

**COMMITTEE  
ON  
SUBORDINATE LEGISLATION**

**(SIXTH LOK SABHA)**

**FOURTH REPORT**

**(Presented on the 22nd December, 1977)**



**LOK SABHA SECRETARIAT,  
NEW DELHI**

**December, 1977 / Pausa, 1899 (Saka)**

**Price : Rs. 2.60**

Corrigenda to the Fourth Report of Committee  
on Subordinate Legislation (Sixth Lok Sabha)  
(Presented on the 22nd December, 1977)

<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
(i)	Item III	2	Ruler	Rules
2	heading	2	1273	1973
	5	19	on	an
	5	22	exereised	exercised
	6	6	Generral	General
3	7	33	purpoes	purport
4	9	15	employees	employees
		18	2447	2427
		18-19	operation	operation
		19	Displacd	Displaced
5	12	4	incorporated	incorporated
		11	<u>intera</u>	<u>inter</u>
6	13	3	instute	institute
9		10	of	or
		12	of	or
		13	objection	objections
	21	4	Rules	Rule
	22	7	this	his
		15	on	of
11	27	5	Scheme	Schemes
12		15	Incidently	Incidentally
	30	7	Scheme	Schemes
13	33	1	with to	with
	34		pursured	pursued
20	heading	1	Orders	Order
	48	5	petroleum	Petroleum
			products	Products
22	55	1	proceedings	Proceedings
24		1	1975	1957
		5	procedure	procedure
25	63	8	desires	desire
26	heading	2	Rule —	Rules.
26	Footnote	4	cotegories	categories
31	77	5	Gazettee	Gazette
		8	regulator	regulation

<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
31	77	14	Environment	Environmental
32	(ii)	31	aslo	also
		32	amendment	amendments
34	81	9	responsibrility	responsibility
35	8	3	Employees's	Employees'
37		19	effect	affects
40		2		
	(from bottom)		43	45
42	59	10	1975	1957
44	78	18	or any	on any
45	81	12	Ministries	Ministries/
53	heading	1	Liquid	Liquidation
	3	15	expects	expected
	5	6	Verma	Varma
		7	1975	1957
57		1	a	an
	7	7	of penalty	or penalty
	heading(ii)	1	Prevented	Prevention
58	12 (ii)	1	of	or
		2	or	of
59	23	2	112	12

---

<u>Line</u>	<u>For</u>	<u>Read</u>
14	Environment	Environmental
31	aslo	also
32	amendment	amendments
9	responsibrility	responsibility
3	Employees's	Employees'
19	effect	affects
2		
bottom)	43	45
10	1975	1957
18	or any	on any
12	Ministries	Ministries/
1	Liquid	Liquidation
15	expects	expected
6	Verma	Varma
7	1975	1957
1	a	an
7	of penalty	or penalty
1	Prevented	Prevention
1	of	or
2	or	of
2	112	12

---

# CONTENTS

		para No.	Page No.
	Composition of the Committee . . . . .		(iii)
	<b>REPORT</b>		
I.	INTRODUCTION . . . . .	1—4	1
II.	The Employees' State Insurance Corporation (General Provider Fund) Rules, 1973 (G.S.R. 1204 of 1973) . . . . .	5—13	2
III.	The Delhi Municipal Corporation (Preparation of Electoral Rolls) Ruler, 1975 (Notification No. F.2(30)/73-LSG dated 19-3-1975 . . . . .	14—24	7
IV.	(i) The Coal Mines Provident Fund (Amendment) Scheme, 1975 (G.S.R. 687 of 1975) . . . . .	25—31	11
	(ii) The Rajasthan Coal Mines Provident Fund (Second Amendment) Scheme, 1975 (G.S.R. 689 of 1975); and . . . . .		11
	(iii) The Neyveli Coal Mines Provident Fund (Second Amendment) Scheme, 1975 (G.S.R. 690 of 1975) . . . . .		11
V.	The Industrial Undertakings (Management, Liquidation or Reconstruction) Rules, 1975 (G.S.R. 2306 of 1975) . . . . .	32—37	13
VI.	Citation of Precise Statutory Authority in the Preamble to Rules . . . . .	38—46	15
VII.	The Meat Food Products Order, 1973 (S.O. 176-E of 1973) . . . . .	47—54	20
VIII.	The Adjudication Proceedings and Appeal Rules, 1974 (GSR 75 of 1974) . . . . .	55—59	22
IX.	The Petroleum Rules, 1976 (G.S.R. 479-E of 1976) . . . . .	60—63	25
X.	Relaxation of age limit for Scheduled Castes, Scheduled Tribes and other special categories of persons—provisions in Recruitment Rules . . . . .	64—67	26
XI.	The Delhi Transport Corporation (Advisory Council) (Amendment) Rules, 1977 (S.O. 667 of 1977) . . . . .	68—70	28
XII.	The Prevention of Food Adulteration (Second Amendment) Rules, 1975 (G.S.R. 508-E of 1975)—Delay in publication of final rules . . . . .	71—75	29
XIII.	Non-framing of rules under the Water (Prevention and Control of Pollution) Act, 1974 . . . . .	76—78	31
XIV.	The Andaman and Nicobar Islands Chief Commissioner's Secretariat (Senior Technical Assistant) (Work Study) Recruitment Rules, 1976 (G.S.R. 159 of 1977) . . . . .	79—81	34

## APPENDICES

I.	Summary of main recommendations/observations made by the Committee . . . . .	35
----	--	----

3045 LS—I

**PARLIAMENT LIBRARY**  
**Library & Reference Services**  
**Central Govt Publications.**  
**Acc. No. B. 49721 (4)**  
**Date 29.3.78**

328.25R  
L7

(ii)

	Para No.	Page No.
II. List of 'Orders' containing expressions like 'and of all other powers enabling the Central Government in this behalf, in the preamble which were referred to the Ministries/ Departments . . . . .	..	46
III. Minutes of the Fifth, Sixth and Eighth Sitzings of the Committee . . . . .	..	52

PERSONNEL OF THE COMMITTEE ON SUBORDINATE  
LEGISLATION (1977-78)

1. Shri Somnath Chatterjee—~~Chairman~~.
2. Shri Bhagirath Bhanwar
3. Shri Somjibhai Damor
4. Shri Durga Chand
5. Shri Santoshrao Gode
6. Chaudhary Hari Ram Makkasar Godara
7. Shri Tarun Gogoi
8. Shri Ram Sewak Hazari
9. Shri K. T. Kosalram
10. Shri P. Rajagopal Naidu
11. Shri N. Sreekantan Nair
12. Shri Trepan Singh Negi
13. Kumari Maniben Vallabhbhai Patel
14. Shri Saeed Murtaza
15. Shri Sachindralal Singha

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer*

# **REPORT**

## **I**

### **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 Fourth Report.

2. The matters covered by this Report were considered by the Committee at their sittings held on the 27th October and 8th November, 1977.

3. The Committee considered and adopted this Report at their sitting held on the 9th December, 1977. The Minutes of the sittings, which form part of the Report, are appended to it.

4. A statement showing the summary of recommendations/observations of the Committee is also appended to the Report (Appendix I).



## II.

### *The Employees' State Insurance Corporation (General Provident Fund) Rules, 1973 (G.S.R. 1204 of 1273)*

#### (4)

5. The Employees' State Insurance Corporation (General Provident Fund) Rules, 1973 were published in the Gazette of India, Part II, Section 3(i), dated the 3rd November, 1973, but were deemed to have come into force with effect from the 4th December, 1959, *vide* rule 1(2), *ibid* The Explanatory Memorandum, appended to the rules at the end reads as under :—

“The circumstances, under which it has become necessary to give retrospective effect to the rules promulgated in the above notification are briefly as follows:—

The Pension Scheme of the Corporation has been brought into force from the 4th December, 1959 and as the General Provident Fund Scheme is a corollary to the Pension Scheme, the Corporation has already implemented the General Provident Fund Scheme from that date and it is being implemented on the basis of draft rules more or less on the lines of the rules now being brought into force.

The employees of the Corporation, who were governed by the Contributory Provident Fund Scheme before the bringing into force of the General Provident Fund Scheme, were given on option either to continue under the Contributory Provident Fund Scheme or to come over to the General Provident Fund-cum-Pension Scheme and have already exercised their option. The persons who entered services of the Corporation on or after the 4th December, 1959 automatically come under the General Provident Fund-cum-Pension Scheme. It is accordingly certified that the giving of retrospective effect to the Employees' State Insurance Corporation (General Provident Fund) Rules 1973 will not adversely affect the interests of any employee of the Corporation.”

6. The Employees' State Insurance Act, 1948 (34 of 1948), does not empower the Central Government to give retrospective effect to the rules framed thereunder. The matter was taken up with the Ministry of Labour and their attention was invited to para 49 of the Seventh Report of the Committee on Subordinate Legislation (Fourth Lok Sabha), wherein the Committee had noted the following observations of the Attorney-Generall on the above point :

“The Legislature may make a law with retrospective effect. A particular provision of a law made by the legislature may operate

retrospectively if the law expressly or by necessary intendment so enacts. A law made by the Legislature may itself further empower subordinate legislation to be operative retrospectively. Without such a law, no subordinate legislation can have any retrospective effect...."

The Ministry of Labour were asked to state the authority in the parent Act under which retrospective effect had been given to the above rules; and whether they had any objection to bringing the above rules into force with effect from the date of their publication in the Gazette, *viz.*, 3-11-1973, instead of 4-12-1959.

7. In their reply, the Ministry have stated as under :—

"...although the Employees' State Insurance Act, 1948 does not empower the Central Government to give retrospective effect to the rules framed under section 95 of the Act, it was considered necessary to give retrospective effect to the Employees' State Insurance Corporation (General Provident Fund) Rules, 1973 from 4th December, 1959 because the Pension Scheme of the Corporation had been brought into force from the same date and as the General Provident Fund Scheme is a corollary to the Pension Scheme, the Corporation had also implemented the General Provident Fund scheme from the same date on the basis of the draft General Provident Fund Regulations more or less on the lines of the General Provident Fund Rules, 1973. In the circumstances, the persons who entered the service of the Corporation on or after 4-12-1959 were already covered by General Provident Fund Scheme under the draft regulations. The General Provident Fund Rules, therefore, merely seek to regularise the action already taken under draft regulations. In this connection, the Legal Adviser of the Corporation has opined as under :—

'Rule 24 read with Rule 8 of the Staff and Conditions of Service Regulations already conferred the pensionary benefits on the Corporation employees. The General Provident Fund Rules, 1973 merely purport to transfer these provisions of Rule 24 read with Rule 8 of the Staff Regulations relating to pensionary benefits to the General Provident Fund Rules so far as they relate to General Provident Fund. General Provident Fund Rules, 1973, therefore, do not create any new benefits with retrospective effect but merely incorporate the existing benefits from the date they were in fact available to the corporation employees. The principle, therefore, that the Central Government cannot make Rules with retrospective effect is not applicable to those rules as they purport only to incorporate the existing Rules provided in the staff Regulations. Moreover, such retrospective operation is objectionable if it purports to impose new restrictions or take away the existing rights to the prejudice of the employees. The Rules do not take away the existing rights but on the contrary incorporate the existing benefits and rights. The Rules, therefore, are not invalid nor do they offend any principle of Law.'

8. The Committee are surprised to find that for a period of nearly 14 years the Employees' State Insurance Corporation had administered the General Provident Fund Scheme on the basis of draft regulations, which had no legal support or authority. Although the Scheme had been in operation since the 4th December, 1959 the Corporation had framed the statutory rules only in 1973, and then had given them retrospective effect from the date of operation of the Scheme. The Committee see no justification for a period of nearly 14 years taken by the Corporation to frame the rules. They observe in this connection that as far back as May, 1959, the Committee on Subordinate Legislation in para 34 of their Fifth Report (Second Lok Sabha) had recommended that 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.

9. Apart from non-observance of the recommendation of the Committee mentioned in the preceding paragraph, the Committee observe that, as conceded by the Ministry of Labour, the Employees' State Insurance Corporation Act, 1948 does not empower the Central Government to give retrospective effect to rules framed under Section 95 of the Act. As without such authorisation, no subordinate legislation can operate retrospectively, the retrospective effect given to the rules in question was without due legal authority. The Committee are unable to accept the opinion of the Legal Adviser of the Corporation that the principle of not giving retrospective effect to the rules framed under subordinate legislation is not applicable to the present case as the General Provident Fund Rules purport only to incorporate the existing rules provided in the Staff Regulations and do not impose new restrictions or take away the existing rights to the prejudice of the employees. The Committee will in this connection like to draw attention to the judgement of the Supreme Court in *Hukam Chand vs. the Union of India* (AIR 1972, S.C. 2447) where commenting upon retrospective operation of a rule framed under Section 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Supreme Court had observed as follows :

“.....if there was nothing in the language of S. 40 to empower the Central Government either expressly or by necessary implication to make a rule retroactively, the Central Government would be acting in excess of its power if it gave retrospective effect to any rule. The underlying principle is that unlike Sovereign Legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same.....”

In the light of the above ruling of the Supreme Court, there does not seem to be any alternative for the Ministry of Labour but to approach Parliament for incorporating a provision in the Employees' State Insurance Act empowering Government to give retrospective effect to the rules framed there under. The amending law may also provide for validation of the unauthorised acts done under the Draft Regulations.

(B)

10. Rule 14(1)(d) and (e) provides as under :

“14. Advances from the Fund—(1) The Director General or any other officer authorised by him in this behalf, may sanction the payment to any subscriber of an advance consisting a sum of whole rupees and not exceeding in amount three months pay or half the amount standing to his credit in the Fund, whichever is less, for one or more of the following purposes, namely :

\* \* \* \* \*

- (d) to meet the cost of legal proceedings instituted by the subscriber for vindicating his position in regard to any allegations made against him in respect of any act done or purporting to be done by him in the discharge of his official duty, such advance being available in addition to advance, if any, admissible for the same purpose from the Corporation :

Provided that the advance under this sub-clause shall not be admissible to a subscriber who institutes legal proceedings in any court of law either in respect of any matter unconnected with his official duty or against the Corporation in respect of any condition of service or penalty imposed on him by the Corporation ;

- (e) to meet the cost of his defence where the subscriber has been prosecuted by the Corporation in any court of law or where the subscriber engages a legal practitioner to defend himself in an enquiry in respect of any alleged official misconduct on his part.”

11. It was noticed that whereas clause (e) provides for an advance from the General Provident Fund, if the subscriber has to defend himself in a case filed by the Corporation against him, proviso to clause (d) makes the advance inadmissible, if the subscriber is forced to resort to legal proceedings in any court of law against the Corporation in respect of any condition of service or penalty imposed on him by the Corporation. The Ministry were asked to state the genesis of proviso to clause (d) of rule 14(1).

12. The Ministry have stated in their reply as under :—

“As for the genesis of proviso to clause (d) of rule 14 of the Employees' State Insurance Corporation (General Provident Fund) Rules, 1973 it may be stated this clause has been incorporated in the Employees' State Insurance Corporation (General Provident Fund) Rules on the basis of corresponding provision [clause (d) of rule 12] in the G.P.F. (Central Services) Rules, 1960. Ministry of Finance have intimated that while considering the proposal regarding provision of legal assistance/reimbursement of legal expenses to Government servants involved in legal proceedings from the general revenues, it was decided, *inter alia*, by them to grant an advance to the officer concerned from his provident fund account for this purpose also. Accordingly, they inserted Rule 12 to the G.P.F. (Central Services) Rules, 1960 so as to provide for the grant of an advance for that purpose from the Provident Fund account like any other temporary advance. It was also decided that no such advance need be

sanctioned in cases where the Government servant himself instituted legal proceedings in respect of any matter unconnected with his official duty or against Government in respect of any condition of service or penalty imposed on him. Proviso to clause (d) was inserted accordingly."

13. The Committee have given a careful thought to the whole matter. They see no cogent reasons for denying to an employee an advance from his General Provident Fund if he has to institute legal proceedings against the Corporation in respect of any condition of service or penalty imposed on him by the Corporation, particularly when clause (e) provides for the grant of an advance if he has to defend himself in a case filed by the Corporation against him. The Committee also see no cogent reasons why an advance should not be available to an employee from his General Provident Fund for (i) instituting legal proceedings to vindicate his position in some matter which, though unconnected with his official duties vitally affects his honour or, (ii) to meet the cost of defence in cases where someone else might have instituted legal proceedings against him in some matter vitally affecting his financial interests (such as a property case). The Committee desire the Ministry to take early action to amend the rules so as to make the advance admissible in the above cases also.

### III

*The Delhi Municipal Corporation (Preparation of Electoral Rolls) Rules, 1975 [Notification No. F. 2(30)'73—LSG dated the 19th March, 1975].*

(A)

14. Rule 10 of the Delhi Municipal Corporation (Preparation of Electoral Rolls) Rules, 1975 reads as under :—

*“Period for lodging claims and objections*

*Every claim for the inclusion of a name in the roll and every objection to an entry therein shall be lodged within a period of 30 days from the date of publication of the roll in draft under rule 9 or such shorter period as may be fixed by the Director in this behalf;*

*Provided that the Director may, by notification in the official Gazette, extend the period in respect of the Ward as a whole or in respect of any part thereof.”*

15. Attention of the Ministry of Home Affairs was drawn to the recommendation of the Committee on Subordinate Legislation made in para 31 of their Sixth Report (First Lok Sabha) that a period of not less than 30 clear days should be given for submitting objections/suggestions by the public on draft Rules.

16. In their reply, the Ministry of Home Affairs have stated as under :

*“Rule 10 of the Delhi Municipal Corporation (Preparation of Electoral Rolls) Rules, 1975 relating to the fixation of the period for lodging claims and objections follows in full the language of rule 12 of the Registration of Electors Rules, 1960. Normally, a period of not less than 30 days is allowed for preferring claims and objections in relation to the rolls undertaken for normal revision. In some contingencies like large scale inadvertent omissions of the names from the rolls as finally published in pursuance of general revision of leaving completely particular locality or area from the electoral rolls it may become necessary for the Central Government under section 7E(3) of the Delhi Municipal Corporation Act as amended to direct a special revision of the electoral roll for any ward or part of ward in such manner as it may think fit. It is in such contingencies the fixation of period of less than 30 days under rule 10 may become necessary for speedy revision. In this connection attention is invited to section 21(3) of the Representation of the People Act, 1950 containing similar provision as in section 7E(3) of the Delhi Municipal Corporation Act 1957.”*

17. The Committee are not satisfied with the reply of the Ministry of Home Affairs in regard to the provision of Rule 10 of the Delhi Municipal Corporation (Preparation of Electoral Rolls) Rules, 1975. The Committee observe that in case of a similar provision in Rule 12 of the Registration of Electors Rules, 1960, where the Committee had found that the period allowed for lodging claims and objections had been reduced to just one day in one case, the Committee had desired that the reduced period should not be so short as to deprive the electors of a fair opportunity of filing claims and objections. On the matter being pursued, the Committee have been assured by the Ministry of Law that in no case of an ordinary revision, a period of less than 15 days will be fixed by the Election Commission for lodging a claim for inclusion of a name in the electoral roll or lodging an objection to an entry therein vide para 109 of their Twentieth Report (Fifth Lok Sabha). The Committee have urged that even in case of special revisions, the period allowed should not be less than 7 days. like-wise, the Committee desire the Ministry of Home Affairs to amend Rule 10 of the Delhi Municipal Corporation (Preparation of Electoral Rolls) Rules, 1975 so as to provide a minimum period of 15 days to the public for submitting their objections/suggestions on the draft rolls in case of ordinary revisions and not less than 7 days in case of special revisions.

(B)

18. Rule 12 of the above Rules provides as under :

*“Manner of lodging claims and objections :—*

Every claim or objection shall —

- (a) either be presented to the registration officer or to such other officer as may be designated by him in this behalf, and
- (b) be sent by post to the registration officer.

19. There was no provision in the above Rule for acknowledging receipt of claims and objections so that there was no dispute in this regard later.

20. The Ministry of Home Affairs with whom the above point was taken up have stated as under :—

*“During the course of preparation or revision a large number of claims and objections, sometimes to the tune of many thousands, are received. These applications may be delivered in persons or through post. According to the procedure, these applications are given numbers as and when these are received and lists prepared in Forms 8, 9, or 10 of the rules, as the case may be, under rule 13, these lists in Form 8, 9 or 10 are maintained in duplicate, and one copy thereof is exhibited on the notice board of the officer concerned. A person can file an objection to the entries in these lists within 7 days from the date of*

exhibition on the notice board. After the said period the claims and objections are accepted or rejected in accordance with the procedure laid down in the rules. Here again, the provision in the Delhi Municipal Corporation (Preparation of Electoral Rolls) Rules, 1975 are based on the Registration of Electors Rules, 1960 made in pursuance of the Representation of the people Act, 1950. In this connection, attention is invited to rule 14 of the Registration of Electors Rules, 1960. For these reasons no provision for acknowledging the receipt of claims/objections is considered necessary or feasible.

There is no prohibition in giving acknowledgement to the objections of claims filed, by the persons, if so requested by the person at the time of filing of the claims or objection. Besides, that, a person desirous of having an acknowledgement of the application sent by post, may send the same by registered A.D and as such he can have the acknowledgement thereof."

**21. The Committee note from the reply of the Ministry of Home Affairs that there is no prohibition in giving acknowledgement to claims/objections. The Committee desire the Ministry of Home Affairs to amend Rules 12 of the Delhi Municipal Corporation (Preparation of Electoral Rolls) Rules, 1975 so as to make a statutory provision for giving of acknowledgement.**

(C)

22. Rule 18 of the above Rules reads as under :

*"Inquiry into claims and objections.—*The registration officer shall hold a summary inquiry into every claim or objection in respect of which notice has been given under rule 17 and shall record his decision thereon."

There is no provision in the above Rule that in case of rejection of the claims/objections the Registration Officer will record this reasons in writing on the lines of Rule 24(5) *ibid.* which reads as under :

"24(5). The Registration officer shall, as soon as, may be after the expiry of the period specified in sub-rule (4), consider the objections, if any, received by him and dispose of the application:

Provided that when an application is rejected by the registration officer, he shall record in writing a brief statement on his reasons for such rejections."

23. The Ministry of Home Affairs with whom the above matter was taken up have replied as under :

"The words 'giving ground for acceptance or rejection on such application' will be added at the end of sub-rule (1) of the rule 18. after the words 'decision thereon'."



24. The Committee note that, on being pointed out the Ministry of Home Affairs have agreed to amend Rule 18 of the Delhi Municipal Corporation (Preparation of Electoral Rolls) Rules, 1975 so as to provide for recording of reasons in writing in case of rejection of claims/objections. The Committee desire the Ministry to amend the Rule accordingly at an early date and inform them as and when the rule is so amended.

#### IV

- (i) *The Coal Mines Provident Fund (Amendment) Scheme, 1975 (G.S.R. 687 of 1975);*
- (ii) *The Rajasthan Coal Mines Provident Fund (Second Amendment) Scheme, 1975 (G.S.R. 689 of 1975); and*
- (iii) *The Neyveli Coal Mines Provident Fund (Second Amendment) Scheme, 1975 (G.S.R. 690 of 1975).*

25. Sub-paragraph (6) of paragraph 65F and sub-paragraph (5) of paragraph 65G of the Coal Mines Provident Fund Scheme, as inserted by G. S. R. 687 of 1975, provide as under :—

“In case of misuse of the advance granted under this paragraph, the whole amount of the advance shall be recovered from the member in terms of the provisions contained in sub-paragraph (9) of paragraph 65B.”

In terms of sub-paragraph 9 of paragraph 65B of the Coal Mines Provident Fund Scheme, if the Commissioner or any other officer subordinate to him authorised to sanction advance, is satisfied that the advance granted under this paragraph has been utilised for a purpose other than that for which it was granted or that the conditions of advance have not been fulfilled or that there is a reasonable apprehension that they will not be fulfilled wholly or partly or that the excess amount will not be refunded, the Commissioner or the officer subordinate to him, as the case may be, shall forthwith take steps to recover the amount due with interest at a rate not exceeding 6½ per cent per annum thereon from the wages of the member in such number of instalments as he may determine.

26. Similar provision has been made in paragraphs 42F(6) and 42G(5) of the Rajasthan Coal Mines Provident Fund Scheme, 1958, *vide* G. S. R. 689 of 1975 and paragraphs 55B(6) and 55C (5) of the Neyveli Coal Mines Provident Fund Scheme, 1966, *vide* G. S. R. 690 of 1975.

27. There was nothing to indicate that the persons concerned will be afforded a reasonable opportunity of being heard before action is taken under these paragraphs. The matter was taken up with the Ministry of Labour and they were asked to state whether they had any objection to amending the Scheme suitably so as to provide therein that an opportunity of being heard would be given to an employee before action is taken against him under the said paragraphs.

28. In their reply, the Ministry have stated as under :-

“...the Coal Mines provident Fund Organisation has introduced a procedure for dealing with the cases of advances under paras 65F and 65G of the Coal Mines Provident Fund Scheme, paras 43F and 43G of the Andhra Pradesh Coal Mines Provident Fund Scheme, paras 42F and 42G of the Rajasthan Coal Mines Provident Fund Scheme and paras 55C of the Neyveli Coal Mines pro-

vident Fund Scheme inserted *vide* Notifications Nos. G. S. R. 687, 688, 689 and 690 of 1975 and a member is given 3 weeks time as prescribed in form Adv. 30...to give completion report in respect of utilisation of the amount. The recovery proceedings are started only when the members fail to satisfy the Coal Mines Provident Fund Organisation that the advance has been used for a purpose other than that for which it was granted.

As provision for such opportunity has been provided in procedural matter it has not been felt necessary to make a provision in the Coal Mines Provident Fund Scheme.

It may be mentioned that para 68K of the Employees' Provident Fund Scheme provides for grant of advance for daughter's marriage or post matriculation education of children. There is no statutory provision for affording a reasonable opportunity of being heard before action is taken for recovery. Incidentally attention may also be invited to Rule 16 of the General Provident Fund (Central Services) Rules, 1960, which lays down the conditions for withdrawal. Sub-rule (2) thereof also does not provide for such opportunity before action is taken for recovery from the Government servant who has utilised the amount withdrawn for the purpose other than it was granted."

29. Similar reply has been sent by the Ministry in respect of other cases.

30. The Committee note from the reply of the Ministry of Labour that according to the procedure introduced by the Coal Mines Provident Fund Organisation, a notice is required to be given in Form Adv. 30 to an employee to make a declaration regarding utilisation of the advance within three weeks from the date of issue of the notice. The Committee desire that the provision of notice should be put on a statutory footing by including it in the Scheme so as to ensure that in each case of default, an opportunity of being heard is statutorily afforded to the employee before action is taken to recover the advance from him. The Committee also desire the Ministry to amend Form Adv. 30 so that three weeks' time is made available to the employee from the date of receipt of the notice by him, instead of the date of its issue.

31. The Committee observe that the original clause (c) of sub-rule (3) of Rule 16 of the General Provident Fund (Central Services) Rules, 1960 relating to conditions of withdrawal, to which a reference has been made by the Ministry in their reply, stands amended *vide* S. O. 1728 of 1974 so as to provide for giving a reasonable opportunity of representation to a subscriber before action is taken to recover the amount from his emoluments. In the opinion of the Committee, the fact that the Ministry have cited reference to an un-amended rule in their reply, indicates that there is no satisfactory arrangement in the Ministry of Labour for keeping the rules upto-date. In order that the employees in the Ministry of Labour and offices subordinate thereto are not deprived of the benefits accruing from the latest amendments to rules issued by other Ministries, the Committee will like to impress upon the Ministry of Labour the need to keep their sets of relevant rules and instructions upto-date.

*The Industrial Undertakings (Management, Liquidation or Reconstruction) Rules, 1975 (G. S. R. 2306 of 1975)*

32. The Committee on Subordinate Legislation (Fifth Lok Sabha) at their sitting held on the 30th January, 1976, examined the above Rules and noticed from the preamble thereto that after the draft rules were published in the Gazette on 2nd March, 1974, as required by sub-section (1) of section 30 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), a period of 40 days was taken in making the copies of the Gazette available to the public, *i. e.* on the 11th April, 1974, with the result that only 5 days were allowed to the public for making comments/suggestions, as against 30 clear days, exclusive of the time taken in publishing the draft rules in the Gazette and despatching the Gazette copies to various parts of the country, recommended by the Committee on Subordinate Legislation, in para 31 of their Sixth Report (First Lok Sabha).

33. The matter was taken up with to the Ministry of Works and Housing who were asked to state the reasons for inordinate delay in making the copies of the Gazette containing draft rules available to the public. In their reply, the Ministry had stated as under :—

“The matter has been looked into and causes of delay are explained in the following paragraph.

The manuscript of the notification consisted of 140 pages and because of bulkiness it required more time to print the Gazette. Further, the Government of India Press, Ring Road where the Gazette was printed, was at that time, busy in printing the Union Budget Documents, Red Book and other urgent jobs and so there was further delay in completing the Gazette issue dated 2-3-1974. In all there was a total delay of about 37 days in printing the Gazette and arranging for its despatch to the Department of Publications. A further delay of three days occurred in making available the Gazette for sale to the public in the Department of Publications as the Gazette was mixed up inadvertently with other Gazettes and the mistake could not be detected immediately. The delay is regretted.

Suitable steps have however been taken by both the Departments to avoid such delays in future”.

34. The matter was further pursued and the Ministry were asked to state :—

- (i) Normally, how much time is taken in printing the ordinary Gazette, which is brought out weekly ;
- (ii) how much time is taken to make available the Gazette copies for sale to the public through the Department of Publications ;

- (iii) what other notifications did the Gazette issue of 2-3-74 contain;
- (iv) whether the ordinary Gazettes are printed on or before the date which they carry on the front page, if not, the reasons therefor ;
- (v) does it not look odd that a Gazette notification of 2-3-74 is actually printed and put on sale after a gap of 5 to 6 weeks, which means that rules, regulations, orders, etc., it contains, come into force much earlier than their coming to the notice of the general public ;
- (vi) what steps have been taken by both the Departments to avoid such delays in future; and
- (vii) whether the Press includes only those notifications in a particular issue of the Gazette, which can reasonably be expected to be printed by the due date, and if so, the procedure at present adopted by the press in this regard.

35. In reply, the Ministry have stated as under :—

- “(i) The weekly Gazette is published on every Saturday and generally efforts are made to print in that issue all notifications received in the Press upto 1 P. M. of the previous Tuesday.
- (ii) The weekly Gazettes after printing are now-a-days regularly being despatched on the date of issue (*i. e.* on every Saturday). The Department of Publications on receipt of these printed copies passes them on to the retail Section either on the day of receipt or the next day. So in the normal course, the Gazette is available for sale to the public a day after the publication of the Gazette.
- (iii) The Gazette issue of 2-3-1974 contains notifications of various Ministries and Departments, which are required to be published in part II, Section 3, Sub-Section (i) of the Gazette.
- (iv) Ordinary Gazettes are printed on the date which they carry on the front page. In view of the tight time schedule pre-printing is not possible. As already stated against item (i) all the notifications received upto 1 P.M. of Tuesday are to be included in the Gazette to be brought out on Saturday.
- (v) Admitted. The inconvenience caused by the delay is regretted.
- (vi) The Govt. Press concerned has assured the despatch of weekly Gazettes on the date of issue (*i.e.* by every Saturday). The Department of Publications has also assured that the Gazette on receipt will be put up for sale either on the same day or the next day.
- (vii) If the volume of manuscripts received is large and owing to unavoidable reasons it becomes necessary at times to hold back a few notifications even though received in time, such notifications are published in the Gazette issue of the next week. While doing so, efforts are made to ensure that those are not the

notifications which have any specific time indicated for the publication. At present top priority is being given to the printing of Gazette and these are being published on due dates."

36. The Committee regret to note that the printed copies of the Gazette containing the draft Rules had reached the public 40 days after the date of its publication, when the period allowed to the public for furnishing objections/suggestions on the draft Rules had almost expired. The Committee have been repeatedly stressing that when the Acts give a right to the public to send their comments on certain draft rules, it is only reasonable that sufficient time should be given to the public to study the draft rules and send their comments/suggestions on their provisions. The Committee cannot but re-emphasize that a period of not less than 30 clear days should invariably be given to the public to send their comments/suggestions on the draft rules. The Committee will also like to re-stress that in case a Ministry/Department find that in a particular case due to any reason the net period made available to the public works out to less than 30 days, they should extend the period for receipt of comments/suggestions so that the net period allowed to the public does not fall short of 30 clear days.

37. The Committee note that the main reason for the reduction of the time allowed to the public in this case was unconscionable delay in the printing of the Gazette containing the draft Rules. The particular issue of the Gazette which bore the date 2nd March, 1974 was in fact brought out 37 days thereafter. The Committee take a serious view of such delays. It is unthinkable that a weekly publication like the Gazette should issue more than five weeks after the date of its publication. The Committee note that, besides the draft Rules in question, the particular Gazette issue contained many sets of final rules. As usually the rules come into force on the date of their publication in the Gazette, most of the final rules contained in the particular issue of the Gazette had come into force on the 2nd March, 1974, long before they came to the notice of the public. This, in the opinion of the Committee, to say the least, was anomalous. The Committee, however, note the assurance of the Ministry of Works and Housing that in future weekly Gazettes would be despatched to the Department of publications on the date of issue (*i.e.* on every Saturday) in order that the printed copies of the same are made available on sale to the public either on the same day or the next day. The Committee trust that the Ministry of Works and Housing will keep their assurance, and take care to avoid such delays in future.

## VI

### *Citation of Precise Statutory Authority in the Preamble to Rules.*

38. Preamble to the Defence of India (Amendment) Rules, 1975, reads as under:—

“In exercise of the powers conferred by section 3 of the Defence and Internal Security of India Act, 1971 (42 of 1971) and of all other powers enabling the Central Government in this behalf, the Central Government hereby makes the following rules further to amend the Defence of India Rules, 1971, namely:—

\* \* \* \* \*

The expression ‘all other powers enabling the Central Government in this behalf’ appeared to be vague, as it was not clear where the other powers had been laid down, which enabled the Central Government to make the rules.

39. The matter was taken up with the Ministry of Home Affairs and in this connection, their attention was drawn to para 76 of the Sixth Report of the Committee on Subordinate Legislation (First Lok Sabha), wherein they had observed as under:—

“The Committee consider that it is essential that the authority giving power to make rules, etc., should be specially cited in the preamble to the rules for the purpose of enabling all concerned to know under what precise authority the rules have been made.”

While re-stressing the need for citation of exact statutory authority in the preamble, the Committee had again observed in para 8 of their Seventh Report (Fourth Lok Sabha), that—

“.....citation of exact Constitutional/statutory authority is necessary for enabling the Committee to examine whether an ‘Order’ has been made under due legal authority and within the limits laid down in the parent law.”

40. The Ministry of Home Affairs were asked to state—

- (i) the reasons for not complying with their above recommendations made as far back as in December, 1956 and December, 1970, respectively;
- (ii) what is the authority, other than the power conferred on the Central Government, *vide* section 3 of the Defence and Internal Security of India Act, 1971, which enables them to make the above rules; and
- (iii) whether they have any objection to amending the preamble suitably, so as to cite therein the exact other statutory authority which also empowers them to frame the rules, or in the alternative, to delete the words, which appear to be vague.

41. In their reply, the Ministry have stated as follows :—

“.....the matter has been examined in consultation with the Ministry of law. In the preamble to this Ministry notification No. G.S.R. 394—E dated July 1, 1975, the exact statutory authority under which the notification amending the Defence of India Rules, 1971 was issued, was specified in clear terms as section 3 of the Defence and Internal Security of India Act, 1971. Having specified this authority in clear terms, it was only by way of abundant caution that the expression ‘and all other powers enabling the Central Government in this behalf’ was used to prevent any possible challenge of the rules. The use of this expression appears to be a well established legislative practice. This Ministry is of the view that as specific statutory authority is clearly specified, the use of other expressions by way of caution, does not detract from observing the requirements of the Committee on Subordinate Legislation .....”

42. Similar expressions had been used in preamble to 28 other ‘Orders’ enumerated in Appendix II.

43. While examining the Indian Economic Service (Ninth Amendment) Rules, 1974, the Committee had noticed a similar expression *viz.*, ‘all other powers enabling him in that behalf’ used in the preamble to the said rules. Commenting upon the use of this expression, the Committee had observed in para 17 of their Seventeenth Report (Fifth Lok Sabha) as under:—

“In their previous Reports, the Committee have repeatedly emphasised the need for citation of precise statutory authority in the preamble to the Rules. The reply of Government indicates that neither the Department of Personnel and Administrative Reforms nor the Ministry of Law have appreciated the purport of the aforesaid recommendation of the Committee. It has, *inter-alia* been argued by the Ministry of Law that non-citation of the precise statutory authority does not affect the validity of a rule. The Committee will like to make it clear that they have not made the above recommendation on considerations of validity. The purpose underlying the said recommendation is to enable one to know whether the rules have due legal backing, and do not go beyond the scope of the parent law. The words “and all other powers enabling him in that behalf” used in the preamble to rules, as in the instant case, keep a person guessing as to what ‘other powers’ are. The Committee are of the view that if there are other provisions under which the rules have been framed, those provisions should also be mentioned in the preamble as has been done by Government in a number of recruitment rules. The Committee desire the Department of Personnel and Administrative Reforms to amend the preamble to the rules in question so as to mention therein all the Constitutional or statutory provisions under which the rules have been framed. The Committee further desire the Department of Personnel and Administrative Reforms to issue necessary instructions to all Ministries/Departments of Government in this regard”.



44. In their action taken note, the Department of Personnel & Administrative Reforms, while accepting the above recommendation of the Committee, have given the following assurance:—

“.....general instructions on para 17..... of the Seventeenth Report of the Committee on Subordinate Legislation have already been issued *vide* this Department's Office Memorandum No. 35012/1/76—Estt. (A), dated the 15th November, 1976..... As will be seen from the general instructions issued the recommendation of the Committee on Subordinate Legislation in this regard has been accepted and all the powers under which statutory orders are issued would in future be specified in such orders. The Committee had also desired that this Department may mention therein all the constitutional and statutory provisions under which the rules have been framed. This question of Law and the entire set of amendments to the Indian Economic Service/Indian Statistical Service rules was reviewed. In view of the fact that the rules were framed only in exercise of the powers conferred by the proviso to article 309 of the Constitution, this Department has been advised by the Ministry of Law that no amendment is considered necessary in the preamble of the rules in question. However, in view of the objections of the Committee to the use of the expression in question and in conformity with the general instructions now issued, the expression ‘and all other powers enabling him in that behalf’ is not being used now and will not be used in the preamble of subsequent amendments to the Rules.”

45. In their earlier Reports, the Committee have repeatedly emphasised the need for citation of precise statutory authority in the preamble to rules. The Committee have come across as many as 29 sets of rules, preambles to which contain expressions like ‘and all other powers enabling him in that behalf’. As observed by the Committee in para 17 of their Seventeenth Report (Fifth Lok Sabha) and para 50 of their Nineteenth Report (Fifth Lok Sabha), such expressions keep a person guessing as to what are the ‘other powers’ under which the rules have been framed. The Committee note with satisfaction that, pursuant to the recommendation of the Committee made in para 17 of their Seventeenth Report (Fifth Lok Sabha), the Department of Personnel and Administrative Reforms have assured that the expression ‘all other powers enabling him in that behalf’ is not being used now, and will not be used in the preamble of subsequent amendments to rules. All the powers under which statutory orders are issued will in future be specified in the orders. The Department of Personnel and Administrative Reforms have also issued general instructions in this regard to all Ministries/Departments of Government of India. The Committee trust that the instructions issued by the Department of Personnel and Administrative Reforms in this regard will be strictly complied with by Ministries/Departments who will take care to scrupulously avoid such vague expressions as ‘all other powers’ etc. in the preamble to rules.

46. In several cases enumerated in Appendix II, the Ministries/Departments were asked to omit the expression ‘all other

powers enabling him in that behalf' appearing in the preamble to rules. However, in view of the advice of the Law Ministry that no amendment is considered necessary in the preamble to the rules, the Committee do not insist on the amendment of the rules already published and enumerated in the Appendix to this effect at this stage.

## VII

### *The Meat Food Products Orders, 1973 (S.O. 176-E of 1973)*

(A)

47. Clause 14(1) of the Meat Food Products Order, 1973 framed under section 3 of the Essential Commodities Act, 1955, provided as under:—

“Powers of entry, search, seizure, etc.—(1) The licensing authority or any Officer authorised by him in this behalf may with a view to securing compliance with this Order :—

- (a) require any person to give any information in his possession with respect to the manufacture and disposal of any meat food products manufactured by him ;
- (b) enter upon and inspect the premises of any licensee at any time with a view to satisfying himself that the requirements of this Order are being complied with ; and

\*\*

\*\*

\*\*”

It was observed from the above provisions that the minimum rank of ‘any Officer’ who could be empowered by the licensing authority to exercise the powers of entry, search, seizure, etc. had not been specified therein.

48. The matter was taken up with the erstwhile Ministry of Agriculture (Department of Agriculture) and their attention was invited to the recommendation of the Committee on Subordinate Legislation made in para 15 of their Fifth Report (Third Lok Sabha), wherein, while commenting upon a similar provision contained in clause 4 of the petroleum products (Supply and Distribution) Order, 1965 they had urged Government to specifically state in the Order that a Government servant not below the specified rank or equivalent Officer, might be authorised to conduct searches, seizures, etc., under the aforesaid Order. It should not be left worded in a manner which would give the Executive the power to authorise any and every Government servant to exercise the power of conducting searches and seizures under the Order.

49. The Ministry were asked to state the reasons for not complying with the above recommendation of the Committee in this case, and also whether they had any objection to specifying the minimum rank of ‘any Officer’ who might be authorised by the licensing authority to conduct searches, seizures, etc.

50. The Ministry have stated in their reply that the point raised had been lost sight of due to inadvertence while drafting the Order by the Directorate of Marketing and Inspection. The Order has since been amended, *vide* S.O. 4740 of 1976, dated 18-12-1976, which provides as under:—

“In sub-clause (1), after the words ‘any Officer’ the words ‘not below the rank of Assistant Marketing Officer of the Directorate of Marketing and Inspection’ shall be inserted.”

**51. The Committee note with satisfaction that, on being pointed out, the Ministry of Agriculture and Irrigation have amended the Meat Food Products Order, 1973, so as to specify the Minimum rank of an Officer who could be empowered by the licensing authority to exercise the powers of entry, search, seizure, etc.**

(B)

52. The provisions of the Code of Criminal Procedure relating to searches and seizures (such as presence of witnesses, preparation of an inventory of seized goods and giving a copy of inventory of such goods to the person concerned) had not been made applicable to searches and seizures to be made under clause (14)(1) of the Meat Food Products Order, 1973. Normally, this is done in respect of all such orders framed under section 3 of the Essential Commodities Act, 1955.

53. The erstwhile Ministry of Agriculture (Department of Agriculture) who were asked to state whether they had any objection to making the provisions of the Code of Criminal Procedure relating to searches, seizures, etc., applicable to searches/seizures under clause 14 of the Order in question, have since done the needful by inserting sub-clause (3) after sub-clause (2) of clause 14, *vide* S.O. 4740 of 1976, dated 18-12-1976, which reads as under :—

“(3). The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall, so far as may be, apply to searches and seizures under this clause.”

**54. The Committee note with satisfaction that, on being pointed out, the Ministry of Agriculture and Irrigation have amended the Meat Food Products Order, 1973, so as to make the provisions of the Code of Criminal Procedure, 1973 relating to searches and seizures, applicable to searches and seizures to be made under clause 14 of the Order.**

## VIII

*The Adjudication Proceedings and Appeal Rules, 1974 (G.S.R. 75 of 1974).*

55. Sub-rule (5) of rule 3 of the Adjudication proceedings and Appeal Rules, 1974, framed under the Foreign Exchange Regulation Act, 1974 (46 of 1974), provides as under :—

“The adjudicating officer shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary, the hearing may be adjourned to a future date ; and in taking such evidence the adjudicating officer shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (1 of 1872).”

56. The above provision appeared to be of over-riding nature and gave an impression that the provisions contained in the Evidence Act were being ignored through subordinate legislation. Normally, such a provision either forms part of the principal Act, or an express authorisation to this effect is made therein. The matter was taken up with the Ministry of Finance (Department of Economic Affairs) and their attention, in this connection, was invited to the following observations of the Committee on Subordinate Legislation (Fifth Lok Sabha) made in paras 37-38 of their First Report :—

“37. The Committee observe that the prefixation of the words ‘Notwithstanding the provisions of Chapter XV of the Code of Criminal Procedure, 1898’ in Rule 36C of the Central Reserve Police Force Rules, 1955, seeks to make the provisions of this Rule of an over-riding nature. Similarly, the powers conferred on the Central Government under Rules 36G and 36I, *ibid.*, may be so exercised as to over-ride the provisions of the Code of Criminal Procedure, should a conflict between the provisions of the said Code and Rules in question arise.

38. The Committee do not question the necessity or desirability of the provisions of Rules 36C, 36G and 36I : nor do they want any modification therein. The question is only limited to the point whether because of their over-riding nature, these provisions should more appropriately form part of the Act or of the Rules. The Committee feel that while the provisions of an act may over-ride the provisions of an earlier Act, the Executive, in exercise of their rule-making power, cannot over-ride the same unless the latter statute expressly authorises them to do so. The Committee are, therefore, of the view that the aforesaid provisions should form part of the parent Act, or in the alternative, there should be a specific authorisation therefor in the Act. The fact that similar provisions form part of four other Acts—Border Security Force Act, Army, Navy and Air Force Acts—reinforces this view.”

57. The Ministry were asked to state whether an express authority existed in the principal Act; and if not, whether they had any objection to taking necessary action in the matter on the lines indicated in the above observations of the Committee on Subordinate Legislation.

58. The Ministry, after examining the matter in detail in consultation with the Ministry of Law and Directorate of Enforcement which is the concerned organisation for dealing with violations of the Foreign Exchange Regulation Act, 1973, have clarified the position as follows:—

“...it may be pointed out that section 1 of the Evidence Act expressly provides that it applies to all judicial proceedings in or before any court. It does not apply to quasi-judicial proceedings like the adjudication proceedings taken under the Foreign Exchange Regulation Act, 1973. In *Union of India Vs. T.R. Verma* (AIR 1957 SC882) the Supreme Court held that quasi-judicial tribunals are required to observe rules of natural justice in the conduct of the inquiry and that if they do so, their decision is not to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a court of law. In the circumstances, rule 3(5) aforesaid merely elaborates and enunciates the legal position obtaining under section 1 of the Evidence Act, namely, that in taking evidence the adjudicating officer shall not be bound to observe the provisions of the Evidence Act. It would, therefore, be clear that the question of over-riding or ignoring the Evidence Act does not arise in this case. In *Shanti Prasad V. Director of Enforcement* (AIR 1962 SC 1964), the Supreme Court held that rule 3(5) of the Rules framed under section 27 of that Act [which was *pari materia* with rule 3(5) of the Adjudication Proceedings and Appeal Rules, 1974] had not the effect of rendering admissible, evidence which was irrelevant or inadmissible under the Evidence Act.

It may also be difficult to draw an analogy between the rules commented upon by the Committee *vide* paragraphs 37 and 38 of their First Report as rule 36(C) of the Central Reserve Police Force Rules, 1955 referred to in para 37 of the aforesaid Report starts with a *non obstante* clause which is not the case in rule 3(5) in question.

Thus, even in the absence of the latter portion of rule 3(5) of the Adjudication Proceedings and Appeal Rules, 1974, the provisions of the Evidence Act would not be applicable to the adjudication proceedings. In the circumstance, there seems to be no conflict between the Foreign Exchange Regulation Act, 1973 and rule 3(5) of the Adjudication Proceedings and Appeal Rules, 1974 nor would there be any necessity to make any express provision or authorisation in the Act for this purpose....”

**59. The Committee note that, according to the Ministry of Law, section 1 of the Evidence Act expressly provides that it applies to all judicial proceedings in or before any court; it does not apply to quasi-judicial proceedings like the adjudication proceedings taken under the Foreign Exchange Regulation Act, 1973. The Committee**

**also note that in the *Union of India Vs. T.R. Varma* (AIR 1975, SC 882) the Supreme Court has also held that quasi-judicial tribunals are required to observe rules of natural justice in the conduct of the inquiry and that if they do so, their decision is not to be impeached on the ground that the procedure followed is not in accordance with that which obtains in a Court of Law. In view of this the Committee do not want to pursue the matter further.**

## IX

### *The Petroleum Rules, 1976 (G.S.R. 479-E of 1976).*

60. Rule 146(1) of the Petroleum Rules, 1976 (G.S.R. 479-E of 1976) provides as under :—

“Power of licensing authority to alter conditions.—(1) Notwithstanding anything contained in rule 145 the licensing authority may omit, alter or add to any of the conditions specified in the form of licence.”

Rule 145(1), *ibid.*, lays down that every licence granted under the rules shall be held subject to the conditions specified therein and shall contain all the particulars which are contained in the form specified under the rules. It was felt that empowering the licensing authority to alter or add to the conditions laid down in the statutory rules, was tantamount to sub-delegation of legislative power. Moreover, the words “notwithstanding anything contained in rule 145”, used in rule 146 indicated that such a power may even be over-riding.

61. The Ministry of Industry (Department of Industrial Development) were asked to state the authority in the parent Act under which the power to sub-delegate had been conferred on the Central Government, and whether in the absence of such an authority available under the Act, they had any objection to delete rule 146, *ibid.*

62. In their reply, the Ministry have stated as under :—

“This rule is also in line with rule 117 of the Petroleum Rules, 1937. On examination of the points raised by the Committee it appears that the Act does not empower the Government to sub-delegate its powers. As such the rule may have to be deleted.”

63. The Committee note that the Ministry of Industry (Department of Industrial Development) have conceded that the Petroleum Act, 1934 does not empower Government to sub-delegate their powers, and as such Rule 146(2) of the Petroleum Rules, 1976, which empowers the licensing authority to omit, alter or add to any of the conditions specified in the form of licence, *notwithstanding anything contained in Rule 145*, may have to be deleted. The Committee desires the Ministry to omit the said rule at an early date and inform them as and when this has been done.



*Relaxation of age limit for Scheduled Castes, Scheduled Tribes and other special categories of persons—Provisions in Recruitment Rule—*

64. The provision in the Recruitment Rules regarding method of recruitment, age limit, qualifications, etc. generally contained the following proviso :—

“Provided that the upper age-limit prescribed may be relaxed in the case of candidates belonging to Scheduled Castes, Scheduled Tribes and other special categories of persons in accordance with the orders issued from time to time by the Central Government”

65. The Committee on Subordinate Legislation in para 182 of their Twelfth Report (Fifth Lok Sabha) had pointed out certain Recruitment Rules which did not contain the abovementioned proviso and desired that all Ministries/Departments should take necessary action to amend their Recruitment Rules so as to incorporate the above proviso wherever it had not already been done.

66. The Department of Personnel and Administrative Reforms in their note on implementation of the above-said recommendation have, *inter alia*, pointed out as under :—

“... Some Ministries/Departments have now pointed out that in view of the Savings Clause\* relating to reservations for Scheduled Castes and Scheduled Tribes required to be included in the Recruitment Rules for all posts/services within the purview of the reservation order, in accordance with the instructions in O.M. No. 8/12/71-Estt (SCT) dated 21.9.1971, it may not be necessary to have a separate proviso relating to relaxation of age limit for Scheduled Castes and Scheduled Tribes, etc. The Savings Clause covers not only “reservations” but also “other concessions” required to be provided for Scheduled Castes and Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard. In the case of Scheduled Castes and Scheduled Tribes, the other concessions include reduction in examination fees, relaxation of age-limit, relaxation of qualifying standards etc. Since the Savings Clause is required to be incorporated in all the Recruitment Rules in respect of posts/services within the purview of the reservation orders, it is considered sufficient and a separate proviso relating to relaxation of age-limit may not be strictly necessary. This would also avoid duplication of work involved in amending the recruitment rules for each and every post under a Ministry/Department.

---

\*Savings Clause in Recruitment Rules reads as under :

*Saving* : Nothing in these rules shall affect reservations and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.

The existing Savings Clause prescribed in O.M. dated 21.9.1971 will be amended so as to include the words "relaxation of age-limit" after the words "reservations" contained therein, and the Ministries/Departments will be informed that the amplified Savings Clause may be included in the Recruitment Rules which may be framed in future and while amending the existing rules and that a separate provision relating to relaxation of age limit as prescribed in the O.M. dated 14th July, 1976 will not be necessary. It is proposed to revise the instructions contained in this Department's Office Memorandum dated the 14th July, 1976 accordingly. The Ministries/Departments would also be asked always to keep in view the various concessions including the relaxation of age limit admissible to candidates belonging to Scheduled Castes and Scheduled Tribes while considering the candidature of candidates belonging to these communities.

Lok Sabha Secretariat may kindly let us have the comments concurrence of the Committee on Subordinate Legislation to the above mentioned proposal."

**67. The Committee concur with the proposal of the Department of Personnel and Administrative Reforms to amend the existing Savings Clause in respect of reservations for Scheduled Castes and Scheduled Tribes in Recruitment Rules so as to include the words 'relaxation of age-limit' after the word 'reservations' contained therein. The Committee will like to be informed as and when the above proposal is given effect to.**

## XI

### *The Delhi Transport Corporation (Advisory Council) (Amendment) Rules, 1977 (S.O. 667 of 1977).*

68. Sub-rule (a) of Rule 7 of the Delhi Transport Corporation (Advisory Council) Rules, 1973, as substituted by the Delhi Transport Corporation (Advisory Council) (Amendment) Rules, 1977 reads as under:

“Term of Office.—7. Subject to the provisions of rule 22 :—

- (a) A member of the Council other than a member referred to in Clause (j) or clause (k) or clause (l) of rule 3, shall hold office for a period of two years from the date of the notification appointing him a member of the Council and shall be eligible for re-appointment:

Provided that the Central Government may by order terminate the membership of any member before he completes his term of office and any outgoing member shall continue in office until the notification of appointment of his successor.”

There is no provision in the above rule for issue of a show-cause notice to a member before his membership is terminated.

69. The Ministry of Shipping and Transport (Transport Wing) with whom the matter was taken up have replied as under :—

“This Ministry has no objection to further amending Rule 7 of the Delhi Transport Corporation (Advisory Council) Rules to provide for issue of a show-cause notice to a person before his membership of the DTC Advisory Council is terminated. Further action in this respect will be taken separately.

**70. The Committee note with satisfaction that the Ministry of Shipping & Transport (Transport Wing), on being pointed out, have agreed to further amend Rule 7 of the Delhi Transport Corporation (Advisory Council) Rules to provide for issue of a show-cause notice to a person before his membership of the Delhi Transport Corporation Advisory Council is terminated. The Committee desire the Ministry to amend the rule in question to the necessary effect at a very early date.**

## XII

### *The Prevention of Food Adulteration (Second Amendment) Rules, 1975 (G.S.R. 508-E of 1975)—Delay in Publication of final rules.*

71. The Prevention of Food Adulteration (Second Amendment) Rules, 1975, have been framed under section 23 of the Prevention of Food Adulteration Act, 1954 (37 of 1954). It has been mentioned in the preamble to the above Rules that objections/suggestions were invited from all persons likely to be affected thereby, till the 31st August, 1973. It was, however, noticed that the final rules were published in the Gazette dated the 27th September, 1975, i.e., after a gap of over two years from the date of receipt of objections/suggestions.

72. In this connection, the attention of the erstwhile Ministry of Health and Family Planning (Department of Health) was invited to the following observations/recommendations made in paras 13-14 of the Fifteenth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha), wherein, they had adversely commented upon the inordinate delay in final publication of amendments to the Drugs and Cosmetics Rules by that Ministry :—

“The Committee are unhappy to find the instances of inordinate delay in final publication of amendments to the Drugs and Cosmetics Rules.....They note that while in some cases the gap between the publication of draft rules and final rules was between two and four years, in some other cases, it was as much as four years and nine months. In the opinion of the Committee, there was no justification for these delays. The Committee need hardly point out that if the Ministry feel the need for a change in the rules, they should effect the change as early as possible after consulting the interests concerned, and not sit over the amendments for years together.”

73. The Ministry were asked to state the reasons for the delay of over two years in final publication of the above amendment rules and how the matters proposed to be inserted in the original rules were being regulated for these two years.

74. In their reply, the Ministry of Health have stated as follows:—

“.....the comments of the persons affected by the proposed draft notification were invited by 31-8-73; the draft rules were circulated also to the members of the Central Committee for Food Standards as required under Section 23 of the Prevention of Food Adulteration Act, 1954. In addition, comments of the concerned port/airport authorities were also invited. Replies from certain members of the Central Committee for Food Standards were received by 21-1-74.

After examination of the comments received from various authorities, a draft notification was prepared and sent on 19-6-74

to the Ministry of Law for vetting. That Ministry informed this Ministry on 5-8-74 that they wanted to have a discussion on the proposed amendment. The matter was discussed and certain modifications were suggested by that Ministry on 26-8-74. The matter was re-examined in the Directorate General of Health Services in consultation with the port Health Officers etc. and a revised notification was prepared and sent on 17-3-75 to the Ministry of Law (Legislative Department) for vetting. The papers were received back from the Ministry of Law on 5-4-75. They again wanted discussion in the matter. After discussion, the Ministry of Law finally approved the draft notification on 16-6-75. The Official Language Commission of the Ministry of Law were then approached for Hindi translation of the notification. After getting Hindi translation, the final notification was published in the Gazette of India on 27-9-75.

While every possible precaution was taken to finalise the draft notification as early as possible, there was some delay either in obtaining the comments of the members of the Central Committee for Good Standards/Subordinate Officers or in discussing the matter with the Ministry of Law. Instructions have been issued to all concerned to finalise such notifications within one year from the date of their publication for inviting comments.

It may, however, be pointed out that during the period when the draft notification was published and final notification issued, no arrangements were made in respect of the proposed amendment to be inserted in the original rules. The areas covered by the Ports/Air ports are limited and the jurisdiction of the local health authorities concerned with these areas is also limited. No difficulty was experienced by the local health authorities concerned with the implementation of the Prevention of Food Adulteration Act during the period in question."

**75. The Committee regret to observe that there was a gap of more than two years between publication of the draft amendment rules and final rules in this case. They are not satisfied with the explanation given by the Ministry of Health and Family Welfare (Department of Health) in this regard. The Committee feel that with a little more care and promptness on the part of the Ministry of Health, the delay in publication of the amendment rules could have been considerably reduced. The Committee have from time to time been deprecating inordinate delays in issue of amendments to rules. It is hardly necessary for the Committee to point out that amendments to rules are brought with a purpose and till the amendments are promulgated, the underlying purpose is not served. The Committee note that the Ministry have since issued instructions to all concerned to finalise such notifications within one year from the date of their publication for inviting comments from the public. The Committee desire the Ministry to make efforts to further reduce the gap between the publication of draft rules and their publication in final form.**

### XIII

#### *Non-framing of rules under the Water (Prevention and Control of Pollution) Act, 1974*

76. While commenting upon the question of delay in exercise/non-exercise of rule-making power by Government delegated under various Acts of Parliament, the Committee on Subordinate Legislation, had, *inter alia*, observed in para 18 of their Eighteenth Report (Fifth Lok Sabha), as follows :—

“The Committee-re-stress their earlier recommendation that 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 6 months. In case, however, a Ministry/Department finds that for any unavoidable reasons it is not possible for them to adhere to the prescribed time-limit in an exceptional case, they should at the expiration of 6 months from the commencement of the relevant Acts, explain the reasons to the Committee and seek a specific extension of time from them.”

77. In compliance with the above recommendation, the Ministry of Works and Housing have informed the Committee that rules on three subjects are yet to be framed by them as required under sections 63 and 12 (3) of the Water (Prevention and Control of Pollution) Act, 1974. Rules covering 13 subjects have already been framed, notified in the Gazettee and laid before Parliament. In so far as the non-framing of rules on three subjects is concerned, the Ministry have stated as under :—

- (i) Prohibition or regulation of bathing in any stream or well or the washing or cleaning therein of things of any class or description, or the putting of litter or other objectionable matter, whether poisonous, noxious or polluting or not into any stream or well.

“This Ministry has consulted the technical officers of the Central Public Health and Environment Engineering Organisation and the Central Board for Prevention and Control of Water Pollution who are of the view that it is better to empower the Central Board to make Regulations for the above purpose as and when occasion arises. It will be difficult to make one set of Rules as situation will be different in different conditions. This was also examined by the Committee set up for examining proposals for amendments to the Water (Prevention and Control of Pollution) Act, 1974 and the Committee approved of deletion of clause (h) of sub-section (2) of section 63 and to empower the Central Board to make Regulations on the above subject as and when needed. This will be included in the comprehensive list of amendments to the Water (Prevention and Control of Pollution) Act, 1974, to be submitted to the Parliament.”

- (ii) Prohibition or regulation of the keeping or use, on any stream, of vessels provided with sanitary appliances from which polluting matter passes into the stream.

“As per clause (i) of sub-section (2) of section 63, the Central Government have to make Rules for the above noted purpose. The Director General, shipping has suggested that the Ministry of Transport and shipping are also making Rules under the Merchant Shipping Act, 1958 to control the Pollution from sea-going ships in accordance with Annexure IV of the International Convention for Prevention of Pollution of Ships, 1973. That Ministry have also pointed out that whereas the Rules made under the Merchant Shipping Act, 1958 will apply to the entire coast line of the country. The Rules made under the Water (Prevention and Control of Pollution) Act, 1974 will not apply to the coast line adjoining to two important maritime States of Maharashtra and Tamil Nadu. The Ministry of Law, Justice & Company Affairs have also advised that in view of section 60 of the Water (Prevention and Control of Pollution) Act, 1974, the provisions of this Act will prevail over the provisions of the Merchant Shipping Act, 1958 and that the two Ministries may consult each other so that there may not be any conflict between the two Central Acts. This matter was considered by the Committee set up in this Ministry to examine the amendments to the Water (Prevention and Control of Pollution) Act, 1974 and in view of of the fact that the Director General, Shipping has better expertise to deal with ships and in view of the fact that Merchant Shipping Act applies to the entire coast line, the Committee approved of the suggestion of the Director General, Shipping, that the Rules for pollution from ships in the territorial waters may be made by the Ministry of Transport and Shipping. This amendment will also be included in the comprehensive list of amendment to be submitted to the Parliament.”

- (iii) Rules regarding service conditions of the employees of the Central Board for Prevention and Control of Water Pollution.

“The draft Rules covering the service conditions of the employees of the Central Board based on the staff regulations of the Delhi Development Authority have been prepared. As no Rule can be finalised without the consideration of the Central Board as per Section 63(1) of the Water (Prevention and Control of Pollution) Act, 1974, the above draft Rules were sent to the Central Board which is yet to finalise its views on the draft Rules. It was, therefore, proposed that like the Delhi Development authority, the Central Board may also be empowered to make Regulations regarding service conditions of their staff and necessary amendments may be made in the Act itself. the Committee to examine proposals for amendments to the Water (Prevention and Control of Pollution) Act, 1974, considered this matter and decided that this will also be included in the list of amendments to the said Act.

In view of the circumstances explained above, the Central Government could not make any Rules in respect of the three

subjects mentioned above. Necessary amendments to the Act are being processed and will be submitted to the Parliament in due course..."

**78. The Committee note that rules in respect of 13 subjects specified in the Water (Prevention and Control of Pollution) Act, 1974 have already been framed by the Ministry of Works and Housing, but rules in respect of the following 3 subjects enumerated in the said Act have not yet been framed :—**

- (i) Prohibition or regulation of bathing in any stream or well or the washing or cleaning therein of things of any class or description, or the putting of litter or other objectionable matter, whether poisonous, noxious or polluting or not into any stream or well.**
- (ii) Prohibition or regulation of the keeping or use, on any stream, of vessels provided with sanitary appliances from which polluting matter passes into the stream.**
- (iii) Rules regarding service conditions of the employees of the Central Board for Prevention and Control of Water Pollution.**

**The Committee note from the reply of the Ministry that they propose to empower the Central Board to frame regulations on subjects mentioned at items (i) and (iii) above by making suitable amendments to the Act. Similarly, in respect of item (ii), the Committee note that the Ministry propose to bring an amendment to the Act so that the rules for pollution from ships in the territorial waters may be made by the Ministry of Shipping and Transport under the Merchant Shipping Act, 1958. The Committee desire the Ministry of Works and Housing to bring forward the proposed amendments to the Act as early as possible in order that the rules/regulations covering the three subjects are framed without any further delay.**



#### XIV

*The Andaman & Nicobar Islands Chief Commissioner's Secretariat Senior Technical Assistant (Work Study) Recruitment Rules, 1976 (G.S.R. 159 of 1977)*

79. Rules 2 and 3 of the Andaman & Nicobar Islands Chief Commissioner's Secretariat Senior Technical Assistant (Work Study) Recruitment Rules, 1976, referred to Schedule annexed to the Rules but it was seen that no schedule had been published alongwith the above Rules.

80. The Ministry of Home Affairs with whom the above matter was taken up have replied as under :—

“...The Schedule annexed to the Recruitment Rules published in the Gazette of India, Part II, Section 3(1) on 5-2-77 vide G.S.R. 159 was inadvertently left behind and hence was not published. The Manager, Government of India Press, Ring Road, New Delhi has now been requested to publish the same with reference to our above notification.”

81. While the Committee note that the Ministry of Home Affairs have since initiated necessary action to publish the Schedule to the Rules in question, they cannot help observing that this had been done by the Ministry only after the mistake had been pointed out by the Committee. The Committee will once again like to re-stress on all Ministries/Departments the need of strictly complying with their recommendation contained in para 36 of Fourth Report (Fifth Lok Sabha) and reiterated in para 93 of Twentieth Report (Fifth Lok Sabha) that the responsibility of a Ministry/Department did not cease with the sending of a notification to the Press. After its publication, the Ministry/Department concerned should take immediate steps to examine whether the same had been correctly printed and if necessary, to issue a corrigendum thereto.

SOMNATH CHATTERJEE,

NEW DELHI;

The 9th December, 1977.

Chairman,

Committee on Subordinate Legislation.

## APPENDIX I

(Vide para 4 of the Report)

*Summary of main recommendations/observations made by the Committee*

S. No.	Para No.	Summary
(1)	(2)	(3)
I (i)	8	The Committee are surprised to find that for a period of nearly 14 years, the Employees' State Insurance Corporation had administered the General Provident Fund Scheme on the basis of draft regulations, which had no legal support or authority. Although the Scheme had been in operation since the 4th December, 1959, the Corporation had framed the statutory rules only in 1973, and then had given them retrospective effect from the date of operation of the Scheme. The Committee see no justification for a period of nearly 14 years taken by the Corporation to frame the rules. They observe in this connection that as far back as May, 1959, the Committee on Subordinate Legislation in para 34 of their Fifth Report (Second Lok Sabha) had recommended that 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.
I (ii)	9	Apart from non-observance of the recommendation of the Committee mentioned in the preceding paragraph, the Committee observe that, as conceded by the Ministry of Labour, the Employees' State Insurance Act, 1948 does not empower the Central Government to give retrospective effect to rules framed under section 95 of the Act. As without such authorisation, no subordinate legislation can operate retrospectively, the retrospective effect given to the rules in question was without due legal authority. The

(1)

(2)

(3)

Committee are unable to accept the opinion of the Legal Adviser of the Corporation that the principle of not giving retrospective effect to the rules framed under subordinate legislation is not applicable to the present case as the General Provident Fund Rules purport only to incorporate the existing rules provided in the Staff Regulations and do not impose new restrictions or take away the existing rights to the prejudice of the employees. The Committee will in this connection like to draw attention to the judgement of the Supreme Court in *Hukam Chand vs. the Union of India* (AIR, 1972, S.C. 2427) where commenting upon retroactive operation of a rule framed under Section 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Supreme Court had observed as follows:—

“...if there was nothing in the language of S.40 to empower the Central Government either expressly or by necessary implication to make a rule retroactively, the Central Government would be acting in excess of its power if it gave retrospective effect to any rule. The underlying principle is that unlike Sovereign Legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same...”

In the light of the above ruling of the Supreme Court, there does not seem to be any alternative for the Ministry of Labour but to approach Parliament for incorporating a provision in the Employees' State Insurance Act empowering Government to give retrospective effect to the rules framed thereunder. The amending law may also provide for validation of the unauthorised acts done under the Draft Regulations.

1

2

3

under the General Provident Fund Scheme of the Employees' State Insurance Corporation. They see no cogent reasons for denying to an employee an advance from his General Provident Fund if he has to institute legal proceedings against the Corporation in respect of any condition of service or penalty imposed on him by the Corporation, particularly where clause (c) provides for the grant of an advance if he has to defend himself in a case filed by the Corporation against him. The Committee also see no cogent reasons why an advance should not be available to an employee from his General Provident Fund for (i) instituting legal proceedings to vindicate his position in some matter which, though unconnected with his official duties, vitally effect his honour or, (ii) to meet the cost of defence in cases where someone else might have instituted legal proceedings against him in some matter vitally affecting his financial interests (such as a property case). The Committee desire the Ministry of Labour to take early action to amend the rules so as to make the advance admissible in the above cases also.

2 (i)

17

The Committee are not satisfied with the reply of the Ministry of Home Affairs in regard to the provision of Rule 10 of the Delhi Municipal Corporation (Preparation of Electoral Rolls) Rules, 1975. The Committee observe that in case of a similar provision in Rule 12 of the Registration of Electors Rules, 1960, where the Committee had found that the period allowed for lodging claims and objections had been reduced to just one day in one case, the Committee had desired that the reduced period should not be so short as to deprive the electors of a fair opportunity of filing claims and objections. On the matter being pursued, the Committee have been assured by the Ministry of Law that in no case of an ordinary revision, a period of less than 15 days will be fixed by the Election Commission for lodging a claim for inclusion of a name in the electoral roll or lodging an objection to an entry therein

1	2	3
		<i>vide</i> para 109 of their Twentieth Report (Fifth Lok Sabha). The Committee have urged that even in case of special revisions, the period allowed should not be less than 7 days. Likewise, the Committee desire the Ministry of Home Affairs to amend Rule 10 of the Delhi Municipal Corporation (Preparation of Electoral Rolls) Rules, 1975 so as to provide a minimum period of 15 days to the public for submitting their objections/suggestions on the draft rolls in case of ordinary revisions and not less than 7 days in case of special revisions.
2 (ii)	21	The Committee note from the reply of the Ministry of Home Affairs that there is no prohibition in giving acknowledgement to claims/objections. The Committee desire the Ministry of Home Affairs to amend Rule 12 of the Delhi Municipal Corporation (Preparation of Electoral Rolls) Rules, 1975 so as to make a statutory provision for giving of acknowledgement.
2 (iii)	24	The Committee note that, on being pointed out, the Ministry of Home Affairs have agreed to amend Rule 18 of the Delhi Municipal Corporation (Preparation of Electoral Rolls) Rules, 1975 so as to provide for recording of reasons in writing in case of rejection of claims/objections. The Committee desire the Ministry to amend the Rule accordingly at an early date and inform them as and when the Rule is so amended.
3 (i)	30	The Committee note from the reply of the Ministry of Labour that according to the procedure introduced by the Coal Mines Provident Fund Organisation, a notice is required to be given in Form Adv. 30 to an employee to make a declaration regarding utilisation of the advance within three weeks from the date of issue of the notice. The Committee desire that the provision of notice should be put on a statutory footing by including it in the Schemes so as to ensure that in each case of default, an opportunity of being heard is statutorily afforded to the employee before action is taken to recover the advance

1

2

3

from him. The Committee also desire the Ministry to amend Form Adv. 30 so that three weeks' time is made available to the employee from the date of receipt of the notice by him, instead of the date of its issue.

3 (ii)

31

The Committee observe that the original clause (c) of sub-rule (3) of Rule 16 of the General Provident Fund (Central Services) Rules, 1960 relating to conditions of withdrawal, to which a reference has been made by the Ministry in their reply, stands amended *vide* S.O. 1728 of 1974 so as to provide for giving a reasonable opportunity of representation to a subscriber before action is taken to recover the amount from his emoluments. In the opinion of the Committee, the fact that the Ministry have cited reference to an unamended rule in their reply, indicates that there is no satisfactory arrangement in the Ministry of Labour for keeping the rules upto-date. In order that the employees in the Ministry of Labour and offices subordinate thereto are not deprived of the benefits accruing from the latest amendments to rules issued by other Ministries, the Committee will like to impress upon the Ministry of Labour the need to keep their sets of relevant rules and instructions upto-date.

4 (i)

36

The Committee regret to note that the printed copies of the Gazette containing the draft Industrial Undertakings (Management, Liquidation or Reconstruction) Rules had reached the public 40 days after the date of its publication, when the period allowed to the public for furnishing objections/suggestions on the draft Rules had almost expired. The Committee have been repeatedly stressing that when the Acts give a right to the public to send their comments on certain draft rules, it is only reasonable that sufficient time should be given to the public to study the draft rules and send their comments/suggestions on their provisions. The Committee cannot but re-emphasize that a period

I

2

3

of not less than 30 clear days should invariably be given to the public to send their comments/suggestions on the draft rules. The Committee will also like to re-stress that in case a Ministry/Department find that in a particular case due to any reason the net period made available to the public works out to less than 30 days, they should extend the period for receipt of comments/suggestions so that the net period allowed to the public does not fall short of 30 clear days.

4 (ii)

37

The Committee note that the main reason for the reduction of the time allowed to the public in this case was unconscionable delay in the printing of the Gazette containing the draft Rules. The particular issue of the Gazette which bore the date 2nd March, 1974 was in fact brought out 37 days thereafter. The Committee take a serious view of such delays. It is unthinkable that a weekly publication like the Gazette should issue more than five weeks after the date of its publication. The Committee note that, besides the draft Rules, in question, the particular Gazette issue contained many sets of final rules. As usually the rules come into force on the date of their publication in the Gazette, most of the final rules contained in the particular issue of the Gazette had come into force on the 2nd March, 1974, long before they came to the notice of the public. This, in the opinion of the Committee, to say the least was anomalous. The Committee, however, note the assurance of the Ministry of Works and Housing that in future weekly Gazettes would be despatched to the Department of Publications on the date of issue (*i.e.* on every Saturday) in order that the printed copies of the same are made available on sale to the public either on the same day or the next day. The Committee trust that the Ministry of Works and Housing will keep their assurance, and take care to avoid such delays in future.

5 (i)

43

In their earlier Reports, the Committee on Subordinate Legislation have re-

peatedly emphasised the need for citation of precise statutory authority in the preamble to rules. The Committee have come across as many as 29 sets of rules, preambles to which contain expressions like 'and all other powers enabling him in that behalf'. As observed by the Committee in para 17 of their Seventeenth Report (Fifth Lok Sabha) and para 50 of their Nineteenth Report (Fifth Lok Sabha), such expressions keep a person aguessing as to what are the 'other powers' under which the rules have been framed. The Committee note with satisfaction that, pursuant to the recommendation of the Committee made in para 17 of their Seventeenth Report (Fifth Lok Sabha), the Department of Personnel and Administrative Reforms have assured that the expression 'all other powers enabling him in that behalf' is not being used now, and will not be used in the preamble of subsequent amendments to rules. All the powers under which statutory orders are issued will in future be specified in the orders. The Department of Personnel and Administrative Reforms have also issued general instructions in this regard to all Ministries/Departments of Government of India. The Committee trust that the instructions issued by the Department of Personnel and Administrative Reforms in this regard will be strictly complied with by Ministries/Departments who will take care to scrupulously avoid such vague expressions as 'all other powers' etc., in the preamble to rules.

5(ii)

46

In several cases enumerated in Appendix II to the Report, the Ministries/Departments were asked to omit the expression 'all other powers enabling him in that behalf' appearing in the preamble to rules. However, in view of the advice of the Law Ministry that no amendment is considered necessary in the preamble to the rules, the Committee do not insist on the amendment of the rules already published and enumerated in the Appendix to this effect at this stage.



1	2	3
6(i)	51	The Committee note with satisfaction that, on being pointed out, the Ministry of Agriculture and Irrigation have amended the Meat Food Products Order, 1973, so as to specify the minimum rank of an Officer who could be empowered by the licensing authority to exercise the powers of entry, search, seizure, etc.
6(ii)	54	The Committee note with satisfaction that, on being pointed out, the Ministry of Agriculture and Irrigation have amended the Meat Food Products Order, 1973, so as to make the provisions of the Code of Criminal Procedure, 1973 relating to searches and seizures, applicable to searches and seizures to be made under clause 14 of the Order.
7	59	The Committee note that, according to the Ministry of Law, section 1 of the Evidence Act expressly provides that it applies to all judicial proceedings in or before any Court; it does not apply to quasi-judicial proceedings like the adjudication proceedings taken under the Foreign Exchange Regulation Act, 1973. The Committee also note that in the <i>Union of India vs. T.R. Varma</i> (AIR 1975, SC 882), the Supreme Court has also held that quasi-judicial tribunals are required to observe rules of natural justice in the conduct of the inquiry and that if they do so, their decision is not to be impeached on the ground that the procedure followed is not in accordance with that which obtains in a Court of Law. In view of this, the Committee do not want to pursue the matter further.
8	63	The Committee note that the Ministry of Industry (Department of Industrial Development) have conceded that the Petroleum Act, 1934 does not empower Government to sub-delegate their powers, and as such Rule 146(2) of the Petroleum Rules, 1976, which empowers the licensing authority to omit, alter or add to any of the conditions specified in the form of licence, <i>notwithstanding anything contained in Rule 145</i> , may have to be deleted.

I

2

3

The Committee desire the Ministry to omit the said rule at an early date and inform them as and when this has been done.

9

67

The Committee concur with the proposal of the Department of Personnel and Administrative Reforms to amend the existing Savings Clause in respect of reservations for Scheduled Castes and Scheduled Tribes in Recruitment Rules so as to include the words 'relaxation of age-limit' after the word 'reservations' contained therein. The Committee will like to be informed as and when the above proposal is given effect to.

10

70

The Committee note with satisfaction that the Ministry of Shipping & Transport (Transport Wing), on being pointed out, have agreed to further amend Rule 7 of the Delhi Transport Corporation (Advisory Council) Rules to provide for issue of a show-cause notice to a person before his membership of the Delhi Transport Corporation Advisory Council is terminated. The Committee desire the Ministry to amend the rule in question to the necessary effect at a very early date.

11

75

The Committee regret to observe that there was gap of more than two years between publication of the draft and final rules in the case of the Prevention of Food Adulteration (Second Amendment) Rules, 1975 (G.S.R. 508-E of 1975). They are not satisfied with the explanation given by the Ministry of Health and Family Welfare (Department of Health) in this regard. The Committee feel that with a little more care and promptness on the part of the Ministry of Health, the delay in publication of the amendment rules could have been considerably reduced. The Committee have from time to time been deprecating inordinate delays in issue of amendments to rules. It is hardly necessary for the Committee to point out that amendments to rules are brought with a purpose and till the amendments are promulgated, the underlying purpose

is not served. The Committee note that the Ministry have since issued instructions to all concerned to finalise such notifications within one year from the date of their publication for inviting comments from the public. The Committee desire the Ministry to make efforts to further reduce the gap between the publication of draft rules and their publication in final form.

1

78

The Committee note that rules in respect of 13 subjects specified in the Water (Prevention and Control of Pollution) Act, 1974 have already been framed by the Ministry of Works and Housing, but rules in respect of the following 3 subjects enumerated in the said Act have not yet been framed :—

- (i) Prohibition or regulation of bathing in any stream or well or the washing or cleaning therein of things of any class or description, or the putting of litter or other objectionable matter, whether poisonous, noxious or polluting or not into any stream or well.
- (ii) Prohibition or regulation of the keeping or use, or any stream, of vessels provided with sanitary appliances from which polluting matter passes into the stream.
- (iii) Rules regarding service conditions of the employees of the Central Board for Prevention and Control of Water Pollution.

The Committee note from the reply of the Ministry that they propose to empower the Central Board to frame regulations on subjects mentioned at items (i) and (iii) above by making suitable amendments to the Act. Similarly, in respect of item (ii), the Committee note that the Ministry propose to bring an amendment to the Act so that the rules for pollution from ships in the territorial waters may be made by the Ministry of Shipping and Transport under the Merchant Shipping

1

2

3

Act, 1958. The Committee desire the Ministry of Works and Housing to bring forward the proposed amendments to the Act as early as possible in order that the rules/regulations covering the three subjects are framed without any further delay.

\*3

81

While the Committee note that the Ministry of Home Affairs have since initiated necessary action to publish the Schedule to the Andaman & Nicobar Islands Chief Commissioner's Secretariat (Senior Technical Assistant) (Work Study) Recruitment Rules, 1976, they cannot help observing that this had been done by the Ministry only after the mistake had been pointed out by the Committee. The Committee will once again like to re-stress on all Ministries Departments the need of strictly complying with their recommendation contained in para 36 of Fourth Report (Fifth Lok Sabha) and reiterated in para 93 of Twentieth Report (Fifth Lok Sabha) that the responsibility of a Ministry/Department did not cease with the sending of a notification to the Press. After its publication, the Ministry/Department concerned should take immediate steps to examine whether the same had been correctly printed and if necessary, to issue a corrigendum thereto.

## APPENDIX B

(See paras 42 and 46 of the Report).

*List of 'Orders' containing expressions like 'and of all other powers enabling the Central Government in this behalf' in the preamble which were referred to the Ministries/Departments.*

S. No.	G.S.R. No. and date	Short Title of the 'Order'	Ministry/Department concerned.
(1)	(2)	(3)	(4)
1	G.S.R. 394-E of 1975 1-7-1975	The Defence of India (Amendment) Rules, 1975.	Home Affairs.
2	G.S.R. 583-E of 1975 12-12-1975	The Company Law Board (Bench) Rules, 1975.	Law, Justice & Company Affairs (Deptt. of Company Affairs).
3	G.S.R. 459-E of 1974 8-11-1974	The Additional Emoluments Compulsory Deposit (Local Authority Employees) Scheme, 1974.	Finance (Deptt. of Economic Affairs).
4	G.S.R. 460-E of 1974 8-4-1974	The Additional Emoluments Compulsory Deposit (Employees other than Employees of Government and Local Authorities) Scheme, 1974.	Do.
5	G.S.R. 458-E of 1974 8-11-1974	The Addl. Emoluments Compulsory Deposit (Government Employees) Scheme, 1974.	Do.
6	G.S.R. 1218 of 1974 16-11-1974	The Merchant Shipping (Wrecks and Salvage) Rules, 1974.	Shipping and Transport (Transport Wing).
7	G.S.R. 366 of 1975 22-3-1975	The Indian Economic Service (First Amendment) Rules, 1975.	The Cabinet Sectt. (Deptt. of Personnel and Administrative Reforms).
8	G.S.R. 327-E of 1975 10-6-1975	The Companies (Central Government's) General Rules and Forms (Amendment) Rules, 1975.	Law, Justice and Company Affairs (Deptt. of Company Affairs).
9	G.S.R. 414-E of 1975 16-7-1975	The Companies (Central Government's) General Rules and Forms (Second Amendment) Rules, 1975.	Law, Justice and Company Affairs (Deptt. of Company Affairs).
10	G.S.R. 276 of 1975 1-3-1975	The Monopolies & Restrictive Trade Practices Commission (Amdt). Regulations, 1975.	Do.

(1)	(2)	(3)	(4)
11 S.O. 606-E of 1974 11-10-1974	The Cement Control (Seventh Amendment) Order, 1974.	Industry & Civil Supplies (Deptt. of Industrial Development).	
12 G.S.R. 899 of 1975 26-7-1975	The Indian Administrative Service (Cadre) First Amdt. Rules, 1975.	Deptt. of Personnel & Administrative Reforms.	
13 G.S.R. 339-E of 1975 21-6-1975	The Post Office Savings Banks (Second Amdt.) Rules, 1975.	Finance (Deptt. of Economic Affairs.)	
14 G.S.R. 1039 of 1974 28-9-1974	The Indian Statistical Service (Fourth Amdt.) Rules, 1974.	The Cabinet Sectt. (Deptt. of Personnel & Administrative Reforms).	
15 S.O. 3006 of 1974 16-11-1974	The Delegation of Financial Powers (Amdt.) Rules, 1974.	Finance (Deptt. of Expenditure).	
16 G.S.R. 1359 of 1974 21-12-1974	The Railway Board Sectt. Stenographers (Amdt.) Rules, 1974.	Railways (Railway Board).	
17 S.O. 2850 of 1974 2-11-1974	The General Provident Fund (Central Services) Eighth Amdt. Rules, 1974.	Finance (Deptt. of Expenditure).	
18 S.O. 2851 of 1974 2-11-1974	The Contributory Provident Fund (India) Fourth Amdt. Rules, 1974.	Do.	
19 S.O. 2915 of 1974 9-11-1974	The Contributory Provident Fund (India) Sixth Amdt. Rules, 1974.	Do.	
20 S.O. 2916 of 1974 9-11-1974	The Contributory Provident Fund Rules (India), Seventh Amdt. Rules, 1974.	Finance (Deptt. of Expenditure).	
21 S.O. 3007 of 1974 16-11-1974	The Contributory Provident Fund (India) Fifth Amdt. Rules, 1974.	Do.	
22 S.O. 3008 of 1974 16-11-1974	The General Provident Fund (Central Services) Tenth Amdt. Rules, 1974.	Do.	
23 G.S.R. 1369 of 1974 28-12-1974	The Delhi & Andaman and Nicobar Islands Civil Service (Fourth Amdt.) Rules, 1974.	Home Affairs.	
24 G.S.R. 1154 of 1974 2-11-1974	The Central Secretariat Service (Sixth Amdt.) Rules, 1974.	The Cabinet Sectt. (Deptt. of Personnel & Administrative Reforms.)	
25 G.S.R. 1361 of 1974 28-12-1974	The Central Sectt. Stenographers Service (Fourth Amdt.) Rules, 1974.	Do.	

(1)	(2)	(3)	(4)
26 G.S.R. 1069 of 1974 5-10-1974	The Delhi & Andaman and Nicobar Islands Civil Ser- vice (Third Amdt.) Rules, 1974.	Home Affairs.	
27 G.S.R. 1070 of 1974 5-10-1974	The Delhi & Andaman and Nicobar Islands Police Ser- vice (Second Amdt.) Rules, 1974.	Do.	
28 G.S.R. 1084 of 1974 5-10-1974	The Indian Foreign Service, Branch 'B' (Recdt., Cadre, Seniority & Promotion) Third Amdt. Rules, 1974.	External Affairs.	
29 G.S.R. 807 of 1974 27-7-1974	The Merchant Shipping (Levy of Seamen's Welfare Fee) Rules, 1974.	Shipping and Transport (Transport Wing).	

---

---

## **MINUTES**

---

---



## **APPENDIX III**

### **Minutes of the Fifth Sitting of the committee on Subordinate Legislation**

**(Sixth Lok Sabha)**

**(1977-78)**

---

The Committee met on Thursday, the 27th October, 1977 from  
23.00 hours to 15.45 hours.

#### **PRESENT**

**Shri Somnath Chatterjee—Chairman.**

#### **MEMBERS**

2. Shri Bhagirath Bhanwar
3. Shri Somjibhai Damor
4. Shri Durga Chand
5. Shri Santoshrao Gode
6. Chaudhary Hari Ram Makkasar Godara
7. Shri Tarun Gogoi
8. Shri Ram Sewak Hazari
9. Shri K. T. Kosalram
10. Shri P. Rajagopal Naidu
11. Shri N. Sreekantan Nair
12. Kumari Maniben Vallabhbbhai Patel
13. Shri Saeed Murtaza
14. Shri Sachindralal Singha

## SECRETARIAT

Shri Y. Sahai—Chief Legislative Committee Officer.

2. The Committee considered Memoranda Nos. 25-34 on the following subjects :—

S. No.	Memo. No.	Subject
(1)	(2)	(3)
(i)	25	Delay in printing the draft Industrial Undertakings (Management, Liquidation or Reconstruction) Rules, 1975 (G.S.R. 2306 of 1975).
(ii)	26	The Meat Food Products Order, 1973 (S.O. 176-E of 1973).
(iii)	27	The Adjudication Proceedings and Appeal Rules, 1974 (G.S.R. 75 of 1974).
(iv)	28	* * *
(v)	29	* * *
(vi)	30	The Defence of India (Amendment) Rules, 1975 (G.S.R. 394E of 1975).
(vii)	31	The Andaman & Nicobar Islands Chief Commissioner's Secretariat (Senior Technical Assistant) (Work Study) Recruitment Rules, 1976 (G.S.R. 159 of 1977).
(viii)	32	* * *
(ix)	33	Relaxation of age limit for Scheduled Castes, Scheduled Tribes and other special Categories of persons-Provisions in the Recruitment Rules.
(x)	34	The Delhi Transport Corporation (Advisory Council) (Amendment) Rules, 1977 (S.O. 667 of 1977).

\*\*\* Omitted portions of the Minutes are not covered by this Report.

- (i) *The Industrial Undertakings (Management, [Liquid or Reconstruction] Rules, 1975 (G.S.R. 2306 of 1975) Memorandum No. 25)*

3. The Committee considered the above Memorandum and noted that the printed copies of the Gazette containing the draft Rules had reached the public 40 days after the date of its publication when the period allowed to the public for furnishing objections[suggestions on the draft rules had almost expired. As the rules usually come into force on the date of their publication in the Gazette, most of the final rules contained in the particular issue of the Gazette had come into force on 2-3-1974. long before they came to the notice of the public on 11-4-1974. This in, the opinion of the Committee was anomalous. The Committee, however, noted the assurance of the Ministry of Works and Housing that weekly Gazettes would be despatched to the Department of publications on the date of issue (i.e. on every Saturday) in order that the printed copies of the Gazette are made available on sale to public on the same day or the next day. The Committee expects the Ministry of Works and Housing to keep their assurance, and to take care to avoid such delays in future.

- (ii) *The Meat Food Products Order, 1973 (S.O. 176-E of 1973) (Memorandum No. 26).*

4. The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out, the Ministry of Agriculture (Department of Agriculture) had amended the Meat Food Products Order, 1973, on the lines suggested by the Committee.

- (iii) *The Adjudication Proceedings and Appeal Rules, 1974 (G.S.R. 75 of 1974) (Memorandum No. 27).*

5. The Committee considered the above Memorandum and noted that, according to the Ministry of Law, section 1 of the Evidence Act expressly provides that it applies to all judicial proceedings in or before any court; it did not apply to quasi-judicial proceedings like the adjudication proceedings taken under the Foreign Exchange Regulation Act, 1973. The Committee also noted that in the *Union of India vs. T. R. Verma* (AIR 1975 SC 832), the Supreme Court had also held that quasi-judicial tribunals were required to observe rules of natural justice in the conduct of the inquiry and that if they did so, their decision was not to be impeached on the ground that the procedure followed was not in accordance with that, which obtained in a Court of Law.

In view of this, the Committee decided not to pursue the matter further.

6—8. \* \* \*

- (vi) *The Defence of India (Amendment) Rules, 1975 (G.S.R. 394-E of 1975)—(Memorandum No. 30)*

9. The Committee considered the above Memorandum and noted the assurance given by the Department of Personnel and Administrative Reforms to the effect that the expression "all other powers enabling him in that behalf" was not being used now and would not be used in the preamble of subsequent amendments to the rules; and that all the powers under which statutory orders were issued would in future be specified in the preamble to such Orders.

10. The Committee noted that a similar objection had been raised in 28 other cases. In view of the advice of the Law Ministry that no amendment

was considered necessary in the preamble to the rules, the Committee decided not to insist on amendment of the rules in question at this stage. The Committee, however, decided to re-stress on all the Ministries/Departments the need to take care that in the preamble to rules precise statutory authority for framing the rules is invariably cited and such vague expressions as 'all other powers', etc. scrupulously avoided.

- (vii) *The Andaman & Nicobar Islands Chief Commissioners Secretariat (Senior Technical Assistant (Work Study) Recruitment Rules, 1976 (G.S.R. 159 of 1977). (Memorandum No. 31).*

11. The Committee considered the above Memorandum and noted that the Ministry of Home Affairs had initiated necessary action to publish the schedule only after they had pointed out the mistake to the Ministry. In para 36 of their Fourth Report (Fifth Lok Sabha), the Committee observed that the responsibility of a Ministry/Department did not cease with the sending of a notification to the press. After its publication, the Ministry/Department concerned should take immediate steps to examine whether the same had been correctly printed and if necessary, to issue a corrigendum thereto. This recommendation was reiterated in para 93 of Twentieth Report (Fifth Lok Sabha). The Committee decided to re-stress on all Ministries/Departments the necessity of strictly complying with their recommendation contained in para 36 of Fourth Report (Fifth Lok Sabha) as reiterated in para 93 of 20th Report (Fifth Lok Sabha).

12.           \*           \*

- (ix) *Relaxation of age limit for Scheduled Castes, Scheduled Tribes and other special Categories of persons—Provisions in the Recruitment Rules. (Memorandum No. 33).*

13. The Committee considered the above Memorandum and decided to concur with the proposal of the Department of Personnel and Administrative Reforms to amend the existing Saving Clause in respect of reservations for Scheduled Castes and Scheduled Tribes in Recruitment Rules so as to include the words "relaxation of age-limit" after the word "reservations" contained therein.

The Committee desired to be informed as and when [the aforesaid proposal was given effect to.

- (x) *The Delhi Transport Corporation (Advisory Council) (Amendment) Rules, 1977 (S.O. 667 of 1977) (Memorandum No. 34).*

14. The Committee considered the above Memorandum and noted with satisfaction that on being pointed out, the Ministry of Shipping and Transport have agreed to further amend Rule 7 of the Delhi Transport Corporation (Advisory Council) Rules to provide for issue of a show-cause notice to a person before his membership of the DTC Advisory Council was terminated.

15. The Committee decided to ask Government to amend the rules to the necessary effect at very early date.

*The Committee then Adjourned.*

---

\*Omitted portions of the Minutes are not covered by this Report.

**MINUTES OF THE SIXTH SITTING OF THE COMMITTEE  
ON SUBORDINATE LEGISLATION  
(SIXTH LOK SABHA)  
(1977-78)**

The Committee met on Tuesday, the 8th November, 1977 from 11.00 to 12.00 hours.

**PRESENT**

Shri Somnath Chatterjee—*Chairman*

**MEMBERS**

2. Shri Bhagirath Bhanwar
3. Shri Somjibhai Damor
4. Shri Durga Chand
5. Shri Santoshrao Gode
6. Chaudhary Hari Ram Makkasar Godara
7. Shri Trepan Singh Negi
8. Kumari Maniben Vallabhbhai Patel

**SECRETARIAT**

Shri Y. Sahai—Chief Legislative Committee Officer.

- |    |   |   |   |   |
|----|---|---|---|---|
| 2. | * | * | * | * |
| 3. | * | * | * | * |

4. The Committee then considered Memoranda Nos. 35 to 42 on the following subjects :

S. No.	Memo. No.	Subject
(1)	(2)	(3)
(i)	35	The Employees' State Insurance Corporation (General Provident Fund) Rules, 1973 (G.S.R. 1204 of 1973).

\*Omitted portions of the Minutes are not covered by this Report.

(1)	(2)	(3)
(ii)	36	The Prevention of Food Adulteration (Second Amendment) Rules, 1975 (G.S.R. 508-E of 1975)—Delay in publication of final rules.
(iii)	37	(a) The Coal Mines Provident Fund (Amendment) Scheme, 1975 (G.S.R. 687 of 1975) ; (b) The Rajasthan Coal Mines Provident Fund (Second Amendment) Scheme, 1975 (G.S.R. 689 of 1975) ; and (c) The Neyveli Coal Mines Provident Fund (Second Amendment) Scheme, 1975 (G.S.R. 690 of 1975) ;
(iv)	38	Non-framing of rules under the Water (Prevention and Control of Pollution) Act, 1974.
(v)	39	* * *
(vi)	40	* * *
(vii)	41	The Petroleum Rules, 1976 (G.S.R. 479-E of 1976).
(viii)	42	The Delhi Municipal Corporation (Preparation of Electoral Rolls) Rules, 1975 (Notification No. F. 2 (30)/73—LSG dated the 19th March, 1975).

- (i) *The Employees State Insurance Corporation (General Provident Fund) Rules, 1973 (G.S.R. 1204 of 1973) (Memorandum No. 35).*

(A)

5. The Committee considered the above Memorandum and were surprised to find that for a period of nearly 14 years the Corporation had administered the General Provident Fund Scheme on the basis of draft regulations, which had no legal support or authority. Although the Scheme had been in operation since 4-12-1959, the Corporation had framed the statutory rules only in 1973, and then had given them retrospective effect from the date of operation of the Scheme. The Committee saw no justification for a period of nearly 14 years taken by the Corporation to frame the rules. They observed in this regard that as far back as May, 1959, the committee on Subordinate Legislation in para 34 of their Fifth Report (Second Lok Sabha) had recommended that ordinarily rules

\*Omitted portions of the Minutes are not covered by this Report.

should be framed under a Act as soon as possible after the commencement of the Act and in no case this period should exceed six months.

6. The Committee noted that the Ministry of Labour in their reply had conceded that the Employees' State Insurance Act, 1948 did not empower the Central Government to give retrospective effect to rules framed under section 95 of the Act. They were, however, not satisfied with the opinion of the Legal Adviser of the Corporation that the principle that the Central Government would not make Rules with retrospective effect was not applicable to the present case as the General Provident Fund Rules purported only to incorporate the existing rules provided in the Staff Regulations and did not impose new restrictions or take away the existing rights to the prejudice of the employees. The Committee was of the opinion that retrospective effect to the Rules was without due legal authority. In this connection, the Committee noted the opinion of the Attorney-General that Subordinate Legislation could not have any retrospective effect, unless it had been authorised by the Legislature. The Committee decided to recommend that the Ministry should either give effect to the Rules from the date of their publication in the Gazette or alternatively incorporate a provision in the Employees' State Insurance Act empowering the Government to give retrospective effect to the Rules.

(B)

7. The Committee considered the Memorandum and were not satisfied with the reply of the Ministry in regard to the genesis of the proviso to clause (d) of rule 14(1) of the Employees' State Insurance Corporation (General Provident Fund) Rules, 1973. The Committee saw no cogent reasons for denying an advance from his General Provident Fund if an employee had to institute legal proceedings against the Corporation in respect of any condition of service of penalty imposed on him by the Corporation, particularly when clause (e) provided for the grant of an advance if he had to defend himself in a case filed by the Corporation against him. The Committee also saw no cogent reason why an advance should not be available to an employee from his General Provident Fund for (i) instituting legal proceedings to vindicate his position in some matter, which though unconnected with his official duties, vitally affected his honour or, (ii) to meet the cost of defence in cases where someone else might have instituted legal proceedings against him in some matter vitally affecting his financial interest (such as a property case). The Committee decided to recommend that the Ministry should amend the Rules accordingly.

- (ii) *The Prevention of Food Adulteration (Second Amendment Rules, 1975 (G.S.R.) 508-E of 1975—Delay in publication of final rules (Memorandum No. 36).*

8. The Committee considered the above Memorandum and were not satisfied with the explanation furnished by the Ministry of Health and Family Welfare (Department of Health) for the delay of over two years in the final publication of the Rules. The Committee noted that during the intervening period of over two years, no arrangements were made in respect of the proposed amendment to be inserted in the original rules. The Committee observed in this connection that amendments to rules were brought with a purpose and till the amendments were promulgated, the underlying purpose was not served. The Committee decided to record disapproval of the delay.

9. The Committee noted that the Ministry had issued instructions to all concerned to finalise such notifications within one year from the date of their publication for inviting comments. The Committee desired Ministry to make efforts to further reduce the gap between the publication of draft rules and their publication in final form.

- (iii) (a) *The Coal Mines Provident Fund (Amendment) Scheme, 1975* (G.S.R. 687 of 1975);
- (b) *The Rajasthan Coal Mines Provident Fund (Second Amendment) Scheme, 1975* (G.S.R. 689 of 1975); and
- (c) *The Neyveli Coal Mines Provident Fund (Second Amendment) Scheme, 1975* (G.S.R. 690 of 1975) (Memorandum No. 37).

10. The Committee considered the above Memorandum and noted from the reply of the Ministry of Labour that according to the procedure introduced by the Coal Mines Provident Fund Organisation, a notice was required to be given in Form Adv. 30 to an employee to make a declaration regarding utilization of the advance within 3 weeks from the date of issue of the notice. The Committee decided to recommend that the provision of notice should be put on a statutory footing by including it in the Scheme so as to ensure that in each case of default, an opportunity of being heard was afforded to the employee before action was taken to recover the advance from him. The Committee also desired the Ministry to amend Form Adv. 30 so that 3 weeks' time was made available to the employee from the date of receipt of the notice by him, instead of the date of its issue.

11. The Committee also observed that the original clause (c) of sub rule (3) of Rule 16 of the General Provident Fund (C.S.) Rules relating to conditions of withdrawal, to which reference had been made by the Ministry in their reply, had been amended *vide* S.O. 1728 of 1974 so as to provide for giving a reasonable opportunity of representation to the subscriber before recovering the amount from his emoluments. In the opinion of the Committee, the fact that the Ministry had referred to an unamended rule in their reply, indicated that there was no satisfactory arrangement in the Ministry for keeping the rules up-to-date.

- (iv) *Non-framing of Rules under the Water (Prevention and Control of Pollution) Act, 1974* (Memorandum No. 38).

12. The Committee noted that in compliance with their recommendation made in para 108 of their 18th Report (Fifth Lok Sabha) the Ministry of Works & Housing had informed them that rules on the following three subjects had yet to be framed by them as required by Section 63 and 12(3) of Water (Prevention and Control of Pollution) Act, 1974 :—

- (i) Prohibition or regulation of bathing in any stream or well or the washing or cleaning therein of things of any class or description, or other objectionable matter, whether poisonous, noxious or polluting or not into any stream or well.
- (ii) Prohibition or regulation of the keeping of use on any stream or vessels provided with sanitary appliances from which polluting matter passes into the stream.



- (iii) Rules regarding service conditions of the employees of the Central Board for prevention and Control of Water Pollution.

13. The Committee noted from the reply of the Ministry that they proposed to empower the Central Board to frame regulations on subjects at items (i) & (iii) above by making suitable amendments to the Act. Similarly, in respect of item (ii), the Committee noted that the Ministry proposed to bring an amendment to the Act so that the Rules for pollution from ships in the territorial waters might be made by the Ministry of Shipping & Transport under the Merchant Shipping Act, 1958.

14. The Committee desired the Ministry of Works & Housing to bring forward the proposed amendments to the Act as early as possible so that the rules/regulations covering the three subjects were framed without any further delay.

15-19        \*                                \*                                \*

- (vii) *The petroleum Rules, 1976 (G.S.R. 479-E of 1976) (Memorandum No. 41).*

(A) & (B)

20. The Committee considered parts A & B of the Memorandum for some time and decided to hear oral evidence of the representatives of the Ministry of Industry (Department of Industrial Development) in regard to (i) the time-lag of about 4 years between the publications of the draft rules and final rules and (ii) use of vague expressions in certain rules.

21. The Committee considered the Memorandum and noted that the Ministry of Industry (Department of Industrial Development) had conceded that the Act did not empower the Government to sub-delegate its powers and as such Rule 117 of the Petroleum Rules might have to be deleted. The Committee desired the Ministry to expedite the matter and inform them when the rule was deleted.

- (viii) *The Delhi Municipal Corporation (Preparation of Electoral Rolls) Rules, 1975 [Notification No. 2(30)/73—LSG dated the 19th March, 1975] (Memorandum No. 42);*

(A)

22. The Committee considered the above Memorandum and were not satisfied with the reply of the Ministry of Home Affairs in respect of the provision of Rule 10 of the Delhi Municipal Corporation (Preparation of Electoral Rolls) Rules, 1975 which empowered the Director to fix a period of less than 30 days for receiving objections/suggestions from the public on draft rolls.

23. The Committee noted that in respect of a similar provision in Rule 112 of the Registration of Electors Rules, 1960, the Election Commission had assured that in no case of ordinary revision a period of less

---

\*Omitted portions of the Minutes are not covered by this Report.

than 15 days would be fixed for lodging a claim for inclusion of a name in the electoral roll or lodging an objection to an entry therein. The Committee had also recommended that in case of special revisions, the period allowed should not be less than 7 days.

24. The Committee decided to recommend that the Ministry of Home Affairs should amend the Rules so as to provide a minimum period of 15 days to the public for submitting their objections/suggestions on the draft rolls in case of ordinary revision and not less than 7 days in case of special revisions.

(B)

25. The Committee considered the Memorandum and noted from the reply of the Ministry of Home Affairs that there was no prohibition in giving acknowledgement to claims/objections. In view of this, the Committee decided to recommend that the Ministry should amend the Rules so as to make a statutory provision for giving of acknowledgement.

(C)

26. The Committee noted that, on being pointed out, the Ministry of Home Affairs had agreed to amend rule 18 so as to provide for recording of reasons in writing in case of rejection of claims/objections. The Committee desired the Ministry to amend the Rules accordingly at an early date and inform them when the rule was amended.

*The Committee then adjourned to meet again on the 29th November, 1977.*

---

MINUTES OF THE EIGHTH SITTING OF THE COMMITTEE  
ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA)

---

The Committee met on Friday, the 9th December, 1977 from 16.00 to 17-00 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Durga Chand
3. Shri N. Sreekantan Nair
4. Shri Trepan Singh Negi
5. Kumari Maniben Vallabhbhai Patel

\* \* \* \*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee considered their draft Third and Fourth Reports and adopted them.

3. \* \* \* \*

4. The Committee also authorised the Chairman and in his absence, Shri Durga Chand to present the Fourth Report to the House on their behalf on the 22nd December, 1977.

5. The Committee decided to meet again on the 20th December, 1977.

6. \* \* \* \*

*The Committee then adjourned.*

---

\*Omitted portions of the Minutes are not covered by this Report.