

THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY ACT, 1997

(Act No.22 of 1997)

[Dated 26.3.1997]

An Act to provide for the establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-eighth Year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

1. SHORT TITLE AND COMMENCEMENT

(1) This Act may be called the National Environment Appellate Authority Act, 1997.

(2) It shall be deemed to have come into force on the 30th day of January, 1997.

2. DEFINITIONS

In this Act, unless the context otherwise requires—

- (a) “Act” means the Environment(Protection)Act,1986(29 of 1986);
- (b) “Authority” means the National Environment Appellate Authority established under sub-section(1) of section 3;
- (c) “Chairperson” means the Chairperson of the Authority;
- (d) “Member” means a Member of the Authority;
- (e) “prescribed” means prescribed by rules made under this Act;
- (f) “Vice-Chairperson” means the Vice-Chairperson of the Authority.

CHAPTER II

ESTABLISHMENT OF AUTHORITY

3. ESTABLISHMENT OF AUTHORITY

(1) The Central Government shall, by notification in the Official Gazette, establish a body to be known as the National Environment Appellate Authority to exercise the powers conferred upon, and to perform the functions assigned to, it under this Act.

(2) The head office of the Authority shall be at Delhi.

4. COMPOSITION OF AUTHORITY

The Authority shall consist of a Chairperson, a Vice Chairperson and such other Members not exceeding three, as the Central Government may deem fit.

5. QUALIFICATIONS FOR APPOINTMENT AS CHAIRPERSON, VICE-CHAIRPERSON OR MEMBER

(1) A person shall not be qualified for appointment as a Chairperson unless he has been-

- (a) a Judge of the Supreme Court; or
- (b) the Chief Justice of a High Court.

(2) A person shall not be qualified for appointment as a Vice-Chairperson unless he has-

- (a) for at least two years held the post of a Secretary to the Government of India 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
- (b) expertise or experience in administrative, legal, managerial or technical aspects of problems relating to environment.

(3) A person shall not be qualified for appointment as a Member unless he has professional knowledge or practical experience in the areas pertaining to conservation, environment management, law or planning and development.

(4) The Chairperson, the Vice-Chairperson and the Members shall be appointed by the President.

6. VICE-CHAIRPERSON TO ACT AS CHAIRPERSON OR TO DISCHARGE HIS FUNCTIONS IN CERTAIN CIRCUMSTANCES

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Vice-Chairperson shall act as the Chairperson until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairperson or, as the case may be such one of the Member as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

7. TERM OF OFFICE

The Chairperson, Vice-Chairperson or a Member shall hold office as such for a term of three years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of three years.

Provided that no Chairperson, Vice-Chairperson or Member shall hold office as such after he has attained,--

(a) in the case of the Chairperson, the age of seventy years; and

(b) in the case of the Vice-Chairperson or a Member, the age of sixty-five years.

8. RESIGNATION AND REMOVAL

(1) The Chairperson, the Vice-Chairperson or a Member may, by notice in writing under his hand addressed to the President resign his office.

Provided that the Chairperson, the Vice-Chairperson or a Member shall, unless he is permitted by the President to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his terms of office, whichever is the earliest.

(2) The Chairperson, the Vice-Chairperson or a Member shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a judge of the Supreme Court in which such Chairperson, the Vice-Chairperson or a Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The President may suspend from office the Chairperson, the Vice-Chairperson or a Member in respect of whom a reference has been made to the Supreme Court under sub-section(2) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson, the Vice-Chairperson or a Member referred to in sub-section (2).

9. SALARIES AND ALLOWANCES AND OTHER TERMS AND CONDITIONS OF SERVICE OF CHAIRPERSON, VICE-CHAIRPERSON AND MEMBERS

The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairperson, the Vice-Chairperson and the Members shall be such as may be prescribed by the Central Government.

10. VACANCY IN AUTHORITY NOT TO INVALIDATE ACTS OR PROCEEDINGS

No act or proceedings of the Authority shall be questioned or shall be invalid merely on the ground of existence of any vacancy or defect in the establishment of the Authority.

CHAPTER III

JURISDICTION AND POWERS OF AUTHORITY

11. APPEALS TO AUTHORITY

(1) Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operation and processes shall not be carried out or shall be carried out subject to certain safeguards may, within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed.

Provided that the Authority may entertain any appeal after the expiry of the said period of thirty days but not after ninety days from the date of aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) For purposes of sub-section (1), “person” means---

- (a) any person who is likely to be affected by the grant of environmental clearance;
- (b) any person who owns or had 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 neighborhood of the area wherein the project is proposed to be located.

(3) On receipt of an appeal preferred under sub-section (1), the Authority shall, after giving the appellant an opportunity of being heard, pass such orders, as it thinks fit.

(4) The Authority shall dispose of the appeal within ninety days from the date of filing the appeal.

Provided that the Authority may for reasons to be recorded in writing, dispose of the appeal within a further period of thirty days.

12. PROCEDURE AND POWERS OF AUTHORITY

(1) The Authority shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Authority shall have power 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.

(2) The Authority shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

- (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 sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses 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.

13. FINANCIAL AND ADMINISTRATIVE POWERS OF CHAIRPERSON

The Chairperson shall exercise such financial and administrative powers as may be vested in him under the rules.

Provided, that the Chairperson shall have authority to delegate such of his financial and administrative powers as he may think fit to the Vice-Chairperson or any other officer subject to the condition that the Vice-Chairperson or such other officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the Chairperson.

14. STAFF OF AUTHORITY

(1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Authority in the discharge of its functions and provide the Authority with such officers and other employees as it may think fit.

(2) The officers and other employees of the Authority shall discharge their functions under the general superintendence of the Chairperson.

(3) The salaries and allowances and conditions of service of the officers and other employees shall be such as may be prescribed.

CHAPTER IV

MISCELLANEOUS

15. BAR OF JURISDICTION

With effect from the date of establishment of the Authority, no civil court or other authority shall have jurisdiction to entertain any appeal in respect of any matter with which the Authority is empowered by or under this Act.

16. PROCEEDINGS BEFORE THE AUTHORITY TO BE JUDICIAL PROCEEDINGS

All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (45 of 1860).

17. MEMBERS AND STAFF OF AUTHORITY TO BE PUBLIC SERVANTS

The Chairperson, the Vice-Chairperson and the Members and the officers and employees of the Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

18. PROTECTION OF ACTION TAKEN IN GOOD FAITH

No suit, prosecution or other legal proceeding shall lie against the Central Government or against the Chairperson, the Vice-Chairperson or a Member of the Authority or any other person authorised by the Chairperson, the Vice-Chairperson or a Member for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

19. PENALTY FOR FAILURE TO COMPLY WITH ORDERS OF AUTHORITY

Whoever fails to comply with any order made by the Authority, he shall be punishable with imprisonment for a term which may extend to seven years, or with fine which may extend to one lakh rupees, or with both.

20. OFFENCES BY COMPANIES

(1) Where any offence under this 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 shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section(1), where an offence under this Act has been committed by a company and 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, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation--- For the purpose of this section,---

- (a) “company” means any body corporate and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.

21. POWER TO REMOVE DIFFICULTIES

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty.

Provided that no such order shall be made after the expiry of the period of three years from the date on which this Act receives the assent of the President.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

22. POWER TO MAKE RULES

(1) The Central Government may, by notification make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the procedure under sub-section(4) of section 8 for the investigation of misbehaviour or incapacity of the Chairperson, the Vice-Chairperson or a Member;

- (b) the salaries and allowances payable to and the other terms and conditions of service of the Chairperson, the Vice-Chairperson and the Members under section 9;
- (c) the form which an appeal shall contain under sub-section(1) of section 11;
- (d) financial and administrative powers of the Chairperson under section 13;
- (e) the salaries and allowances and conditions of service of the officers and other employees of the Authority;
- (f) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rules.

23. REPEAL AND SAVING

(1) The National Environment Appellate Authority Ordinance, 1997 (35 of 1997) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Act, shall be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

Clause (v) of sub-section(2) of section 3 of the Environment(Protection)Act,1986 empowers the Central Government to impose restrictions in the areas in which any industries, operations or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. In view of recent pronouncements by the Supreme Court in certain public interest litigation cases involving environmental issues, it was considered necessary to set up an independent body for quick redressal of public grievances. Consequently, an Ordinance was promulgated providing for the establishment of a National Environment Appellate Authority to deal with petitions, complaints, representations or appeals against the grant of environmental clearance to projects.

2. The Bill seeks to replace the aforesaid Ordinance.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No.23(2)/97-PL, dated the 21st February 1997 from Shri Saifuddin Soz, Minister of Environment and Forests to the Secretary-General, Lok Sabha]

The President, having been informed of the proposed Bill for the establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or process or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment(Protection)Act,1986 and for matters connected therewith or incidental thereto, accords his previous sanction to the introduction of the National Environment Appellate Authority Bill,1997 under articles 117(1) and consideration of the Bill under article 117(3) of the Constitution in Lok Sabha.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 22 of the Bill empowers the Central Government to make rules by notification to carry out the provisions of the Act. The matters in respect of which such rules may be made are specified therein. These matters relate, inter alia, to the procedure for the investigation of misbehavior or incapacity of the Chairperson, the Vice-Chairperson or a Member, the financial and administrative powers of the Chairperson, the form of appeal, the terms and conditions of service of Chairperson, the Vice-Chairperson and the Members and other officers and employees of the Authority.

2.The matters in respect of which rules may be made are matters of administrative details and procedure and, as such, the delegation of legislative power is of a normal character.

Statement explaining the circumstances which necessitated the promulgation of the National Environment Appellate Authority Ordinance, 1997

In view of recent pronouncements by the Supreme Court in certain public interest litigation cases involving environmental issues, it was considered necessary to take immediate steps to set up an independent body for quick redressal of public grievances. Accordingly, it was proposed to provide for the setting of a National Environmental Appellate Authority to deal with petitions, complaints, representations and appeals against the decisions of the competent authorities granting environmental clearances to developmental projects under the provisions of the Environment (Protection) Act, 1986. Since the matter was very urgent, the National Environment Appellate Authority Ordinance was promulgated.