

CHAPTEER VIII
Miscellaneous

29. Determination of question as to whether a person is an emigrant.- Where a question arises before a Protector of Emigrants as to whether a person intending to depart from India is or is not an emigrant, the Protector of Emigrants shall decided the question after holding an inquiry in such manner and upon considering such evidence as may be prescribed and such other evidence as may be relevant, and communicate the decision to such person in the prescribed manner.

30. Power to prohibit emigration to any country in the interests of the general public, etc. –

(1) Where the Central Government has reason to believe that sufficient grounds exist for prohibiting emigration to any country, having regard to the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or the interests of the general public, it may, by notification, prohibit emigration to that country.

(2) A notification issued under sub-section (1) shall have effect for such period not exceeding six months as may be specified in the notification:

Provided that if the Central Government has reason to believe that the grounds mentioned in sub-section (1) continue to exist, it may, from time to time, by notification, prohibit emigration to that country for such further period, not exceeding six months on each occasion, as may be specified in the notification.

Power to prohibit emigration due to outbreak of epidemics, civil disturbances, etc. in a country.- (1) Where the Central Government has reasons to believe- that intending emigrants if allowed to emigrate to any country would be exposed to serious risk to life on arrival there by reason of-

(i) outbreak of any disease of grave pollution of environment in such country, or
(ii) outbreak of hostilities or civil war or civil commotion or political disturbances

(b) that by reason of India not being in diplomatic relations with that country it is not possible to protect the emigrants from discrimination, maltreatment exploitation, it may, by notification, prohibit emigration to that country.

(2) A notification, issued under sub-section (1) shall have effect for such period not exceeding six months as may be specified in the notification:

Provided that if the Central Government has reason to believe that any ground mentioned in sub-section (1) continues to exist it may, from time to time, by notification, prohibit emigration to that country for such further period, not exceeding six months on each occasion, as may be specified in the notification.

Comment

Under the provisions of this section the Central Government is empowered to prohibit emigration due to certain circumstances, viz. outbreak of epidemic, grave pollution of environment, civil war, hostilities.

32. Power to prohibit emigration of any class or category of persons. –

(1) Where the Central Government considers that in the interests of the general public, emigration of any class or category of persons, having regard to their age, sex or other relevant factors, to any country should be prohibited it may, by notification, prohibit the emigration to such country of such class or category of persons as may be specified in the notification.

(2) A notification, issued under sub-section (1) shall have effect for such period not exceeding six months as may be specified in the notification:

Provide that if the Central Government has reason to believe that any of grounds mentioned in sub-section (1) continues to exist, if may, from time to time,

by notification, prohibit emigration of such class or category of persons to that country for such further period, not exceeding six months on each occasion, as may be specified in the notification.

Comment

This section empowers the Central Government to prohibit emigration of any person or class of persons in the interests of the general public.

33. Provision as to security.-

(1) Any security or other financial provision which may be required to be made under this Act shall be reasonable having regard to the purpose for which such security or other financial provision is required to be made.

(2) The prescribed authority may, after giving notice in the prescribed manner to a person who has furnished any security for any purpose and after giving to such person an opportunity to represent his case, by order in writing, direct that the whole or any part of such security may be forfeited for being utilized for such purpose and in such manner as may be specified in the order.

(3) Where it appears to the prescribed authority that the security furnished by any person under this Act for any purpose has, for any reason, become inadequate or has ceased to be available for any reason whatsoever, the prescribed authority may after giving him an opportunity to represent his case, by order in writing, require such person to furnish such additional security or, as the case may be, such fresh security as may be specified in the order.

34. Refund of security – Any security furnished under this Act shall be refunded or, as the case may be, released, when no longer required for the purpose for which it has been furnished and the other circumstances in which and the manner in which any security furnished under this Act may be released or refunded shall be such as may be prescribed.

35. Power to Search, seize and detain persons, conveyance, etc. – All the powers for the time being conferred by the Customs Act, 1962 (52 of 1952), on officers of customs with regard to the searching and detention of persons, vessels or aircrafts or any other conveyance or seizure of any document or thing or arrest of any person or otherwise for the purpose of prevention or detection of any offence under this Act or for apprehending a person suspected to have committed any offence under that Act may be exercised, for the purpose of prevention detection of any offence under this Act or for apprehending a person suspected to have committed any offence under this act, by -

any such officer of the customs, or
the Protector General of Emigrants or a Protector of Emigrants,
or
an officer-in-charge of an emigrant check Post.

36. Returns and Registers. – (1) Every recruiting agent shall maintain such registers and other records and shall submit to the prescribed authorities such periodical or other returns as may be prescribed.

(2) The Protector General of Emigrants, the registering authority, the competent authority or a Protector of Emigrants may, by order, call for any other return or information from a recruiting agent.

(3) The Protector General of Emigrants, the registering authority, the competent authority or a Protector of Emigrant or an officer in charge of an emigration check post may inspect any register or other record maintained by a recruiting agent under

sub-section (1) and for the purpose of such inspection, enter at any reasonable time, the business premises of a recruiting agent.

37. Authorities and Officer to have certain powers of Civil and Court – (1) The Protector General Of Emigrants, the registering authority, the competent authority and every Protector of Emigrants shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters namely :

summoning and enforcing the attendance of witnesses;
requiring the discovery and production of any document;
requisitioning any public record or copy thereof from any court or office;
receiving evidence on affidavits; and
issuing commissions for the examination of witnesses or documents.

(2) Every proceeding before the Protector-General of Emigrants, or the registering authority or the competent authority or a Protector of Emigrants shall be judicial proceeding within the meaning of Sec. 193 and 228 of the Indian Penal Code (45 of 1860) and the Protector-General of Emigrants, the registering authority, the competent authority, and every Protector of Emigrants shall be deemed to be a Civil Court for the purpose of Sec. 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Comments

Under the Provisions of this section the Protector General of Emigrants and other authorities have certain powers of a Civil Court.

Power of a Court – There can be no doubt that whenever an authority is vested with a jurisdiction to decide a matter, such jurisdiction can be exercised in deciding the matter, in favour of or against a person.

38. Powers to give directions – The Central Government may give directions to the Protector-General of Emigrants, the registering authority, the competent authority or any Protector of Emigrants as to the carrying into execution of any provision of this Act.

39. Effect of Other Laws. –

(1) The Provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this act or in any agreement or other instrument having effect by virtue of any enactment other than this act.

(2) Save as provided in sub-section (1) the provision of this act shall be in addition to and not in derogation of any other law for the time being in force.

40. Delegation – The central government may, by notification direct that any power or function-

which may be exercised or performed by its under this Act, or
which may be exercised or performed by a registering authority, a competent authority or a Protector of Emigrants under this Act,
may in relation to such matters, and subject to such conditions, if any as it may specify in the notification, be also exercised or performed –

(i) by such officer or authority subordinate to the Central Government:

or

(ii) by any State Government or by any officer or authority subordinate

to such

State Government, or
(iii) in any foreign country in which there is no diplomatic mission of
India by
such foreign consular office,
as may be specified in the notification.

Power to Exempt. –

(1) Where the Central Government on a reference made to it or otherwise, is satisfied that having regard to –
the friendly relations with any foreign country.

The known reputation of any foreign employer or class of foreign employers for providing to emigrants standard conditions of living and working, and their methods of recruitment and conditions of employment ; or

The methods or recruitment followed and the conditions of employment provided by a public undertaking or an approved concern for the execution of its project abroad;
or

The facilities and conditions of service provided by Government officers posted abroad to their domestic servants accompanying such Government officers, where the expenditure in respect of the passage or such domestic servants is borne by the Government; and

All other relevant considerations,

It is all necessary or expedient in the public interest so to do, the Central Government may, by notification, and subject to such conditions, if any as may be specified in the notification, exempt from the operation of all or any of the provision of this Act, such foreign dignitary or class of foreign employers, public undertaking, approved concern or Government officers.

Explanation – for the purpose of this sub - section. –

“public undertaking” means, -

(i) an undertaking owned and controlled by Government; or

(ii) a Government company as defined in Sec. 617 of the Companies Act, 1956 (1 of 1956); or

(iii) a body corporate established by or, under any Central, Provincial or State Act;

“approved concern” means such company incorporated under the Companies Act, 1956 (1 of 1956) or partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932) or societies registered under Societies Registration Act, 1860 (21 of 1860) or any other law relating to societies for the time being in force in any state, or Cooperative society registered under any Central, Provincial or State Law as the Central Government may, by notification, approve for the purposes of this section.

(2) If the Central government is satisfied that it is necessary for implementing any treaty, agreement or convention between India and a foreign country or for foreign countries so to do, it may, by notification, and subject to such conditions, if any as may be specified in the notification, exempt from the operation of all or any of the provision of this Act, recruitment by such authorities, agencies or persons as may be specified in the notification either generally or for such purposes as may be specified in the notification.

Comment

“Otherwise” - What amounts to - The word “otherwise” is not to be construed ejusdem generis with the words “circulars, advertisements”.

Act not to apply to certain emigrants – Nothing contained in this Act shall be deemed to apply to -

the recruitment or emigration of any person who is not a citizen of India;
the control of recruiting in India for the service of foreign State to which the Foreign Recruiting Act, 1874 (4 of 1874) applies.

Power to make rules - (1) The Central Government may, by notification, make rules to carry out the Provision of this Act.

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

the powers and duties of officers and employed appointed for the purposes of this Act and the terms and conditions of their service;

the form of –

(i) a certificate to commence or carry on the business of recruitment and on an application for the issue or renewal thereof ;

(ii) a permit for the recruitment of persons for employment outside India and of an application for the issue of thereof ;

(iii) an application for emigration clearance ;

(iv) an appeal to be preferred to the Central Government;

the manner and form in which an authorization by way of emigration or for an emigration clearance;

particulars to be contained in an application for a certificated or a permit of for an emigration clearance;

the manner in which different inquiries required to be held under that act may be held;

the manner in which the amount of security for securing due performance of the terms and conditions of the certificate or permit or for compliance with the provisions of this Act shall be furnished;

the manner of verifying or authenticating documents and copies of documents for the purposes of this Act;

the procedure to be followed in hearing an appeal preferred to the Central Government;

the fees to be paid in respect of applications and other matters under this Act;

the charges which a recruiting agent may recover from an emigrant in respect of services rendered and the scales and limits of such charges;

the terms and conditions subject to which a certificate or a permit or an emigration clearance may be issued under this Act;

the period of validity of a certificate or a permit issued under this Act;

the authority competent to extend the period of validity of a permit or to forfeit security or to require any additional security or fresh security under this Act;

the accommodation, thee provision, the medical stores and staff, the life saving and sanitary arrangements and other provisions and arrangement for the well being, security and protection of emigrants which shall be provide and the records which shall be maintained in any emigrant conveyance;

any other matter which is required to be, or may bee, prescribed.

Comment

Rules- whether validly framed.- The question whether rules are validly framed to carry out thee purposes of thee Act can be determined on the analysis of the provisions of the Act.

Notification and rules to be laid before Parliament.- Every notification issued under C1.(o) of sub-section {1} of Sec. 2, sec. 30, Sec. 31 or Sec. 32 and every rule made under Sec, 43 shall bee laid, as soon as may be, after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty

days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or the rule or both Houses agree that the notification or the rule should not only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

Repeal of Act 7 of 1922.-The Emigration Act, 1922{7 of 1922} is hereby repealed.
Comments

Implied repeal.- It is undoubtedly true that the Legislature can exercise the power of repeal by implication. But it is equally well settled that there is a presumption against an implied repeal. Upon the assumption that the Legislature enacts law with a complete knowledge of all existing laws pertaining to the same subject the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. This presumption will be rebutted if the provisions of the new act are so inconsistent with the old one that the two cannot stand together.

Repeal. - It is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted. Such deletion has the effect of repeal of the existing provision.