

**COMMITTEE ON SUBORDINATE
LEGISLATION**

THIRD REPORT

(THIRD LOK SABHA)

(Presented on the 21st April, 1964)



**LOK SABHA SECRETARIAT
NEW DELHI**

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COMPOSITION OF COMMITTEE ON SUBORDINATE LEGISLATION (1963-64)

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SECRETARIAT

Shri A. L. Rai—*Deputy Secretary*.

I

INTRODUCTION

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

2. Subsequent to the presentation of the Second Report, the Committee have held three sittings and considered 1249 'Orders'. The Committee considered and adopted this Report at their sitting held on the 15th April, 1964.

3. Observations of the Committee on matters which arose 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.

II

THE PORT OF BOMBAY PASSENGER BOATS RULES, 1962

(G.S.R. 1628 of 1962)

4. The Port of Bombay Passenger Boats Rules, 1962, were made by the Central Government under section 6(1)(k) of the Indian Ports Act, 1908.

Rule 12

5. Rule 12 of the aforesaid rules confers power on the Deputy Conservator who may in his discretion refuse to grant a license for keeping or letting for hire a boat in the Bombay Port to any applicant whom he may consider, on account of age, bad character, or for any other reason, unfit to be entrusted with the same. It was felt that the phrase "for any other reason" was liable to be very widely interpreted and it might lead to arbitrary exercise of discretionary powers by the Deputy Conservator, especially in the absence of any provision in the rules requiring him to record the reasons for refusal to grant a license and to communicate the same to the applicant. It was, therefore, pointed out to the concerned Ministry of Transport and Communications that there might be a specific provision in the rule that the reasons for refusal should be recorded in writing and communicated to the applicant.

6. In their reply, the Ministry have stated that the power of the Deputy Conservator has been very rarely used in this connection and it has never been misused in the past. It is impossible, the Ministry add, to foresee the other reasons which may crop up, as for instance, permitting the vessel to be used for smuggling, continued obstruction of water-side steps, or cutting across bows of ocean-going ships within Dock Channels, going alongside ships in quarantine, tankers at Butcher Island, ships with explosive and dangerous cargo on board, and also any other important reason. The Ministry consider that the phrase as it stands is a deterrent against such acts. The Ministry have, however, assured that, if necessary, the Deputy Conservator could be required to record the reasons for refusing to grant a licence, on the analogy of the first proviso below Rule 14.

7. The Committee have considered the matter and recommend that, at least, a provision should be made in rule 12 that the reasons for refusal to grant a license should be put on record.

Rules 12, 14 and 15

8. There is no provision for appeal against the orders of the Deputy Conservator refusing to grant a license under rule 12 or against the orders under rules 14 and 15 refusing to renew or suspending or revoking a licence. It was felt that provision for appeal to some higher authority against all such orders of the Deputy Conservator should have been made in the rules.

9. On being pointed out, the Ministry have stated that it is inadvisable that the easy method of resisting an order by appeal should be permitted lest it may lead to chaos and indiscipline among the launch operators. Very rarely the boat licenses have been suspended in Bombay. The Ministry have also stated that when statutory powers are conferred on an executive authority, it is to be presumed that the Legislature had sufficient confidence in the discretion of that authority and no provision for any appeal is usually made.

10. The Committee are of the view that the mere fact of delegation of legislative power to the Executive does not, by itself, dispense with the need of making salutary provisions for notice, hearing and appeal in licensing orders. The Committee feel that by making a provision in the rules for appeal against the orders, especially under rules 14 and 15, refusing to renew or suspending or revoking a license, the aggrieved party would have a feeling of justice and fair-play and if the parties concerned make use of such a right, it should not be treated as a factor leading to chaos and indiscipline when the need for suspending a license, as stated by the Ministry, very rarely arises.

11. The Committee recommend that a provision for allowing appeal to some higher authority against the orders passed, especially under rules 14 and 15 should be made in the rules. There is no reason why such a provision should not be made in these rules when similar rules applicable to Harbour Crafts in the Ports of Cochin, Kandla, Madras and Vizagapatam provide for appeal against all orders of the licensing officers.

Rule 30

12. Rule 30, without providing for any conditions, such as the existence of a request made by a *bona fide* passenger, requirement of public purpose or emergency etc. for a boat, merely confers on "a police officer", irrespective of his rank, the power to require any licensee to ply his boat for hire. Section 6(1) (k) of the parent Act specifically lays down that the rules may be made *inter alia* for "the conditions under which such vessels shall be compelled to ply for hire". It was brought to the notice of the Ministry that the rule did not conform to the provisions of the parent Act. The Ministry have agreed to lay down in the rule the contingencies such as refusal by a licensee to ply his boat, with small number of passengers or, unless he was paid in advance a larger sum than scheduled etc.

The Committee note the assurance given by the Ministry.

III

THE DOCK WORKERS (SAFETY, HEALTH AND WELFARE) SCHEME, 1961

(S.O. 1540 OF 1961)

13. The Dock Workers (Safety, Health and Welfare) Scheme, 1961 was made under section 4(1) of the Dock Workers (Regulation of Employment) Act, 1948.

14. Under clause 5(2) of the said Scheme if any medical practitioner, attending on a dock worker who is suffering from any of the diseases listed in Schedule I of the Scheme, fails to send the particulars about the patient and the disease to the Chief Adviser, Factories, Ministry of Labour and Employment, New Delhi, he would be liable to fine which may extend upto Rs. 50.

15. The clause, as it is worded, appeared to be defective inasmuch as a medical practitioner could be held liable even if he did not know that the person suffering from a disease mentioned in the schedule was a dock worker. It was also not clear whether these penal provisions had been specifically brought to the notice of medical practitioners.

16. On a reference, the concerned Ministry of Labour and Employment have stated that the relevant provisions of the scheme were brought to the notice of the Port Health Officers in the major ports of Bombay, Calcutta, Madras, Cochin, Vizagapatam and Kandla by the directorate General of Health Services, and that the maritime State Governments had also been requested by the Ministry to supply the relevant extracts of the scheme to the State Medical Councils for bringing them to the notice of the registered medical practitioners.

17. The Ministry have further stated that it is usual for the medical practitioners to enquire about his age and occupation from a patient, and like any other patient a dock worker can also be expected to furnish this information to the medical practitioner. However, it may not be possible, the Ministry add, to take any action against a medical practitioner for his failure to send the requisite information to the Chief Adviser, Factories, unless it can be proved that he had wilfully suppressed it.

18. Having considered the clarification given by the Ministry of Labour and Employment, the Committee feel that it may be ^{made} clear in the scheme itself that a medical practitioner will be liable on wilful suppression of information which is required under the said clause 5(2).
..

IV

THE CENTRAL MANUFACTURED DRUGS RULES, 1962

(G.S.R. 1259 of 1962)

19. The Central Manufactured Drugs Rules, 1962, were issued under section 6(2) of the Dangerous Drugs Act, 1930.

20. Condition (12) of Form A regarding licence for the manufacture of medicinal hemp appended thereto provides that in case of breach of any of the conditions of the licence, the Chief Excise Authority may cancel or suspend the licence or in lieu thereof impose a penalty not exceeding one hundred rupees. A similar provision is found in condition (23) of Form B of the rules regarding licence for the manufacture of pethidine. It was noticed that whereas a right of appeal against an order made under condition (23) of Form B by the licensing authority to the Central Board of Revenue had been provided for in that Form, the same had not been provided for under Form A.

21. On a reference, the Ministry of Finance (Deptt. of Revenue) have stated that the Central Manufactured Drugs Rules, 1962, are a

fresh set of rules replacing the old Central Manufactured Drugs Rules, 1934 and the main feature of the new Rules is that they authorize the manufacture of pethidine preparations while the manufacture of medicinal hemp was allowed under the old Central Manufactured Drugs Rules, 1934. The Ministry have further stated that the preparation of Indian hemp is virtually obsolete and consequently the rule regarding it has been retained as in the past.

22. The Committee do not agree with the Ministry's view and feel that so long as there is a provision regarding preparation of Indian hemp under the new rules, it is an incongruity in the rules that a right of appeal is given to the aggrieved persons against the orders of the licensing authority in connection with the licence for the manufacture of pethidine but denied in the case of manufacture of medicinal hemp.

The Committee recommend that a right of appeal against the orders of the licensing authority should be provided for in Form A also.

V

THE INDIAN INSPECTION SERVICE (CLASS I—RECRUITMENT BY COMPETITIVE EXAMINATION) RULES, 1963 (G.S.R. 142 OF 1963)

Rule 3(2) (a)

23. Rule 3(2) (a) of the Indian Inspection Service (Class I—Recruitment by Competitive Examination) Rules, 1963, which were made in pursuance of rule 11 of the Indian Inspection Service (Class I) Rules, 1961, contained a reference to "payment of the fee referred to above" but there was no mention of any fee in the rules preceding that rule. The correct reference should have been to the fee referred to in rule 4(iv) thereof.

24. The Committee note that, on being brought to the notice of the concerned Department of Supply, necessary corrections have been made in the rules by a Gazette notification published with G.S.R. 708 of 1963.

Rule 7(i)

25. Rule 7(i) lays down that the candidates who obtain minimum qualifying marks in the written examination fixed by the Union Public Service Commission shall be summoned by the Commission at their own discretion for interview for a personality test. It was felt

that conferring of discretionary powers on the Commission to pick and choose the candidates for personality test from among the candidates who have secured the minimum qualifying marks, already fixed by the Commission, was not reasonable in the absence of any provision in the rules requiring U.P.S.C. to lay down standards in writing for further elimination of candidates, in case any such necessity arose.

26. On being pointed out, the Department of Supply, after consulting the Ministry of Home Affairs and the U.P.S.C., have informed the Committee that a suitable amendment to the said rule 7(i) will be made at the time when the rules are republished before the next Engineering Service Examination is conducted by the U.P.S.C.

The Committee note the assurance given by the Ministry.

VI

LEVY OF FEE NOT AUTHORISED BY AN ACT OF PARLIAMENT

(a)

Bye-laws for Regulating the Construction and Maintenance of Domestic Water Connections in R.A. Bazar, Roorkee Cantonment
(S.R.O. 25 of 1961)

27. Bye-laws 2, 12(1) and 18 of the above-mentioned bye-laws provided for levy of fees by the Cantonment Board for applying for water connection, inspection of water connection and for permission to construct storage tanks etc. Clauses (33) and (34) of section 282 and section 283 of the Cantonments Act, 1924, under which the bye-laws had been made, did not authorise the Cantonment Board to levy fees.

28. The Committee note that on being brought to the notice of the Ministry of Defence the bye-laws in question were superseded by fresh bye-laws omitting the provisions relating to fees. (See S.R.O. 210 of 1962, as amended by S.R.O. 197 of 1963).

(b)

Bye-laws for the Registration of Births, Deaths and Marriages and the Taking of the Census Made by the Cantonment Board, Babina
(S.R.O. 383 of 1961)

29. Bye-law 1(2) of the above-mentioned bye-laws provided inter alia that a fee of rupee one would be charged for the registration of every marriage. Sections 282(1) and 283 of the Cantonments Act, 1924, under which these bye-laws were made, did not authorise the Cantonment Board to levy such fee.

30. The Committee note that on being brought to the notice of the Ministry of Defence, the said bye-law 1 (2) has been amended to indicate that no fee will be charged thereunder for the registration of any marriage. (See S.R.O. 156 of 1963).

VII

AMBIGUITIES IN 'ORDERS'

(a)

- (i) The Registrar of Newspapers for India (Accounts Clerk) Recruitment Rules, 1962 (G.S.R. 1761 of 1962) and the Press Information Bureau (Accountants) Recruitment Rules, 1962 (G.S.R. 1681 of 1962).
- (ii) The Ferroprinters (P. & T. Deptt.) Recruitment Rules, 1962 (G.S.R. 1495 of 1962).
- (iii) The Director General of Supplies and Disposals (Field Officer) Recruitment Rules, 1962 (G.S.R. 979 of 1962).

31. The above-mentioned rules, as published in the Gazette of India, did not contain the schedules in which the method of recruitment and other connected matters were to be specified. The rules as such were incomprehensible.

32. The Committee note that on being brought to the notice of the respective Ministries of Information and Broadcasting, Transport and Communications and Works, Housing and Supply (Department of Supply), the requisite schedules were published in the Gazette (*vide* G.S.Rs. 595 and 358 of 1963 and G.S.Rs. 1754 and 1755 of 1962, respectively).

(b)

Amendment in the Indian Post Office Rules, 1933 (S.O. 1235 of 1962)

33. S.O. 1235 of 1962, inserting a new rule 225 in the Indian Post Office Rules, 1933, was issued under sections 25 and 74 of the Indian Post Office Act, 1898 and was published in the Gazette of India, dated the 28th April, 1962. It was noticed that the same amendment had already been issued under S.O. 1936 of 1960. The Posts and Telegraphs Board, when their attention was drawn to it, replied that the amendment was printed a second time under some misapprehension.

34. The Committee note that the subsequent S.O. 1235 of 1962 has been cancelled through a corrigendum published with S.O. 2709 of 1962.

(c)

The Official Language (Legislative) Commission (Class I Posts) Recruitment Rules, 1962 (G.S.R. 508 of 1963)

35. The above-mentioned rules were made under the proviso to Art. 309 of the Constitution of India and published in the Gazette of India, Part II, Sec. 3(i), dated the 23rd March, 1963. These rules, though published in 1963, were referred to as of 1962 in rule 1 thereof.

36. The Committee note that on being brought to the notice of the Ministry of Law, the mistake has been rectified by the Ministry by a notification published with G.S.R. 1170 of 1963.

VIII

NON-CITATION OF SPECIFIC STATUTORY AUTHORITY IN PREAMBLES TO THE RULES

37. The National Cadet Corps (Amendment) Rules, 1963 (S.R.O. 16 of 1963) and amendments to the Coir Industry (Registration and Licensing) Rules, 1958 (G.S.R. 1243 of 1961) were issued by the Ministry of Defence and the Ministry of Commerce and Industry, respectively, but the specific sections of the parent Acts under which the rules were made were not cited in the preambles to the said rules.

38. The Committee note that, on being pointed out, the Ministries concerned have rectified the omissions by Gazette Notifications published with S.R.O. 261 and G.S.R. 255 of 1963, respectively.

IX

ABSENCE OF PROVISION IN THE BILLS REQUIRING THE SCHEMES MADE THEREUNDER TO BE LAID BEFORE THE HOUSES

39. The Emergency Risks (Goods) Insurance Bill, 1962, the Emergency Risks (Factories) Insurance Bill, 1962 and the Personal Injuries (Emergency Provisions) Bill, 1962, as introduced in Lok Sabha, empowered the Central Government to frame schemes to provide for matters enumerated therein but there was no provision in the Bills requiring such schemes to be laid before the Houses.

40. The Committee note that amendments to the Bills to provide for the laying of the schemes before the Houses of Parliament and modification thereof were moved by the Members and adopted by the House (vide L.S. Deb., dt. 7-12-1962, cc. 4821-22; dt. 7-12-1962, cc. 4827-28; and dt. 6-12-1962, cc. 4707-09, respectively).

IMPLEMENTATION OF RECOMMENDATION OF COMMITTEE ON SUBORDINATE LEGISLATION—PARAS 17-24 OF EIGHTH REPORT (SECOND LOK SABHA)

41. Rule 98 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956, which laid down the procedure to be followed before recording votes in an election by the members of Legislative Assemblies to fill seats in Rajya Sabha or State Legislative Councils, was amended by G.S.R. 433 of 1959. The rule as amended (now re-incorporated in rule 70 of the Conduct of Election Rules, 1961, as amended by S.O. 965 of 1962) provides that instead of merely marking the list of electors on delivery of ballot paper, the serial number of the ballot paper delivered to the elector would be put down against his name.

42. The Committee on Subordinate Legislation (Second Lok Sabha), after considering the views of the Ministry of Law, had recommended (Para 24, Eighth Report, Second Lok Sabha) that the said rule 98 be restored as it stood before it was amended by G.S.R. 433 of 1959; otherwise, the new procedure for entering the serial number of the ballot paper against the name of the voter in the electoral list could lead to violation of secrecy of votes.

43. By way of further clarification about introduction of the new procedure, the Government have stated that originally the ballot paper for elections to fill seats in the Council of States and Legislative Councils contained a counterfoil in which the name of the electors to whom any particular ballot paper was issued used to be noted. The serial number of the ballot paper was printed on both the counterfoil and the outerfoil. With a view to simplify the form and also to reduce the cost of printing, the counterfoil was dispensed with and the form of the ballot papers was completely revised in 1957. Then, as well as now, the document containing the names of the electors and the serial numbers of the ballot papers issued to them are sealed immediately after the poll and cannot be opened except under the orders of a competent court.

44. In support of the new procedure, the following points have been advanced by the Government :—

- “(1) Such a procedure obtains in respect of elections to Legislative Councils from Council Constituencies and there has

been no complaint about violation of the secrecy of the vote even in elections from local authorities constituencies where the electorate is comparatively small.

- (2) The fact that there has been no occasion in the past for using the information about the serial numbers of ballot papers issued to electors cannot be advanced as an argument for doing away with a procedure which has stood the test of time.
- (3) Even in the United Kingdom, where there has not been any election petition in recent times, the procedure of noting down the name of the elector in the counterfoil on which is printed the serial number of the ballot paper continues even today.
- (4) That there is likely to be no violation of the secrecy of the votes and that the special precaution provided in rule 98(3) [now rule 70, 38A (1B) of the new Conduct of Election Rules] for concealing the serial number of the ballot paper at the time of giving it to the elector effectively safeguards the secrecy of the vote.
- (5) On the other hand, the information about the serial number of the ballot paper issued to the elector may be very useful in the disposal of election petitions and may even avoid unnecessary bye-elections where the allegation is only about the reception of a vote which is void."

45. The Committee have considered the further clarification and the arguments advanced in favour of the new procedure by the Government. The Committee feel that the original procedure as it existed in the first instance was more conducive to secrecy and should be restored even if it involved a little extra expense.

NEW DELHI;
The 15th April, 1964.
 Chaitra 26, 1886 (Saka).

S. V. KRISHNAMOORTHY RAO,
 Chairman,
 Committee on Subordinate Legislation.

SUMMARY OF RECOMMENDATIONS MADE BY, AND ASSURANCES GIVEN TO, THE COMMITTEE ON SUBORDINATE LEGISLATION (THIRD LOK SABHA)

(Third Report)

S. No.	Reference to para No. of the Report	Summary of Recommendations/ assurances
(1)	(2)	(3)
1	7	A provision should be made in rule 12 of the Port of Bombay Passenger Boats Rules, 1962 (G.S.R. 1628 of 1962) that reasons for refusal to grant a licence thereunder should be put on record.
2	11	A provision for allowing appeal to some higher authority against the orders passed, especially, under rules 14 and 15, should be made in the Port of Bombay Passenger Boats Rules, 1962.
3	12	The Committee note the assurance given by the Ministry of Transport and Communications that a provision will be made in rule 30 of the Port of Bombay Passenger Boats Rules, 1962, to lay down the contingencies such as refusal by a licensee to ply his boat, with small number of passengers, or unless he was paid in advance a larger sum than scheduled etc. in order to bring the rule in conformity with sec. 6(1) (k) of the Indian Ports Act, 1908.
4	18	It should be made clear in the Dock Workers (Safety, Health and Welfare) Scheme, 1961 (S.O. 1540 of 1961) itself that a medical practitioner shall be liable for punishment only on wilful suppression of information which is required under clause 5(2) of the said Scheme.

(1)	(2)	(3)
5	22	A right of appeal against the orders of the licensing authority made under condition (12) of Form A appended to the Central Manufactured Drugs Rules, 1962 should be provided for in that Form also.
6	26	The Committee note the assurance given by the Department of Supply that a suitable amendment to rule 7(i) of the Indian Inspection Service (Class I—Recruitment by Competitive Examination) Rules, 1963 regarding discretionary powers of the U.P.S.C. for calling the candidates for interview for a personality test will be made at the time when the rules are republished before the next Engineering Service Examination is conducted by the U.P.S.C.
7	45	The original procedure regarding issue of ballot papers before recording votes in an election by the Members of the Legislative Assemblies to fill seats in Rajya Sabha or State Legislative Councils as it was provided for in rule 98 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956, was more conducive to secrecy and it should be restored even if it involved a little extra expense.