PROVISIONS AS TO ORDERS, RULES ETC MADE UNDER ENACTMENTS

Section 20. Constructions of orders etc issued under enactments—Where, by any [Central Act] or Regulation, a power to issue any [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.

SYNOPSIS

1. ANALOGY OF THE SECTION

The section finds its analogy in s 31 of the English Interpretation Act 1889, providing as follows:

> 31. Construction of statutory rules etc—Where any Act, whether passed before or after the commencement of this Act, confers power to make, grant, or issue any instrument, that is to say, any order-in-council, order, warrant, scheme, letters patent, rules, regulation, or bye-laws, expressions used in the

instrument, if it is made after the commencement of this Act, shall, unless the contrary intention appears, have the same respective meaning as in the Act conferring the power.

2. SCOPE

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 the 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.[1]

In *Mangi Lal v Suwa Lal*,[2] the word 'building' was construed as a roofed structure, though it was not defined as such either in the Jaipur Municipalities Act 1938 or in the City of Jaipur Municipal Act 1943.

If a notification is intended to operate over a only part 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 signification of the area, it may be implied that it is intended to operate throughout the territory to which the Act extends.[3]

3. COMPETENT ORDER UNDER WRONG PROVISION

Where an authority passes an order 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.[4] 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

1 *Bagalkot City Municipality v Bagalkot Cement Co* AIR 1963 SC 771, 773 (bye-law under s 48 of the Bombay District Municipal Act 1901, providing for octroi limits for the municipal district defined to the same as the usual municipal district; the latter expression in the bye-law to be construed as referring to the existing municipal district, and not to that as defined in the Act); *Fatik Chand Seal v State of West Bengal* (1966) ILR 2 Cal 50, 66 (provisions of West Bengal (Premises Requisitions Control Temporary Provisions) Act 1947, held inconsistent with s 22 of West Bengal General Clauses Act, corresponding to s 21 of the General Clauses Act 1897).

2 1948 ILR 110.

3 *Ram Deo Omkarmal, Firm v State of Uttar Pradesh* AIR 1961 SC 1502, 1504.

4 *P Kata Kotiah v Union of India* [1958] SCR 1052, 1059, AIR 1958 SC 232; *Municipal Committee, Raipur v Punjab Oil Mills* 1969 MPC 592 (upholding the validity of Proviso (3) to r 28 of the Raipur Municipal Committee Octroi Tax Rules, on the basis of this principle); *Secretary of State v Apinno* AIR 1924 Mad 92; *Kesava Bottu v Sheshayya* ILR 19 Mad 226 (FB); *Queen Empress v Gangaram* ILR 16 All 136.

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.[5]

4. INTER-CONNECTION OF POWERS AND DUTIES

Where powers and duties are inter-connected and it is not possible to separate one from the other, such powers may be delegated while duties are retained and vice versa, the delegation of powers takes with it the duties.[6]

It may be noted that where a statute confers an express power, a power inconsistent with that expressly given cannot be implied.[7]

5. CORRESPONDENCE OF TERMS IN ACTS AND RULES

The section would contemplate correspondence in the matter of operation of any Act through 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.[8]

Section 3(c) of the Land Acquisition Act 1894, defines a collector to mean the collector of the district and includes deputy commissioner and any officer specially appointed by the government to perform the functions of a collector under the Act. Section 20 of the General Clauses Act provides that where a central Act empowers making rules, the expression used in such rules, if made after the commencement of that Act, shall have the same meaning as in the central Act, unless there is anything repugnant in the subject or context. This is so because it would lead to contradictory inference if a different sense to the same word appearing in same sequence is attributed.[9] There being nothing repugnant in the subject or context, the word 'collector' must have the same meaning in the Land Acquisition (Companies) Rules 1963, as in s 3(e) of the Act, which section includes an officer specially appointed to perform the functions of the collector. If, therefore, an officer can be said to have been specially appointed to perform the functions of the collector under the Act, no challenge can be

5 *Prem Shankar Sharma v Collector, East Nimar* AIR 1962 MP 262, 264 (FB).

6 *Hazrat Syed Shah v Commr of Wakfs, West Bengal* AIR 1961 SC 1095–96; *Murgoni v Att-General, Northern Rhodesia* [1960] AC 336.

7 *M Pentiah v Muddla Verma* AIR 1961 SC 1107, 1117.

8 *Ram Deo Onkarmal, Firm v State of Uttar Pradesh* AIR 1981 SC 1582, 1584, 1981 Cr LJ 1309, 1981 All LJ 850.

9 *U Dakshinamoorthy v Commission of Inquiry* AIR 1980 Mad 89, 96, (1980) 1 Mad LJ 121 (FB).

entertained as to his competence to make the inquiry and report under r 4 of the said rules.[10]

6. TERMS USED IN SECTION TO BE CONSTRUED *EJUSDEM GENERIS*

The expression 'to make or issue orders', as used in s 23 of the Bihar and Orissa General Clauses Act, which corresponds to s 20 of the General Clauses Act, has to be construed ejusdem generis. When so construed, the 'orders', spoken of in s 24 of the Bihar and Orissa General Clauses Act correspond to s 21 of the General Clauses Act, have the meaning of orders made or issued in exercise of the power of a subordinate legislation conferred by any Act.[11]

The point is that legislation is the genus and the notification, order, scheme, rule, form or bye-laws is the species of the same genus, 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 legislations.

A rule cannot, in any case, be assumed to be a bye-law merely for the 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.[12]

7. CONSTRUCTION BY IMPLICATION

Ordinarily, whether a particular notification extends over only a part or the whole of the territory would be specified in the notification. If the notification is intended to operate over only a part of the territory to which the relevant Act extends, the notification must necessarily define that limited area. 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. This is a construction by implication.[13]

Section 21. Power to Issue to Include Power to Add to, Amend, Vary or Rescind Notifications, Orders, Rules or Bye-laws— Where, by any [Central Act] or Regulation, a power to issue [notifications], orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject

10 *Abdul Hussain Tavabali v State of Gujarat* AIR 1968 SC 432, 9 Guj LR 243, (1968) 2 SCJ 425, [1968] 1 SCR 597.

11 *Bhola Prasad Singh v Prof US Goswami* AIR 1963 Pat 437.

12 *Trustees of Port of Madras v Amin Chand Pyare Lal* AIR 1975 SC 1935, 1941–42.

13 *Ram Deo Onkarmal, Firm v State of Uttar Pradesh* AIR 1981 SC 1584, 1981 All LJ 850, 1981 Cr LJ 1309, (1981) 3 SCC 489, 1981 Cr LR 493 (SC), 1981 Cr App Rep (SC) 289, 1981 All Cr R 362, 1981 All WC 694.

to the like sanction and conditions (if any), to add to, amend, vary or rescind any [notifications], order, rules or bye-laws so [issued].

SYNOPSIS

1. SCOPE

This section is of general application.[14] It only embodies a rule of construction which should be applied if the construction cannot be arrived at or determined with reference to the context or subject matter of the particular statute.[15]

It can never be said that s 3 of the Orissa Land Reforms Act 1960 had repealed the CP & Berar Tenancy Act 1920. All that the said section says is that the provisions in the Act shall have effect, notwithstanding anything to

14 *Shiam Lal v Ram Saroop* 1971 All LJ 1349, 1355.

15 *Maharajkumari Meenakshi Devi Avaru v Union of India* (1979) 12 Cur Tax Rep 185 (DB) (Kant); (power to give exemption under cl (iii) of para 15 of Part B States (Taxation Concessions) Order 1950, made under s 60A of the Income Tax Act 1922, recognised as power to rescind exemption under s 297(2)(i) of the Income Tax Act 1961 consequent on former ruler's palace at Mysore ceasing to be his office-cum-residence); *Harendra Nath v Judge, Second Industrial Tribunal* AIR 1958 Cal 208; (overruled on another point in *State of Bihar v DN Ganguli* AIR 1958 SC 1018); *Ramchandra Reddy v State of Andhra Pradesh* AIR 1965 AP 40 (s 21); does not enable the government to totally extinguish a *panchayat samiti* duly constituted under the Panchayat Samiti Act 1959; *Dadri Cement Ltd v State of Punjab* AIR 1966 Punj 214; relying on *State of Bihar v DN Ganguly* AIR 1958 SC 1018; *DN Ganguli v State of Bihar* AIR 1956 Pat 449, 454, 1956 Pat LR 166 (DB) (implied power of cancellation); *State of Maharashtra v Sushila Mafatlal Shah* AIR 1988 SC 2090.

the contrary in any other law, custom, usage, agreement, decree or order of the court.[16]

Maybe ss 14 and 21 of this Act do not apply in terms to subordinate legislations but the rules of interpretation contained therein for application to statutes can be invoked for construction of statutory rules including provisos.[17]

The section will not save a resolution of the state bar council cancelling an election in its entirety and directing fresh election after the poll had been taken and the counting and re-counting of votes had also taken place. It was held that even if some irregularities had been committed, the proper course was to file an election petition and not to invoke at that stage the implied power under s 21 of this Act.[18]

If there is no provision prescribing the procedure for convening a meeting for considering a no-confidence motion against an elected person for his removal, then it is legitimate to hold that the same procedure followed for electing him, shall now be followed.[19] This is so on the principle that persons who have power to elect do possess power also to remove by vote of no-confidence.[20]

Correction by erratum declaration is permissible in view of s 21.[21] A mayor of a municipal corporation, who has power to convene a meeting, has the implied power to postpone or cancel it as well.[22]

The section insists on the word 'power'.—It follows that power conferred on any rule-making authority is not a plenary power so as to give retrospective effect to a delegated legislation, unless such power is traced to have been expressly conferred by the parent statute,[23] or by rules validly made thereunder.[24] Power under s 21 has to be exercised within the limits prescribed by the provision conferring such power.[25]

16 *Sadhu Meher v Rajkumar Patel* AIR 1994 Ori 26, 31.

17 *Isherdas Sahni & Bros v Delhi Admn* AIR 1980 Del 147; distinguishing *State of Bihar v DN Ganguli* AIR 1958 SC 1018; *Nav Samaj Ltd, Nagpur v Registrar of Companies* AIR 1966 Bom 218.

18 *Bakshis SBP Sinha v Bihar State Bar Council* AIR 1980 Pat 189, 1980 Bih LJR 521.

19 *Haji Anwar Ahmed Khan v Punjab Wakf Board* AIR 1980 P&H 306; dissenting from *Veeramachari Venkata Narayan v Dy Registrar of Co-op Societies* (1975) ILR 242 AP.

20 Ibid.

21 *Abdul Latif Mullick v Special Land Acquisition Collector* AIR 1981 Cal 395, (1981) 85 CWN 148.

22 *Jayanti Bhai Manu Bhai Patel v Arun Subodh Bhai Mehta* AIR 1989 SC 1289, 1295.

23 *ML Bagga v C Murhar Rao* AIR 1956 Hyd 35, (1956) ILR 58 Hyd (DB) (sub-cl (b) as added to r 11E(3) of the Evacuee Interest (Separation) Rules 1951 not to operate retrospectively).

24 *Narayan Row v Ishwar Lal* AIR 1955 SC 1818, 1825, (1965) 2 SCJ 359; affirming *Bhagwan Das Keval Das v ND Mehrotra* [1959] 36 ITR 538 (Bom); relying on *MK Venkatachalam, Income-tax Officer v Bombay Dyeing & Mfg Co Ltd* AIR 1958 SC 875.

25 *M/s Bhagwan Das Gopal Prasad v State of Bihar* 1980 Pat LJR 130 (DB).

The principle underlying this section is that a statutory body cannot act beyond its frame work and must confine its activities within the four corners of the statute within which it is functioning.[26] A draft proposal, once published in the *Gazette*, becomes a notification and is covered by the provisions of s 21 of the General Clauses Act.[27]

Section 21 of the Act prescribes a rule of construction. The rule of construction embodied in this section can be applied to the provisions of a statute only where the subject matter, context, and effect of such provisions are in no way inconsistent with such application. Under this section, the state cannot invoke the power to withdraw the consent validly given by it, as in the instant case, to the lessee corporation to enter into sub-leases with the *pattedars*, after the sub-lease deeds were executed and the mining operations had already commenced.[28]

A close reading of r 37 of the Mineral Concession Rules 1960 shows that having regard to the scheme of the rule, the concept of withdrawal of the consent given to the lessee for entering into sub-leases is inconsistent with the power conferred thereunder. So, by invoking s 21 of the General Clauses Act, the state government cannot purport to withdraw the consent.[29]

The General Clauses Act is applicable to the presidential order. The presidential order issued on 4 February 2000 is not in deviation or contradiction to the presidential order issued in 1975 inasmuch as the object underlying the latter order was not defeated. On the other hand, it benefitted the local candidates more closely. Therefore, the amended presidential order of 2000 was held intra vires the Constitution and hence valid.[30]

The state government of Bihar was held to have absolute right to decide whether an exemption in payment of road-tax should be given to the educational institutions even where it was found that after receiving such exemption not only was such benefit denied to the students in respect of transportation fees but, such fees was being increased by the school authorities without any rhyme or reason.[31]

There is no provision under the Manipur Panchayati Raj Act 1994 enabling the requisitionist or some of them to withdraw the requisition. The prescribed procedures in that regard are to be followed. But there is no procedure prescribed for withdrawal of nomination. Section 21 of the General Clauses

26 *Prabhakar Kesho Tare v Emperor* AIR 1943 Nag 26.

27 *Chavali Shivaji v Government of Andhra Pradesh* (1987) 1 Andh LT 565.

28 *Government of Andhra Pradesh, Principal Secretary, Industries and Commerce Department, Hyderabad & Ors v YV Vivekananda Reddy & Ors* (1994) 3 Andh LT 179, (1994) 2 Andh WR 300 (FB).

29 *Government of Andhra Pradesh & Anor v YS Vivekananda Reddy & Ors* AIR 1995 AP 1 (FB), (1994) 3 Andh LT 179 (AP) (FB).

30 *Md Ameenuddin v Government of Andhra Pradesh, Education Department & Ors* (2000) 5 Andh LT 127, 132 (DB).

31 *DAV College Managing Committee & Ors v State of Bihar & Anor* AIR 2000 Pat 285, 290 (DB) (Ranchi).

Act cannot be of any help in the present case. The entire gamut regarding the removal of *Adhyaksha* and *Up-Adhyaksha* is prescribed in s 57 of the said Act, and the court cannot supplement or supplant any other provision which is not expressly prescribed, and more so, when a reading of a provision, which may amount to stultifying some action taken under the enacted provision, will not be taken to be in consonance with the intention of the legislature. Since the no-confidence letter was acted upon by the *Adhyaksha* by issuing the notice of the meeting, an option for withdrawal was held not to be available. Therefore, the meeting was held not to be faulted with. The petition was dismissed accordingly.[32]

Paragraph 2(2) of the Election Symbols (Reservation and Allotment) Order 1968 makes the provisions of the General Clauses Act applicable to that order. Accordingly, s 21 of the General Clauses Act also becomes applicable to vesting the power in the Election Commission, which has issued the order recognising the appellant as a national party, so as to rescind the said order since, the appellant in the elections to the legislative assemblies of the states in question ceased to fulfil the conditions prescribed in para 6(2) of the said order read with para 7(1) thereof.[33]

In *Chairman, Public Service Commission, Jammu and Kashmir & Anor v Sudarshan Singh Jamna & Anor*,[34] the Supreme Court held, inter alia, as follows:

Section 21 of the General Clauses Act says that where, by any central Act or regulation, a power to issue notification, orders, rules, or bye-laws is conferred, that power includes the power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules, or bye-laws so issued. The order, upon which the first respondent relied, was, according to the High Court itself, issued in the exercise of the state government's inherent powers, meaning apparently, the power derived from s 21. The order was not issued in exercise of the power to make the said rules and the power was not exercised in the like manner and subject to the sanction and conditions which operated for the making of the said rules. Reliance upon the judgment in *Re Sampat Prakash*[35] was, therefore, misplaced as also reliance upon s 21 of the General Clauses Act. The exemption order did not, therefore, entitle the first respondent to appear at the recruitment examination.

In this case, the High Court rejected the review petition of the appellant holding, inter alia, that the order in question based on which the age bar was relaxed was passed by the government in exercise of its inherent powers,

32 *Dr M Ibeyaima Devi & Ors v Mutum Babita Devi & Ors* AIR 2000 Gau 124, 127.

33 *Janata Dal (Samajwadi) v Election Commission of India* AIR 1996 SC 577, 579, (1996) 1 SCC 235.

34 AIR 1999 SC 3796, (2000) 10 SCC 31.

35 AIR 1970 SC 1118.

which always exists with the government, by placing reliance on the judgment of the Supreme Court in *Sampat Prakash*'s case cited earlier.

It was reiterated by the Supreme Court in *Lacchmi Narayan v Union of India*,[36] that the question whether the provisions of this section as applied to a power conferred under any enactment has to be considered having regard to the scheme and object of the enactment as well as the context in which the power is conferred. For instance, under sub-s (1) of s 43 of the Motor Vehicles Act 4 of 1939, the state government has been empowered to issue directions to the state transport authority from time to time, but it also lays down the conditions subject to which a notification can be issued from time to time, namely, the conditions set out in the proviso to that sub-section. Again, sub-ss (2) and (3) of s 43 of the Motor Vehicles Act, also provide the conditions subject to which the notification issued under sub-s (1) can be cancelled or varied. Hence, if the state government desires to cancel or vary a notification issued under sub-s (1) of s 43 of the Motor Vehicles Act 1939, it can do so only subject to the conditions laid down in sub-ss (2) and (3) of s 43 of that Act. Therefore, s 21 of the General Clauses Act cannot be made use of to exercise the power under s 43(1) of the Motor Vehicles Act 1939 to issue directions to the state transport authority or to cancel or vary such directions unless the state government has already complied with the conditions as have been laid down under the proviso to sub-s (1) or under sub-ss (2) and (3) of s 43 of that Act, as the case may be.[37] This is the effect which directly ensues from the expression 'exercisable in the like manner and subject to the like sanction and conditions' as used in the text of s 21 of the General Clauses Act.

Section 21 would empower the collector to reduce, after due hearing, the amount of penalty, with regard to a document insufficiently stamped, imposed by him under s 40 of the Stamp Act 1899,[38] but it would not apply to empower the state government to withdraw the sanction to prosecute once accorded under s 197 of the Code of Criminal Procedure.[39] The state cannot invoke power under s 21 of Act to withdraw consent validly given by it to lessee corporation to enter into sub-leases with *pattedars* after sub-lease deeds have been executed resulting into commencement of mining operations.[40]

36 AIR 1976 SC 714, (1975) 6 STA 47, 1976 Tax LR 1467, 37 STC 267, (1976) 2 SCC 953, (1976) SCC (Tax) 213, 1976 Rajdhani LR 342, [1976] 2 SCR 785; relying on art 143, Constitution of India; *Delhi Laws Act 1912 Re* AIR 1951 SC 332; now Motor Vehicles Act 1988.

37 *Gauhati Tpt Assn v State of Assam* AIR 1978 Gau 33, 47 (FB); *Vishweshwar Sharan Singh v State Tpt Appellate Tribunal, Gwalior* AIR 1981 MP 121–22, 1981 MPLJ 377 (DB) (no power with Central Government to cancel notification once issued under s 1(2) of the Motor Vehicles Act for bringing into force any section of the amending Act).

38 *Amar Nath Khanna v Collector, Agra* 1954 All LJ 520, AIR 1955 NUC (All) 2715.

39 *Mukan Chand v State of Rajasthan* 1971 WLN 616, 619.

40 *Government of Andhra Pradesh & Anor v YS Vivekananda Reddy* (1994) 3 ALT 179 (AP) (FB).

The General Clauses Act have been made applicable by art 367 of Constitution of The India to the interpretation of the Constitution.[41]

Provisions of s 21 apply to orders passed under cl 6 of the Sugarcane (Control) Order 1966 so that the cane commissioner can modify or annul the orders passed by him earlier.[42] This means that when power is confined, under an enacted provision, to passing orders in keeping with codal provisions, the scope of such power is not enlarged by s 21.[43]

Where there was a clear direction in the Central Government notification 1844, dated 18 June 1966, that all orders made under cl (f) shall require the prior concurrence of the Central Government, it was obligatory upon the state government to have obtained prior concurrence of the Central Government before adding new cl 5A in the Rajasthan (Display of Prices of Essential Commodities) Order 1966, despite the power of the state government to add, amend, or vary any order, because that power had to be exercised, in view of s 2 of the General Clauses Act, in the like manner and subject to the like sanction and conditions.[44]

Section 21 applies to s 4 of East Punjab Public Safety Act 1949 (as extended to erstwhile Pt C state of Ajmer) whereunder the district magistrate can cancel or withdraw his earlier order.[45]

Where there was no rule under the Haryana Gram Panchayat (First Amendment) Election Rules 1971 prescribing the manner in which a meeting of the *panchas* for the consideration of a no-confidence motion against the *sarpanch* is to be called and conducted, but sub-s (2) of s 9 of the Punjab Gram Panchayat Act 4 of 1953, as in force in Haryana after an amendment by Haryana Act 19 of 1971, provides that an extraordinary meeting of the *panchas* shall be called to consider the no-confidence resolution, it was held, by resorting to s 21 of the General Clauses Act, that the meeting for the removal of a *sarpanch* by passing a no-confidence motion shall also be held in the same manner in which a meeting for the election of a *sarpanch* is to be held.[46]

The bar council can competently frame a rule prescribing the procedure for calling a meeting for expressing a no-confidence against the chairman and vice-chairman of the bar council.[47]

---

41 *Relly Susan Mathew v Controller of Entrance Examination* AIR 1997 Ker 218; *Alex Saji v University of Kerala* (1996) 2 Ker LT 588.

42 *Partalepeve Co Ltd v Cane Commr* 1969 Bih LJR 46, ILR 47 Pat 477.

43 *Sampu Gowda v State of Mysore* AIR 1953 Mys 156 (wrt s 233 of Land Revenue Code in Mysore).

44 *Sohan Lal v State* AIR 1975 Raj 251, 1975 Raj LW 199.

45 *Chand Karan Sarda v State of Ajmer* AIR 1950 Ajm 57–58, 1950 AMLJ 39.

46 *Dharam Singh v State of Haryana* AIR 1974 P&H 99, 1975 Punj LR 554, 1974 Cur LJ 731, 1973 Rev LR 590; *Haji Anwar Ahmed Khan v Punjab Wakf Board* AIR 1980 Punj 306, 310–11 (DB) (power to elect chairman implies power to remove him by vote of no-confidence despite absence of provision authorising removal); dissenting from *Venkata Narayan v Dy Registrar, Co-op Societies, Eluru* (1975) ILR AP 242; *Jeeram v Director of Panchayats* 1974 Punj LJ 527.

47 *Bar Council of Delhi v Bar Council of India, New Delhi* AIR 1975 Del 200; relying on *Veeramachari Venkata Narayan v Dy Registrar of Co-op Societies* (1975) ILR AP 242.

It lies within inherent powers of the High Court to vary an order passed in revision.[48]

The power exercisable under the section looks towards the future and cannot be exercised retrospectively.[49] The power to abolish any civil post is inherent in every sovereign government, and this power is a policy decision exercised by the executive. Thus, it is clear that the executive committee had the power to abolish the post which it did and on this count the impugned order could not be set aside.[50] However, when the power exercised by some authority has been approved by or gone for approval to higher authority, the former authority would not be competent to exercise the powers under this section.[51]

Section 19 of the Punjab General Clauses Act 1898, unlike s 21 of the General Clauses Act 1897, refers to any Punjab Act and not to any rule.[52]

Section 21 of the General Clauses Act is fully applicable in interpreting rr 4 and 6 of the Bar Council of Uttar Pradesh Rules 1958. There is no limitation express or implied in the rules on the power of the bar council for exercising its power to modify, vary, or rescind its notification relating to holding elections except that the power can be exercised only before the elections are held. The power of the bar council to fix the time, place and date of the election is not exhausted merely on the issue of notification of the programme. It can alter, modify, or rescind its order fixing the various dates. Otherwise preposterous results would follow as there would be nothing in another construction of these rules to take into account the emergencies resulting from natural calamities, etc.[53]

The power conferred under s 3 of the Cantonments (Extension of Rent Control Laws) Act cannot be said to have been exhausted merely by the issue of a notification extending the Uttar Pradesh (Temporary) Control of Rent and Eviction Act. The Central Government will be empowered to issue a notification extending the rent control laws to the cantonment area in view of the ss 14 and 21 of General Clauses Act.[54]

---

48 *Duli Chand v Chain Singh* 1965 Jab LJ 997, 999–1000.

49 *Dosabhai Keravala v State of Gujarat* (1970) 11 Guj LR 361, 373–74 (DB); *Municipal Council, Bezwada v Madras and Southern Maratha Railway Co Ltd* AIR 1944 Mad 355, 357–58, (1944) 1 Mad LJ 76 (DB); *Straw Board Mfg Co Ltd v Gutta Mills Workers Union* AIR 1953 SC 95, 96–98, 1953 All LJ 144, (1953) SCJ 104 (power to modify cannot be exercised *ex post facto*); *Jagatjit Cotton Textile Mills Ltd v Industrial Tribunal, Patiala* AIR 1959 Punj 389, 392, 61 Pun LR 597 (DB) (life of tribunal only for six months, cannot be extended for six months more).

50 *G Satyanarayana v Principal Director-in-charge National Institute of Small Industry* (1996) 1 ALT 830 (AP).

51 *Dulal Chandra Ghosh v District Magistrate, Birbhum* 1974 Cr LJ 24, 28, 77 CWN 727 (DB); relying on *Kamala Prasad Khaitan v Union of India* AIR 1957 SC 676.

52 *Mohinder Singh v State* AIR 1967 Punj 450.

53 *RK Jain v Bar Council of Uttar Pradesh* AIR 1974 All 211.

54 *Brij Sunder Kapoor v First Addl District Judge* AIR 1989 SC 572.

This section cannot be made use of for the purpose of superseding a reference under s 10 of the Industrial Disputes Act 1947.[55]

Section 21 cannot be availed of by a tehsildar and returning officer to cancel a notification fixing a calendar of events for the election of the chairman and vice-chairman of a market committee under s 27 of the Karnataka Agricultural Produce Market (Regulation) Act 1966.[56]

The power to amend, which is included in the power to make the order, is exercisable in the like manner and subject to like sanction and conditions (if any) as govern the making of the original order,[57]and can be used by authorities even to unburden themselves of any liability which they have undertaken by doing some act in exercise of powers conferred on them in a way that the act is burdened also with certain obligation. Section 21 would, hence, enable them to release themselves from such obligation created by their own voluntary act in case they choose to later relieve themselves of such burden.[58] The authority which can make a rule (eg, r 465 of the Civil Services Regulations dealing with compulsory retirement) has also the power to alter or modify it from time to time, that is, whenever the occasion arises.[59] It follows, therefore, that every government servant is bound by any subsequent alteration, amendment, or addition made in the rules in existence when he was recruited to the service.[60] But there cannot be any amendment or modification of a notification with retrospective effect nor does such an amending notification infuse life into the earlier notification which had already expired by efflux of time.[61]

The section includes power to add any new item to the scope of a certificate previously issued. Where an application was made for permission to conduct business in a commodity not specified in the certificate already granted, it was held that the application, if granted, would stand on the same footing as granting a new certificate.[62]

---

55 *Management of Assam Railway and Tdg Co v Ramlubhaya* AIR 1964 Assam 51, (1960) ILR 12 Assam 153.

56 *Tehsildar and Returning Officer, Agricultural Produce Market Committee v Shivaji Rao* AIR 1976 Kant 233–34, 1976 Kant LJ 272 (DB).

57 *KP Khetan v Union of India* AIR 1957 SC 676, 684. This is stated by s 21 of the General Clauses Act itself. It becomes necessary, however, to understand clearly the true nature of the conditions which have to be fulfilled before the requisite order can be made.

58 *Simpath Kumaran & Co v Regional Commr for Provident Fund* 1974 Lab IC 602–03, (1974) 1 Mad LJ 153.

59 *Ranchhod v Collector* (1966) 7 Guj LR 341.

60 *Raj Kishore v State of Uttar Pradesh* AIR 1964 All 343; *Kanta Devi v State of Rajasthan* AIR 1957 Raj 134.

61 *Jagatjit Cotton Textile Mills Ltd v Industrial Tribunal, Patiala* AIR 1959 Punj 389.

62 *Bullion and Agriculture Produce Exchange Pvt Ltd, Agra v Forward Markets Commr, Bombay* AIR 1979 All 332.

This section applies to the interpretation of the Representation of the People Act 1951.[63] In *MK Krishnan Nair v State of Kerala*,[64] the power under s 21 was held applicable to substitution of rules and regulations under arts 234 and 237 of the Constitution of India.

The words 'notification, orders, rules, or bye-laws' have no reference to judicial order, the making or rescinding whereof is regulated by provisions of the law governing the practice of courts.[65] The word 'order' refers to non-judicial or administrative orders. Thus, an order passed under s 238 of the Punjab Municipal Act 1911, is not an administrative order and, hence, cannot be withdrawn by virtue of s 21;[66] similarly, the same applies to orders of the kind contemplated in s 5 of the Citizenship Act.[67] However, s 21 applies to an order defining or declaring a government servant as a ministerial servant.[68]

The state government can revoke or modify a detention order if it is satisfied, on new and/or supervening conditions or facts coming to light, that a revocation or modification had become necessary. The power of the state government and the Central Government, under s 11 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974, to revoke orders of detention is in addition to the power under s 21 of the General Clauses Act.[69] Section 14 of the Maintenance of Internal Security Act 1971 apparently vests a wider power than the state government may have possessed under the provisions of s 21 of the General Clauses Act, specifically mentioned in s 14 of the Maintenance of Internal Security Act and made applicable in such cases. The language of s 14 of the said Act, however, makes it clear that the power under s 14, is not necessarily subject to the provisions of s 21 of the General Clauses Act. This means that a revocation or modification of an order of the state government is possible even without complying with the restrictions laid down in s 21 of the General Clauses Act. Nevertheless, as the wider power under s 14 of the Maintenance of Internal Security Act does not override but exists 'without prejudice to the provisions of section 21 of the General Clauses Act,' the correct interpretation of the provisions read together would be that it is left to the state government in the exercise of its discretion, either to exercise the power

63 *Mhd Yunus v Shiva Kumar* AIR 1974 SC 1218, (1974) 4 SCC 854; overruled on another point in *Umed v Raj Singh* AIR 1975 SC 43.

64 1974 Lab IC 1170, 1177, 1974 KLT 313 (DB); reversed on another point in *State of Kerala v MK Krishnan Nair* AIR 1978 SC 747.

65 *Kalee Majdoor Binkar Panchayat v State* 1975 All LJ 560.

66 *Karnail Singh v State of Punjab* (1966) 68 Punj LR 890.

67 *Ghaurul Hassan v State of Rajasthan* 1961 SCD 796, (1962) 1 SCJ 668, 1962 All WR 418 (HC), 1962 All Cr R 243, [1962] 1 SCR 772, AIR 1967 SC 107.

68 *Sartaj Behari Lal Mathur v Union of India* 1971 Lab IC 1276, 1283 (Del) (wrt r 9(17) of fundamental rules).

69 *Kavita v State of Maharashtra* AIR 1981 SC 1641, 1981 Cr LJ 1264, (1981) 3 SCC 558, 1981 Cr App Reg 295 (SC), 1981 SCC (Cr) 743, 1981 Rev LR 481.

with or without the aid of s 21 of the General Clauses Act.[70] The power of dereservation is implicit in s 29B of Industrial (Development and Regulation) Act 65 of 1951, by virtue of s 21.[71]

The authority which has the power to issue a licence or quota would also have the power to cancel it,[72] but the power to cancel or modify must inevitably be exercised within the limits. The power under s 21 to rescind notifications, orders, rules or bye-laws is not subject to such limitations or conditions[73] as to be exercised only once. Yet it is limited in other respects, for example, though the power of the town improvement trust, under the Punjab Town Improvement Act 1922, to frame a development scheme includes the power to abandon that scheme, it cannot, either in law or in equity, revive an abandoned scheme.[74] A power to grant a licence under a statute, like the Essential Commodities Act, carries with it the power to cancel the licence. This power of revocation is inherent[75] and prescribed by the provision conferring the said power. Section 20 of the East Punjab Public Safety Act 1949, empowers the provincial government to declare the whole or any part of the province to be a dangerously disturbed area; and if a notification is issued in respect of the whole or any part of the province it may be either cancelled wholly or may be modified, restricting the declaration to a specified part of the province. However the power to modify cannot include the power to treat the same area as dangerously disturbed for persons accused of crimes committed in the past, and not disturbed for other accused of the same or similar offences committed later. That clearly is a legislative function which is wholly outside the authority conferred by s 20 or s 36(1) of the East Punjab Public Safety Act 1949.[76]

In a Calcutta case[77] the principle in this section was applied to a rule-making power under the memorandum of a society by providing through amendment the right to elect or nominate the successor of the founder.

70 *Ram Bali Rajbhar v State of West Bengal* AIR 1975 SC 623, 1975 Cr LJ 592, (1975) 1 All LR 54, (1975) SCC 321 (Cr), (1975) 4 SCC 47.

71 *Zipper India Pvt Ltd v Union of India* 1988 Lab IC 1601.

72 *Girdhari Lal v State of Punjab* (1966) 68 Punj LR 390, 392 (wrt cl 8 of Iron and Steel Control Order 1956).

73 *Ranchod Zina v Patankar* (1966) 7 Guj LR 341, AIR 1966 Guj 248 (FB); overruling *Vinubhai Hari Lal Panchal v NH Sethna, Dy Commr of Police* (1962) 3 Guj LR 66.

74 *Kartar Kaur v State of Punjab* AIR 1981 P&H 146, 1981 Punj LJ 150, 1981 Rev LR 125.

75 *Girdhari Lal v State of Punjab* (1966) 68 Punj LR 390; *Narayan Das v Karam Chand* AIR 1968 Del 226; *CD Hans v Munnu Lal* AIR 1952 All 432, 1951 All LJ 479, 1951 All WR 431 (HC) (power to grant sanction for commencement of suit deemed to have power to revoke, on general principles).

76 *Gopi Chand v Delhi Admn* AIR 1959 SC 609; *Bhupati Goswami v CR Krishna Murti* AIR 1969 Assam 14.

77 *Krishna Das Chaterjee v Dr MN Chatterjee Memorial Eye Hospital Society* (1970) ILR 2 Cal 370, 385.

Fixation of special selling price for specified stocks of iron scrap under the proviso to cl 27(1)(2) of the Iron Steel (Control) Order 1956 does not amount to amendment, variation, or rescission of the general price fixed under cl 27(1) by notification of Circular 5 of 1957. The approval of the Central Government and publication in the *Official Gazette of India* are not necessary. Section 21 of the General Clauses Act is inapplicable.[78]

The order abolishing the industrial tribunal, when there is a dispute pending before it, is illegal and without jurisdiction. There is no room, even by implication, for the application of s 21 of the General Clauses Act in the scheme of the Industrial Disputes Act.[79]

When under a notification, certain publications had been seized but later on the notification was rescinded, the right for return of copies of such publication accrues to the person, from whom they were seized, after the notification is rescinded. There is the power with the state government to declare certain publications forfeited and the state government has also the power to rescind such notification and pass fresh orders within the purview of s 21 of the General Clauses Act.[80]

Section 21 will be attracted to substitution of rules and regulations under arts 234 and 237 of the Constitution.[81] Article 367 of the Constitution makes s 21 of the General Clauses Act applicable for the purpose of interpretation of the Constitution. There is nothing in art 370 which would exclude the applicability of s 21 in such interpretation. Therefore the President can, in the exercise of the power under art 370, make orders from time to time. The power to modify in cl (d) of art 370(1) includes the power to subsequently vary, alter, add to, or rescind such an order by reason of the applicability of the rule of interpretation laid down in s 21 of the General Clauses Act. The said power cannot be interpreted to mean or to be limited to making minor alterations and should not cover the power to practically abrogate an article of the Constitution applied in the State of Jammu & Kashmir.[82] Section 21 of the General Clauses Act. 1897 does not provide such procedure for the rescission of the agreement. Section 21 lays down that where by the Central Act or regulation, a power to issue notifications, orders, rules or bye-laws is 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

78 *Devi Prasad Khandelwal & Sons v Union of India* 70 Bom LR 364, 1968 Mah LJ 635, AIR 1969 Bom 163.

79 *Shellac Industries Ltd v Workmen* 29 FJR 430, AIR 1966 Cal 371; *East India Pharmaceutical Works Ltd v GS Verma* 1973 Lab IC 1501, 1507–09; 1973 Pat LJR 324 (DB) (labour court not to be abolished till awards are pending).

80 *Gopal Vinayak Godse v Union of India* AIR 1971 Bom 56, 72 Bom LR 871, 1971 Cr LJ 324.

81 *MK Krishnan Nair v State of Kerala* 1974 Lab IC 1170, 1177, 1974 KLT 373; reversed on another point in *State of Kerala v MK Krishnan Nair* AIR 1978 SC 747.

82 *Sampat Prakash v State of Jammu & Kashmir* (1969) 2 Um NP 275, [1969] 2 SCR 365, AIR 1970 SC 1118; *Sohan Singh v State* 1972 Cr LJ 692.

notifications, orders, rules, or bye-laws so issued. This section provides that the power to rescind shall be exercised in the like manner.[83]

Where rules are to be framed for carrying out the purpose of an Act, such rules cannot travel beyond the four corners of the Act itself.[84]But the Constitution never deprives the legislature of a state of the power of amending a rule which was framed not by the legislature but by the government of that state under the mandate of the legislature itself. The power to make laws has been conferred on state legislatures in absolute terms by art 245 of the Constitution and is subject, under art 246 to only one condition that the legislation passed by the state legislature must relate to a subject over which it has legislative competence. Section 21 of the General Clauses Act could not, therefore, be invoked in such a case where it was contended that a rule made by the governor under art 309 of the Constitution could be amended only by the government and not by the legislature of that state. By virtue of art 309 itself, the legislature of a state can pass an Act in relation to the conditions of service of state public servants, and once it does so, any rule framed by the government shall stand superseded to the extent of the legislative enactment. On the other hand, the power of repeal of a law cannot be delegated to the executive so as to displace the application of s 21.[85] The provisions of the General Clauses Act, though applicable, under art 367(1) of the Constitution, for interpretation of the Constitution also, cannot be read to restrict the meaning of the words used, or to control the power conferred upon legislatures, by the Constitution.[86] The state cannot invoke the power under s 21 of the General Clauses Act to withdraw the consent validly given by it.[87]

2. JUDICIAL AND QUASI-JUDICIAL ORDERS

The word 'orders' used in the section refers to subordinate legislation and not to judicial orders,[88] which are not open to revision, alteration, or amendment, except as permitted by the relevant statute. Thus, when the High Court had declined to answer a reference on account of default of the party, it could, under its own powers, entertain an application for re-hearing the reference and disposing it on merits.[89] In the same way, an order

83 *Rat Sahib v State of Haryana* AIR 1996 Raj 83.

84 *Huzrat Syed v Commr of Wakfs* AIR 1954 Cal 436, 440.

85 *Thakur Vishweshwar Sharan Singh v State Tpt Appellate Tribunal, Gwalior* AIR 1981 MP 121–22, 1981 Jab LJ 440.

86 *Iqbal Narayan v State of Uttar Pradesh* AIR 1971 All 178, 1971 All LJ 169, 1971 Lab IC 418.

87 *Government of Andhra Pradesh v YS Vivekanand Reddy* AIR 1995 AP 1.

88 *State v DN Ganguli* AIR 1958 SC 1018.

89 *Jaipur Mineral Development Syndicate, Jaipur v Commr of Income-tax, New Delhi* AIR 1977 SC 1346, 1350, 1977 Tax LR 685; overruling *Roop Narain Ram Chandra Pvt Ltd v Commr of Income-tax* [1972] 84 ITR 181 (All).

returning a reference unanswered is not an administrative but a Judicial order which is not amenable to the application of s 21.[90]

Section 19 of the Punjab General Clauses Act 1898, corresponding to s 21 of the General Clauses Act 1897, cannot be made applicable to quasi-judicial orders so as to inculpate any person exculpated by an earlier order.[91]

Section 15 of Madras General Clauses Act does not authorise the revocation or annulment of a decision having already become final.[92]

When in the construction of a bridge, no loan was taken by the state government from any financial institution and no interest was paid, there is no question to include any amount by way of interest in the levy of toll with regard to the bridge.[93]

3. POWER TO MAKE AN ORDER AND TO AMEND IT

The word 'make' in 'make bye-laws for regulation and control of contracts' in the Securities Contracts Regulation Act, would also include the power to amend, alter, or rescind, and this power is not confined to post-recognition bye-laws.[94]

The word 'amend' has been held to include 'correction',[95] even by change of place.[96]The power to amend rules is comprehended within the power to make rules, and s 15(1) of Mines and Minerals (Regulation and Development) Act confers the power upon the state government to make rules providing for paying dead rent and royalty at enhanced rates.[97]

The principles underlying the section is that when the original order can be validly made only by publication, an amendment therein can also be effected by similar publication, and there can be no departure in formality in case of subsequent order or notification.[98] In order to attract s 21, there

90 *Roop Narain Ram Chandra Pvt Ltd v Commr of Income-tax* [1972] 84 ITR 181 (All).

91 *Hardev Singh v State of Punjab* 1967 Cur LJ 151, 156 (P&H).

92 *State of Madras v Kunnakudi Melamatam* AIR 1965 SC 1570, 1573.

93 *Jiya Lal v State of Uttar Pradesh* AIR 1981 All 72; *Shanti Swarup v State of Uttar Pradesh* 1982 All LJ 1085–86.

94 *VV Ruia v S Dalmia* ILR 70 Bom 420, 38 Com Cas 572, (1968) 1 Com LJ 572, AIR 1968 Bom 347.

95 *Bangeswari Cotton Mills Ltd v MC Banerjee* (1958) 62 CWN 303 (DB) (addition of words to or even correction in notification of reference of an industrial dispute, under s 10 of the Industrial Disputes Act 1947, through a subsequent notification).

96 *II Iyappan Mills Ltd v State* AIR 1958 Ker 139, 140, 1957 KLT 1169 (DB) (reference for adjudication of industrial dispute at one place instead of another, under s 10(1)(c) of the Industrial Disputes Act 1947).

97 *DK Trivedi & Sons v State of Gujarat* AIR 1986 SC 1323, 1359.

98 *Sohan Lal v State of Rajasthan* AIR 1975 Raj 215, 217, 1975 Raj LW 199; *State of Kerala v PJ Joseph* AIR 1958 SC 296, 299, (1958) SCJ 614; *Mahendra Lal v State of Uttar Pradesh* AIR 1963 SC 1019, 1035, (1963) 2 SCA 163.

has first to be an order. When s 64 of the Motor Vehicles Act 1939,[99] does not have the word 'order', there is no question of varying, amending or rescinding any order alleged to be made thereunder.[1]

The principles of s 21 apply not only to Acts of the legislature but also to statutory orders passed in exercise of powers conferred by subordinate legislation. The power to make, no doubt, includes the power to amend, but the section says that the power to amend must be exercised in the same manner and subject to the same conditions as would apply to the power to make,[2] but no departure in subsequent modification can be made where the original order was validly made only for certain purposes.[3]Where, with concurrence of the Central Government, the Bihar Rice and Paddy Procurement Order 1972 was made by the Governor of Bihar, but subsequently the Government of Bihar issued a notification and deleted three provisos of cl 13 thereof, it was held that the notification was ultra vires because if the said order could have been made with the prior concurrence of the Central Government, as required by provisions of the Essential Commodities Act 1955, and of the order itself, then any provision thereof cannot be amended, rescinded or varied by the state government without the prior concurrence of the Central Government.[4]

In *PR Nayak v Union of India*,[5] the section was made applicable to a case of extension of time for making inquiry and report under s 3 of the Commission of Inquiry Act 1952. It has been held in *LUK Co-op Hsg Society v State*[6] that power of the state government, under s 71 of Madhya Pradesh Town Improvement Trust Act, to issue a notification involving land in dispute in a particular scheme includes power to issue notification with a view to releasing a portion of that land.

The provisions apply to an order passed under cl 6 of the Sugarcane (Control) Order 1966 and the cane commissioner can modify or annul an order passed earlier.[7] Section 21 permits the government to amplify and add to the issues already covered in a reference to the industrial tribunal.[8]

Under the terms of the section, the power to amend, included in the power to make an order, is exercisable in a like manner and subject to conditions, if any, as govern the making of the original order. It is neither possible nor proper to lay down definitely the circumstances under which

99 Now, Motor Vehicles Act 1988.

1 *Ramnath Prasad v STAA, Bihar* AIR 1957 Pat 117, 1956 BihLJR 711.

2 *Bapurao Dhondiba Jagtap v State* AIR 1956 Bom 300, 304, 1956 Cr LJ 598, 58 Bom LR 418 (DB).

3 *Mahendra Lal v State of Uttar Pradesh* AIR 1963 SC 1019, (1963) 2 SCA 163.

4 *Hanant Lal Agrawal v State of Bihar* AIR 1973 Pat 419.

5 (1973) ILR Del 747, 769 (DB).

6 AIR 1975 MP 93.

7 *Purtabpore Co Ltd v Cane Commr* 1968 Pat LJR 344.

8 *NN Chakravarty v State of Assam* AIR 1960 Assam 11, 14 (DB).

it is open to the state government to amend or not to amend any clerical or other errors in the original notification issued under s 10(1) of the Industrial Disputes Act. The power of amendment, etc, given by s 21 of the General Clauses Act cannot be used to nullify or render ineffective the other provisions of the Industrial Disputes Act,[9] nor can it be used for withdrawing or superseding a reference already made, though such a reference already made can be amended by way of an amendment or modification.[10] Once the true nature of these conditions is appreciated, there is little difficulty left in the application of s 21.[11] Thus where a deputy commissioner acting as inspector of factories, approves the working of the factory in a system of shifts, he has power under this section to cancel such approval also.[12]

A collector, acting under the proviso to s 110(2) of the Customs Act 1962, can extend the period of notice of confiscation under s 124(a) of that Act, but it has been held,[13] that such an extension cannot be made without giving the opportunity of a hearing to the persons whose articles have been seized. The director, vested with the power to make orders, could revoke, modify, or vary such orders at a subsequent stage unless there is a specific bar.[14]

Where octroi rules and bye-laws, after due publication and consideration of objections, are sanctioned by the government, and such government, after according such sanction, has the power by virtue of s 99 of the Gujarat Municipalities Act 1964 to effect further modification in the rules before they are put into force, there is no reason why during the course of the proceedings for the imposition it cannot have the power to rectify any lacuna. This conclusion flows from the Act itself and, therefore, it will not be necessary to derive additional support from s 21 of the General Clauses Act, though it is possible to argue that the sanction is in the nature of an order and therefore subject to s 21 of the General Clauses Act and that it will, for that reason, be open to the government to modify its sanction before the rules become final.[15]

Similarly, the power to fix a date for election[16] or for holding a meeting,[17] must be taken to include the power to postpone any date so fixed. Provisions

9 *Dalmia Dadri Cement Ltd v State of Punjab* 1965 Cur LJ 587, 67 Punj LR 775, (1966) ILR 1 Punj 176, AIR 1966 Punj 214.

10 *Chandra Spg and Wg Mills Ltd v State of Mysore* (1964) 1 Mys LJ 569, 576, 580 (DB).

11 *KT Khetan v Union of India* AIR 1957 SC 676.

12 *Madan Mohan Lal v Emperor* 59 IC 857, 22 Cr LJ 153; *Durga Prasad v State of Uttar Pradesh* AIR 1952 All 959 (power to release requisitioned property).

13 *Asst Collector of Customs, Calcutta v Charan Das Malhotra* AIR 1972 SC 689, 692, (1972) 1 SCJ 579, [1971] 3 SCR 802.

14 *Sakhi Ram v State of Haryana* AIR 1988 P&H 211.

15 *Surendra Iron Foundry and Steel Works Pvt Ltd v Bhavnagar Nagarpalika* AIR 1970 Guj 53.

16 *Bhuban Mohan Basak v Dacca Municipality* AIR 1927 Cal 704, 706; *Subodh Chandra v Jnanendra Nath* AIR 1937 Cal 718; *Somira Charan Paul v District Magistrate, Howrah* AIR 1955 NUC (Cal) 2935; *Janta Dal v Election Commission of India* AIR 1995 SC 577.

17 *Govind Chandra v SDO* AIR 1965 Ori 94.

of s 21 were made applicable for construing rr 4 and 6 of the Bar Council of Uttar Pradesh Election Rules 1968.[18] The provisions of s 21 confer ample jurisdiction on an administrative authority to amend, vary or rescind its orders. The assistant returning officer in conduct of elections has the jurisdiction to correct a mistake in the conduct, counting, and declaration of results. It was held that in refusing to correct an error committed by him, he failed to exercise jurisdiction vested in him.[19] The state government has the power to fix and extend the period of a tribunal.[20] With reference to r 1A of the Election Rules, framed under the Bengal Local Self-Government Act 1885, it was held[21] that the powers of the district magistrate to delegate his authority to any other subordinate magistrate are not different from those contained in s 21.

On the analogy of s 21 of the General Clauses Act, whereby a power to issue an order conferred by a statute, includes a power to vary or rescind that order, O 26, r 2, Civil Procedure Code, which empowers the court to issue an order suo motu for the issue of a commission also empowers the court to cancel that order suo motu notwithstanding the absence of an express provision in this regard.[22] Similarly, the government is also competent to issue notifications.[23] But a notification published in the state gazette can be cancelled only by a notification similarly published as provided under this section.[24]

Thus, a meeting held to pass a no-confidence motion against a *sarpanch* has to be conducted in accordance with the same procedure as in electing him.[25] In the same way, a notification made by state government with prior concurrence of the Central Government can be amended by addition therein of a new clause only with the concurrence of the Central Government.[26]

The power vested in the government to cancel or rescind the notifications issued under ss 4 and 6 and the Land Acquisition Act by a notification under s 21 of the General Clauses Act cannot be exercised after the land statutorily vests in the state government. Thus, after possession has been taken pursuant to a notification under s 17(1) of the Land Acquisition Act, the land is vested in the government and the notification cannot be cancelled under s 21 of the General Clauses Act nor can it be withdrawn in exercise of

18 *Ravi Kiran Jain v Bar Council of Uttar Pradesh* AIR 1974 All 211, 214.

19 *Bhagwan Singh v Surjit Kaur* 1971 All LJ 1348, 1971 All WR 811, 1972 RCJ 249, AIR 1972 All 216.

20 *Sitinwasa Silk Mills v State of Mysore* AIR 1962 Mys 117.

21 *Subodh Chandra v Jnanendra Nath* AIR 1937 Cal 718–19, 42 CWN 177.

22 *Narain Dass v Karam Chand* AIR 1968 Del 226.

23 *Ram Autar Panday v State of Uttar Pradesh* AIR 1962 All 320, 1962 All LJ 31, (1969) ILR 1 All 793 (FB).

24 *Harihar Mandar v State of Bihar* AIR 1963 Pat 130.

25 *Har Datt Singh v Block Development and Panchayat Officer* 1975 Punj LR 449, AIR 1976 P&H 122.

26 *M/s Sohan Lal Loonkaran v State of Rajasthan* AIR 1975 Raj 215, 217, 1975 Raj LW 199.

the powers under s 48 of the Land Acquisition Act.[27] In *Gopal Jairam v State of Madhya Pradesh*,[28] the government was not held competent to amend an order of suspension under s 57(2) of the CP and Berar Municipalities Act 1922. Looking to the scheme of s 52(1) of the Kerala Land Acquisition Act 1962, it is not possible for the government to withdraw from the acquisition a portion of the land scheduled for declaration of an intended acquisition.[29] There being no requirement to issue a notification under s 48 of the Rajasthan Land Acquisition Act, an order of withdrawal from acquisition of land once passed under that section cannot be subsequently withdrawn or rescinded.[30] Power of state government to make rules includes powers to add to or amend the rules so issued already.[31]

Power to issue an order includes power to amend or rescind the same.[32]

It has however, been held in the following cases that where the government, in recognition of the incorrectness or invalidity of the earlier notification, cancels the same, there is nothing in s 48 of the Land Acquisition Act 1894 which precluded the government from treating the earlier invalid notification as ineffective and issuing in its place an effective notification under s 6 of that Act.[33] Similarly where earlier notification is allowed to lapse as the schemes had not been executed, the subsequent notification cannot be said to be a colourable exercise of the power.[34]

The rule of construction enunciated in s 21 of the General Clauses Act, in so far as it refers to the power of rescinding or cancelling the original order, cannot be invoked in respect of the provisions of Reg 100 of the Coal Mines Regulations 1957, in as much as it will be repugnant to the scheme of the Mines Act and the relevant regulations.[35]

Section 21 does not justify the extension of a motor vehicle route after having originally notified the opening up of the route[36] but the High Court of Madhya Pradesh has held that the power to alter and modify an order made or passed by any public authority is granted under ss 14 and 21 of the General Clauses Act.[37]

27 *Lt Governor of Himachal Pradesh v Avinash Sharma* (1970) 2 SCJ 735, AIR 1970 SC 1576.
28 AIR 1951 Nag 181, 183, 1950 Nag LJ 509.
29 *AL Sreenivas Shenoy v State of Kerala* AIR 1968 Ker 325.
30 *Jasraj v State* AIR 1977 Raj 150.
31 *Durairaju Naidu v State of Tamil Nadu & Ors* AIR 1994 Mad 68.
32 *SN Awasthi v Union of India* 1994 JLJ 353 (MP).
33 *Girdhari Lal Amratlal Shodhan v State of Gujarat* AIR 1966 SC 1408, (1966) 1 SCA 910, (1966) 2 SCWR 253, (1966) 2 SCJ 528, (1966) 7 Guj LR 957, 1966 SCD 1053; *State of Madhya Pradesh v Vishnu Prasad Sharma* AIR 1966 SC 1593, (1966) 2 SCJ 231, 1966 MPLJ 995, 1966 Mah LJ 969; *Jai Narayan v Land Acquisition Collector, Delhi* AIR 1976 Del 166.
34 *Ghan Shyam Das Goyal v State of Haryana* AIR 1986 P&H 207.
35 *State v BL Ohri* 1967 Cr LJ 1684, AIR 1967 Pat 441.
36 *A Somasundra Reddiar v KMS Roadways* AIR 1965 Mad 58, (1965) 1 Mad LJ 193.
37 *Shivchand Amolak Chand v State Tpt Appellate Authority* 1987 MPLJ 554.

The government has the power, in terms of s 10 of the Industrial Disputes Act read with s 21 of the General Clauses Act, to amend the reference by adding a party or a new issue.[38] Issues already referred to the industrial tribunal can be amended by amplification or by addition of new issues.[39] However the Industrial Disputes Act 1947, does not confer any power on the government to cancel or supersede a reference under s 10(1) of the Act, nor can such power be claimed by implication on the strength of s 21 of the General Clauses Act 1897,[40] though it is competent for the government to withdraw reference from one tribunal and refer the same to another.[41] Similarly, so far as making of a reference is concerned, the government can always review its previous decision.[42]

Section 21 will empower the Board of High School and Intermediate Education, Uttar Pradesh, to rectify a mistake in the date of birth of a candidate at the High School Examination.[43] But the power under the section can be exercised by the authority that issued the earlier original notification and not an inferior authority.[44]

By virtue of s 22 of the Bengal General Clauses Act 1899, corresponding to s 21 of the General Clauses Act 1897, the period fixed by the Howrah Municipality Election Rules can be extended or altered by the district magistrate.[45]

4. POWER TO TRANSFER REFERENCE

The Industrial Disputes Act 1947, as it applies to Bengal, does not contain any provision enabling the state government to transfer a reference from one tribunal to another. But such power is exercised by the state government under s 21 of the General Clauses Act 1897. The plain effect of the order of transfer is to cancel the previous order of reference and to make a fresh order under s 10 of the Industrial Disputes Act 1947.[46]

38 *Rivers Steam Navigation Co v Radha Nath* AIR 1960 Assam 39; *Sudhindra Kumar v State* AIR 1959 Assam 1.

39 *NN Chakravarty v State of Assam* AIR 1960 Assam 11.

40 *Assam Rly and Trading Co v Ram Labaya* AIR 1964 Assam 51; *State of Bihar v DN Ganguli* AIR 1958 SC 1018, 1024, (1959) SCJ 533; overruling *Textile Worker's Union v State of Punjab* AIR 1957 Punj 255; *Harendra Nath Bose v Second Industrial Tribunal* AIR 1958 Cal 208.

41 *Second Iyyappan Mills Ltd Trichur v State* AIR 1958 Ker 139, 1957 KLT 1169.

42 *LH Sugar Factories and Oil Mills Ltd v State* AIR 1962 All 70.

43 *Neelam Sharma v Board of HS & IE* 1975 All LR 273.

44 *S Vanaja v Secretary STA* AIR 1992 AP 333, 339.

45 *Shambhucharan Paul v DM, Howrah* AIR 1955 NUC 2935 (Cal).

46 *Birendra Kumar Chatterji v Reliance Jute Mills Co Ltd* 62 CWN 303.

5. ORDER

There must be an 'order' that can be varied, Grant of a permit under s 64, Motor Vehicles Act 1939, is not an 'order' and so there is no question of varying, rescinding, or amending it by the application of s 21, General Clauses Act 1897.[47] Only the authority conferred with the power to make an order would have the right to recall it, and if that authority can only act in a certain solemn way while making the order, it is at least incumbent upon it to be equally solemn while cancelling it.[48]

Section 21 must be taken to have limited its scope only to orders of a non-judicial character,[49] because judicial orders particularly of criminal courts, do not admit of variation by the same court.[50] In civil cases, the relevant law may itself empower a court to review or vary its order, for example, discontinuance of the monthly maintenance, under s 24 of the Hindu Marriage Act 1955, on account of a change in circumstances,[51] or the power of the appellate court to vary its former order and reopen the appeal on learning of the death of one of the parties,[52] and no such review is possible when no power has been given under the statute.[53]

Section 21, according to the Nagpur view,[54] is confined, in its application to a legislative order, and accordingly, an order for remission of punishment is not amenable to s 21.[55] There is no need for an authority under the COFEPOSA to inform the detenue, while informing the grounds of detention, that he can make a representation to get the order of detention rescinded under s 21 of General Clauses Act.[56] The authority which passes the order can revoke its order in exercise of powers under s 21 of the General Clauses Act.[57]

47 *Ramnath Prasad v State Tpt* AIR 1957 Pat 117.

48 *Venkatesh Yesawant v Emperor* AIR 1938 Nag 513, 521 (FB), per Vivian Bose J: whether the section applies only to legislative and statutory orders, that is an order having the force of law, was left open in this case; the question was again left open in *Gopal Jairam v State of Madhya Pradesh* AIR 1951 Nag 181: extension of route for operation of vehicles under s 43A(2) of the Motor Vehicles Act 1939, cannot be justified under s 21, General Clauses Act; *Somasundara Reddiar v Roadways Pvt Ltd* AIR 1969 Mad 58.

49 *Bachchu Lal v State* AIR 1951 All 836, 52 Cr LJ 1505.

50 *Bherunal v Moti Lal* AIR 1956 Ajm 67, 1956 Cr LJ 1140.

51 *Kamla Rani v Raj Kumar* 1972 Rev LR 236–37.

52 *Azizur Rehman v Aminuddin* 1975 Raj LR 199, 202 (Del).

53 *Bullion and Agricultural Produce Exchange Pvt Ltd, Agra v Forward Markets Commission, Bombay* AIR 1979 All 332–34 (DB) (s 21 of the Forward Markets Act gives no power of review); *Durga Prasad v State Bank of Saurashtra* (1997) 1 Guj LR 462 (Power to review its own administrative orders).

54 *Re Behari Gaya Prasad Barai* AIR 1939 Nag 513, 515–16, 1938 Nag LJ 423 (FB).

55 *Shahbaz v Crown* 1955 Pak LD (Lah) 65, AIR 1955 NUC (Pak) 1956 (s 21 applies to order of remission of punishment until order is acted upon, but not thereafter).

56 *Nutan J Patel v SV Prasad* 1993 Cr LJ 989, 992.

57 *Dalbir Singh v Union of India* 1995 Cr LJ 2390 (Del).

6. POWER TO GRANT EXEMPTION AND TO AMEND IT

A notification granting exemption from sales-tax can validly be modified by a subsequent notification omitting some items from the original list.[58] But a power of exemption created by s 89(4) of the Companies Act, can be exercised only once, and there can be no revocation of the exemption once granted. It is not permissible for the Central Government, having regard to the provisions in s 14 of the General Clauses Act, from time to time, to pass and revoke orders of exemption under s 89(4).[59] A power to issue a notification, however, includes the power to withdraw it.

By virtue of the decision of the Supreme Court in *Sampat Prakash v State of Jammu & Kashmir*,[60] it cannot be said that the order issued by the executive of the state cannot be amended. In spite of the absence of any express provision for any amendment in the prospectus for modification, the government has the power to amend the same.[61]

The government has no power or jurisdiction to invoke s 21 of the General Clauses Act to notify an area as a 'sanctuary' under the Wild Life (Protection) Act, which is a special Act. The power of altering the boundary is expressly reserved with the state legislature under s 26A(3) of that Act. Once a sanctuary has been notified as such, then the state government, for the purpose of altering its boundary, would become functus officio and the only authority or body, which could have a right to amend the boundaries is the state legislature.[62]

There are two exceptions to the power of the government under the Land Acquisition Act in withdrawing from the acquisition proceedings: (a) matters covered by s 36 (which deals with the power of the collector to enter and take possession of the land); (b) cases in which possession has already been taken. Incorporating these two limitations, s 48(1) clearly says that, subject to these, the government shall be at liberty to withdraw from the acquisition proceedings. As the authority notifying the acquisition proceedings, the government has the power to withdraw from the proceedings subject, of course, to the restrictions imposed by s 48(1). But for these two limitations engrafted in s 48(1), the situation would have been governed by s 21 of the General Clauses Act, under which an authority which has the power to make a notification also has the power to revoke it.[63]

58 *Parthasarathy Mudaliar v State of Madras* (1957) 2 Mad LJ 300.

59 *Nava Samaj Ltd, Nagpur v Registrar of Companies, Bombay* 67 Bom LR 362, 1965 Mah LJ 349, (1965) ILR 807 Bom, (1965) 1 Comp LJ 337, AIR 1966 Bom 218.

60 AIR 1970 SC 1118.

61 *Relly Susan Mathew v Controller of Entrance Examinations, Trivandrum & Ors* AIR 1997 Ker 218 (DB); *Alex Saji v University of Kerala* (1996) 2 K LT 588.

62 *Consumer Education and Research Society, Ahmedabad v Union of India & Ors* AIR 1995 Guj 133, 140, 145.

63 *Andhra Pradesh Industrial Infrastructure Corpn Ltd v Chalasani Vijaya Lakshmi & Ors* AIR 1993 AP 195, 205 (DB); *AL Srinivasa Shenoy v State of Kerala* AIR 1968 Ker 325 dissented from.

The power to abolish any civil post is inherent with every sovereign government. Such a power is a policy decision exercised by the executive. Thus, the executive committee has the power to abolish the post, which it did, and on that count the impugned order was held not to be set aside.[64]

Power to issue an order includes power to amend or rescind the same.[65]

The authority which passes an order can revoke the same in exercise of the powers under s 21 of the General Clauses Act.[66]

Under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner.[67]

Even though s 11, COFEPOSA Act, expressly mentions only the state government or the Central Government as the authority empowered to revoke or modify a detention order, the authority making the order of detention would also have the support of the clear provisions of s 21 of the General Clauses Act, which has been expressly, though unnecessarily, saved by the provision of s 11, as well as art 22(5) read with art 367 of the Constitution of India.[68]

Where, by any central Act, a power to issue orders is conferred, then that power includes a power exercisable in like manner, to rescind any order so issued.[69]

Giving mass promotions being bad in law, the university, in view of this section, must hold fresh examinations in the respective courses with regard to which mass promotion was given.[70]

The government has the power to cancel the notifications, under ss 4 and 6 of the Land Acquisition Act, under the powers vested in it by s 21 of the General Clauses Act.[71]

Section 21 of the General Clauses Act cannot be said to apply to a case where the acquisition proceedings went beyond the stage of the publication of notification under ss 4, 6 and 7 of the Act and the government took possession of the property and the same vested in the government free of all incumbrances.[72]

64 *G Satyanarayana v Principal Director Incharge, National Institute of Small Industry* (1996) 1 Andh LT 830 (AP).

65 *SN Awasthi v Union of India* 1994 Jab LJ 353 (MP).

66 *Dalbir Singh v Union of India* 1995 Cr LJ 2390 (Del).

67 *Kaniska Trading v Union of India* (1995) 1 SCC 274; *Nazar v State* (1996) 2 KLT 518 (Ker).

68 *Kamlesh Kumar Ishwardas Patel v Union of India* 1994 Cr LJ 3105 (Bom) (FB); *Amir Shad Khan v L Hamingliana* AIR 1991 SC 1983; *Hiralal Ganeshmal Jain v State of Maharahtra* 1993 Cr LJ 1209 overruled; *Girija Brij Mohan Sood v Union of India* (1994) 2 Guj LR 1656.

69 *Girija Brij Mohan Sood v Union of India* (1994) 2 GCD 544 (Guj).

70 *Sonal V Shah v University of Gujarat* AIR 1982 Guj 37, 51–52.

71 *State of Madhya Pradesh v Vishnu Prasad Sharma* (1966) 2 SCJ 231, 1966 MPLJ 995, 1966 Mah LJ 969, AIR 1965 SC 1593; followed in *Jai Narayan v Land Acquisition Collector, Delhi* AIR 1976 Del 166.

72 *M/s RC Sood & Co Pvt Ltd v Union of India* AIR 1971 Del 170.

Where rules are to be framed for 'carrying out the purposes of the Act' such rules cannot travel beyond the four corners of the Act itself.[73]

There is nothing in art 370 of the Constitution of India which would exclude the application of s 21 of the General Clauses Act when interpreting the powers of the President under art 370. The modification in art 35 (c) of the Constitution extending its period from five to 20 years and thus saving the provisions of s 8 of the Jammu & Kashmir Preventive Detention Act 1964, from being violative of art 22(5) of the Constitution of India is within the powers of the President. The said power includes the power to vary modifications under s 21 of the General Clauses Act.[74]

An order of amendment under s 21, General Clauses Act, cannot operate retrospectively, though it may operate prospectivety.[75]

7. POWER TO RESCIND

(a) General Limitations on Powers to Rescind

Where an Act does not lay down either that the notification may be amended or rescinded or that it will not be amended or varied once it has been issued, the state government can exercise the powers available to it under s 21 of General Clauses Act.[76] The rule enacted in s 21 is presumptive and can be displaced by the context and object of a particular statutory provision conferring the power.[77] Once a section of some amending Act is brought into force by issue of a notification under the same section of that Act, the power under that section and to that extent, is exhausted, and the government then has no power under the same provision of the Act, as has been brought into force. Again, the power of repeal of a law, which is a legislative power, cannot be delegated.[78]

The authority in *Municipal Board, Sheoganj v State of Rajasthan*,[79] with reference to ss 104, 107(5) and 13 of the Rajasthan Municipalities Act 1959, holds that the government cannot rescind the notification directing the municipal board to levy octroi on goods and animals.

A resolution of the municipality, absorbing into the corporation persons serving on deputation, having received sanction of the government, can be

73 *ML Bagga v C Murhar Rao* AIR 1956 Hyd 35 (principle applies to statutory orders); *Purtabpore Co v Cane Commr* 1968 Pat LJR 344.

74 *Kundan Lal v District Magistrate* AIR 1970 J&K 143.

75 *Umaid Mills Ltd v Industrial Tribunal, Jaipur* AIR 1954 Raj 274.

76 *Aminuddin v State* 1993 All LJ 135, 143.

77 *State of Bihar v DN Ganguli* AIR 1958 SC 1018.

78 *Thakur Vishweshwar Sharan Singh v State Tpt Appellate Tribunal* AIR 1981 MP 121, 1981 Jab LJ 440, 1981 MPLJ 377.

79 1975 Raj LW 238, 244.

withdrawn by the government alone.[80] Where law casts a duty on the appropriate government to revoke or modify the order of detention, the detaining authority is not obliged to invite a representation from the detenue and there cannot be said to be any violation of art 22(5) of the Constitution of India.[81]

A notification to rescind an earlier notification for acquisition of land will be valid only when published in the manner as upon acquisition.[82] In Karnataka, a notification was issued under s 11 of Karnataka Slum Areas (Improvement and Clearance) Act 1973 declaring the whole area as slum clearing area, rescinding the earlier notifications declaring a certain area as slum area, without hearing the affected parties. The Supreme Court held that in such case of violation of principle of natural justice, the implied power to rescind can not be exercised within the scope of s 21 of the General Clauses Act.[83] Under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner.[84]

(b) Power to Rescind Not to Operate Retrospectively

The power to issue a notification includes the power to rescind it.[85] Section 21 of the General Clauses Act provides it in explicit terms. But this power does not include a power to rescind the notification with retrospective effect. Section 21 does not say expressly or by necessary implication that the power can be exercised with retrospective effect. In *Mohd Swallehin v Lt Governor, Delhi*,[86] the government had issued the notification dated 11 January 1969 and published in the gazette on 15 January 1969. Under the powers conferred by s 21, General Clauses Act, it was held that the notification cannot have effect from 11 January 1969. It will have effect from 15 January 1969, that is the date of its publication. In *State of Madhya Pradesh v Vishnu Prasad Sharma*,[87] the cancellation of a notification was in recognition of the earlier notification. But the cancellation became effective when it had come to the knowledge of

80 *C Muniyappa Naidu v State of Karnataka* (1976) 1 Kant LJ 548, 558.

81 *Moinudeen Baba v DN Capoor* (1988) 3 Bom CR 323, 1989 Mah LR 121.

82 *Sadar Anjuman Bhuradiya v State of Andhra Pradesh* AIR 1980 AP 246, (1980) 2 Andh LT 32 (DB); *Kamla Prasad Khetan v Union of India* AIR 1957 SC 676.

83 *Scheduled Castes and Weaker Section Assn v State of Karnataka* AIR 1991 SC 1117, 1122.

84 *Kasinka Trading v Union of India* (1995) 1 SCC 274; *Nazar v State* (1996) 2 Ker LT 518 (Ker).

85 *Basanta Chand Ghosh v Emperor* AIR 1945 Pat 44, 52, 46 Cr LJ 460, ILR 23 Pat 968 (order of detention under r 26 of Defence of India Rules 1939, can be cancelled for making fresh order, under s 3(1)(b) of the Restriction and Detention Ordinance 3 of 1944).

86 AIR 1977 Del 184, 1977 Rajdhani LR 415, (1977) ILR 2 Del 387.

87 AIR 1966 SC 1593, (1966) 2 SCJ 231, 1966 MPLJ 995, 1966 Mah LJ 969.

the petitioners, that is to say, when it was published in the gazette and not before that.

Since, in s 21 of the Bombay General Clauses Act 1904, there is an absence of the words, 'unless there is anything repugnant in the subject or context' and 'unless a different intention appears,' the power to rescind goes without any limitation.[88]

(c) Cases on Exercise of Powers to Rescind

The scope of s 4 of the Land Acquisition Act read in the context of other provisions, negatives any implied power vested in the collector to rescind or withdraw a notification issued under said s 4.[89] Under s 17(1) of the same Act, the land, after possession being taken under that section, becomes vested in the government, and thereafter the power under s 21 of the General Clauses Act, for cancellation of notification, cannot be exercised.[90] It has been observed in *Sreenivas Shenoy v State of Kerala*,[91] that it is not competent for the government, in exercise of its powers under s 52(1) of the Kerala Land Acquisition Act 1962, to withdraw an acquisition with regard to a portion of the land comprised in the declaration made under s 5 of the Cochin Land Acquisition Act 1970.

In *Rai Sahib v State of Haryana & Anor*, it was held that sub-ss (5) and (6) of s 88 of the Motor Vehicles Act are related to the procedure required to be undertaken before and after the reciprocal agreement is arrived at between the states. There is nothing in these sub-sections or in the other provisions of the said Act that for rescinding the reciprocal agreement, the same procedure shall be followed. Section 21 of the General Clauses Act also does not provide for such a procedure for the rescission of the agreement. Section 21 provides that the power to rescind shall be exercised in the like manner. To bring about an effective addition, amendment, or cancellation of statutory orders, rules, or bye-laws, the order, or rule, or bye-law effecting addition, amendment, or cancellation must be made in the manner in which the original order or rule was required to be made. Section 21 of the General Clauses Act in terms was held to apply to the statutory rules, bye-laws, notifications, and orders and not to the contracts entered into between the parties. It is not necessary to take up a similar procedure to rescind the agreement entered into between the states as provided for by sub-s(5) of s 88 of the Motor Vehicles Act.[92]

88 *Ranchhod Zina v Patankar* AIR 1966 Guj 248, 252.
89 *Arya Samaj Khalepar Society v Collector of Saharanpur* 1967 All LJ 796, 798.
90 *Lt Governor of Himachal Pradesh v Avinash Sharma* AIR 1970 SC 1576, (1970) 2 SCJ 735.
91 AIR 1968 Ker 325, 329 (DB).
92 AIR 1996 Raj 83, 86–87.

It has been observed:

> Section 15 of the Mines and Minerals (Regulation and Development) Act 1957, read with s 21 of the General Clauses Act, gives ample power to the state government to add to the impugned r 39 of the existing rules for the purpose of regulating the grant of quarry leases, mining leases, or other mineral concessions in respect of minor minerals, and for [the] purposes onnected therewith, on terms and conditions... apart from those laid down in the other rules already made under s 15(1). The rules under s 15(1), though made by the state government, are [the] rules made in a central Act and, therefore, the provisions of the General Clauses Act will apply to such rules. Under s 21 of the General Clauses Act, where, by any central Act, a power to make rules is conferred, then that power to make rules includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to add, annul, vary, or rescind any rules so made.[93]

The general power in s 21 of the General Clauses Act is to add to, amend, vary or rescind any notifications etc. The power of rescinding any notification, conferred generally in s 21 of the General Clauses Act is clearly inapplicable to the scheme under the Commissions of Inquiry Act 1952, which expressly provides for the exercise of power in relation to a commission constituted under s 3 of the said Act. The extent to which constitution of the commission can be amended or varied by filling any vacancy in the office of a member as provided in the Commission of Inquiry Act, is also obviously excluded from the purview of s 21 of the General Clauses Act which cannot be invoked for the purpose.[94]

Where the central or state government has specially empowered an officer to pass the order of detention by delegation, such officer shall have no power to revoke the order of detention under the garb of s 21 of General Clauses Act and the power to revoke in such case remains with the concerned government.[95]

However the above view did not stand long and in 1991 the Supreme Court held that such special officer empowered to pass detention orders has the power to revoke them also, under s 21 of the General Clauses Act.[96] Even though s 11, COFEPOSA Act expressly mentions only the state government

93 *Durairaju Naidu v State of Tamil Nadu & Ors* AIR 1994 Mad 68 (DB); *DK Trivedi v State of Gujarat* AIR 1986 SC 1323.

94 *State of Madhya Pradesh v A & A Enterprises & Ors* AIR 1993 SC 825, 838, (1993) 1 SCC 302.

95 *State of Maharashtra v Sushila Mafat Lal* AIR 1988 SC 2090, 2098.

96 *Amir Shad Khan v L Himingliana* AIR 1991 SC 1983, 1991 Cr LJ 2713, 2718.

or the 'Central Government' as the authority empowered to revoke or modify a detention order, the authority making the order of detention would also have clear authority to revoke or otherwise modify the same as a result of the operation of the provisions of s 21 of the General Clauses Act, which has been expressly (though unnecessarily) saved by the provisions of s 11 of the COFEPOSA Act and also of art 22(5) of the Constitution read with art 367 thereof.[97]

So long as the allottee has not taken possession of the allotted premises, the Rent Control and Eviction Officer can modify or cancel the previous order of allotment.[98]

A notification under s 4 of the Forest Act is required to be published in the *Gazette* and unless so published, it is ineffective.[99] It can, thus, be cancelled in the like manner by publication. Section 4(2) of the West Bengal Criminal Law Amendment (Special Courts) Act 1949, empowering the state government to distribute cases, necessarily implies the power to cancel a former distribution.[1]

A sanction to institute ejectment proceedings against a tenant by the landlord, when rescinded by a subsequent order, cancels the original sanction.[2]

Unless there is an express power conferred by a statute, the tehsildar has no power to cancel the notification of election once he has issued a calendar of events and pursuant to the same, nominations have been filed and accepted.[3]

A trust as a maker of a scheme can also abandon or rescind the same.[4] It is regular on the part of the government to cancel a distribution of cases in the courts and thereafter to redistribute same.[5]

In view of the powers contemplated under s 5 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, the director of agriculture can close an existing market and establish it elsewhere.[6] Where by any Central Act a power to issue orders is conferred, then that power

97 *Kamlesh Kumar Ishwardas Patel v Union of India* 1994 Cr LJ 3105 (Bom) (FB); *Ibrahim Bachu Bafan v State of Gujarat* and *Mithu Bawa Pandhiyar v State of Gujarat* AIR 1985 SC 697, 1985 Cr LJ 533; *Amir Shad Khan v L Hmingliana* AIR 1991 SC 1933 followed; *Hiralal Ganeshmal Jain v State of Maharashtra* 1993 Cr LJ 1209 overruled; *Girija Brij Mohan Sood v Union of India* (1994) 2 Guj LR 1656.

98 *Mahabir Prasad v District Magistrate* AIR 1953 All 501, 1955 All LJ 252.

99 *Mahendra Lal Jaini v State of Uttar Pradesh* AIR 1963 SC 1019.

1 *Major J Phillips v State* AIR 1957 Cal 25.

2 *Munna Lal v Chandhradhar Hans* AIR 1952 All 859, 1952 All LJ 278; reversing *CD Hans v Munna Lal* AIR 1952 All 32, 1951 All LJ 479.

3 *Tehsildar and Returning Officer, Bhalki v Shivaji Rao* AIR 1976 Kant 233–34.

4 *Kartar Singh v State of Punjab* AIR 1981 P&H 146.

5 *Major J Phillips v State* AIR 1957 Cal 25, 33.

6 *Ram Chandra Kachardas Porwal v State of Maharashtra* AIR 1981 SC 1127, 1135.

includes a power exercisable in like manner, to rescind any order so issued.[7]

(d) Power Not Meant to Enlarge Statute

A notification can only explain the section but it can not go so far as to enlarge the provisions of the statute. A notification issued in exercise of power conferred under an Act cannot alter the statutory definition given under the Act.[8]

8. POWER TO CHANGE NOTIFIED NAME

The government which had once notified the name of an *anchal panchyat* has the power, under this section, to issue a subsequent corrigendum notification changing the name of the *panchayat*, provided that the nature and character of the *panchayat* is not thereby changed.[9]

Where the registrar, acting under ss 9–10, Karnataka Societies Registration Act 1960, had granted registration to the amendment in the name and the object of a society, in the meeting of its general body, but the amendments were found to be invalid, it was held that the registrar could cancel such registration, in view of s 21.[10]

9. POWER TO EFFECT 'SUCH RESTRICTIONS AND MODIFICATIONS' AS BE DEEMED FIT

Whether the Notification SRO–3908, dated 7 December 1957, issued by the Central Government in the purported exercise of its powers under s 2 of the Union Territories (Laws) Act 1950, is ultra vires the Central Government, was the principal question that arose in *Lachchmi Narayan v Union of India*.[11] Section 2 of the Part C States (Laws) Act empowered the

7 *Girija Brij Mohan Sood v Union of India* (1994) 2 GCD 544 (Guj).

8 *Jacqueline Chandani v Dy Director, Enforcement Directorate* AIR 1991 Kant 194, 1991 Cr LJ 1408.

9 *Birendra Nath Jana v State of West Bengal* (1977) 2 CLJ 383, AIR 1978 NOC 129 (Cal); *Corpn of Calcutta v Jugal Kishore Dhandharia* (1978) 82 CWN 276, AIR 1978 NOC 129; but see *Ram Chandra Reddy v State of Andhra Pradesh* AIR 1965 AP 40, 47–48, (1955) 1 Andh WR 317 (DB) (no power to cancel notification once issued under s 2(b) of Andhra Pradesh Panchayat Samitis and Zila Parishads Act 1959); but see *P Raman Nair v State* AIR 1957 Tr & Coch 220–21 (implied power with government to cancel order once issued, giving sanction to *panchayat* to open and conduct public market at a certain place).

10 *Dhirendra Kumar v Registrar of Societies* (1979) 1 Kant LJ 244.

11 AIR 1976 SC 714, (1975) 6 STA 47, 1976 Tax LR 1467, 37 STC 267, (1976) 2 SCC 953, (1976) SCC (Tax) 213, 1976 Rajdhani LR 342, [1976] 2 SCR 285; reversing

continued on the next page

Central Government to extend, by notification in the *Official Gazette*, to any Part C state, or to any part of such state, with such restrictions and modifications as it thinks fit, any enactment which is in force in a Pt A state. In the exercise of this power, the Central Government by notification SRO 615, dated the 28 April 1951, extended to the then Pt C state of Delhi, the Bengal Finance (Sales Tax) Act 1941 with certain modifications. On 1 November 1956, as a result of the coming into force of the States Reorganisation Act 1956 and the Constitution (Seventh Amendment) Act 1956, Pt C states were abolished. Part C State of Delhi became a union territory and the Delhi Legislative Assembly was also abolished. In 1956, Pt C State (Laws) Act 1950 also became the Union Territories (Laws) Act 1950, with the necessary adaptations.

On 1 December 1956, the parliament passed the Bengal Finance (Sales Tax) (Delhi Amendment) Act 1956 which introduced amendments in different sections of the Bengal Finance (Sales Tax) Act 1941, in its application to Delhi. It made two changes in s 6 thereof: (a) the word 'schedule', wherever it occurred, was replaced by the words 'second schedule'; (b) the words 'Central Government' were substituted for the words 'state government'.

On 7 December 1957, in the *Gazette of India, Extraordinary*, there appeared a notification as follows:

> SRO 3908—In exercise of the powers conferred by section 2 of the Union Territories (Laws) Act 1950 (30 of 1950), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Home Affairs No SRO 615, dated the 28 April 1951 (extending to the Union Territory of Delhi) the Bengal Finance (Sales Tax) Act 1941, subject to certain modifications, namely:
> in the said notification in the modification to the Bengal Act aforesaid in Item 6 [relating to sub-section (2) of section 6], after sub-item (a), the following sub-item shall be inserted, namely;
> (aa) for the words 'not less than three months' notice the words 'such previous notice as it considers reasonable' shall be substituted.

The *vires* of this notification, dated 7 December 1957, was challenged mainly on the ground that the power of modification conferred on the Central Government by s 2 of the Union Territories (Laws) Act is not an unfettered power of delegated legislation but a subsidiary power conferred for the limited purpose of extension and application to a union territory, an enactment enforced in a state, meaning thereby that only such modifications are permissible in the exercise of that power which are necessary to adopt and adjust such enactments to local conditions.

Union of India v Lachmi Narain (1972) ILR 1 Del 475; *Roshanara Begum v Union of India* (1996) 61 Del LT 206.

Upholding the above challenge, RS Sarkaria J, speaking for the court, held as follows;

> Bearing in mind the principles and the scope and meaning of the expression 'restrictions and modifications' explained in *Delhi Laws Act 1912 Re*,[12] let us now have a close look at section 2. It will be clear that the primary power, bestowed by the section on the Central Government, is one of extension, that is, bringing into operation and effect in a union territory, an enactment already in force in a state. The discretion, conferred by the section to make restrictions and modifications in the enactment sought to be extended, is not a separate and independent power. It is an integral constituent of the power of extension. It cannot be exercised apart from the power of extension. This is indubitably clear from the preposition 'with' which immediately precedes the phrase 'such restrictions and modifications' and conjoins it to the principal clause of the section which gives the power of extension. According to the Shorter Oxford Dictionary, one meaning of the word 'with' (which accords herewith the context) is part of the same whole.
>
> The power given by section 2 exhausts itself on extension of the enactment; it cannot be exercised repeatedly or subsequently to such an extension. It can be exercised only once simultaneously with the extension of the enactment. This is one dimension of the statutory limits which circumscribe the power. The second is that the power cannot be used for a purpose other than that of extension. In the exercise of this power, only such 'restrictions and modifications' can be validly engrafted in the enactment sought to be extended, [as] are necessary to bring it into operation and effect in the union territory. 'Modifications' which are not necessary for, or ancillary and subservient to, the purpose of extension, are not permissible. And only such 'modifications' can be legitimately necessary for such purpose as are required to adjust, adopt and make the enactment suitable to the peculiar local conditions of the union territory for carrying it into operation and effect. In the context of the section, the words 'restrictions and modifications' do not cover such alterations as involve a change in any essential feature of the enactment or the legislative policy built into it. This is the third dimension of the limits that circumscribe the power.
>
> It is true that the words 'such restrictions and modifications as it thinks fit', if construed literally and in isolation, appear to give unfettered power of amending and modifying the enactment sought to be extended. Such a wide construction must be eschewed lest the very validity of the section become vulnerable on account of the vice of excessive delegation. Moreover, such a construction would be repugnant to the context and the content of

12 AIR 1951 SC 332; *Ganga Dhar Singh v State of West Bengal* (1997) 2 Cal HN 140

the section read as a whole and the statutory limits and conditions attaching to the exercise of the power. We must, therefore, confine the scope of the words 'restrictions and modifications' to alterations of such a character which keep the in-built policy, essence, and substance of the enactment sought to be extended intact and introduce only such peripheral or insubstantial changes as are appropriate and necessary to adopt and adjust it to the local conditions of the union territory. The impugned notification dated 7 December 1957, transgresses the limits which circumscribe the scope and exercise of the power conferred by section 2 of the Laws Act.

His lordship further held that:

...nor could the respondents derive any authority or validity from section 21 of the General Clauses Act for the notifications withdrawing the exemptions. The source from which the power to amend the second schedule comes in section 6(2) of the Bengal Act and not section 21 of the General Clauses Act. Section 21, as pointed out by this court in *Gopi Chand v Delhi Admn*[13], embodies only a rule of construction, and the nature and extent of its application must be governed by the relevant statute which confers the power to issue the notification. The power, therefore, had to be exercised within the limits circumscribed by section 6(2) and for the purpose for which it was conferred.

10. NO CANCELLATION WITHOUT POWER TO CANCEL NOTIFICATION

The deputy commissioner had published a notification notifying the names of all elected members of the market committee under the Karnataka Agricultural Produce Market (Regulation) Act 27 of 1966 and thereafter, the *tehsildar*, as Returning Officer, published a calendar of events for election of the chairman and the vice-chairman fixing the date of such election. But one day before the date of election, the *tehsildar* issued another notification cancelling the earlier one for election of the chairman and the vice-chairman, on the ground that the market committee had not been duly constituted. There was, in the Act, no provision, express or implied conferring any power on the *tehsildar* to cancel such notification. In the case of *Tehsildar and Returning Officer, Agricultural Produce Market Committee v Shivaji Rao*,[14] the act of the *tehsildar* was sought to be validated under s 21 of the General Clauses Act. Quashing the order of the *tehsildar*, it was observed by GK Govinda Bhat CJ:

13 1959 Supp (2) SCR 87, AIR 1959 SC 607.
14 AIR 1976 Kant 233, (1976) 1 Kant LJ 272, (1976) ILR 629 Kant.

The general principle of law is that once the process of election is started, the same cannot be interrupted except by an order of court. The result of the action of the appellant *tehsildar* is to interrupt the process of election after the nominations had been filed and accepted. If the principle of section 21 of the General Clauses Act can be availed of by returning officers, then it is likely to be seriously abused wherever the persons in authority find that their candidates are not likely to win or their nominations are not valid. As at present advised, we are of the opinion that unless there is an express power conferred by the statute, the *tehsildar* has no power to cancel the notification once he has issued a calendar of events and, persuant to the same, nominations have been filed and accepted.

A notification cancelling a labour court constituted under s 7 of the Industrial Disputes Act 1947 and constituting a fresh labour court has been held to operate from its own date without affecting the references already made to that court.[15]

The governor is competent to promulgate a notification in supersession of an earlier notification.[16]

11. SECTION NOT TO EXCLUDE NATURAL JUSTICE

Section 21 of the General Clauses Act, does not, either by itself or when read with s 18AA of the Industries (Development & Regulation) Act 1951, exclude natural justice. The exclusion of natural justice, where such exclusion is not express, has to be implied by reference to the subject, the statute, and the statutory situation. That a post-decision hearing in terms of s 21, may not necessarily help in the interpretation of the provisions of the concerned statute.[17] It has, however, been held in *Amar Nath Khanna v Collector, Agra,*[18] that the collector, before imposing a penalty under s 40(1)(b) of the Stamp Act 1899, is bound to give notice to the party calling upon to show cause.

An administrative decision which results in adverse civil consequences must follow the principle of natural justice.[19]

15 *East India Pharmaceutical Works Ltd v GS Verma* 1973 Lab IC 1501, 1973 Pat LJR 324.

16 *Sita Ram v Addl Collector, Gorakhpur* 1982 All LJ 829 (notification 1(3) 1741 Rev; s 8(868), conferring on additional collectors the powers of director of consolidation).

17 *Swadeshi Cotton Mills v Union of India* AIR 1981 SC 818, (1981) 1 SCC 664, 51 Com Cas 210, 58 FJR 190, [1981] 2 SCR 533.

18 AIR 1955 NUC 2715, 1954 All LJ 520.

19 *State of Uttar Pradesh v Girish Bihari* (1997) 1 LLJ 45 (SC).

Section 22. Making of rules or bye-laws and issuing of orders between passing and commencement of enactment—Where, by any [Central Act] or Regulation which is not to come into force immediately, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

SYNOPSIS

1. ANALOGY OF THE SECTION

The section has an analogy in s 37 of the English Interpretation Act 1889, which states as follows:

> **Section 37. Exercise of statutory powers between passing and commencement of Act**—Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any order in council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.

2. PURPOSE OF THE SECTION

This section is a filling in of the gap between the passing and the coming into operation of an enactment. An Act may be passed any day but its commencement may be postponed and various orders or rules may be needed to bring it into operation.[20] The section virtually provides for the things preparatory to the commencement of an Act.[21] An authority is given by this section to make provision for all such incidents and instrumentalities with the aid of which the enactment is to achieve its purpose. With the support of this section situations may be set and climate created in which the Act may correctly put itself into an orderly course of working. However, this section can be utilised only in such situations where an Act would not come into force immediately. Secondly, though the power given under the section may be exercised at any time after the passing of the Act, yet the conditions are: (a) the rules, bye-laws, orders etc, must be within the scope of the rule-making power conferred by the statute;[22] (b) the preparation so set or the background so created shall be effective and recognised not earlier, than the commencement of the Act.[23] Section 22 expressly confers on a rule-making authority, where there is an interregnum between the date of the commencement of the Act and the date of its enactment, the authority to make rules even during that interregnum.[24]

However, the words 'with respect to' are just words of limitation. Hence, unless the amendment to an Act has not been made retrospective, an order made under the Act prior to its having come into force, cannot be validated under s 22.[25] Again, when the amendment as well as the rules have been given retrospective effect, an order made without notifying the law as in force, would be all the more defective.[26]

3. INSTANCES

Where the rules were made and completed on 25 September 1961, under s 21 of the Mysore Motor Vehicles (Taxation on Passengers and Goods) Act

20 *Kishore Singh v Revenue Board, Rajasthan* AIR 1953 Raj 37, 40, 1953 Raj LW 21 (DB).

21 See for example, s 21 of Madhya Bharat General Clauses Act, giving power to government to take steps for bringing an Act into operation: *State v Anandi Lal* 1957 Cr LJ 251, 254, 1956 Mad BLJ 883 (DB).

22 *Kerala State Electricity Board v Indian Aluminium Co Ltd* AIR 1976 SC 1031, 1047, (1976) 1 SCC 466, [1976] SCR 552; reversing *Barathalomeo Firm v Manager ST Albana LP School* ILR (1970) 1 Ker 116.

23 *Gram Panchayat, Zillalguda v Government of Andhra Pradesh* AIR 1982 AP 315, (1982) 1 APLJ 233 (HC), (1982) 1 Andh LT 253, (1982) 2 Andh WR 23.

24 *HK Swarnevar Nasha v State of Mysore* AIR 1963 Mys 49, 61.

25 *Venkateswaraloo v Supdt, Central Jail* AIR 1953 SC 49–50, 1953 Cr LJ 501, (1953) SCJ 1.

26 *SAL Narayan Lal v Ishwar Lal* AIR 1965 SC 1818, 1824, (1965) 2 SCJ 359; relying on *MK Venkatachalam v Bombay Dyeing & Mfg Co* AIR 1958 SC 875; affirming [1959] 36 ITR 538.

which came into force on 1 October 1961, it was held that rules could not be held invalid on the ground that they were made and completed before the Act came into force.[27]

In *Union of India v M Thankaraj,* the common question of law that arose for answer was whether in respect of death or injury sustained before the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules 1997 came into force, the enhanced rate of compensation under the amended rules could be made applicable. In the facts and circumstances of the case, a division Bench of the Kerala High Court held, inter alia, as follows:

1. The rule that will be applied for finding out the quantum of compensation for death would be the rule that was available at the time of the death. It does not mean that the rule on the date of consideration of the claim on the basis of death has to be applied for assessing the quantum.
2. As per s 126 of the Railways Act 1989, the liability of the Railways to pay compensation and the right of the claimant to receive compensation accrue on the date of the accident and not at a subsequent date. The liability to pay compensation is to the extent prescribed under the rules in force at the time of the accident or the untoward incident, as the case may be.
3. Sections 124 and 124A of the Railways Act would clearly show that it is not the provisions of General Clauses Act that have been excluded, but reference is to the provisions of other statutes like Fatal Accidents Act, Workmen's Compensation Act etc; the amended rules themselves provided that they shall come into force on 1 November 1997.[28]

Sections 99–100 of the Motor Vehicles Act 1988 by themselves make complete provisions for the preparation and finalisation of a scheme, independent of the rules framed under s 107 of that Act. The government is empowered to frame the scheme for nationalisation and finalise the same under ss 99–100. Even if the rules framed under s 107 of the Motor Vehicles Act may appear to be void for want of pre-publication, that itself would not render the scheme, formulated in exercise of powers under ss 99 and 100, void. Mere reference to r 311 along with s 99 of the said Act as a source of power for framing the scheme, cannot render it void, once it is clear that the power to frame such a scheme is clearly independently referable to s 99 itself. The decision for modification and/or approval of the scheme in the instant case, had nothing to do with the change in policy. The policy was already formulated in terms of s 99 of the Motor Vehicles Act itself. Cabinet

27 *HK Swarenavar Nashar v State of Mysore* AIR 1963 Mys 49.
28 AIR 2000 Ker 91 (DB).

approval was also given to the scheme. Authorisation by an order under r 17 to hear and decide was only regarding modification and approval of the said scheme after hearing the objections from the public. It related to the implementation of the scheme prepared in accordance with the policy adopted by the government under the provisions of the Motor Vehicles Act. It can at the most be considered as an implementation of the policy already formulated. Therefore, the provisions contained in r 9 of the business rules read with the schedule to the business rules, were held not at all attracted to the case in hand. The petitions were dismissed accordingly.[29]

The rules made under s 26 of the Rajasthan Sales Tax Act which received the assent of the President on 22 December 1954, but came into force on 1 April 1955, were published on 28 March 1955. By reason of s 22 of the General Clauses Act, read with s 29 of the Sales Tax Act, the rules were held to be operative from 1 April 1955, since s 29 of the Rajasthan Sales Tax Act makes the provisions of the General Clauses Act applicable for the interpretation of the Act in the same manner as they apply for the interpretation of a central Act. Under s 22 of the General Clauses Act, the power is expressly conferred on the rule-making authority to make rules even before the date of commencement of the Act, but the rules so made shall not take effect till the actual enforcement of the Act. Section 22 of the General Clauses Act is a section dealing not merely with construction but also interpretation and it follows that the provisions of that section are applicable for the interpretation of the Act in view of the requirements of s 29 thereof.[30]

Similarly, when an Act was brought into force in the state on 23 January 1955, but the constitution of the court and the appointment of judges of that court were made on 22 January 1955, ie, one day prior, it was held that by virtue of the provisions of s 22 of the General Clauses Act, the power so exercised shall be deemed to be valid, but the appointment made in the exercise of that power would take effect only on the coming into force of the Act in the State, ie, 23 January 1955.[31] So also, in *Amarendra Nath v Bikash Chandra*,[32] an order was passed appointing a judge under the Calcutta City Civil Courts Act before the Act came into operation. It was held that the power of appointment could be exercised after the passing of the Act though it would not take effect till the commencement of that Act.

But an order of transfer of a case, pending before the industrial tribunal prior to s 33B of the Industrial Disputes Act 1947 coming into force, was held not saved by s 22 of the General Clauses Act 1897.[33]

29 *Socorro N Gracias v State of Goa & Ors* AIR 1999 Bom 436, 442, 445 (DB).

30 *State of Rajasthan v Mewar Sugar Mills Ltd, Bhopalsagar* (1969) 2 SCJ 270, 24 STC 174, 1969 Um NP 524, (1969) 2 SCA 450, AIR 1969 SC 880.

31 *Jiyajirao Cotton Mills Ltd v Employees State Insurance Corpn* AIR 1962 MP 340.

32 AIR 1957 Cal 534.

33 *Shree Shew Sakti Oil Mills Ltd v Judge, Second Industrial Tribunal* AIR 1961 Cal 227, 65 CWN 478.

The governor of Uttar Pradesh issued a notification under the Uttar Pradesh Sales Tax Act 1948. The notification was issued in exercise of the powers conferred by s 3A of the Uttar Pradesh Sales Tax Act 1948, as amended from time to time. This can mean only that the notification was issued by the governor in exercise of the power conferred on him under the unamended s 3A, that is, prior to its amendment by an ordinance. Recourse can be had to s 22, General Clauses Act, only if a notification is issued under an Act or ordinance which had been published but had not then come into force. As, under the unamended s 3A, the governor had no power to issue the notification, it was held invalid.[34]

4. RULES NOT TO GO BEYOND STATUTE

Rules and regulations made by a subordinate agency under the statutory power delegated by the legislature have the same force as laws made by the legislature,[35] but it is an established law that a rule can never contravene a provision of the Act and it can neither curtail nor add anything to the statutory power under the Act.[36]

This section was not held applicable to a case where the applicant was disqualified on the date of the election, which defect was held not incurable by resort to s 23 of the Orissa General Clauses Act, corresponding to s 22 of this Act.[37]

An order issued by the state government under ss 2(o) and 13(1) of the Andhra Pradesh Avas (Development) Act, after passing of the Act but before its having come into force, has been held to be valid.[38]

Section 23. Provisions applicable to making of rules or bye-laws after previous publication—Where, by any [Central Act] or Regulation, a power to make rules or bye-laws is expressed to be given, subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:

34 *Adarsh Bhandar v Sales-tax Officer* AIR 1957 All 475; *State of Rajasthan v Mewar Sugar Mills Ltd* AIR 1969 SC 880, (1969) 2 SCJ 270, 24 STC 174, (1969) 1 Um NP 524, (1969) 2 SCA 450.

35 *MPSRTC, Bairagarh v Ram Chandra* AIR 1977 MP 243, 247, 1977 Lab IC 1266, 1977 MPLJ 341 (FB).

36 *Gandharb Sain v Addl District Development Officer, Sriganganagar* AIR 1980 Raj 229, 232; *Shanta Prasad v Collector, Nainital* 1978 All LJ 126, 128 (DB); *Baleswar Prasad Srivastava v Sita Devi* AIR 1976 All 328, 335–36; held to be no longer good law on another point in the light of *State of Orissa v Chandrika Mohapatra* AIR 1977 SC 903 and *Charan Dass v District Judge, Dehradun* AIR 1977 SC 1559.

37 *Sukhawat Ali v State of Orissa* AIR 1955 SC 166, 168–69, (1955) SCJ 212.

38 *Gram Panchayat, Zillaguda, Village Hayatnagar Taluk v Govt of Andhra Pradesh* AIR 1982 AP 315, 321.

(1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;[39]

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the [Government concerned] prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye-laws and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the [*Official Gazette*] of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

SYNOPSIS

1. SCOPE

Section 23 has no application to a case where the publication of a draft regulation has been dispensed with by proper authority and the regulations are brought into force at once.[40] The commencement of rules is not within the direct scope of s 23. However, as held in *Abhey Kumar v Faquir Chand*,[41] a statutory order commences its operation on a date

39 The authority contemplated by this clause can only exercise the power on the date on which the rule or bye-law is made: *CJ Shah v Chhabulal Ganpatlal* 1968 Cr LJ 253 (Guj).

40 *Baldev Band v Union of India* 1983 Cr LJ 787 (Del).

41 (1954) 56 Punj LR 437, AIR 1955 NUC (Punj) 2517.

when it becomes known to the public and not on the date on which it is made, though a contrary view has come in *Kochusora v Gracy*.[42]

In *Brojendra Kumar Saha v Union of India*,[43] it was held that on the principle of presumption that official acts are performed in the regular course, a rule once published in the gazette, must be regarded as incorporated in the Act itself, particularly, when there is nothing to contradict the fact that rules and notifications were placed before Parliament.

The proviso to art 320(3) of the Constitution of India requires that the authorities, competent to frame regulations, must also submit the regulations to the judgment of the legislature.[44]

A rule having failed to comply with the requirements set out in this section is liable to be held as void.[45]

The power to issue a notification includes the power to rescind, vary, modify, or annul a notification.[46] In the absence of any provision in the Act or rules empowering the authority to vary or rescind the order made under the rules, the provisions of s 23 of the General Clauses Act can be pressed into operation if the circumstances so necessitate. However, the procedural formalities have to be followed and they cannot be circumvented. The power to do a particular thing includes the power to undo that thing.[47]

2. PREVIOUS PUBLICATION

Previous publication means:

(i) the authority concerned must publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(ii) the manner of publication is left to the authority concerned unless it has been otherwise prescribed by the government;

(iii) along with the draft rules, a notice must also be published specifying a date on or after which the draft is to come up for consideration;

(iv) the said authority must then consider any objections or suggestions which may have been received before the specified date; and

42 1973 KLJ 880 (DB).

43 AIR 1961 Cal 217, 221, 223, 65 CWN 70.

44 *Munna Lal Tewari v Harold R Scott* AIR 1955 Cal 451, 454–55, 59 CWN 260 (DB) (r 53 of regulations framed under s 267(3) of the Government of India Act 1935 exempting government from entrusting matters to Public Service Commission as regards matters specified in s 266(3) thereof inconsistent with art 320(3) of the Constitution).

45 *Municipal Corpn, Bhopal v Misbahul Hassan* AIR 1972 SC 892, 896, (1972) 2 SCJ 775.

46 *Man Singh v State of Rajasthan* AIR 1995 Raj 276.

47 *Man Singh & Ors v States of Rajasthan* 1995 Raj 276, 280 (DB).

(v) then after all these requirements have been fulfilled, the rules or the bye-laws, as the case may be, as finalised, must be published in the *Official Gazette*; and a certain presumption then arises under section 23(5) that the rules or bye-laws have been duly made.[48] The word 'publication' means that the rule or bye-law must actually be released from the press. Mere printing of the rule or bye-law or notice in the *Official Gazette* which was not out of the press is not publication.[49]

An executive direction or instruction need not at all be published.[50] Non-publication of rules in the newspapers does not invalidate the rules.[51]

Since s 23 has prescribed a cumbersome procedure of previous publication, sub-s (5) thereof has dispensed with the proof that such procedure has been complied with.[52] The expression 'after previous publication' goes with the expression 'purporting to have been made' and not with 'power to make rules.[53]

Notification relating to appointment of additional commissioner had on it the date of 24 January 1949 but was published on 26 January 1949. The appointment covered thereby is valid only from 26 January 1949.[54]

The authority having the power to make rules or bye-laws mentioned in s 23(1) can only exercise the power on the date when the rules and bye-laws are made,[55] though, according to the High Court of Punjab,[56] a statutory order comes into operation not on the date on which it is made known to public but on the date of passing such an order.[57]

The previous publication of any rule by a predecessor state is valid.[58]

The draft of proposed Prevention of Food Adulteration Rules 1961, published by Government of Bombay, is valid even if the same are not

48 *Automobile Transport of Rajasthan Pvt Ltd v State of Rajasthan* AIR 1962 Raj 24, (1960) ILR 10 Raj 1332; *Munna Lal Tewari v HR Scott* AIR 1955 Cal 451, 59 CWN 260; *Brojendra Kumar Shah v Union of India* AIR 1961 Cal 217, 65 CWN 670 (presumption of official acts done in regular course).

49 *Jagjit Singh v State of Rajasthan* 1967 Raj LW 116, (1966) ILR 16 Raj 1196, AIR 1968 Raj 24; *CJ Saha v Chhabulal* 1968 Cr LJ 253 (Guj).

50 *A Murlidhar v State of Andhra Pradesh* AIR 1959 AP 437.

51 *Rajendra Singh v State* AIR 1979 AP 1.

52 *CJ Shah v Chhabalal Ganpatlal* 1968 Cr LJ 253 (Guj).

53 Ibid.

54 *Ram Narain Lal v Radha Raman* AIR 1954 Pat 393.

55 *CJ Shah v Chhabalal* 1968 Cr LJ 253 (Guj).

56 *Abhey Kumar v Faquir Chand* (1954) 56 Punj LR 437, AIR 1955 NUC (Punj) 2517.

57 But see *Kochusara v Gracy* 1973 KLT 880, 885–86 (DB) (r 6F in Ch 23 of Kerala Education Rules 1959 came into force when it was made).

58 *Mani Lal R Pandya v Chiman Lal Parshottam Das* AIR 1968 Guj 80, 83–84, 1968 Cr LJ 485, 8 Guj LR 1030 (DB); overruling *CJ Shah v Chhabalal* 1968 Cr LJ 253 (rr 1 and 5 of Gujarat Prevention of Food Adulteration Rules 1961—draft of rules published by the state of Bombay).

once again published by the State of Gujarat when the territory of Bombay was split up and part of it went to Gujarat and part to Maharashtra.[59]

Section 23 has to be read along with the provisions of each such enactment which does not provide the mode of publication of an order.[60]

While construing s 2(36) of the Punjab General Clauses Act 1898, it has been held that all notifications, unless specifically overruled, have to be published in the *Official Gazette* of the state government.[61]

3. SECTION 23(5) NOT VIOLATIVE OF ARTICLE 14 OF THE CONSTITUTION

The various steps under s 23(1)–(4) would be found to contain sufficient guidance for the authority concerned in the matter of the final act of publishing the rules, and it is then that the presumption of conclusiveness is intended to arise. It has been, therefore, held that the section does not violate art 14 of the Constitution.

After the publication of the rule in the *Official Gazette*, it is to be inferred that the procedure for making such rules has been followed. Where the amended r 108 of the Rajasthan Motor Vehicles Rules was published in the *Official Gazette*, the irregularities in publishing the draft amendment cannot be questioned. Likewise, no objection can either be taken to the incidental changes brought about in the draft amendment so long as such changes are ancillary to the draft.[62]

It is true that once the rules and notifications are published in the *Official Gazette* these must be regarded as being incorporated in the Act itself. But if there is a conflict between one of these instruments and a section of the Act, it must be dealt with in the same spirit as a conflict between two sections of the Act. The court can go into the question of the rules being ultra vires on the ground that the impugned rule or notification was not 'under the Act'.[63] It will be seen that due publication by a duly constituted state authority enures for the benefit of a different state after bifurcation, and the new state can rely upon the publication made by the composite state before bifurcation.

The rules under the Gujarat Prevention of Food Adulteration Act were held to have been validly made though the previous publication of the draft rules was by the State of Bombay before the bifurcation of the State of Bombay. It was held that what s 23(1) of the General Clauses Act required

59 *Mani Lal R Pandya v Chiman Lal Parshottamdas* AIR 1968 Guj 80, 8 Guj LR 1030.

60 *Ramdayal v State* 1965 Mah LJ 25 (Notes).

61 *Puran Chand Gupta v State of Punjab* AIR 1973 P&H 450.

62 *Maula Bux v Appellate Tribunal of State Tpt Authority, Jaipur* AIR 1962 Raj 19, (1960) ILR 10 Raj 1060.

63 *Brojendra Kumar Saha v Union of India* AIR 1961 Cal 217.

was that the publication of the draft rules should be made by the authority which had the power to make rules on the date of publication.[64]

Similarly, where sufficient time for filing objections was not furnished and the rules had not been validly made for want of substantial compliance with the provisions of s 133 of the Motor Vehicles Act 1939, read with s 23 of the General Clauses Act, they were held illegal and inoperative.[65]

4. NON-PUBLICATION TO BE AVERRED

Section 133 of the Motor Vehicles Act 1939 provides that every power to make rules given by this Act is subject to the conditions of the rules being made after previous publication. So, where the amendment of the rules appointing the transport controller in place of the inspector general of police as the registering authority, had been challenged but the petitioners had failed to show that the Impugned amendment was not published in compliance with s 133 of the Motor Vehicles Act, it was held in *Bakshi Tirath Ram v Registering Authority, Jammu & Kashmir*,[66] that it was for the petitioners to allege in their petition that the essential condition of previous publication for amending rules was not complied with, and since the petitioners had not done so, there was nothing for the respondents to show that the provisions of s 133 of the Motor Vehicles Act 1939 read with s 23 of the General Clauses Act had been complied with.

The word 'purporting' in cl (5) indicates that the rule gets sanctity even if it is not made in the general exercise of power but under a bona fide belief of its being made in such exercise of that power.[67]

In *Baluswami Naidu v State of Madras*,[68] it was admitted to the government that the procedure relating to previous publication in the matter of rules framed under the Madras General Sales Tax Act 1939, was not adhered to. In view of this admission it was held that the government could not claim that the due making of the rules was conclusively proved merely by publication of the rules in the *Official Gazette*.

The doctrine of conclusive proof, available for validity of statutes after their due publication in the *Gazette* cannot, however, validate a statutory instrument if the manner of publication required by the parent Act has not been complied with,[69] particularly with regard to an instrument imposing

64 *Manilal R Pandya v P Chimanlal* 9 Guj LR 1030, 1968 Cr LJ 485, AIR 1968 Guj 80.

65 *Automobile Transport Rajasthan Pvt Ltd v State of Rajasthan* AIR 1962 Raj 24, (1960) ILR 10 Raj 1332.

66 AIR 1959 J&K 141.

67 *Batchu Sreeramulu Chetty v State of Andhra Pradesh* AIR 1958 AP 354, 360 (FB).

68 (1961) 1 Mad LJ 51, (1960) 73 Mad LW 177, 180–81.

69 *Raza Buland Sugar Co v Municipal Board, Rampur* (1965) 2 SCJ 431 (substantial compliance held sufficient); *Maunath Bhanjan Municipality v Swadeshi Cotton Mills Co Ltd* AIR 1977 SC 1055, 1958, 1977 UJ 180 (SC); reversing *Swadeshi Cotton Mills Co Ltd v Municipal Board, Azamgarh* AIR 1976 All 484; *Swadeshi Vanaspati v Municipal Commr, Shegaon* AIR 1962 SC 420–22, (1961) 2 SCJ 613.

tax not being authorised by a substantive law.[70] But a challenge to the validity of amendment in the rules cannot be sustained when there has been no such averment in the petition.[71]

Section 24. Continuation of orders etc, issued under enactments repealed and re-enacted—Where any [Central Act] or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any [appointment notification], order, scheme, rule, form, or bye-law, [made or] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been [made or] issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law, [made or] issued under the provisions so re-enacted, and when any Central Act or regulation, which by a notification under section 5 or 5A of the Scheduled Districts Act, 1874 (14 of 1874), or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this Section.

SYNOPSIS

1. APPLICABILITY AND SCOPE

The consequences which follow from the repeal and re-enactment, or the argument of supersession or inconsistency which would have

70 *Municipal Board, Hapur v Raghavendra Kripal* AIR 1966 SC 693, 697–99, 1966 All LJ 205, (1967) 1 SCJ 512; reversing, *Municipal Board, Hapur v R Kripal* 1960 All LJ 185.

71 *United Cereal Products Ltd, Calcutta v Union of India* 1971 Cr LJ 1605, 1607, 1971 Rajdhani LR 17 (DB) (Del) (with reference to non-compliance with s 133 of the Motor Vehicles Act including rule for alteration of legislative authority).

perhaps been applicable in a case of repeal, have no application to Acts or orders which have lapsed by efflux of time. Section 24, therefore, does not apply to such cases.[72] This section does not apply to an enactment which simply lapses.[73] It applies only to the repeal of a central Act but not a state Act.[74] It applies only to valid Acts which are subsequently repealed.[75]

This section would apply only when there is no inconsistency between a notification issued earlier and the subsequent declaration by legislation.[76] This section does not provide for delegation of power which had no existence at the time of delegation and in fact which was not delegated.[77] The section provides that where any central Act is repealed and re-enacted with or without modification, the notifications issued under the repealed central Act are to continue in force and be deemed to have been made or issued under the provisions so re-enacted.[78]

When, under ss 3 and 5 of the Essential Commodities Act 1955, the power to make certain order has been delegated to the state government, and in pursuance of that power, the State Government of Madhya Pradesh issued the Madhya Pradesh Foodstuffs (Distribution) Control Order 1960, it was held that the power to issue such order as well as the power to amend any order so issued can be exercised without the concurrence of the Central Government. To such cases, s 24 has no application.[79]

It is not s 6 but s 24 that applies if a statute is repealed and re-enacted.[80] The re-enactment neutralises the previous repeal and the provisions of the repealed Act, which are so re-enacted, continue in force without interruption. If, however, the statute is repealed and re-enacted in somewhat different terms, the amendments and modifications operate as a repeal of the provisions of the repealed Act which are changed by and are repugnant to the repealing Act. The inconsistency which the law

72 *Hot Chandra Shamdas v Lala Shri Ram* AIR 1963 All 234, 236–37 (the Vegetable Oils and Oil Cakes (Forward Contracts) Prohibition Order of 1944, lapsed by efflux of time on 30 September 1946).

73 *Trust Mai Lachhmi, Sialkot Bradari v Chairman, Amritsar Improvement Trust* AIR 1963 SC 976, 979, 1962 SCD 1016 (wrt Punjab Damaged Areas Act 1947 having lapsed on 15 August 1947).

74 *Deep Chand v State of Uttar Pradesh* AIR 1959 SC 648.

75 *Jairam Singh v State of Uttar Pradesh* AIR 1952 All 350 (case under Uttar Pradesh General Clauses Act).

76 *Shailappa v CTO* (1975) 2 Kant LJ 190.

77 *NA Committee v Addl Commr* 1973 All LJ 105.

78 *KNN Ayyangar v State* AIR 1954 MB 101, 55 Cr LJ 966.

79 *Madhya Pradesh Ration Vikreta Sangh v State of Madhya Pradesh* AIR 1981 MP 203, 1981 MPLJ 528, 1981 Jab LJ 564.

80 *Gajadhar Singh v Municipality, Bhind* 1954 MBLJ (HCR) 706, 708, AIR 1955 NUC (MB) 3014 (sale of property attached in view of provision authorising recovery of municipal dues as arrears of land revenue invalidated after amendment of that provision after such attachment but before actual sale).

contemplates should be such a positive repugnancy,[81] between the provisions of the old and the new statutes, that they cannot be reconciled and made to stand together.[82]

Whenever an Act is repealed and re-enacted, the repealing Act would require complicated saving clauses to preserve various provisions of that Act.[83]

Section 161A of the Goods Tariff Act is not illegal, inequitable, and arbitrary, and it continues to be endowed with life by virtue of s 24 of the General Clauses Act 1897.[84]

It is clear from s 24 of the General Clauses Act that the Rajasthan Motor Vehicles Rules 1951, did not cease to be in force on the Motor Vehicles Act 1988 coming into force.[85] These rules stood repealed only on the Rajasthan Motor Vehicles Rules 1990 coming into force with effect from 16 July 1990.[86]

Section 24 will not apply in cases where the provision, which keeps alive an earlier provision, is itself repealed and no saving clause is reserved for that.[87]

Where the provisions of one enactment differ materially from the provisions of another, for example, the provisions of the Conservation of Foreign Exchange and Smuggling Activities Act 1974 differ substantially from the provisions of the Maintenance of Internal Security Act 1971 (as amended by O 11 of 1974) the grounds for detention, duration of detention, and the authorities competent to make the order of detention, there is no scope for the application of s 24 of the General Clauses Act, and the contention cannot be sustained that the Maintenance of Internal Security Act 1971 (as amended by O 11 of 1974) has to be taken as repealed and re-enacted by the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974. Moreover, the provisions for indefinite period of detention having been restricted to a period only of twelve months in the maximum by virtue of an amendment in s 13 of the Defence of India Act, there is no consistency between the orders of detention passed under s 10 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act and under the Maintenance of Internal Security Act. This is an additional ground for excluding the applicability of s 24 of the General Clauses Act. However, s 14 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act has repealed the temporary

81 *State v NB Hankins* AIR 1957 Punj 243, 248, 1957 Cr LJ 1172, 59 Punj LR 366 (DB).
82 Ibid.
83 *Surinder Mohan Luthra v State of Punjab* (1994) 2 SCC 67 (P&H).
84 *Straw Products Ltd & Anor v Union of India & Ors* AIR 1995 Raj 193 (DB).
85 *Chief Inspector of Mines v KC Thaper* AIR 1961 SC 838.
86 *Regional Tpt Authority, Jodhpur v Sita Ram* AIR 1993 Raj 76(DB).
87 *Devaguptapu Seshagiri Rao v Salt Factory Officer, Guruzanapalli* (1964) 2 APWR 416–17 (repeal of s 39 read with Sch 3 of Central Excise and Salt Tax Act 1944, by force of which notification of 1928 was saved, by repealing and amending Act of 1948 nullifies notification of 1928).

enactment of ordinance 11 of 1974, and, an order of detention passed under the said ordinance stands terminated on the repeal of that ordinance and the same cannot be continued as made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act.[88]

Moreover, a general enactment must give way to a special enactment. This section is in certain respects wider than s 645, Companies Act 1956. But it is a general provision and must give way to the special provision which has been made in regard to the same matter by a special law, that is, the Companies Act.[89]

When the life of a temporary statute is extended, the life of the authority delegated thereunder is also extended.[90]

A repealing statute, in the absence of saving clauses, operates from its commencement, whether the alteration of the law affected by it has to do with procedure or with matter of substance, and a repealed Act, in the absence of saving clauses, and except as to transactions passed and closed, must be considered as if it had never existed, and that a bye-law made under a statute repealed is abrogated unless it is preserved by the repealing statute, by means of a saving clause or otherwise.[91] A notification dated 24 February 1948, authorising the district magistrates to issue pre-censorship orders on publishers of journals, issued by chief commissioner, Ajmer, under the East Punjab Public Safety Act 1947, as extended to Ajmer, was held to remain in force despite repeal of that Act by the East Punjab Act 5 of 1949.[92]

Cess imposed in accordance with the procedure under the rules framed under an ordinance repealed in due course by the Act is valid.[93]

The charges fixed by the government for supply of power to consumers under s 57 of the Electricity (Supply) Act 54 of 1948 before its amendment in 1956 can be enhanced unilaterally by the licensee by virtue of the amendment in accordance with the provisions contained in Sch 6 of the Act. Though it is true that when an existing statute or regulation is repealed and replaced by a new one, unless the new statute or regulation specifically or by necessary implication affects the rights created under the old law, those rights must be held to continue to be in force even after the new statute or regulation comes into force. But when the charges fixed can be unilaterally altered and the controversy relates only to the procedure in altering them, the controversy does not touch any vested rights. The right to pay charges previously fixed is not a vested right.[94]

88 *Hemlataben Manohar Lal Soni v State of Gujarat* 1976 Cr LJ 882, 17 Guj LR 201.
89 *Chaintaman Jagannath v Gandhi Sewa Samaj Ltd* AIR 1968 Bom 209.
90 *Gauri Nandan v Rex* AIR 1948 All 414, 49 Cr LJ 726.
91 *State v AK Jain* AIR 1958 MP 162.
92 *Trilok Chand Gopal Das v State* AIR 1957 Ajm 100, 52 Cr LJ 1350.
93 *Laxmidas v Indore Municipality* AIR 1975 MP 223.
94 *Jindas Oil Mills v Godra Electricity Co* (1969) 1 SCC 781, AIR 1969 SC 1225.

Section 24 does not afford any assistance in making legal an illegal levy imposed under an Act which has been repealed.[95]

The provision of s 5 of the Rajasthan Sales Tax Act as re-enacted in 1964 is not inconsistent with what it was prior to its re-enactment. Hence the notification of 2 March 1963, authorising different rates of tax, continued to be in force even after the re-enactment of s 5.[96] Where a statutory order is superseded or repealed by another statutory order which re-enacts the same provisions with or without modifications, the principles embodied in s 24 of the General Clauses Act 1897 will squarely apply as a sound tenet of wholesome construction.[97]

The Rent Act of 1947 having been repealed by s 21 of the 1949 Act, the notification issued under the 1947 Act, appointing rent control and appellate authorities, was held to have continued in force by virtue of s 22 of the Punjab General Clauses Act 1898, corresponding to s 24 of this Act.[98] Whenever an Act is repealed and re-enacted, the repealing Act would require complicated saving clauses to preserve various provisions of the Act.[99]

The word 'orders' is not capable of being interpreted as including judicial or quasi-judicial orders.[1] By virtue of this section, the rules, regulations and bye-laws made under the repealed Act are continued in force under the new Act and are deemed to have been made or issued under the provisions of the new Act,[2] and same would be the position in case of notifications particularly, when the relevant provision in the repealed enactment is taken word for word in the repealing enactment.[3] Thus, the rules framed under the Cinematograph Act 1918, would be deemed to be framed under the Bihar Cinemas (Regulations) Act 1954.[4] The section introduces a fiction that the rules, orders, bye-laws, notifications etc, will be 'deemed' to be issued under the re-enacted provisions, and will therefore be continued in force not by the operation of the repealed Act but of the new Act. The Bombay Drugs Rules, framed under unamended s 33(1) of the Drugs Act 1940 were deemed to be made under the amended section so as to remain in force until they were repealed by the rules framed under the amended section.[5] An order issued

95 *G Rajagoplachari v Corpn of Madras* AIR 1964 SC 1172, 1177–78, (1964) 2 SCJ 324.
96 *Jaipur Bottling Co v State* 1973 Tax LR 2234.
97 *Omraomal Goyal v State of West Bengal* 1995 Cr LJ 2611 (Cal).
98 *Jag Dutta v Savitri Devi* AIR 1977 P&H 68.
99 *Surinder Mohan Luthra v State of Punjab* 1994 (2) CC Cases 67 (P&H).
1 *Jagdish Prasad v District Board* AIR 1966 All 26.
2 *Issa Yacub Bichara v State of Mysore* AIR 1961 Mys 7, (1961) 1 Cr LJ 106; *Jag Dutta v Savitri Devi* AIR 1977 P&H 79 Punj LR 42, 1977 RLR 272, 1977 RCJ 447, 1977 RCR 674, (1977) ILR 1 P&H 832; *Magan Lal v Bedi Gram Panchyat* 8 Guj LR 956.
3 *Chatturbhuj Maheswari v Har Lall Agarwalla* AIR 1925 Cal 335 (DB) (s 3 of Provincial Insolvency Act 1907 taken word for word in Provincial Insolvency Act 1920).
4 *Bhola Singh v State of Bihar* AIR 1972 Pat 412.
5 *Chuni Lal Vallabhji Gandhi v State* AIR 1959 Bom 554–55, 1959 Cr LJ 1429, 61 Bom LR 807 (DB).

by the government under s 57(2)(c) of the Electricity (Supply) Act prior to its amendment in 1956 fixing charges for electricity supplied by a licensee company continues to be in force after the amendment by virtue of s 6 of the General Clauses Act and the company cannot unilaterally increase the charges in violation of that order because, under s 6 of the General Clauses Act, the previous operation of the old enactment and actions taken therein survive unless a contrary intention is expressed or necessarily implied in the new provision. Section 24 of the General Clauses Act continues the orders and notifications which are not inconsistent with the re-enacted provisions by introducing a fiction that they will be deemed to have been issued under the re-enacted provision. Section 24 of the General Clauses Act cannot be invoked unless the legislature had created such fiction.[6] A notification issued by board of revenue, under the Uttar Pradesh Agricultural Income Tax Act 1948 was held[7] to continue as valid until withdrawn or superseded by the successor authority. The Indian Metalliferrous Mines Regulations framed under the repealed Mines Act 1923, have been deemed by virtue of this section, to have been issued under the new Mines Act of 1952.[8] Similarly, the Mines Creche Rules 1946, framed under s 30(bb) of the repealed Mines Act 1923, have been held to survive the repeal of the Act.[9]

Section 125 of the Code of Criminal Procedure 1973 corresponds to s 488 of the Code of 1898. Therefore, an order under s 488 of the old Code is deemed to be an order under s 125 of the new Code, and it must be so deemed for all purposes including the application of s 127 of the new Code, providing for consequential orders on proof of a change in the circumstances of the person entitled to maintenance. In case of minor son receiving maintenance allowance, the attainment of majority by him, would be a changed circumstance justifying the cancellation of the order awarding maintenance.[10]

Under s 26 of the Assam General Clauses Act 1915, corresponding to s 24 of the General Clauses Act 1897, the state government is competent to revise the boundaries of the notified areas by including within the area of any town committee any local area contiguous to it.[11]

An appointment made under s 15 of the Uttar Pradesh Home Guards Adhiniyam 24 of 1963, under executive orders in force priof to the coming

6 *Godhara Electricity Co Ltd v Somalal Nathji* 8 Guj LJ 686, AIR 1967 Guj 172.

7 *Maharaja Sukhjit Singh v State of Uttar Pradesh* 1958 All LJ 509, 511, 1959 All WR 620 (HC) (DB).

8 *State of Mysore v PC Sarangapani Mudaliar* AIR 1960 Mys 245; *State of Orissa v Ishwar Das* AIR 1960 Ori 180, (1960) ILR Cut 162; *State v Kunj Behary Chandra* AIR 1954 Pat 37 (FB).

9 *Mineral Development Ltd v Union of India* AIR 1961 SC 1543; *GD Bhattar v State* AIR 1957 Cal 483; *Karam Chand v State of Bihar* AIR 1958 Pat 378; on appeal: *Chief Inspector of Mines v Karam Chand Thapar* AIR 1961 SC 838; *Mohan Lal Goenka v State of West Bengal* AIR 1961 SC 1543, 1546.

10 *Jagir Singh v Ranbir Singh* AIR 1979 SC 381, 386, 1979 Cr LJ 318, 1979 Cr App Rep 79 (SC); reversing 1978 Recent Laws 1 (P&H).

11 *State of Assam v Assam Tea Co Ltd* (1970) 2 SCC 817, AIR 1971 SC 1358, [1971] 1 SCR 931.

into force of the *adhiniyam*, cannot be deemed to have been made under the *adhiniyam* by virtue of s 24 of the General Clauses Act.[12]

Since this section applies only to the repeal of central Acts or regulations with regard to the matters enumerated in the section, the state Acts or even the Central Acts with regard to matters not covered by the section do enact express savings.[13] The rule laid down in the section applies to any form, etc, which continues in force and deemed to have been made or issued under the new provisions. Until the university has prescribed new form of transfer certificate, under the Calcutta University Act 1951, the old forms would continue to be used.[14] Accordingly, although the phrase 'Central Government' in s 72(2), Railways Act, has taken the place of the phrase 'Governor-General in Council' after the Adaptation of Laws Order of 1948, any risk note form issued before in the name of the Governor-General in Council must be deemed to have been approved by the Central Government.[15]

2. MODIFICATIONS

The word 'modification' as used in the section is comprehensive and includes additions made in the new enactment.[16] It has been held in *Commr of Income-tax, Gujarat v Poonjabhai Vanmalidas*,[17] that in applying s 24, there would be no inconsistency between the provisions of s 10(2)(xi) of the Income Tax Act 1922 and the new provisions in ss 36(1)(vii), 36(2) and 41(4) of the Income Tax Act 1961. Where a reading of the two Acts—the old and the new—clearly shows that they dealt with the same subject matter and that the new Act has made some additional provisions, the word 'modification' in the section is comprehensive enough to include such additions.[18]

3. NOTIFICATION AND INSTRUMENTS UNDER THE REPEALED ENACTMENT

A notification which comes into effect from the date it is issued, which is usually some time before it can be actually printed in the *Gazette*[19] is only

12 *Balak Ram Vaish v Badri Prasad Avasthi* AIR 1969 All 88.

13 *Gujarat Pottery Works v GP Sood* AIR 1967 SC 964, 968–69, (1968) 1 SCJ 30; *State of Nagaland v Ratan Singh* AIR 1967 SC 212, 221, 1967 Cr LJ 265, (1967) SCD 861; *Rajendra Swamy v Commr of Hindu Religious and Charitable Endowments, Hyderabad* AIR 1965 SC 502, 505, (1965) 1 SCJ 697.

14 *Swapan Roy v Khagendra Nath* AIR 1962 Cal 520.

15 *North-Eastern Railway v Ramlal Golcha* AIR 1960 Pat 489.

16 *State of Madhya Pradesh v AK Jain* AIR 1958 MP 162, 164, 1958 MPLJ 225 (DB), 1958 Cr LJ 767.

17 (1976) 44 Taxation 89, 94 (Guj).

18 *Jalal Din v Nathu Ram* AIR 1922 Lah 474 (1).

19 *Kishori Lal v State* AIR 1973 P&H 450; *Kotchusara v Gracy* (1973) ILR 2 Ker 163.

a method adopted for communicating orders, rules etc, to the general public. What s 24 means is that notifications under a repealed enactment remains intact and attaches to the new Act as having been made under the corresponding provisions of the new Act having come about as a re-enactment of the old one[20] until it is superseded.[21] The fact that the re-enacted provision has been given retrospective effect does not make s 24 inapplicable.[22] In *State v AK Jain Nanak Chand*,[23] the violation of a notification under s 9 of the Punjab Shops and Establishments Act 1958 was held punishable before replacement of that section by a new one in 1964.[24] The provisions of s 153C of the Companies Act of 1913 have been substantially re-enacted by the Companies Act of 1956 and this would indicate an intention not to destroy the right created by s 153C. Accordingly, it has been held that the notification empowering the district judge to exercise jurisdiction under the Act of 1913 is not cancelled and the district judge continues to have jurisdiction to entertain an application under s 153C even after the repeal of the 1913 Act.[25] Where the definition of the word 'purchase', on the basis of which a notification was issued on 19 April 1958, under s 2(ff) of the Punjab Sales Tax Act 1948, as introduced by the Punjab Act 1958, had been amended by three Punjab Acts, namely, 13 and 24 of 1959 and 18 of 1960, but there was no notification under the amended definition, having become inconsistent with the original definition until 29 September 1961, it was held that assessment of tax on the basis of the original definition, after that definition was amended, was not sustainable.[26] The High Court of Madras in *N Chinna Kannu v NS Sundaram*,[27] rejected the contention that with the repeal of the Succession Certificate Act 1889 and

20 *Hari Pada Roy Chaudhari v Chairman, Municipal Commrs, Howrah* AIR 1931 Cal 481–82.

21 *Commr for the Port of Calcutta v Suraj Mull* AIR 1928 Cal 464; *Emperor v Karapan* AIR 1934 Rang 12 (bye-law); *Hazari Singh v Tirbeni Singh* 28 IC 577 (lease unregistered); *State of Bombay v Pandurang Vinayak* AIR 1953 SC 244; *Asoka Tea Estate v Registrar, Joint Stock Companies* AIR 1959 Mad 334; *Laisram v Union of India* AIR 1959 Mani 46; *Sukhjit Singh v State of Uttar Pradesh* 1958 All LJ 509; *Emperor v Raghunath Ram Chandra Karlekar* AIR 1941 Bom 100, 102, 42 CLJ 538, 43 Bom LR 99 (s 24 does not put an end to but continues such notification).

22 *Manohar Singh v Caltex Oil Refining (India) Ltd, Bombay* AIR 1981 MP 123, 1981 MPLJ 202.

23 1970 Cr LJ 651, 1969 Cur LJ 734.

24 *Commr of Income-tax, Gujarat v Poonjabhai Vanmalidas* (1976) 44 Taxation 89, 94 (Guj) (no inconsistency between s 10(2)(xi) of the Income Tax Act 1922 and ss 36(1)(vii) and (2), and 41(4) of the Income Tax Act 1961).

25 *Brihan Maharashtra Sugar Syndicate Ltd v Janardan Ramchandra Kulkarni* AIR 1960 SC 794.

26 *Bhawani Cotton Mills Ltd v State of Punjab* AIR 1967 SC 1616, 1624–25, (1968) 1 SCJ 545; *KA & Sons v Commercial-tax Officer* (1977) 39 STC 547 (1) (DB) (revision of an assessment already set aside through a validating Act, must be by a fresh assessment); *Subhas Chandra Majumdar v Pijush Kanti Majumdar* (1980) 84 CWN 549.

27 AIR 1951 Mad 437, (1950) 2 Mad LJ 644.

its re-enactment by Succession Act of 1925, the notification issued under the earlier Act came to an end merely by omission of the provision in the later Act for continuation of notifications.

A notification prescribing the time, form, and authority to whom such notice is to be given under s 33(1) of the Electricity Act prior to the amendment of s 33(1) continues to be in force after amendment of the Act by virtue of s 24 of the General Clauses Act. 'Unless otherwise provided for' in s 24 of the General Clauses Act means that the notifications, rules etc under the repealed Act shall continue in force provided they are not inconsistent with the re-enacted provision. Thus, s 24 of the General Clauses Act protects the notification issued before the amendment.[28] In *State of Assam v Assam Tea Co Ltd*,[29] the notification issued under the Assam Municipal Act 1923 was held to continue under the repealed and re-enacted Act of 1957. Similarly, the regulations framed under s 19(1) of the Delhi (Control of Building Operations) Ordinance 1955 did continue on the repeal and re-enactment of the ordinance by Act of 1955.[30]

The Punjab Government notification under s 5(1) of the Punjab General Sales Tax Act 1958 was issued on the basis of the definition of purchases in s 2(ff) of the said Act. The definition of the word 'purchase' was amended thrice before 1961, and a fresh notification fixing the rate of tax, inconsistent with the amended definition, was not issued till 1961. The assessment for 1960–61 and 1961–62 on the basis of the original notification of 1958 was held not sustainable and that s 22 of the Punjab General Clauses Act had no application.[31] When the Punjab Urban Rent Restriction Act 1947 was repealed in view of s 21 of the Act of 1949, the notification of 18 April 1947, issued under the former Act, continued to be in force.[32]

The authority conferred upon the government by s 9 (as amended by Act 25 of 1958) of the Punjab Shops and Commercial Establishments Act 1958, as well as by s 9 as substituted by the amending Act 1 of 1964 to issue notification fixing opening and closing hours is identical and not in any way inconsistent. Hence s 22 of the Punjab General Clauses Act is attracted and the notification issued under the 1958 Act must be deemed to have been issued under the re-enacted s 9 and any violation thereof could be punishable under s 26 of the Act.[33]

28 *Poona Electricity Supply Co Ltd v State* 67 Bom LR 534, (1966) ILR Bom 154, 1967 Cr LJ 155, AIR 1967 Bom 27.

29 AIR 1971 SC 1358, 1360, (1971) 2 SCJ 22.

30 *DLF Housing & Construction Co Ltd v Delhi Municipality Corpn* (1969) ILR Del 1055–56, 1065 (DB).

31 *Bhawani Cotton Mills Ltd v State of Punjab* 20 STC 290, (1967) 2 SCA 485, 13 LR 294, AIR 1967 SC 1616.

32 *Sunder Singh v Budh Dev* 1971 RCJ 8 (SN 12).

33 *State v Nanak Chand* 1969 Cur LJ 734, 1970 Cr LJ 651 (Punj); relying on *RB Ram Rattan Seth v State* AIR 1959 Punj 59, 60 Punj LR 683; *State v Kunja Behari Chandra* AIR 1954 Pat 971, 55 Cr LJ 1187.

It is evident from the language of the section that it would apply to all rules and regulations whether made simpliciter or as if enacted under the Act.[34]

The Mines Act 1923 having been repealed by the Mines Act 1952, the Mines Creche Rules 1946, framed under the 1923 Act continued in force so as to be regarded as 'law in force' within the meaning of art 20(1) of the Constitution of India.[35] It may be noted that where rules framed under a previous enactment continue to be in force under the new enactment replacing the old one, no question of retrospective legislation can arise until new regulations are made under the new Act.[36]

The combined effect of ss 6 and 24 of the General Clauses Act, is that the notification issued under s 15 of the Arms Act of 1878, not only continued to operate but has to be deemed to have been re-enacted by the Arms Act of 1959 that repealed the 1923 Act. In that view the breach of the notification under the 1878 Act by carrying arms amounts to an offence even though the 1878 Act was repealed by the 1959 Act, and no notification under the 1959 Act was issued.[37]

The term 'central Act' includes, by virtue of s 30, General Clauses Act 1897, an ordinance. And by virtue of s 24, General Clauses Act, a notification issued under an ordinance continues to be in force even when the ordinance is subsequently enacted.[38] Though the Bihar Act 15 of 1954, repealed the Central Cinematograph Act of 1918 in its application to the State of Bihar, the rules made by the state government in exercise of the power conferred by the central Act (now repealed) continue to have legal existence and validity by virtue of the provision in this section. It is therefore open to the state government to direct the district magistrate to grant a renewal to a licence-holder beyond the period of six months.[39]

Where the ruler of the state promulgated an ordinance (the Enemy Agents Ordinance, Svt 2005) under s 5 of the Jammu & Kashmir Constitution Act of Svt 1996 and subsequently s 5 of that Act was deleted by the Jammu &

34 *Lal Karam Chand Thapar v State of Bihar* AIR 1958 Pat 378, 382, 1958 BLJR 424 (DB); as approved by Supreme Court in *Mohan Lal Goenka v State of West Bengal* AIR 1961 SC 1543, 1545–46, (1961) 2 Cr LJ 713, (1962) 1 SCJ 401.

35 *Jaipur Mineral Development Syndicate Pvt Ltd v Regional Inspector of Mines* AIR 1961 Raj 189, 191, (1961) 2 Cr LJ 286, 1962 Raj LW 519.

36 *Ram Rattan Seth v State* AIR 1959 Punj 69–70; *GD Bhattar v State* AIR 1957 Cal 483; *State v Kunj Bihari Chandra* AIR 1954 Pat 371; but see *Re Lingareddy Venkatareddi* AIR 1956 AP 24 (does not appear to be sound law); *Chunilal v State* AIR 1969 Bom 554.

37 *Neel Niranjan Majumdar v State of West Bengal* (1972) 2 SCWR 244, (1972) 2 SCC 668, AIR 1972 SC 2066; *Sanju v State* AIR 1964 All 6–7, (1964) 1 Cr LJ 23.

38 *Ayyangar v State* AIR 1954 MB 101 (notification extending application of ordinance to a particular area issued under the Delhi Special Police Establishment Ordinance continues to be in force under Delhi Special Police Establishment Act 1946, which has repealed the ordinance).

39 *Lakhi Prasad v State* AIR 1957 Pat 665.

Kashmir Constitution Amendment Act of Svt 2008, it was held that the deletion of s 5 of the Act of 1969 did not result in the ordinances becoming extinct.[40]

In *Shiv Bahadur Singh v State of Vindhya Pradesh*,[41] the accused were charged under ss 120B, 161, 465 and 46 of the Indian Penal Code as adapted by the Vindhya Pradesh Ordinance of 1849 long after the alleged offences. It was held by the Supreme Court that 'law in force' does not comprise *ex post facto* legislation made by virtue of the power of the legislature to pass a law with retrospective effect.

This case was misapplied by the Andhra Pradesh High Court in *Re Lingareddy Venkatareddy*,[42] to a case where there was no question of an *ex post facto* legislation with retrospective effect.[43]

The notification issued on 15 January 1948, under s 1(4) of the Bombay Building (Control on Erection Ordinance 1 of 1948), extended not only the provisions of the ordinance to the other areas in the State of Bombay to the extent indicated in the notification, but also the provisions of Act 21 of 1948.[44]

Where any Central Act or regulation is replaced or re-enacted, with or without modification then, unless it is expressly provided, any notification inter alia under the replaced Act will continue to remain in force provided it is not inconsistent with the provisions of thereplacing Act until it is superseded. Section 24 has no application to a case where a new tariff entry is introduced by amendment.[45]

4. IMPLIED REPEAL

(a) Background and Philosophy of Doctrine

If the general law has virtually repealed a state Act, it gives rise to the same consequences as an express repeal and re-enactment.[46] However, general principles governing implied repeal appear to have long been settled. Difficulty is, however, experienced in their application to a given case. The Supreme Court, therefore, thought it 'proper to broadly re-state the general rule' in *Municipal Corpn of Delhi v Shiv Shankar*.[47] The general principle

40 *Rehman Sahgoo v State of Jammu & Kashmir* AIR 1958 J&K 29 (FB).
41 AIR 1953 SC 394.
42 AIR 1956 AP 24.
43 *Mohan Lal Goenka & Anor v State* 1957 Cr LJ 122 (Cal HC).
44 *State of Bombay v Pandurang Vinayak* AIR 1953 SC 244; *KS Venkatesum Naidu & Sons v State of Madras* AIR 1959 Mad 334.
45 *Mahindra Ugine Steel Co Ltd v Union of India* (1988) 34 ELT 20.
46 *Nagalinga Nadar v Ambalapuzha Taluk Head Load Convevance Workers' Union, Allebby* AIR 1951 Tr & Coch 203, 1951 KLT 121.
47 AIR 1971 SC 815, 1971 Cr LJ 680, 1971 Cr App Rep 192 (SC)

as re-stated by the Supreme Court has, therefore, to be noticed in its necessary details.

The Supreme Court found the rule to have been laid in *Paine v Slater*,[48] that when two Acts are inconsistent or repugnant, the latter will be read as having impliedly repealed the earlier. As the legislature must be presumed, in deference to the rule of law, to intend to enact a consistent and harmonious body of laws, a subsequent legislation may not be too readily presumed to effectuate a repeal of existing statutory law in the absence of express or at least clear and unambiguous indication to that effect. This is essential in the interest of certainty and consistency in the laws which the citizens are enjoined and expected to obey. The legislature which may generally be presumed to know the existing law, is not expected to create confusion by its omission to express its intent to repeal in clear terms. The courts, therefore, as a rule, lean against implying a repeal unless the two provisions are so plainly repugnant to each other that they cannot stand together, and it is not possible, on any reasonable hypothesis, to give effect to both at the same time. The repeal must, if not express, flow from necessary implication as the only intendment. The provisions must be wholly incompatible with each other so that the two provisions operating together would lead to absurd consequences which intention could reasonably be imputed to the legislature. It is only when a consistent body of law cannot be maintained without abrogation of the previous law that the plea of implied repeals should be sustained. To determine if a later statutory provision repeals, by implication, an earlier one, it is accordingly necessary to closely scrutinise and consider the true meaning and effect of both, the earlier and the later statutes. Until this is done, it cannot be satisfactorily ascertained if any fatal inconsistency exists between them. The meaning, scope and effect of the two statutes as discovered on scrutiny, determines the legislative intent whether the earlier law shall cease or only be supplemented. If the objects of the two statutory provisions are different and the language of each statute is restricted to its own objects or subject, then they are generally intended to run on parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface. Statutes *in pari materia*, although in apparent conflict, should also, so far as reasonably possible, be construed to be in harmony with each other. It is only when there is an irreconcilable conflict between the new provision and the prior statute relating to the same subject matter, that the former, being the later expression of the legislature, may be held to prevail, the prior law yielding to the extent of the conflict. The same rule of irreconcilable repugnancy controls implied repeal of a general by a special statute. The subsequent provision treating a phase of the same general subject matter in a more minute way may be intended to imply repeal pro tanto of the repugnant

48 [1833] 11 QBD 120, 52 LJQB 282.

general provision with which it cannot reasonably co-exist. When there is no inconsistency between the general and special statutes, the latter may well be construed as supplementary.

It should be appreciated that inconsistency does not lie in the mere co-existence of two laws which are susceptible to simultaneous obedience. Where both can co-exist peacefully, both reap their harvests.[49]

Section 27 of the Bihar and Orissa General Clauses Act, corresponding to s 24 of the General Clauses Act 1897, saves only the provision of election of 32 commissioners but not that of election of eight commissioners in the notification of 1 February 1964 issued under s 13(1) of the Bihar and Orissa Municipal Act 1922, the latter provision being inconsistent with provisions of the Bihar Municipality (Fourth Amendment) Ordinance 1972.[50]

(b) Application of Doctrine

In the background of these guidelines, the Supreme Court, in *Municipal Corpn of Delhi v Shiva Shankar*,[51] proceeded to examine whether the provisions of the Prevention of Food Adulteration Act 1954, were impliedly repealed by the provisions of the Fruit Products Order 1955, made under the Essential Commodities Act 1955.

The background of the objects of the above two Acts may again be relevant. The court observed:

> The object and purpose of the adulteration Act is to eliminate the danger to human life and health from the sale of unwholesome articles of food. It is covered by Entry 18, List 3 of the 7th Schedule to the Constitution. The Essential Commodities Act, on the other hand, has for its object the control of the production, supply and distribution of, and trade and commerce in, essential commodities and is covered by Entry 33 of List 3. In spite of this difference in their main objects, control of production and distribution of essential commodities may, to an extent, from a broader point of view, include control of the quality of the essential articles of food and, thus considered, it may reasonably be urged that to some extent it covers the same field as is covered by the provisions of the adulteration Act. The two provisions may, therefore, have within these narrow limits, conterminous fields of operation.

It was on this premise that the court proceeded to see if the two provisions could stand together, having a cumulative effect, and in case they could not, then which of the two provisions had the overriding or the controlling effect. The court had the view that if the powers were intended to be

49 *SC Jain v Union of India* AIR 1983 Del 367, (1983) 23 DLT 467, 1983 Rajdhani LR 401.
50 *Rajendra Prasad Gupta v State of Bihar* AIR 1975 Pat 20.
51 AIR 1971 SC 815, 1971 Cr LJ 680, 1971 Cr App Rep 192 (SC).

exercised for different purposes without fatal inconsistency or repugnancy, then and in that case alone could they stand together.

The court came to the conclusion that the provisions of the adulteration Act could not be said to have been impliedly repealed by the provisions of the Fruit Products Order. Arriving at this conclusion, the court observed:

> In the interest of public health, the respondents have to comply with the provisions of adulteration Act and rules and in the interest of equitable distribution of essential commodities including the articles of food covered by Essential Commodities Act and the fruit order, they have to comply with the provisions of the fruit order. The provisions of the adulteration Act and the fruit order, to which our attention was drawn, seem to be supplementary and cumulative in their operation and no provision of the fruit order is shown to be destructive of or fatal to any provision of the adulteration Act or the rules made thereunder so as to compel the court to hold that they cannot stand together. If the adulteration Act or rules impose some restrictions on the manufacturer, dealer and seller of vinegar, then they have to comply with them irrespective of the fact that the fruit order imposes lesser number of restrictions in respect of these matters. The former do not render compliance with the latter impossible, nor does compliance with the former necessarily and automatically involve violation of the latter. Indeed, our attention was not drawn to any provision of the adulteration Act and rules, compliance with which would result in breach of any mandate, whether affirmative or negative of the fruit order. We are, therefore unable to find any cogent or convincing reason for holding that the Parliament intended by enacting the Essential Commodities Act or the fruit order to impliedly repeal the provisions of the adulteration Act and the rules in respect of the vinegar in dispute. Both the statutes can function with full vigour side by side in their own parallel channels. Even if they happen to some extent to overlap, section 26 of the General Clauses Act fully protects the guilty parties against double jeopardy or double penalty...

The court has to construe the language of two provisions so as to avoid the effect of inconsistency,[52] on the supposition that the government has a consistent design and policy and intends nothing that is inconsistent or incongruous. An order of a later date annuls all inconsistent orders of former dates. Though, as a rule, a prior special statute is not to be taken to be repealed by a later general enactment, this proposition cannot be pressed too far. If a special enactment and a subsequent general Act are absolutely repugnant and inconsistent with one another, courts have no alternative

52 *P Bala Rama Krishna Rao v Government of Andhra Pradesh* AIR 1974 AP 294.

but to declare the prior general enactment as repealed by the subsequent general Act. In all such cases the legislative intention, rather than the grammar or letter of the enactment, is the determining factor. If the intention is found to be to sweep away all previous orders and to establish one rule, that will be sufficient to get rid of any previous special order.[53] Section 24 can be called to aid only in cases where there is no express provision.[54]

A statute can be abrogated only by express or implied repeal, but it cannot fall into desuetude or become inoperative through obsolescence or by lapse of time.[55] The provisions of s 24 are not confined to cases of express repeals. All that is contemplated by the section is that there must be a repeal of an existing Act by a subsequent Act. Such repeal may be by express words or it may be by necessary implication. Where the latter Act has in substance and in effect repealed the earlier Act, the provisions of the section will be attracted.[56] When an existing Act is repealed by a subsequent enactment, whether by express words or by necessary implication, the courts will have to declare the prior general enactment repealed by the subsequent general enactment if the Acts are repugnant to and inconsistent with each other. The rules of 1959, as framed by the chief commissioner of Manipur under s 157 of the Assam Land Revenue Regulations, were also applicable to leases and settlements of roadside lands and town lands and, hence, the old rules in Pt 2 of the Assam Revenue Manual relating to the grant of leases and settlement of land revenue in respect of town lands must be deemed to have been repealed.[57] Where a statute, under which bye-laws are made, is repealed, those bye-laws also stand repealed and cease to have any validity, unless the repealing statute contains some provision preserving the validity of the bye-laws notwithstanding the repeal.[58]

A case of implied repeal arises where the later of the two general enactments is worded in negative terms. If two statutes are destructive[59] or repugnant[60] to each other, then the general rule that the later statute will abrogate the earlier will apply, because the implied repeal can only be of an earlier by a later provision.[61] Where there is a conflict between two enactments, the rule is that the later one will be taken to have repealed the earlier.[62] The

53 *Ramji Rup Chand v District Suptd, Western Railway, Ratlam* AIR 1957 MB 155.
54 *Seshagiri Rao v Salt Factory Officer* (1964) 2 Andh WR 416.
55 *State of Maharashtra v Narayan Shamrao Puranik* AIR 1983 SC 46.
56 *Ayyaswami v Joseph* AIR 1952 Tr & Coch 371, 374.
57 *Aribam Pishak Sharma v Aribam Tuleshwar Sharma* AIR 1968 Mani 74; reversed on another point in *Aribam Tuleshwar Sharma v Aribam Pishak Sharma* AIR 1979 SC 1047.
58 *Harish Chandra v State of Madhya Pradesh* AIR 1965 SC 932.
59 *Bahadur Singh v Union of India* (1961) ILR 1 Del 375, 394; *Lal Mohan Ghosh v Ramanath Shaha* AIR 1954 Tri 17, 20.
60 *Xembu Govinda Sinai Cuvelcar v Union of India* AIR 1969 Goa 30.
61 *Fedders Lloyed Corporation Pvt Ltd v Governor of Delhi* AIR 1970 Del 60, 37 FJR 69, 1970 Lab IC 421.
62 *Haridassee v Manufacturers, LI Co Ltd* ILR 1 Cal 67.

rule of implied repeal is subject to the identity of the subject matter of two enactments,[63] but the repeal or amendment of an enactment by necessary implication need not extend to the whole of it and certain provisions of the earlier enactment may survive the repeal or amendment.[64]

The effect of enactment of the Industrial Disputes Act 1947 has been held to be a virtual repeal of Travancore Cochin Industrial Disputes Act, and, hence, the industrial tribunal appointed under the latter Act would continue to be valid until superseded by a new tribunal appointed under the former Act.[65]

The question of implied repeal is a question of law.[66] The general rule that when the prior enactment is special and the subsequent is general, there can be no implied repeal, has no application when a special enactment and a general subsequent enactment are absolutely repugnant to each other, in which case the rule that prior special Act shall be deemed to be repealed by implication will apply.[67]

For repeal by implication see also Note 26 to s 6.

5. CONTINUANCE OF ORDERS ETC ISSUED UNDER REPEALED ENACTMENTS

The General Clauses Act 1897, when it was enacted did not create any new legislation. Its application is primarily with reference to central Acts or regulations and not with reference to territory itself. It is, in a sense, a part of every central Act or regulation. It has application to a central Act not by virtue of its territorial extent, but *ex proprio vigore* so that if a central Act is extended to any territory, the General Clauses Act would also be deemed to have come into force in that territory and would apply in the construction of the central Act so extended. There is, therefore, no reasonable ground for holding that as the General Clauses Act has not been extended to Pt B states, it can have no application for construing in those states the provisions of the central Acts and regulations in force there.[68]

This view of Dixit J was indorsed by AH Khan J in the case of *State v Fatehchand*,[69] but Nevaskar J dissented. The Division Bench, however, held that the proviso to s 17(4) of the Essential Supplies (Temporary

63 *TS Baliah v TS Rangachari* AIR 1969 Mad 145, (1968) 2 Mad LJ 451; *Kilikar v Sales-tax Officer* 1968 KLT 171, 1968 Ker LJ 57 (DB); *State v Bheru Lal* 1961 Jab LJ 1280; *Ali Hasan v Lt Governor* (1977) 79 Punj LR (D) 246, (1976) ILR 1 Del 485.

64 *S Baldev Singh v Government of Patiala* AIR 1954 Pepsu 98, 107, (1954) ILR Patiala 105.

65 *Firm Nagalinga Nadar & Sons v Ambalapuzha Taluk Head Load Conveyance Workers' Union* AIR 1951 Tr & Coch 203, 209–10, 1951 KLT 121.

66 *Gajanan Raghunath Neugni v Jao Santano Gomes* AIR 1967 Goa 151–52.

67 *Ramji Rup Chand v District Suptd, Western Railway, Ratlam* AIR 1957 MB 155, 12 FJR 262.

68 *Hubbalal v State* AIR 1955 MB 36.

69 AIR 1955 MB 82, 85, 89.

Powers) Act 1946, embodies the provisions of s 24, General Clauses Act, which refer to the continuance of orders etc, issued under enactments repealed and re-enacted.

The Notification 7988 of 19 September 1904 issued by the judicial commissioner in central provinces authorising district judges to receive applications for probate and letters of administration was, by virtue of s 24, deemed to continue as one issued under s 264(2) of the Indian Succession Act 1925:[70]

In the light of s 24 of the General Clauses Act 1897, an order passed under s 10(2)(xi) of Income Tax Act 1922 with reference to a debt which had been written off was deemed to be an order under s 36(1)(vii) of Income Tax Act 1961, and any amount recovered on any such debt was held chargeable to tax.[71]

When the second proviso to s 6 of the Pt B States (Laws) Act 1951, provided that the rules which were in force in Pt B states under the laws repealed would continue and would be deemed to have been framed under the laws extended by the Act of 1951, it meant that the rules in force under ordinance 34 of 1948 became rules under the Mines Act of 1923, which was being extended to Rajasthan. Therefore, when s 88 of the Act of 1952 repealed the Mines Act of 1923 and re-enacted it, s 24 of the General Clauses Act came into play and the rules and regulations made under the Act of 1923 would continue till they were superseded by fresh rules under the new Act.[72]

It has been held in *GD Bhattar v State*,[73] that the rules framed in 1946 under the Mines Act 1923, since repealed by the Mines Act of 1952, are, by virtue of s 4 of the 1952 Act, deemed to be rules framed under the 1952 Act so as to validate a prosecution launched under these rules.[74]

There being material difference between Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 and Maintenance of Internal Security Act 1971 (as amended by Ordinance 11 of 1974), the former cannot be said to have repealed the latter.[75]

---

70 *Damodar Lal Sunder Lal v Gopinath Sunder Lal* AIR 1956 Nag 209–10, 1956 Nag LJ 524 (DB).

71 *Poonjabhai Vanmalidas v Commr of Income Tax* AIR 1991 SC 1, 4.

72 *State of Rajasthan v Panna Lal* AIR 1958 Raj 59, 1988 Cr LJ 226, 1957 Raj LW 633 (DB); *Surajmal v Hiralal* AIR 1958 Raj 59; *Mohan Lal Goenka v State* 1957 Cr LJ 122–23 (Cal) (1952 Act had widened the rule-making powers—rules under earlier narrower powers could not be said to have lapsed on repeal of earlier Act); *Mohan Lal Goenka v State of West Bengal* AIR 1961 SC 1543, (1962) 1 SCJ 401; relying on *Chief Inspector of Mines v Karam Chand Thapar* AIR 1961 SC 838, (1962) 2 SCJ 1.

73 AIR 1957 Cal 483, 492, 1957 Cr LJ 834, 61 CWN 660 (DB); overruled on another point in *Mohan Lal Goenka v State of West Bengal* AIR 1961 SC 1543, (1961) 2 Cr LJ 713, (1962) 1 SCJ 401.

74 *Mohan Lal Goenka v State of West Bengal* AIR 1961 SC 1543 (earlier rules continued).

75 *Hemlataben Manohar Lal Soni v State of Gujarat* 1976 Cr LJ 882, 885, 888, 17 Guj LR 201 (FB).

In Jaipur Mineral Development Syndicate, Jaipur v Commr of Income-tax, New Delhi,[76] the High Court had before it a reference under s 66(1) of the Income Tax Act 1922. The High Court declined to answer the reference on the ground that the party had neither appeared nor had caused the paper-book to be prepared. On application by the party for re-hearing the reference, it was held that the High Court was competent to re-hear and dispose of the reference on merit.

Section 24 will cease to apply to statutory instruments when there is a variance between the repealing and the earlier Acts. A notification by one collectorate empowering an inspector of Excise to exercise powers under r 200 of the Central Excise Rules 1944 ceases to be operative when subsequently the inspector goes under another collectorate.[77]

Where a notification had been issued under s 18 of the Drugs and Cosmetics Act 1940, fixing a date for bringing into force the provisions of the said s 18, it was held that a separate notification was not necessary when s 18 was amended by the amending Act of 1962.[78]

76 AIR 1977 SC 1348, 1350, 1977 Tax LR 685, 1977 UPTC 491.

77 *State of Assam v Surajbhan Agarwalla* (1959) ILR 11 Assam 397, 402–03 (DB).

78 *State of Maharashtra v Zahid Hussain Kikabhai* 1975 Mah LJ 455, 461.