

SIKKIM

GOVERNMENT



GAZETTE

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 122

Gangtok, Thursday, October 27, 1977.

LEGISLATIVE DEPARTMENT

NOTIFICATION

No. 6/LL/77

Dated Gangtok, the 25th October, 1977.

The following Act of the Sikkim Legislative Assembly having received the assent of the Governor on the 17th day of October, 1977 is hereby published for general information.

SIKKIM ACT NO. 6 OF 1977

SIKKIM INTERPRETATION AND GENERAL CLAUSES ACT, 1977

AN ACT

to provide for and to facilitate the interpretation and construction of Sikkim laws, to shorten the language used therein and to make certain other provisions relating to such laws.

WHEREAS it is expedient to provide for and to facilitate the interpretation and construction of Sikkim laws, to shorten the language used therein and to make certain other provisions relating to such laws:

Be it enacted by the Legislature of Sikkim in the Twenty-eighth year of the Republic of India as follows:—

CHAPTER I

Preliminary

Short title and commencement.

1. (1) This Act may be called the Sikkim Interpretation and General Clauses Act, 1977.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Application.

2. Unless otherwise expressly provided or unless the context otherwise requires, the provisions of this Act shall apply to—

(a) all Sikkim laws made before or after the commencement of this Act;

(b) all notifications, orders, schemes, rules, regulations, by-laws or any other instruments having the force of law and made under or in exercise of any power conferred by any Sikkim law.

CHAPTER II

Definitions

Definitions.

3. In all Sikkim laws, unless there is anything repugnant in the subject or context or unless a contrary intention appears,—

(1) "abet", with its grammatical variations and cognate expressions, has the same meaning as in the Indian Penal Code, 1860;

(2) "act", used with reference to an offence or a civil wrong, denotes a series of acts, and words which refer to acts done extend also to illegal omissions;

(3) "affidavit" means a statement in writing signed by the person making it and confirmed by oath;

(4) "Central Act" shall mean an Act of Parliament and shall include—

(a) an Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution, and

(b) an Act made before such commencement by the Governor General-in-Council or the Governor General acting in a legislative capacity;

(5) "Central Government" in relation to anything done or to be done after the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975, means the President and includes, in relation to functions entrusted under clause (1) of Article 258 of the Constitution to the Government of Sikkim, the Government of Sikkim acting within the scope of the authority given to it under that clause;

(6) "child", in the case of anyone whose personal law permits adoption, includes an adopted child;

(7) "collector" means the chief officer in charge of the revenue administration of a district;

(8) "commencement", used with reference to an enactment, means the day on which such enactment comes into force;

(9) "Constitution" means the Constitution of India;

(10) "daughter", in the case of anyone whose personal law permits adoption, includes an adopted daughter;

(11) "day" means the period of twenty-four hours beginning at midnight;

(12) "District Court" means the principal civil court of original jurisdiction constituted for the purpose but shall not include the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;

(13) "District Judge" means the judge of District Court and includes an Additional District Judge;

(14) "document" includes any matter written, expressed, inscribed, or described upon any substance by means of letters, figures or marks or by more than one of those means which is intended to be used or which may be used for the purpose of recording that matter;

(15) "enactment" means any law and includes any provision contained in any law;

(16) "father", in the case of anyone whose personal law permits adoption, includes an adoptive father;

(17) "financial year" means the year commencing on the first day of April and ending on the thirty-first day of March next following;

(18) "good faith"—a thing is deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not;

(19) "Government" or "the Government" includes the State Government as well as the Central Government;

(20) "government security" means securities of the Government of Sikkim or any other Government;

(21) "Governor" means, as respects the period after the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975, the Governor of Sikkim;

(22) "growing crops" mean crops of all sorts attached to the soil and leaves, flowers and fruits upon and juice in, trees and shrubs;

- (23) "High Court" means the High Court of Sikkim.
- (24) "immovable property" includes land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to earth but does not include standing timber, growing crops or grass;
- (25) "imprisonment" means imprisonment of either description as defined in the Indian Penal Code, 1860;
- (26) "Law" means any law, Act, Ordinance, Proclamation, regulation, rule, notification, order, by-law, scheme or other instrument having for the time being the force of law;
- (27) "Legislative Assembly" or "State Legislative Assembly" means the Legislative Assembly of the State of Sikkim;
- (28) "local authority" means a municipal corporation, a municipality, a municipal committee, a local or district board, a Zilla Parishad, a Panchayat Samitee, a Block Panchayat or any other authority legally entitled to or entrusted by the Government with the control or management of municipal or local fund;
- (29) "Magistrate" includes every person exercising all or any of the powers of a magistrate under the Code of Criminal Procedure for the time being in force;
- (30) "month" means a month reckoned according to the English calendar;
- (31) "mother", in the case of anyone whose personal law permits adoption, includes an adoptive mother;
- (32) "movable property" means property of every description except immovable property;
- (33) "oath" includes affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;
- (34) "offence" means any act or omission made punishable by any law for the time being in force;
- (35) "Parliament" means the Parliament of India;
- (36) "person" includes any company or association or body of individuals, whether incorporated or not;
- (37) "prescribe" means prescribed by rules made under an enactment in which the expression occurs;
- (38) "President" means the President of India;
- (39) "public nuisance" has the same meaning as in the Indian Penal Code, 1860;
- (40) "registered", used with reference to a document, means registered in Sikkim or anywhere else in India under any law for the time being in force for the registration of documents;
- (41) "regulation" means regulation made in exercise of a power conferred by any enactment and includes a non-statutory or other independent regulation having for the time being the force of law;
- (42) "rule" means a rule made in exercise of a power conferred by any enactment and includes a non-statutory or other independent rule having for the time being the force of law;
- (43) "sign" with its grammatical variations and cognate expressions, used with reference to a person who is unable to write his name, includes "mark" with its grammatical variations and cognate expressions;
- (44) "Sikkim laws" mean and include:—
- (a) all laws in force in the territories comprised in the State of Sikkim or any part thereof immediately before the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975;
- (b) all laws amending or repealing any such law referred to in sub-clause (a);
- (c) all orders made and passed under clause (1) of Article 371 F of the Constitution making adaptations or modifications of the laws referred to in sub-clause (a) whether by way of repeal or amendment;

(d) all enactments in force in a State or some States in India with respect to matters in the State List or the Concurrent List of the Constitution not being Central Acts and extended to the State of Sikkim by notifications under clause (n) of Article 371 F of the Constitution;

(e) all Ordinances promulgated by the Governor of Sikkim;

(f) all Acts passed by the Sikkim Legislative Assembly which have received the assent of the Governor or the President;

(g) all laws made by parliament or the President in respect of the State of Sikkim under or in exercise of the powers conferred by Article 356 and Article 357 of the Constitution;

(45) "son", in the case of any one whose personal law permits adoption, includes an adopted son;

(46) "State Government" or "the Government of Sikkim", in relation to anything done or to be done on and from the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975, means the Governor;

(47) "swear" with its grammatical variations and cognate expressions includes affirming and declaring in the case of person by law allowed to affirm or declare instead of swearing;

(48) "will" and "codicil" have the meanings respectively assigned to them in the Indian Succession Act, 1925;

(49) "writing" includes printing, type-writing, lithography, photography and other modes of representing or reproducing words in a visible form;

(50) "year" means a year reckoned according to the English calendar.

CHAPTER III

General Rules of Construction.

Territorial extent of Sikkim laws. 4. Every Sikkim law, unless otherwise expressly provided, applies to the whole of Sikkim.

Coming into operation of Sikkim law. 5. (1) Where any Sikkim law made after the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975, is not expressed to come into operation on a particular day, then it shall come into operation—

(a) if it is an Act of the Sikkim Legislature, on the day on which it received the assent of the Governor or the President, as the case may be, and

(b) if it is an Ordinance, on the day on which it is first published in the Official Gazette.

(2) Unless the contrary is expressed, a Sikkim law shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

Expiry of temporary laws. 6. Where any Sikkim law is expressed to expire, lapse or otherwise cease to have effect on a particular day, it shall, unless the contrary intention is expressed, be construed as ceasing to have effect immediately on the commencement of the following day.

Rights of the Government. 7. No Sikkim law shall in any manner whatsoever affect the rights of the Government unless it is expressly provided therein or unless it appears by necessary implication therefrom that the Government is bound thereby.

Effect of incorporation. 8. Where any Sikkim law constitutes a body corporate by any form of words, that body corporate shall have perpetual succession and a common seal and may enter into contracts by its corporate name and acquire, hold and dispose of property, whether movable or immovable and shall sue or be sued by or in its corporate name.

Offences by companies. 9. (1) Where an offence under any Sikkim law has been committed by a company, the company as well as every person in charge of and responsible to the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

now

(2) Where any offence under any Sikkim law has been committed by a company, any director, manager, secretary or other officer of the company, not being a person in charge of and responsible to the company for the conduct of its business at the time of the commission of the offence, shall, if it is proved that the offence has been committed with his consent or connivance or that the commission of the offence is attributable to any neglect on his part, also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanations:— For the purpose of this section—

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

- Gender and number.* 10. In all Sikkim laws, unless a different intention appears -
- (a) words importing the masculine gender shall be taken to include females; and
- (b) words in the singular shall be taken to include the plural and vice - versa.
- Commencement and termination of time in Sikkim law.* 11. In any Sikkim law it shall be sufficient -
- (a) to use the word "from" or the word "after" for the purpose of excluding the first in a series of days;
- (b) to use the word "to" for the purpose of including the last in a series of days; and
- (c) to use the word "on" or the word "with" for the purpose of including the day on which the period is expressed to begin or to end.
- Computation of time.* 12. Where by any Sikkim law, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a specified period then if the Court or office is closed on that day on the last day of the specified period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.
- Expression of time.* 13. Where in any Sikkim law any reference to a specified time of the day occurs, such time shall, unless it is otherwise specifically stated, be deemed to mean the Indian Standard Time.
- Day to be taken pro rata.* 14. Where by any Sikkim law any duty of customs or excise, or in the nature thereof, is leviable on a given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.
- Measurement of distance.* 15. In the measurement of any distance for the purpose of any Sikkim law, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plain.
- Penalties provided to be deemed maximum penalties.* 16. Wherever in any Sikkim law a punishment is provided for an offence, such punishment shall, unless a different intention appears, be deemed to be the maximum punishment for that offence.
- Deviation from forms.* 17. Save as otherwise expressly provided by any Sikkim law, wherever a form is prescribed by any Sikkim law, any deviation therefrom, not affecting the substance or calculated to mislead, shall not invalidate it.
- Act done on holidays or outside office hours.* 18. Save as otherwise expressly provided by any Sikkim law, no act done by any authority, whether legislative, executive or judicial, shall be invalid by reason only of its having been done on a public holiday or before, beyond or after usual office hours.
- Provisions as to offences punishable under two or more Sikkim laws.* 19. Where an act or omission constitutes an offence under two or more Sikkim laws, the offender shall be liable to be prosecuted and punished under either or any of those laws but shall not be liable to be punished more than once for the same offence.

CHAPTER IV

Repeal and expiry of laws.

- Effect of repeal.* 20. Where any Sikkim law repeals any enactment, then, unless a different intention appears, the repeal shall not -

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, penalty, liability, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing law had not been passed.

Effect of expiration of Sikkim laws.

21. Where any Sikkim law ceases to have effect or ceased to operate on the expiration of a particular period or on the happening of a particular contingency, then, unless a different intention appears, such expiry or cessation shall not affect-

(a) the previous operation of, or anything duly done or suffered under such law; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under law; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against such law; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the law had not ceased to have effect or ceased to operate.

Repeal of law making textual amendment in other laws.

22. Where any Sikkim law repeals any enactment (not being an enactment which is to cease to have effect or to cease to operate on the expiry of a particular period or on the happening of a particular contingency) by which the text of any law has been amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

Revival of repealed enactment.

23. In any Sikkim law made after the commencement of this Act, it shall be necessary for the purpose of reviving either wholly or partially any enactment wholly or partially repealed, expressly to state that purpose.

Construction of references to repealed enactment.

24. Where any Sikkim law repeals and re-enacts, with or without modification, any former enactment or any provision thereof, then references in any other enactment, or in any instrument, to the enactment or provision so repealed shall, unless a different intention appears, be construed as references to the enactment or provision, as the case may be, so re-enacted.

CHAPTER V

Powers and functionaries.

Exercise of Power and performance of duties.

25. Where by any Sikkim law any power is conferred or any duty is imposed, then, unless a different intention appears, that power may be exercised and that duty shall be performed from time to time as occasion requires.

Power incidental for effective exercise of powers granted.

26. Where by any Sikkim law a power is conferred on any person or functionary to do or enforce the doing of any act or thing, such power shall be deemed to include all such powers as may be necessary to enable such person or functionary to do or enforce the doing of such act or thing.

Exercise of power and performance of duty by temporary holder of office.

27. Where any Sikkim law confers a power or imposes a duty on the holder of any office as such, then the power may be exercised and the duty shall be performed by the holder for the time being of the office.

Power to appoint to include power to appoint ex-officio.

Power to appoint to include power to suspend, remove or dismiss.

Substitution of functionaries.

Successors.

Official chiefs and subordinates.

28. Where by any Sikkim law a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment may be made by name or by virtue of office.

29. Where by any Sikkim law a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being the power to make the appointment shall also have power to suspend, remove or dismiss any person appointed, whether by itself or by any authority, in exercise of that power.

30. In any Sikkim law, it shall be sufficient for the purpose of indicating the application of the law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer, who is, at the time of the making of the law executing the functions or that of the officer by whom the functions are commonly executed.

31. In any Sikkim law, it shall be sufficient for the purpose of indicating the relation of a law to the successors of any functionaries or the corporations having perpetual succession, to express its relation to the functionaries or corporations.

32. In any Sikkim law, it shall be sufficient for the purpose of expressing that a law relating to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to specify the duties of the chief or superior.

CHAPTER VI

Subordinate Legislation

Construction of rules, notifications, orders, etc. issued under Sikkim laws.

Power to make or issue rules, etc. includes power to add to amend, vary or rescind.

Making of rules or by-laws or issuing of orders between passing and commencement of Sikkim laws.

Publication of rules, etc. in the Official Gazette to be deemed to be due publication.

Continuation of rules, orders, appointments, notifications, etc. under Sikkim law repealed and re-enacted.

Commencement of rules.

Provisions applicable to making of rules, etc. after previous publication.

33. Where by any Sikkim law a power to issue or make any rule, notification, order, scheme, form or by-law is conferred, then, expressions used in the rule, notification, order, scheme, form or by-law shall, unless a different intention appears, have the same respective meaning as in the law conferring the power.

34. Where by any Sikkim law, a power to make or issue rules, notifications, orders, schemes, forms or by-laws is conferred, then, unless a different intention appears, 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 rules, notifications, orders, schemes, forms or by-laws so made or issued.

35. Where by any Sikkim law which is not to come into operation immediately on the passing thereof a power is conferred to make rules, regulations or by-laws, or to issue orders with respect to the application of law, or with respect to the establishment of any Court or office or the appointment of a 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 such Sikkim law, then, that power may be exercised at any time after the passing of such law, but rules, regulations, by-laws or orders so made or issued shall not take effect till the commencement of such law.

36. Where in any Sikkim law or any rule, regulation or by-law made thereunder, it is directed that any rule, regulation, by-law, notification, order, scheme, form or other matter shall be notified or published, then, such notification or publication shall, unless such law, rule, regulation or by-law otherwise provides, be deemed to be duly made if it is published in the official Gazette.

37. Where any Sikkim law is repealed and re-enacted with or without modification, then, unless otherwise expressly provided, any appointment, rule, notification, order, scheme, form or by-law made or issued under the repealed enactment, 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, form or by-law made or issued or anything done or action taken under the provisions so re-enacted.

38. Every rule made under any Sikkim law shall be published in the Official Gazette and shall, in the absence of an express provision to the contrary either in the rule or in the law under which it is made, come into force on the day on which it is published in the Official Gazette.

39. Where, by any Sikkim law, a power to make rules, regulations or by-laws is expressed to be given subject to the condition of the rules, regulations, by-laws, being made after previous publication, then, unless such law otherwise provides, the following provisions shall apply, namely:—

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

(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 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, regulations or by-laws, and, where the rules, regulations or by-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, regulations, or by-laws from any person with respect to the draft before the date so specified.

(5) the publication in the Official Gazette of a rule, regulation, by-law purporting to have been made in exercise of a power to make rules, regulations or by-laws after previous publication shall be conclusive proof that the rules, regulations or by-law have been duly made.

Laying of rules before Legislative Assembly.

40. (1) Where any Sikkim law provides that any regulations or rules made thereunder shall be laid before the Legislative Assembly, such regulations or rules shall be laid as soon as may be after they are made before the Legislative Assembly while it is in session, and if before the expiry of the session in which they are laid, or the next session immediately following, the Legislative Assembly resolves to make any modification in the regulations or the rules, or resolves that such regulations or rules shall not have effect, the regulations or the rules, as the case may be, shall thereafter have effect only in such modified form or of be of no effect, as the case may be, so, however, that any such resolution shall be without prejudice to the validity of anything previously done under such regulations or rules before such resolution.

(2) Where regulations or rules required by any Sikkim law to be laid before the Legislative Assembly, are not laid before the Legislative Assembly in accordance with the provisions of sub-section (1), they shall, on the expiry of two successive sessions immediately following the publication of such regulations or rules, as the case may be, cease to have effect, without prejudice to the continued validity of anything previously done under such regulations or rules.

Recovery of fines.

41. The provisions of Sections 63 to 70 of the Indian Penal Code, 1860, and the provisions of the Code of Criminal Procedure for the time being in force, in relation to the issue and execution of warrants for the levy of fines shall apply to all fines imposed under any Sikkim law or any rule, regulation or by-law made under any Sikkim law, unless such law, rule, regulation or by-law contains an express provision to the contrary.

Meaning of service by post.

42. Where, any Sikkim law authorises or requires any document to be served by post, whether the expression "serve" or "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Citation of law.

43. (1) Any Sikkim enactment may be cited by reference to the title or short-title, if any, conferred thereon or by reference to the number and year thereof.

(2) Any provision in any Sikkim enactment may be cited by reference to the section of the law in which the provision is contained.

By Order of the Governor,

B. R. PRADHAN,

Secretary to the Government
of Sikkim.

F. 16 (15) LL/77.