

"specially appointed" means appointed specially to perform the functions of the Collector under the Act. The appointment need not be by name. A 1968 SC 432 (436, 437) : (1968) 2 SCJ 425.

Under S. 13 (1) of the Suppression of Immoral Traffic in Women and Girls Act, read with S. 15 of the General Clauses Act a Special Police Officer need not be appointed by name. A police officer in charge of a division can be appointed as a Special Police Officer for the purpose of the Act. (1968) 9 Guj LR 278 : ILR (1967) Guj 1046 (1054).

Where power is conferred on a person by name or by virtue of his office, the individual designated by name or as the holder of the office for the time being is empowered specially. A 1967 SC 1532 (1533, 1534).

Where a Superintendent of Police was appointed as Inquiry Officer to conduct departmental enquiry against petitioner, and another Police Officer continued the enquiry and submitted inquiry report, Held, S. 15 is not attracted and inquiry by another police Officer was without jurisdiction. 1978 Lab IC (NOC) 162 (Goa).

**16. Power to appoint to include power to suspend or dismiss.**— *Where, by any Act of Parliament or regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having<sup>1</sup> [for the time being] power to make (the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.*

### Scope and applications

In view of the fact that the order suspending the order of appointment is not a penalty and that the appropriate authority can not only suspend but also terminate the appointment of the petitioner, the Syndicate being the appointing authority has the authority to place the petitioner under suspension. Dr. Syed Mahabubur Rahman Vs. Buet 45 DLR 333.

Rights of Government in the matter of suspension of public servant. The authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceedings, which may eventually result in a departmental enquiry against him. This general principle is illustrated by provision in Section 16, General Clauses Act which is in consonance with general law of Master and Servant. AIR 1964 SC 787.

Member of High Court staff—Power to dismiss vests in Chief Justice. AIR 1956 SC 285.

**Principle.**— The General Clauses Act has been enacted so as to avoid superfluity of language in statutes wherever it is possible to do so.

Section 16 has codified the well-understood rule of general law that the power to terminate follows naturally and as a

necessary sequence from the power to create. In other words, it is a necessary adjunct of the power of appointment and is exercised as an incident to, or consequence of, the power; the authority to call an officer into being necessarily implies the authority to terminate his functions when their exercise is no longer necessary, or to remove the incumbent for an abuse of those functions or for other causes shown. *Rayarappan v. Madhavi Amma*, 1949 FCR 667 : 1950 SCJ 567.

**Disciplinary jurisdiction of High Court over District Judges and Judges subordinate to them, extent of Jurisdiction of Governor to remove or dismiss these officers.**— Exercise of Governor's powers has to be in consultation with High Court. AIR 1965 Bom. 156.

The Act confers a general power upon the appointing authority to order suspension. Where Government is the appointing authority, it can order suspension, pending departmental Proceedings or even when departmental proceedings are contemplated. AIR 1959 Cal 294.

Under Section 16, the Government can appoint a President of a Municipality and it has the power to dismiss him unless there is some other provision by which that power is curtailed. AIR 1958 J and K 6.

Government has power to suspend a Government servant appointed by it. AIR 1956 SC 285 : ILR (1962) 2 Punj 642.

Order of termination can be passed by an authority competent to appoint him at time when order terminating his service is passed in view of Section 16, General clauses Act. AIR 1962 Raj 244.

The power to terminate service is a necessary adjunct of the power of appointment and is exercised as an incident to or consequence of that power. A 1977 SC 2257 (2260, 2263).

Section 16 has codified the well-known rule of general law that the power to terminate flows naturally and as a necessary sequence from the power to create. In other words, it is a "necessary adjunct" of the power of appointment and is exercised as an incident to, or consequence of the power. A 166 SC 334 (336) : (1966) 1 SCJ 24.

Power to appoint generally includes power to dismiss, in the absence of anything to contrary. A 1971 Mys 99 (106, 107) : 1971 Lab IC 461.

The authority to call an officer into being necessarily implies the necessity to terminate his functions when their exercise is no longer necessary or to remove the incumbent for an abuses of those functions or for other causes shown. A 1950 FC 140 (141) : 1949 FCR 667. Order of removal of receiver falls within the ambit of Rule 1 of Order 40-Civil P. C. 1908. A 1924 Mad 614. A 1961 Cal 826. A 1931 All 72 and A 1947 Pat 418.

Where the Government is the appointing authority, it can order suspension pending departmental proceedings, or even when departmental proceedings are contemplated. A 1959 Cal 294 (295).

**Dismissal and termination of service.**— The word "dismiss", generally used in connection with the termination of appointments, is not confined merely to determination of employment as a measure of punishment. A 1968 SC 292 (296) : 1968 Lab IC 232.

**Power under section :** (a) Power to terminate, a necessary adjunct of power to appoint—It is now firmly established that the power to terminate service is a necessary adjunct of the power of appointment and is exercised as an incident to or consequence of that power. *Lekhraj Satramdas Lalvani v. Deputy Custodian-cum-Managing Officer*, (1966) 1 SCR 120 : AIR 1966 SC 334 ; *Kutoor Vengayil Rayarappan Nayanar v. Kutoor Vengayil Aadhi Amma*, 1949 FCR 667; AIR 1950 FC 140. The power to terminate flows naturally and as a necessary sequence, from the power to create. ILR (1971) 1 DEL 568 (FB). This power cannot be delegated to an authority subordinate to the appointing authority. *Management of Delhi Transport Undertaking v. B.B.L. Hajley*, 1972 Serv LR 299 : ILR (1971) 1 DEL 568 (FB). In other words, the authority to call such officer into being necessarily implies the authority to terminate his functions. *Heckett Engineering Co. v. Their Workmen*, AIR 1977 SC 2257 : 1977 Lab IC 1843 : (1977) 4 SCC 377 : 1977 UJ (SC) 706.

When an appointment to be valid requires its confirmation by an authority other than that which made the appointment, it is the confirming authority which would have power to dismiss or suspend the appointee. *T. Cajee v. U. Jormanik Siems*, AIR 1961 SC 276 at pp 279-283 : (1961) 1 Lab LJ 652 : (1961) 2 SCA 1.

Where the power to appoint assistant accountants in Treasury had been transferred by the State Government to the Deputy Commissioner it has held that the Deputy Commissioner was not acting on behalf of State Government while making the appointment and that he himself was the appointing authority. *Rmperor v. Maung B Maung*, AIR 1935 Rang 263.

A power to terminate may in the absence of restrictions express or implied be exercised subject to the conditions prescribed in that behalf by the authority competent to appoint. *S. R. Tiwari v. Sistrict Board, Agra*, (1964) 3 CR 55 : AIR 1964 SC 1980. In each case, therefore, the Court has to see whether the relationship between the employer and the employee is dominantly contractual or statutory. *I.I.T. v. Mangat Singh Molar Singh*, 75, Punj LR (D) 297 : ILR (1973) 2 DEL 6.

The General clauses Act has been enacted so as to avoid superfluity of language in statues wherever it is possible to do so. This section would apply when a different intention does not appear in the relevant Act sought to be applied. *State of Kerala v. V. P.P. Mahammed Kunhi*, 1970 Serv LR at p 570 (DB).

**Power to suspend.**— Suspension means the issuing of an order that so long as the contract of employment subsists and until the employee is dismissed, he must not discharge his duties. *Gurudev Narayan Srivastava v. State of Bihar*, AIR 1955 Pat 131 at p 134 (DB). The appointing authority has power to

suspend an employee. *Union of India v. Baijnath*, 1972 Serv LR 382 at p 384 (DB) (Del) ; *Nrisingha Murari v. District Magistrate*, AIR 1961 Cal 225 : 25 Cal WN 129 ; *Pratap Singh, (Dr.) v. State of Punjab*, AIR 1963 Punj 298.

The appointing authority can suspend the appointee pending departmental proceedings or even after their completion. *Suroj Kumar Data v. State of West Bengal*, AIR 1959 Cal 294 ; *Gurdev Narain Srivastava v. State of Bihar*, AIR 1955 Pat 131 at p 134 (DB) . The exercise of power to suspend with retrospective effect is illegal. *Hemantha Kumar v. S.N. Mukharjee*, AIR 1954 Cal 340 at p 343 : 58 Cal WN 1 (DB).

Section 16 is no authority for withholding emoluments of a suspended employee. *Uma Shankar v. B. R. Anand*, 1968 Lab IC 1483. Nor does section 16 vest in the appointing authority the power to withdraw any part of emoluments of the employee during his suspension. *Tustu Charan Saha v. Collector, District Hoogly*, ILR (1968) 2 Cal 217 ; *Uma Shankar Shukla v. B. R. Anand*, 1968 Lab IC 1483 : 1968 M.P.L.J. 604 (DB).

When suspension is not punitive, it can be brought about by an authority subordinate to the appointing authority. *Saisa Behari v. State of Orissa*, AIR 1966 Orissa 150.

**Application of the section to the appointed and not to the elected.**— When an office is controlled by the provisions of an Act and when that office is not an office at will, for example, an elective office created by Act with no provision for removal by vote of no confidence, section 16 will have no application to such office. *Hindurao Balwant Patil v. Krishna Rao Parashuram Patil*, AIR 1982 Bom. 216 : (1982) 1 Bom. CR 65 ; (1982 1 Co-op LJ 149, *Kanta Devi v. State of Rajasthan* AIR 1957 Raj 134.

This section is not applicable to the person elected to an office. *Jagdev Singh v. Registrar, Co-operative Societies*, AIR 1991 P & H 149 (158) (FB).

Section 16 of the Act applies unless a different intention appears in the enactment to which it is sought to be applied and has no application to the case of revocation or cancellation of the authority of the appointed arbitrator. In the matter of application of the principle of this section to an order canceling a licence granted to a document writer, it was held that such order could not be sustained by reason of breach of principles of natural justice. *Ram Dayal v. Registrar, Registratio, Patial.* (1969) 71 Punj LR 335.

An authority competent to appoint a railway servant can pass an order of termination of his appointment. A 1962 Raj 244 (246) : 1962 (1) Cri LJ 743.

**Power of suspension.**— Assuming that there is no statutory rule which empowers the Government to suspend an officer pending an inquiry, yet even in the absence of a statutory rule, Government have power to suspend an officer from performing the duties of his office pending an inquiry into the charges leveled against him. In this connection a distinction must be drawn between suspending the "contract of service" of an officer

an suspending an officer from performing the "duties of his office" on the basis that the contract is subsisting. Suspension in the latter sense is always an implied term in every contract of service. When an officer is "suspended" in this sense, it means that the Government merely issues a direction to the officer that so long as the contract is subsisting and till the time the officer is legally dismissed he must not do anything in the discharge of the duties of his office. In other words, the employer is regarded as issuing an order to the employ which, because the contract is subsisting, the employee must obey. A 1955 Pat 131 (134) (DB).

An appointing and dismissing authority has power to suspend a Government servant. 1972 Serve LR 382 (384) (DB). (Delhi); A 1963 Punj 298 (310, 311) : ILR (1962) 2 Punj 642 (DB).

In the absence of any express rule, Government has no power to treat a Government servant as suspended during a period prior to the making of the order of suspension, when he has already in law performed the duties of his office during that period. A 1958 Madh Pra 44 (45) : 12957 MPLJ 866 (DB).

**Application of the section to the constitution and the Rules under the constitution.**— Section 16 applies to the Constitution by virtue of Art of the Constitution. A 1956 SC 285 (291) : 1956 SCJ 259.

The expression "appointment" as used in Article of the Constitution will, therefore, include termination of or removal from service also. A 1979 SC 429 (432, 433) : 1979 Lab IC 146 : (1979) Lab LJ 156.

Where for an appointment of an auditor of certain Government companies and statutory corporation, the Central Government is the appointing authority, in absence of a provisions to the contrary, the same Central Government would be the dismissing authority by virtue of S. 16 of the General Clauses Act, so as to disqualify a person from membership of the House of People under Art. of the Constitution by reason of his being a partner of the firm functioning as auditor of the aforesaid companies and corporations. (1963) 67 Cal WN 558 (566 to 569).

When the Governor in exercise of his powers under Art of the Constitution appoints some person or persons before which the members may make and subscribe their oath or affirmation, he does not thereby abdicate his own power under the article, but the jurisdiction of both is concurrent and the option lies with the member in Council to shoo the persons before whom he would like to make the oath or affirmation. This conclusion follows both from the construction of the constitutional provisions read with Ss. 14 to 16 of the General Clauses Act, 1897 and from the generally accepted theory that an authority which delegates its powers does not divest itself of its powers and can resume them in full or in part. A 1978 Mad 342 (349, 250).

Power to start a departmental inquiry or action for misconduct against a District Judge (or a Judge subordinate to him) vest exclusively in the High Court. The power to dismiss and remove District Judges and Judges subordinate to them vests in the Governor, but this power has to be exercised in consultation with the High Court. A 1965 Bom. 156 (162, 163) : 67 Bom. LR 170 (DB).

The power to suspend District Judges pending disciplinary proceedings is excluded from the power of Governor under the Constitution. A 1973 Orissa 244 (256).

The words "disciplinary matters" in the Art. of the Constitution include suspension pending departmental inquiry or pending a criminal proceedings. Authority appointing a public servant may order such suspension. A 1964 SC 787 (891, 792, 799) : (1966) 2 Lab LJ 164.

Provisions of S. 16 do not apply to the interpretation of rules. A 1968 All 207 (212) : 1968 Cri LJ 721.

Provisions of S. 16 do not apply to the construction of the Business Rules framed under the Art. of the Constitution. But the principle thereof can be applied, even apart from any statutory provision. A 1953 Trav C 130 (238) : 1953 Cri LJ 752.

**Application of the section to subordinate legislation.**— Section 16 would not apply to a statutory notification issued by the Central Government under S. 3 of the Land Customs Act, 1924 delegating to Board of Revenue Act, 1924 power to appoint Land Customs Officer. A 1958 Assam 111 (112) : 1958 Cri L 1129 (DB).

**Statutory corporation, Boards and universities.**— Section 16 applies to the members of a Municipal Board. A 1957 Raj 134 (136) : 1957 Raj LW 69 (DB).

Section 16 does not apply to the revocation of authority of an arbitrator. A 1954 Cal 41 (45) : 58 Cal Wn 512.

**Delegation of power of appointment and provisions for confirmation - Effect of.**— Sometimes the power of appointment is delegated by the appointing authority to a lower authority. Such delegation may not necessarily imply delegation of the power to dismiss. Thus, the Central Government delegated to the Central Board of Revenue the Power to appoint Land Customs Officers. It was held that the Board did not thereby acquire the power of removal of the Officers. Such a result did not follow from Section 16, which provides that the authority competent to appoint may dismiss. A 1958 Assam 111 (112) : 1958 Cri LJ 1129 (DB).

**When fresh appointment can be made.**— Power to make a fresh appointment can be exercised only after the previous incumbent is removed. An application for the appointment of a fresh receiver is ancillary to and would come into operation only on the grant of the prayer to remove the existing receiver. For, if the existing receiver is not removed there is no scope for a fresh appointment. 1954 ker LT 981 (989) : A 1955 NUC (Trav-Co) 1907 (DB).

**Power to make rules for dismissal not included in the section.**— Power to make rules for appointment does not include a power to make rules for dismissal. A 1977 All 6 (7) : 1977 Lab IC 92.

**Natural justice observation of.**— Section 16 and corresponding provisions in General Clauses Acts, only enunciate the well-established rule of general law that an authority with power to appoint a person can also suspend or dismiss him; but in each case one has to look to the Act or rules under which an appointment had been made or condition prescribed for an appointment, suspension or dismissal. Provisions in the General Clauses Act are not intended to abrogate the rules of natural justice when action is sought to be taken affecting the civil rights of a citizen. An order canceling a license granted to document writers was held unsustainable by reason of breach of the rules of natural justice. (1969) 71 Pun LR 335 (338, 339, 340).

**Power to be exercised in conformity with the statute.**— Where a District Board has passed a resolution for the dismissal of the Secretary under District Boards Act it is not competent to the Board to pass a resolution for his suspension till the matter of his dismissal is decided on an appeal, if any, preferred by the Secretary to the Government. When express powers have been given to the Board under the terms it would not be legitimate to have resort to general or implied powers under the law of master and servant A 1952 C 362 (365).

**Express provision for dismissal.**— An express provision for dismissal in a specific Act, renders S. 16 inapplicable. Thus, when termination of an appointment of a member of the Wakf Board before the expiry of the five-year term is not contemplated except under one or the other of the contingencies specifically mentioned in the Wakf Act, the State Government has no power to remove such member merely for the contravention of Section 11 of the Act with the aid of S. 16 of the General Clauses Act. 1970 Serve LR 569 (570) (DB). (Ker).

**Difference intention.**— Section 16 is attracted only where a different intention does not appear in the enactment to which it is sought to be applied. A 1954 Cal 41 (45) : 58 Cal WN 512.

If O. 40, R. 1, Civil P. C. 1908 is read along with S. 16 of the General Clauses Act, then it follows by necessary implication that the order of removal of a receiver falls within the ambit of that Rule. A 1950 FC 140 (140, 141) : 1949 FCR 667.

O. 20, R.1 of the Civil P. C. should be held to contain at least by implication—a power to remove a receiver, and an application for removing a receiver is well within its scope. An order disposing of such an application (whether granting it or rejecting it would thus obviously be an order under that statutory provision and would, therefore be appealable under O. 43, R. 1 (5) of the Code. ILR (1955) 2 Cal 203 (209) : A 1955 NUC (Cal) 2915 (DB).

Refusal to remove a receiver is not equivalent to "appointment", and such an order is not appealable. 1954 ker LT 981 : A 1955 NUC (Travancor) 1907.

The fact that the advice of some other body is requisite for appointment does not render S. 16 inapplicable. A 1967 SC 459 (462, 463) : (1967) 2 SCJ 877.

Where the Government can appoint a President of a Municipality, it has the power to dismiss him also, unless there is some other provision by which that power is curtailed. A 1958 J & K 6 (9) (DB).

The power of appointment conferred upon the Custodian of Evacuee Property by S. 10 (2) (b) of the Administration of Evacuee Property Act, 1950 confers upon the Custodian by implication the power to suspend or dismiss any person appointed by him as manager. A Deputy Custodian, therefore, has the power to terminate the management of a persons with regard to business concerns. A 1966 SC 334 (336) : (1966) 1 SCJ 24.

A notification was issued under Criminal Law Amendment Act, appointing Assistant Sessions Judges (having already extensive jurisdiction and power as such Officer) as Special Judges. The notification was held to be illegal. Amendment of the notification, only removing the portion which amounted to a sort of restriction of jurisdiction of such Judges as Special Judges. Was held not to amount to "suspending" or "dismissing" the person originally appointed either altogether or even from the office of Special Judge. Section 16 did not apply to the case, but Section 21, General Clauses Act would apply. A 1965 Andh Pra 372 (381, 382) : 1965 (2) Cri LJ 585.

An arbitrator appointed under S. 19, Defence of India Act, 1939 is not in the position of an employee. Section 16 has no application to his dismissal. He is not an "employee". A 1954 Cal 41 (45) : 92 Cal LJ 246.

Though the Government can suspend its employee for making an enquiry or otherwise, it has no right to withdraw any part of the emoluments of the employee during such suspension, unless specifically empowered in that behalf by law or Rules having statutory force. The power to withdraw emoluments during interim suspension cannot be drawn from S. 16, General Clauses Act, ILR (1968) 2 Cal 217 (219, 221, 222, 223, 226).

The management of the appellant with regard to the business concerns can lawfully be terminated by the Deputy Custodian by virtue of section 10 (2) (b) of the 1950 Act read with section 16 of the General Clauses Act. The principle underlying the section is that the power to terminate is a necessary adjunct of the power of appointment and is exercised as an incident to or in consequence of that power. The power of appointment conferred upon the Custodian under section 10 (2) (b) of the 1950 Act confers, by implication, upon the Custodian the power to suspend or dismiss any person

appointed. [Kekhray Sattramdas Lalvani v. Deputy Custodian, Bombay, (1966) 1 SCJ 24; (1965) 2 SCWR 885 : AIR 1966 SC 334 : (1966) 1 SCR 120.

Power to appoint includes power to suspend or dismiss.— Pradyat Kumar Bose v. Hon'ble Chief Justice of Calcutta, (1955) 2 SCR 1313 : 1956 SCA 79 : 1956 SCJ 259 : 1956 SCC 402 : AIR 1956 SC 85.

Power to terminate service is necessary adjunct of power of appointment. M/s. Heckett Engineering Co. v. Their Workmen. AIR 1977 Sc 2257 (2261).

**17. Substitution of Functionaries.**— (1) *In any Act of Parliament or regulation made after the commencement of this act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.*

(2) *This section applies also to all [acts of Parliament] made after the third day of January, 1968, and to all Regulations made on or after the fourteenth day of January, 1887.*

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1. Subs. by P.O. No. 147 of 1972, Art. 7 for "Central Acts".

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### Scope and applications

**Reconstitution of functionary.**— If a functionary is constituted of a body of persons, this section would apply, if that body of persons is reconstituted.

By virtue of clause (1) of Section 17, an acting District Magistrate would be competent to perform the functions of a District Magistrate. Kandasami Pillai v. Emperor, ILR 2 Ma 69 at p 75 ; K. Gopala Krishnayya v. State of Andhra Pradesh, AIR 1959 Andh Pra 292 : (1958) 2 Andh Wr 211 ; Saroj Kumar v. State, AIR 1959 Cal 294.

By virtue of S. 17, it is competent to an Acting District Magistrate to grant sanction for the prosecution of an offence. A 1919 Mad 24 (25, 26) : 20 Cril LJ 129.

**18. Successors.**— (1) *In any act of Parliament or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.*

(2) *This section applies also to all acts of Parliament made after the third day of January, 1868, and to all regulations made on or after the fourteenth day of January, 1887.*

### Scope and applications

Inasmuch as the excise licensing Board, constituted under S. 7(2), Bengal Excise Act, 1909, exercises the functions of the Collector, that Board should, in appropriate coerce be substituted for the word "Collector" for the purpose of appeal. A 1955 NUC (Cal) 4290.

Section 18 is also applicable to a case of administrator of a superseded Municipal Corporation. A, 1970 Bom 394. (397) : 1970 Cri LJ 1436.

**19. Official chiefs and subordinates.**— (1) *In any Act of Parliament or regulation made after the commencement of this act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.*

(2) *This section applies also to all Acts of Parliament made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.*

### Scope and applications

Additional District Magistrate can lawfully perform functions of the District Magistrate in authenticating a declaration. Walil Bari vs. Dist. Magistrate. 38 DLR (AD) 256.

This section simply states that it need not be made express, but it rather follows by implication that the law which relates to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior. It follows that there has to be a law or vesting of legal authority making provision that a subordinate can enter upon the functions of his superior in the latter's incapacity or absence, or any such other eventuality. This is the logical conclusion which inevitably follows by the use of the expression 'subordinate lawfully performing the duties of that office in the place of their superior'. The emphasis on the word "lawfully" pre-supposes the existence of a law entitling the subordinate to fill in the vacancy of his superior.

**When no delegation provided.**— The subordinate entering into the real functions of his superior by authority of law is one thing, but the subordinate using the powers vested in the superior without a legal sanction of delegation of authority by the superior upon his subordinate is quite another. The section protects the former but not the latter incident.

A warrant issued against a person, under S. 7 of the Extradition Act, 1903 who has committed an extractable offence in an Indian State. In order to attract S. 19, the subordinate of the Political Agent at the time of issuing a warrant must be lawfully performing the duties of the office of the Political Agent.

Since the Political Agent cannot delegate his powers and appoint his subordinate to exercise his functions, such a person cannot be said to be lawfully performing his duty. Such a warrant, therefore, being illegal a person cannot be arrested on it. A 1948 All 129 (130, 131) : 49 Cri LJ 98 (DB).

### PROVISIONS AS TO ORDERS, RULES, ETC., MADE UNDER ENACTMENT'S.

**120. Construction of orders, etc. issued under enactments.**— Where, by any <sup>2</sup>[Act of Parliament] or Regulation, a power to issue any <sup>3</sup>[notification], order, scheme, rule, form or bye-law is conferred, then expressions used in the notification, order, scheme, rule, form or bye-law, if it is made after the commencement of this act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the act or Regulation conferring the power.

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1. Cf. s. 31 of the Interpretation Act, 1889 (52 and 53 Vict., c.63).
  2. Subs. by P.O. No. 147 of 1972, Art. 7 for 'Central Act'.
  3. Ins. by the Amending act, 1903 (1 of 1903), s. 3 and Sch. 11.
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#### Scope and applications

**Principle and object.**— The principle underlying the section is that words used in subordinate legislation must (unless a different intention appears) have the same meanings as in the parent Act. Subordinate legislation—as the very name indicates—must be subordinate to the parent Act and there must therefore be harmony between the two in matters of construction.

**Notification.**— Ordinarily whether the notification as issued under an Act extends over part only of the territory or throughout the territory would be specified in the notification when it contains no express signification of the area, it may be implied that it is intended

to operate throughout the territory covered by the Act. That is a construction by implication. It is not mandatory in such a case that the notification should specify that it operates throughout the territory to which the Act extends. A 1981 SC 1582 (1584) : 1981 Cri LJ 1309 : 1981 All J 850.

If same words appear in similar context in the same section or in the same paragraph, then the words have to be given the same meaning. This accepted canon of interpret action is also applicable which interpreting notification or rule etc., as issued or made under a statute, because attributing a different sense to the as word appearing in the same sequence will lead to contradictory inferences. A 1980 Mad 89 (96) : (1980) 1 Mad LJ 121 (FB).

Expressions used in bye-laws are to have the same meaning as they have in the Act, unless there is anything repugnant in the context. If there is any such repugnancy the definition in the Act cannot be resorted to for interpreting a bye-law. A 1963 SC 771 (773).

Bye-laws may be treated as ultra vires on the grounds, amongst others, that they are repugnant to the Statute under which they are made or that they are unreasonable. Caries on Statute Law. (7th Edn.) 325.

A rule cannot be wrongly assumed to be a bye-law and as such declared invalid on the ground that it is unreasonable. A 1975 SC 1935 (1941, 1942).

When considering whether a bye-law is reasonable or not the Courts need a strong case to be made out against it and decline to determine whether it would have been wiser or more prudent to make the bye-law less absolute, nor will they hold that it is unreasonable because considerations which the Court would itself have regarded in framing such a bye-law have been overlooked or rejected by its framers. (1888) 13 AC 446 (452) : 57 LJPC 73.

The section provides for an identity of construction with regard to the expressions in an enactment when the same expressions are used in any order, scheme, notification, rule or bye-law brought about under that enactment. But, the scope of section is restricted by the expression "anything repugnant in the subject or context". In case of any repugnancy, the definition in the Act cannot be resorted to for interpreting a bye-law. Bagalkot City Municipality v. Bagalkot Cement Co., AIR 1963 SC 771 at p 773.

If a notification is intended to operate over part only of the territory to which the Act extends, it is essential for the notification to define that part and in the absence of any express notification of the area, it may be implied that it is intended to operate throughout the territory to which the Act extends. Ram Deo Onkarmal, (Firm) v. State of Uttar Pradesh, AIR 1981 SC 1582 at p 1584.

**Competent order under wrong provision.**— Where an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within its powers under any other rule. The validity of an order should be judged on a consideration of its substance and not its form. P. Bala Kotiah v. Union of India, 1958 SCR 1052 at p 1959 : AIR 1958 SC 232; AIR 1924 Mad 92 ; Rajam Chetty v. Sheshayya, ILR 18 Mad 236 (FB) ; Queen Empress v. Gangaram, ILR 16 All 136. It is well settled that rule made under an enactment cannot be declared ultra vires unless it is found that the enactment does not confer any power at all to make the rule. A rule purported to have been made under a wrong provision of an Act would nonetheless be valid if it is shown to be within the four corners of the power conferred by any other provision of the Act. Prem Shankar Sharma v. Collector, East Nimar, AIR 1962 MP 262, 264 (FB).

**Inter-connection of powers and duties.**— Where powers and duties are inter-connected and it is not possible to separate one from the other in such case that power may be delegated while duties are retained and vice versa, the delegation of

powers takes with it the duties. *Hazra Syed Shah v. Commissioner of Wakfs, West Bengal*, AIR 1961 SC 1095 at p 1096 ; *Murgoi v. Attorney-General, Northern Rhodesia* 1960 AC 336.

It may be noted that where a statute confers and express power, a power inconsistent with that expressly given cannot be implied. *M. Pentiah v. Muddla Verma*, AIR 1961 SC 1107 at p 1117.

**Correspondence of terms in Acts and Rules.**— The section would contemplate correspondence in the matter of operation of any Act though a notification whether in part or in whole of any particular area. When a notification issued under an Act does not specify any particular area to be covered by the notification, the construction by implication would mean that the notification operates throughout the area to which the Act extends. *Ram. Deo Onkarmal (Firm) v. State of U. P.*, AIR 1981 SC 1582 at p 1584 : 1981 Cr Lj 1309 : (1981 All LJ 850).

**Terms used in section to be construed "ejusdem generis".**— The point is that legislation is the general and the notification, order, scheme, rule, form or bye-laws is the species of the same general, and since the power to make any of such things is derived under the relevant Act, they are all in the nature of subordinate or delegated legislation.

A rule cannot in any case, be assumed to be a bye-law merely for purpose of declaring it invalid on the ground of unreasonableness merely because the Court thinks that it goes further and has no limitations or exceptions. *Trustees of Port of Madras v. Amin Chand Pyare Lal*, AIR 1975 SC 1935 at pp 1941, (1942).

**Construction by implication.**— Ordinarily, whether a particular notification extends over part only of the territory or throughout the territory, would be specified in the notification. If the notification is intended to operate over a part only of the territory to which the relevant Act extends, the notification must necessarily define that limited area. When it contains of express signification of the area, it may be implied that it is intended to operate thought the territory covered by the Act. This is a construction by implication. *Ram Deo Onkarmal (Fim) v. State of U. P.*, AIR 1981 SC 1582 at pa 1584 : 1981 All LJ 850.

**121. Power to make, to include power to add to, amend, vary or rescind, orders, rules or bye-laws.**— Where, by any Act of Parliament or Regulation, a power to <sup>2</sup>[issue notifications], orders, rules, or bye-laws in conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any <sup>3</sup>[notification], orders, rules or by laws so <sup>4</sup>[issued].

1. Cl. s 32 (3) of the Interpretation act, 1889 (52 & 53 'ict., c. 63).

2. Subs. by Amending act, 1903 (1 of 1903), s. 3 and Sch. II, for "make".

3. Ins., *ibid.*

4. Subs. *ibid.*, for "made".