

COMMITTEE ON SUBORDINATE
LEGISLATION

THIRTEENTH REPORT

(SECOND LOK SABHA)

(Presented on the 8th December, 1961)



LOK SABHA SECRETARIAT
NEW DELHI

December, 1961/Agrahayana, 1883 (Saka)

Price Re. 0.20 nP.

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COMPOSITION OF COMMITTEE ON SUBORDINATE
LEGISLATION (1961-62)

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13. Shri Ajit Singh Sarhadi
14. Shri H. Siddananjappa
15. Shri Jhulan Sinha.

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

INTRODUCTION

I, the Chairman of the Committee on Subordinate Legislation having been authorised by the Committee to present the Report on their behalf, present this their Thirteenth Report.

2. Subsequent to the presentation of the Twelfth Report the Committee have held two sittings and considered 242 new 'Orders'. The Committee also considered the 'Orders' that were pending for final disposal at the time of presentation of their Twelfth Report. At the sitting held on the 6th December, 1961, the Committee considered and adopted this Report.

3. Observations of the Committee on matters of special interest made during the course of examination of the 'Orders' and matters which required to be brought to the notice of the House have been included in this Report.

THE RUBBER RULES, 1955 (S.R.O. 1662 of 1955)—REFERENCE TO THE MINISTRY OF COMMERCE AND INDUSTRY

4. The following two points relating to rules 21 and 25 of the Rubber Rules, 1955, were referred to the Ministry of Commerce and Industry on the 27th August, 1955, during the term of the Committee on Subordinate Legislation of the First Lok Sabha:—

- (i) Two terms "vacancy" and "permanent vacancy" were used in the same rule viz. rule 21. If the term "vacancy" included "temporary vacancy" then the sub-rule (1) thereof appeared to be in conflict with rule 22 which provided for the filling of temporary vacancies.
- (ii) Under sub-rule (2) of rule 25 the Chairman of the Rubber Board could impose penalties mentioned in sub-rule (1) on officers whom he is empowered to appoint. Under sub-rule (4) the Rubber Board can also impose the same penalties on the officers appointed by the Board subject to the conditions prescribed therein. It was felt that if certain checks have to be imposed on the punishing powers of the Board to safeguard some important rights of the staff the same should also be imposed on the punishing powers of the Chairman.

5. After a protracted correspondence a reply dated the 17th February, 1958, was received from the Ministry stating that the word "permanent" occurring in sub-rules (3) & (4) of rule 21 was redundant and that the punishing powers of the Chairman should be subjected to like conditions as the punishing powers of the Board.

6. Then on a further query the Ministry intimated on the 6th June, 1959, that the discrepancies pointed out by the Committee had led to examination of the existing Rules *de novo* and that they were trying to frame new set of Recruitment and Classification, Control and Appeal Rules for the staff of the Rubber Board and, therefore, amendment to rules 19—25 of the Rubber Rules would have to await the finalisation of the Recruitment and C.C.A. Rules of the Board.

7. Although the Recruitment and Classification, Control and Appeal Rules of the Rubber Board were finally published in the Gazette, dated the 3rd June, 1961, the Ministry did not appear to have taken the necessary action on the points at issue. When the Ministry were again reminded on the 11th September, 1961, they addressed a letter on 15th September, 1961, to the Rubber Board inviting their comments on the points in question and endorsed a copy thereof to the Committee. On another reminder the Ministry have sent a reply dated the 18th November, 1961, stating that the information called for from the Rubber Board is still awaited.

8. The Committee express their regrets on the manner in which the Ministry have been advancing one excuse after another in delaying the removal of defects from the rules in question which in fact were acknowledged by the Ministry in February, 1958. The Committee hope that the Ministry will now take the earliest opportunity to rectify the defects in the rules referred to above.

III

[THE MINERAL CONCESSION RULES, 1960 (G.S.R. 1398 of 1960)

9. The Mineral Concession Rules, 1960 (G.S.R. 1398 of 1960) were made under Section 13 of the Mines and Minerals (Regulation and Development) Act, 1957.

Rules 11(1) (2) and 24(3)

10. These rules provide that if applications for grant or renewal of prospecting licence or mining leases are not disposed of within the prescribed period, the applications shall be deemed to have been refused on the expiry of the period. It was felt that the rules were negative in character putting premium on inaction of the State Governments.

11. The Ministry of Steel, Mines and Fuel (Department of Mines and Fuel) to whom the matter was referred have stated that the intention when these sub-rules were framed, was that the State Government will feel compelled to dispose of the applications within the prescribed time-limit, and in the few exceptional cases where it might not be possible for the State Government to dispose of the applications, within the time-limit, the applicant concerned might file review application with the Central Government so that the Central Government could press the State Government for taking early decision on the applications but now in practice these rules have turned to be of negative character. It is now proposed, the

Ministry have added, to amend or cancel these sub-rules in such a manner that there might be no prescribed period for disposal of applications and the State Government be in a position to pass orders on them at any time. At the same time, the explanation appended to rule 54 will be so amplified, the Ministry have assured, that if the application for grant of prospecting licence or mining lease or renewal of such licence or lease is not disposed of within the period of 9 months and 90 days respectively, the applicant might file a review application with the Central Government so that the State Government could be pressed for taking early decision on such applications.

The Committee note the assurance given by the Ministry. See Note 7
1.73
10A

Rules 11(3) and 28(5):

12. These rules provided that the State Government while granting renewal of prospecting licence or mining lease could, for reasons to be recorded in writing, reduce the area applied for. It was felt that such reasons ought to be communicated to the applicant.

13. The Committee note that the Ministry have amended the rules accordingly (see G.S.R. 1133 of 1961).

Rule 27(1) (c):

14. Under proviso to rule 27(1)(c) the lessee is liable to pay dead rent or royalty in respect of each mineral whichever is higher in amount. It was felt that a provision should have been made in the rules to the effect that in case the renewal of a mining lease was delayed by the Government without any fault of the lessee and if the lease was subsequently granted with retrospective effect, the lessee should not be required to pay dead rent for the retrospective period during which the leased area could not have been worked.

15. The Ministry on a reference to them, have stated that sub-rule (1) of rule 28 lays down that the lessee shall submit his application for renewal of lease at least 6 months in advance of the date of expiry of the lease and the State Government shall pass orders on the renewal application within 3 months from the date of receipt of renewal application. Normally, therefore, the Ministry have added, there should be no occasion in which the contingency visualised by the Committee on Subordinate Legislation could arise, however, to safeguard the interest of the lessee in few exceptional cases where the State Government might delay the disposal of applications for renewal, the Ministry have assured that they would incorporate a suitable clause in the Mineral Concession Rules, 1960 to the effect, that in case an application for renewal is not disposed of by the State Government by the date the original lease expires, the lease will automatically get extended till such date on which the State Government finally passes orders on the renewal application. By making such a provision in the Mineral Concession Rules, the lessee will continue to be in occupation of the area and to work it. When the leasehold continues to be in possession of the lessee and he continues to work it, the lessee should be made liable to pay dead rent as well as surface rent for the intervening period between the date on which the lease expires and the date on which renewal is actually granted or refused by the State Government.

The Committee note the assurance given by the Ministry.

Rule 38:

16. This rule laid down that arrangement should be made for survey and demarcation of the area granted under a lease, but who should make these arrangements was not specifically indicated therein.

17. The Committee note that on a reference to them the Ministry have amended the rules by specifying the authority, viz., the State Government who shall make such arrangements. (See G.S.R. 1133 of 1961).

Rule 37:

18. Under this rule the transfer of a mining lease can be affected only with the previous consent of the State Government and in respect of certain specified minerals such consent cannot be given without obtaining previous approval of the Central Government. It was felt that some time limit ought to have been specified in the rules within which the State Government would obtain the required consent from the Central Government so that applicants may not be kept in suspense for long.

19. The Ministry on a reference being made to them have stated that it is not proposed, as suggested, to lay down any prescribed time limit within which the State Government might be required to pass orders on an application for transfer of mining lease. At the same time, the Ministry have added, it will be provided in the explanation appended to rule 54 that the applicant who applies for transfer of lease might come in review to the Central Government if his application for transfer is not disposed of by the State Government within 9 months and that the period would also apply to applications for transfer of mining leases for scheduled minerals.

20. The Committee note the reply given by the Ministry. In this connection, the Committee also take note of the assurances given by the Minister of Mines and Oil, while replying to the debate in the House on the motions for modification of Mineral Concession Rules, 1960, on the 6th September, 1961, to reconsider the rules and amend them in the light of the discussion. (vide Lok Sabha Debates, dated the 6th September, 1961, Cols. 7497—7566).

IV

THE DELHI MUNICIPAL CORPORATION (AMENDMENT) BILL, 1961.

21. Clause 19 of the Delhi Municipal Corporation (Amendment) Bill, 1961, as introduced in the Lok Sabha, substituted sub-section (2) of section 479 of the principal Act relating to the laying of rules made under the Act before Parliament. The proposed sub-section (2) of section 479 read 'Every rule made under this section shall be

laid as soon as may be after it is made, before each House of Parliament. . . . ' which in effect meant that rules made under section 479 only were required to be laid before Parliament and not the rules made under any other section of the Act. In fact section 479 did not confer any rule-making power on the Government. All it provided was to prescribe penalty for contravention of the rules made under the Act and that the rules made under the Act should be laid before Parliament for not less than 30 days before each House of Parliament. The actual rule making power was delegated under various other sections of the Act. The Committee note that, in order to remove the anomaly, an amendment seeking to substitute the word 'Act' for the word 'section' was moved by a member of the Committee and adopted by the House on the 6th September, 1961, when the Bill was taken up for clause by clause consideration.

V

THE IMPORTED TOURIST CARS (CONTROL) ORDER, 1961 (S.O. 352 OF 1961)—RETROSPECTIVE EFFECT

22. The Imported Tourist Cars (Control) Order, 1961, published in the Gazette of India, dated the 11th February, 1961, was given retrospective effect from the 28th January, 1961 [*vide* clause 1(3) thereof]. Section 18G of the Industries (Development and Regulation) Act, 1951, under which the Order was issued did not empower the Government to give it retrospective effect.

23. The Ministry of Transport and Communications (Department of Tourism) to whom the matter was referred stated that it was not the intention to give the Control Order a retrospective effect and that due to delay in despatch the said Order could not be published in the Gazette on the date when it was to come into force. The Ministry, however, have assured to omit clause 1(3) of the said Order pertaining to the date of its enforcement, so that it would come into force on the date of its publication in the Gazette.

The Committee note the assurance given by the Ministry.

VI

DEFECTS IN 'ORDERS'

(a)

Amendment in the Ministry of Food and Agriculture Notification No. 3-41/58-Com III, dated the 7th October, 1958 (S.O. 560 of 1961)

24. S.O. 560 of 1961 amending the notification referred to above did not contain the statutory authority under which it was issued nor did it contain adequate reference to the original notification *viz.* the 'Order' number, date and the part of the Gazette in which it was published. It was, therefore, not possible to know the authority under which the amendment was made nor could the original notification be located easily.

25. On a reference being made the concerned Ministry of Food and Agriculture (Department of Agriculture) have intimated that the notification was issued in exercise of the powers conferred by section 9 of the Indian Lac Cess Act, 1930 and have assured that in future the recommendation of the Committee relating to citation of exact statutory authority and giving of adequate references to the original rules in the amending 'Orders' will be kept in view.

The Committee note the reply given by the Ministry.

(b)

The Central Cost Accounts Pool (Recruitment and Conditions of Service) Rules, 1961 (S.O. 1935 of 1961)

26. Rule 3 of the above Rules which were issued under proviso to Article 309 of the Constitution provided that the Central Cost Accounts Pool would consist of all posts, whether permanent or temporary, of the grades and categories mentioned in Schedule I appended to the rules. It was noted that the said Schedule had not been published without which the rules were incomplete. The Committee note that the Ministry of Finance whose attention was drawn towards the matter, have re-published the rules under S.O. 2363 of 1961 incorporating the missing Schedule I.

(c)

The Jute Grading and Marking Rules, 1961 (S.O. 1380 of 1961)

27. The preamble to the Jute Grading and Marking Rules, 1961, as published under S.O. 1380, dated the 17th June, 1961, did not cite the proper authority under which the said rules had been made. The Committee note that the Ministry of Food and Agriculture, whose attention was drawn, have corrected the preamble thereto by issuing the necessary corrigendum under S.O. 2013 of 1961.

(d)

The Kandla (Limitation of Powers and Duties) Rules, 1961 (S.O. 555 of 1961)

28. The above mentioned rules published under S.O. 555 of 1961 were made under section 9 of the Sea Customs Act, 1878, which authorises the Chief Customs Authority (the Central Board of Revenue) to prescribe and limit the powers and duties of Officers of Customs, but the short title "The Kandla (Limitation of Powers and Duties) Rules, 1961" was not adequately indicative of the subject matter of the rules.

29. The Committee note that on a reference having been made the Ministry of Finance (Central Board of Revenue) have amended the short title to read "The Kandla (Limitation of Powers and Duties of Customs Officers) Rules, 1961" which now adequately indicates the subject matter of the rules. (vide S.O. 2138 of 1961).

(e)

The Safdarjung Hospital and the Willingdon Hospital and Nursing Home (Non-Medical Gazetted Posts) Recruitment Rules, 1960 (G.S.R. 364 of 1961)

30. The short title given to the above noted rules described them as of "1960" although the rules were published in March, 1961. Further in the Schedule appended to the rules asterisks were used against serial numbers 1, 3 and 4 under column 6 thereof without giving any indication as to what those asterisks stood for.

31. The Committee note that on being pointed out to the Ministry of Health, the short title has been amended to describe the rules as of "1961", the year in which the rules were published and the asterisks have also been removed. (Vide G.S.R. 1168 of 1961).

VII

ACTION TAKEN OR PROPOSED TO BE TAKEN BY GOVERNMENT ON VARIOUS RECOMMENDATIONS OF AND ASSURANCES GIVEN TO THE COMMITTEE ON SUBORDINATE LEGISLATION

32. The Committee have considered the replies sent by the Government in respect of the action taken or proposed to be taken by the Government on various recommendations of and assurances given to, the Committee.

33. The recommendations/assurances which have been accepted/implemented are given in Appendix I. The recommendation in respect of which, the Government have given their own views and the same have been accepted by the Committee is given in Appendix II together with the views of the Government.

NEW DELHI;

The 7th December, 1961.

Agrahayana 14, 1883 (Saka).

HUKAM SINGH,

Chairman,

Committee on Subordinate Legislation.

APPENDIX I

(See para 33)

Recommendations/assurances that have been accepted/implemented by Government.

Serial No.	Ref. to para No. of the Report	Summary of recommendation/assurance	Gist of Government's reply
1	2	3	4
1	FIRST REPORT (Second Lok Sabha) 55—62	Government should not provide by Rules imposition of penalty beyond the statutory provisions contained in Section 283 of the Cantonments Act, 1924. Accordingly Bye-law 34(2) of the Ambala Cantonment Bye-laws for the Regulation of the collection and recovery of Octroi (without refund) should be suitably amended.	This has been done (vide S.R.O. 153 of 1961).
2	FOURTH REPORT (Second Lok Sabha) 12—15	(i) The Committee note the assurance given by the Ministry of Labour and Employment to amend proviso to regulation 8(i)(a) of the Coal Mines Regulations 1957 as published under S.R.O. 3419 of 1957 which contained an unusual provision in so far as it required the owner of a coal mine to intimate to the Chief Inspector and Regional Inspector any change which might occur in the membership of firm or other association of individuals of which the owner was a member. (ii) The Committee note the reply of the Ministry to the effect that regulation 13(4) of the Coal Mines Regulations 1957 would be suitably amplified to enable the Board of Mining Examinations to make bye-laws providing for the quorum, mode of arriving at final decisions etc.	These assurances have been implemented (vide G.S.R. 1014 of 1961).
3	FIFTH REPORT (Second Lok Sabha) 34	Ordinarily rules should be framed under an Act as soon as possible after the commencement of the Act and in no case this period should exceed six months. If no rules are framed within a reasonable period after the commencement of the Act the Committee will take up the matter with the Ministry concerned and report to the House the cases where it is felt that undue delay has occurred in framing the rules.	Subject to the statutory requirements of previous publication every effort will be made to ensure that rules are framed as expeditiously as possible.
	SIXTH REPORT (Second Lok Sabha) Appendix IV		

On further representation made by the Government the Committee observed :—

“The Committee do not consider it necessary to modify the existing recommendation as in every case of delay clarification from the Ministry will be sought and thereafter if it is felt that there has been undue delay in framing the rules the delay will be reported to the House.”

4 SEVENTH REPORT
(Second Lok Sabha)

The Metalliferous Mines Regulations under the Mines Act, 1952 ought to be issued without further delay.

Regulations have been issued (G.S.R. 337 of 1961) [D.P.A. O.M. No. SRVII (39-41) CB/60 dated the 25th October, 1961.]

41

5 TENTH REPORT
(Second Lok Sabha)

Since the Schedule to the Ministry of Defence Library [Class II (Gazetted) Non-Ministerial] Recruitment Rules, 1960, constitutes the substantive part of the rules, it should be published in the Gazette.

The rules have been published afresh (S.R.O. 256 of 1961) [D.P.A. O.M. No. SRX, (23-25) CB/61 dated the 24th October 1961].

6 ELEVENTH REPORT
(Second Lok Sabha)

In spite of the fact that adverse entries are communicated to the persons concerned it will be still desirable to inform the applicant in writing that because of “adverse remarks already communicated to him” his application for permission to appear in the competitive examination under the Telegraph Engineering Service (Class I) Rules, 1960 has been withheld.

In future the applicants will be informed of the reasons in general terms for withholding their respective applications. [Ministry of Transport and Communications (Deputy of Communications and Civil Aviation P&T Board) O.M. No. 5/4/59-STA dated the 27th July, 1961].

7 12—13

The Committee note the assurance given by the Ministry of Defence to omit the condition from the declaration required to be made under bye-law 9 of the Bye-laws for the provision of Culverts and Pavements in Shahjahanpur Cantonment, as amended by S.R.O. 251 of 1960 by an applicant seeking permission to construct a culvert/pavement, to the effect that the licence shall be terminable by the Central Government/Cantonment Board at any time without any previous notice to him.

Necessary amendment in the declaration form referred to in bye-law 9 has since been made. The Cantonment Board will now have to give 30 days notice to the applicant, before termination of his licence (vide S.R.O. 274 of 1961).

8 TWELFTH REPORT
(Second Lok Sabha)

The Ministry of Defence should follow the same procedure in numbering the ‘Orders’ as followed by other Ministries. The date of issue of an ‘Order’ may be given at the top of each ‘Order’

Accepted.
[D. P. A. O.M. No. SRXII (8-10) 61-CB dated the 23rd November, 1961].

instead of putting it in juxtaposition to the 'order' numbers. The 'orders' published in the Gazette each calendar year should be assigned fresh serial numbers and not be in continuation of the serial numbers of the previous year.

9 20—21

The Committee note the assurance given by the Ministry of Defence that the word "draft" occurring in the preamble to S.R.O. 115 of 1961 containing amendments to the Bye-laws of St. Thomas Mount-cum-Pallavaram Cantonment for regulation or prohibition of the use or occupation of any street or public place by itinerant vendors or by other persons, would be deleted as it made the preamble ambiguous.

This has since been done (*vide* S.R.O. 269 of 1961).

[D.P.A. O.M. No. SRXII (20-21) CB 61
dated the 28 November, 1961]

APPENDIX II

(See para 33)

Recommendation in respect of which Government's views have been accepted by the Committee

Serial No.	Ref. to para No. of the Report	Summary of recommendation	Gist of Government's reply	Comments of the Committee
1	2	Whenever 'orders' are laid on the Table after an inordinate delay, an explanatory note giving the reasons for such delay should be appended to the 'Order' when so laid.	3	4
✓1	SIXTH REPORT (Second Lok Sabha) 29	Whenever 'orders' are laid on the Table after an inordinate delay, an explanatory note giving the reasons for such delay should be appended to the 'Order' when so laid.	Government are of the general opinion that reasons for delay should not be appended to the rules when these are laid on the Table of the House. The Government, however, agree that since the purpose behind the recommendation is to pinpoint particular cases of delay the purpose should be served by the Committee on Subordinate Legislation being informed about the reasons in suitable cases. In cases where the explanation offered by a Ministry may be unsatisfactory the Committee would 'as in the past' bring such cases to the notice of the Lok Sabha through their periodical reports.	Although the Committee would have preferred the procedure recommended yet they would accept the Government suggestion for the present by way of an experiment for some time to see whether it works well.
		Special efforts are being made by the Department of Parliamentary Affairs to ensure that there is no delay in the laying of rules and 'Orders' on the Table of the House. The Minister of Parliamentary Affairs has personally taken special interest in impressing upon them the urgency and importance of avoiding such delay.		

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This recommendation may be modified to the extent that explanation for delay may be submitted by the Government to the Committee instead of being appended to the rules and 'Orders' laid on the Table of the House.

[D.P.A. O.M. No. SRVI (28-29)/CB/59
Dated the 29th September, 1961]
