Where the offence under the NEAA Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company are deemed to be guilty of the offence and are liable to be proceeded against and punished accordingly. But, where such person is able to prove that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence, he cannot be held liable for any punishment under the Act.<sup>66</sup> Further, if it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company they shall also be deemed to be guilty of that offence and may be liable to be proceeded against and punished accordingly.<sup>67</sup>

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62. Section 15

63. Section 16.

64. Section 17.

65. Section 18.

66. Section 20 (1).

67. Section 20 (2).

Section 21 of the NEAA Act is removal of difficulties clause. It authorises the Central Government to make necessary provisions for removing the difficulty within three years from the date on which the NEAA Act received the assent of the President. The rule making power is with the Central Government, it may make rules for carrying out the provisions of the Act.<sup>68</sup>

The judgment of the Supreme Court in *A.P. Pollution Control Board v. Prof. M.V. Nayudu*<sup>69</sup> has added a new dimension to the role to be played by the NEA Authority. The Court suggested in this case, "with a view to ensure that there is neither danger to the environment nor to the ecology and, at the same time, ensuring sustainable development, this Court in our view, can refer scientific and technical aspects for investigation and opinion to expert bodies such as the appellate authority under the National Environmental Appellate Authority Act, 1997". Further, the Court added that any opinions rendered by the said authority would of course be subject to the approval of the Court. Such a procedure of getting assistance from the NEA Authority, in the opinion of the Supreme Court, is perfectly within the bounds of the law. The Court has recommended the adoption of such procedure in matters arising in the Supreme Court under Article 32 or under Article 136 or arising before the High Courts under Article 226 of the Constitution of India.

It may be noted that out of three legislations discussed above two are confined only to the accident occurring while handling any hazardous substance whereas the third one limits itself to the disputes arising out of environmental clearance to any industry etc. These enactments do not cover many other aspects relating to environment and therefore, there is an urgent need for legislation providing environmental courts at district level having expertise to deal with all kinds of environmental issues. Only then the pressure on the higher judiciary may be abated and people may get cheap and speedy environmental justice at their door step.

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68. Section 22.

69. AIR 1999 SC 812.