

Difference between a Principal Act and Notification / rules / by-laws

Effect and difference between the Principal Act and Notification/ Rules/ by-laws

While considering the fact whether contravention of Notification issued under any Act is equivalent to the contravention of sections of the Principal Act, we find that various judgments of the Apex Court substantiate this fact.

a. In the matter of "Edward Mills Co. Ltd. v. State of Ajmer, (S) AIR 1955 SC 25 (F)" the Apex Court had stated the distinction between law and order/notification as follows "On 16th March 1949 Central Government issued a notification in exercise of its powers under Section 94(3) of the Government of India Act 1935 directing that the functions of the appropriate Government under Minimum Wages Act would in respect of every Chief Commissioner's Province be exercised by the Chief Commissioner. On 17th March 1950 the Chief Commissioner of Ajmer, purporting to act as the 'appropriate' Government of the State of Ajmer-Merwara published a notification in terms of Section 27 of the Minimum Wages Act giving three months' notice of his intention to include employment in the Textile Mills as an additional item in Part I of the Schedule. On 10th of October 1950 the final notification was issued stating that the Chief Commissioner had directed that 'employment in the textile industry' should be added in Part I of the Schedule.

On 23rd November 1950 another notification was published with the signature of Secretary to the Chief-Commissioner containing the Rules purporting to have been framed by the Chief Commissioner in exercise of his powers under Section 30 of the Act. Under Article 239 of the Constitution, the President of India could delegate his authority to the Chief Commissioner of Part 'C' States similarly as under Section 94(3) of the Government of India Act 1935. There was however, no such notification, delegating such authority to function as appropriate Government under the Minimum Wages Act."

12. The question before their Lordships of the Supreme Court was whether the notification issued under Section 94(3) of the Government of India Act, 1935 could be said to be a law in force within the meaning of Article 372(1) of the Constitution. It was contended before them that the Order (Notification) issued by the Central Government, under Section 94(3) of the Government of India Act, 1935 could not be regarded as law in force, within the meaning of Article 372.

A distinction was sought to be made in this connection between an 'existing law' as defined in Article 3GG (1) and 'law in force' under Article 372, and it was contended that though an 'order' can come within the definition of 'existing law' it cannot be included within the expression 'law in force' as used in Article 372 of the Constitution. Their Lordship[^] rejected this contention in these terms :

"We do not think that there is any material difference between an 'existing law' and 'a law in force'. Quite apart from Article 3GG (10) of the Constitution, the expression 'Indian Law' has itself been defined in Section 3(29) of the General Clauses Act, ordinance, regulation, rule, order or bye-law which before the commencement of the Constitution had the force of law in any Province of India or part thereof. In our opinion, the words 'Law in force' as used in Article 372 are wide enough to include not merely a legislative enactment but also any regulation or order which has the force of law. We agree with Mr. Chatterjee that an order must be a legislative and not an executive order before it can come within the definition of law. We do not agree with him however, that the order made by the Governor-General in the present case under, Section 94(3) of the Government of India Act is a mere executive order,"

b. In the matter of "Dowell Leasing and Finance Ltd. through its Director Syed Riazuddin S/o. Syed Mohiuddin vs. Radheshyam B. Khandelwal, Anup Investments carrying on Business in the name and Style of Anup Investments, Ajay Chajjer, carrying on business in the name of Akash Investments and The Bombay Stock Exchange Ltd. through its Secretary 2008(1)ARBLR512(Bom)", the Bombay HC considered various judgments of the Apex Court considering the difference between rules/ notifications/ by- laws etc. and wherein it was concluded that notification /orders issued under statutory powers would form a part of it and would have same binding force thereon as the main statute has.

It reads as follows : Babaji Kondaji Garad v. Nasik Merchants Co-operative Bank Ltd. Nasik and Ors. MANU/SC/0367/1984; while considering the bye-laws made under that Act, the Supreme Court observed as under: Bye-law of a co-operative society can at best have the status of an Article of Association of a company governed by the Companies Act, 1956 and as held by this Court in Co-operative Central Bank Ltd. v. Additional Industrial Tribunal, Andhra Pradesh, the bye-laws of a co-operative society framed in pursuance of the provision of the relevant Act cannot be held to be law or to have the force of law. They are neither statutory in character nor they have statutory flavour so as to be raised to the status of law. Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over

subordinate legislation and the bye-law if not in conformity with the statute in order to give effect to the statutory provision the rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with.

In the *Co-operative Central Bank Ltd., v. The Additional Industrial Tribunal, Andhra Pradesh and Ors.* MANU/SC/0611/1969, while examining the nature of the bye-laws made by the Co-operative Societies, the Supreme Court was pleased to observe as under: It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute.

In *Dr. Indramani Pyarelal Gupta and Ors. v. W.R. Natu and Ors.* MANU/SC/0066/1962, the issue that was being examined was as to whether power conferred by a bye-law framed under Section 11 or 12 of the Forward Page 1558 Contracts (Regulation) Act, 1952 was not one that was conferred "By or under this Act or as may be prescribed". Addressing itself on the question, the Supreme Court held - "The meaning of the words "under the Act" is well known. "By" an Act would mean by a provision directly enacted in the statute in question and which is gatherable from its express language or by necessary implication therefrom. The words "under the Act" would, in that context signify what is not directly to be found in the statute itself but is conferred or imposed by virtue of powers enabling this to be done; in other words, bye-laws made by a subordinate law-making authority which is empowered to do so by the parent Act. The distinction is thus between what is directly done by the enactment and what is done indirectly by the rule making authorities which are vested with powers in that behalf by the Act.". Proceeding further, the Supreme Court then observed : "Thus the utmost could be said would be that though normally and in their ordinary signification the words "under the Act" would include both "rules" framed under Section 28 as well as "bye-laws" under Section 11 or 12, the reference to "rules" might be eliminated as tautologous since they have been specifically provided by the words that follow...".

Subba Rao, J, in the minority judgment, was examining the nature of the subordinate legislation and its various forms. The learned Judge observed as under:

Para (41) : Subordinate or delegated legislation takes different forms. Subordinate legislation is divided into two main classes, namely, (i) statutory rules, and (ii) bye-laws or regulations made (a) by authorities concerned with local government, and (b) by persons, societies, or corporations. The Act itself recognizes this distinction and provides both for making of the rules as well as bye-laws. A comparative study of Sections 11 and 12 whereunder power is conferred on the Central Government and recognised associations to make bye-laws on the one hand, and Section 28, whereunder the Central Government is empowered to make rules on the other, indicate that the former are intended for conducting the business of the association and the latter for the purpose of carrying into effect the objects of the Act. In considering the question raised in this case this distinction will have to be borne in mind."