

20. The pollution that can possibly be caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase would attract the various provisions of the Water Act. Even after completion of construction a functional residential or commercial complex will have to abide by the water pollution norms stipulated by the Water Act. The DPCC has been constituted under Section 4(4) of the Water Act. Section 9 of the Water Act permits the constitution of committees by the DPCC. Under Section 11A the DPCC can delegate its powers to its Chairman. Section 16 of the Water Act sets out the functions of the Central Pollution Control Board (CPCB). Section 21 of the Water Act empowers the DPCC or any of its officials to take samples of water "from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well" for the purposes of analysis. The word „sewage" in this context would include „domestic sewage" as well. Section 23 gives the DPCC power of entry at any time any place for the purposes of performing any of the functions entrusted by the DPCC to such officer for the purposes of determining "whether and if so in what manner, any such functions are to be performed or whether any direction or authorization served, made, given, or granted under this Act is being or has been complied with." Section 24 of the Water Act prohibits the use of a stream or well for disposal of polluting matters. Consequently, all of the above provisions of the Water Act get attracted when an activity, including an industrial, trade, commercial or domestic activity, causes pollution. This power can be exercised by the DPCC at any time during the construction phase and after the completion of construction when the complex in question becomes functional.

Position under the Air Act

30. Next for consideration are the provisions of the Air Act and the validity of the action taken thereunder by the DPCC. It requires to be first noticed that the definitions of the different terms under the Air Act are not identical to the corresponding terms in the Water Act. The words "air pollutant" or "air pollution", "emission", "industrial plant" occurring in Section 2(a), 2(b), 2(j) and 2(k) respectively of the Air Act read as under:

"(a) "air pollutant" means any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b) "air pollution" means the presence in the atmosphere of any air pollutant."

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(j) "emission" means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

(k) "industrial plant" means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere"

31. The requirement of obtaining from the DPCC a prior consent to operate flows from Section 21(1) of the Air Act which reads as under:

32. After its amendment in 1988, the essential definitions remained unchanged. The consent to establish or operate had to be obtained only where it was concerning "any industrial plant in an air pollution control area". It appears to this Court that as far as the Air Act is concerned, the emphasis was only on consent to operate having to be obtained for establishment of an industrial plant. Section 2(k) defines industrial plant to mean "any plant used for any industrial or trade purpose and made any area pollutant into the atmosphere". In the instant case, the expression "trade purposes" therefore have to be distinguished from the industrial purposes. The word "trade" could have a wide meaning. It could include the transaction that takes place within a commercial shopping complex or a shopping mall. The word "air pollutant", as defined in Section 2(a), means the presence in the atmosphere "in such concentration as may be or tend to be injurious to the atmosphere or the other breeding creatures or plants or property or environment". Therefore the activity has to be such that it results in the establishment of an industrial plant in an air pollution control area. Air pollution, in terms of Section 2(b) is "presence in the atmosphere of any air pollutant".