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COMMITTEE ON SUBORDINATE LEGISLATION
(FOURTEENTH LOK SABHA)
(2004-2005)

FIRST REPORT

(PRESENTED ON 2 DECEMBER, 2004)

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LOK SABHA SECRETARIAT

NEW DELHI

PRICE:

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INTRODUCTION

I, the Chairman, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this First Report.

2. The matters covered by this Report were considered by the Committee of 2003.2004 at their sitting held on 4.8.2003, 14.10.2003, 10.12.2003 and 20.1.2004.

3. The Committee wish to thank the representatives of the Ministry of Agriculture (Department of Agriculture and Cooperation), Ministry of Petroleum and Natural Gas and Ministry of Finance (Department of Company Affairs) for appearing before the Committee and furnished the information required by the Committee.

4. The Committee also wish to place on record their appreciation of the valuable work done by the predecessor Committee (2003-2004).

5. The Committee considered and adopted this Report at their sitting held on 26.8.2004. Extracts from the Minutes of the First sitting (2004-2005) relevant to this Report are included in Appendix II.

6. For facility of reference and convenience, recommendations/observation of the Committee have been printed in thick type in the body of the Report and have also been reproduced in consolidated form in Appendix I of the Report.

N.N. KRISHNADAS
CHAIRMAN
COMMITTEE ON SUBORDINATE LEGISLATION

NEW DELHI;
August,2004

I

The Multi-State Co-operative Societies Rules, 2002

The Multi State Cooperative Societies Rules, 2002, (GSR 790-E of 2002) published in Gazette of India – Extraordinary, Part-II, Section 3(i) dated 2 December, 2002 contained a number of shortcomings. These were referred to the Ministry of Agriculture (Department of Agriculture and Cooperation) for their comments and a reply dated 18 August, 2003 was received. The Committee also held discussions with the representatives of the Ministry of Agriculture (Department of Agriculture and Cooperation) on 20 January, 2004. These issues are discussed in the succeeding paragraphs:-

A. Absence of minimum period of demand notice before attachment of movable property.

1.2. Under Rule 37(5)(a) regarding attachment and sale of movable property in the Multi-State Cooperative Societies Rules 2002 (GSR 790-E of 2002) a judgement debtor is served a demand notice and he is expected to settle his dues at once. There is no provision for Sale Officer to provide a minimum period of demand notice to judgement debtor before attachment of movable property.

1.3. Rule 37(5)(a) regarding attachment and sale of movable property reads as under:-

> *"the Sale Officer, shall after giving previous notice to the decree-holder, proceed to the village or place where the judgement debtor resides or the property to be distrained is situated and serve a demand notice upon the judgement debtor if he is present. If the amount due together with the expenses be not at once paid, the Sale Officer shall make the distress and shall immediately deliver to the judgement debtor a list or inventory of the property distrained and an intimation of place and day and hour at which the distrained property will be brought to sale*

if the amount due are not previously discharged. If the judgement debtor is absent, the Sale Officer shall serve the demand notice on some adult male member of his family, or on his authorized agent, or when such service cannot be effected, shall affix a copy of the demand notice on some conspicuous part of his residence. He shall then proceed to make the distress and shall fix the list of property attached on the ususal place of residence of the judgement debtor, endorsing thereon the place where the property may be lodged or kept and an intimation of the place, day and hour of sale".

1.4. It may be observed from above that there is a provision for giving prior notice to the decree holder but not to the judgement debtor. The latter is served a demand notice and he is expected to settle the dues at once. If the judgement debtor is not able to pay at once the amount due together with the expenses, the Sale Officer would deliver to him a list of inventory of the property distrained and an intimation of place and day and hour at which the distrained property is to be put on sale. There is no provision for Sale Officer to provide a minimum period of demand notice to judgement debtor before attachment of movable property.

1.5. It was against the principle of natural justice not to give reasonable time to poor debtors for making payments after serving demand notice prior to attachment of movable property. When this lacuna was pointed out, the Ministry of Agriculture (Department of Agriculture and Cooperation) stated in a written reply as under:-

> "As per provisions of rule 37 (5) (a), there is no provision for giving prior notice to the judgement debtor. It may be noted that first, the judgement debtor is provided with ample opportunity before passing an order or decision by the competent authority. Secondly, a decree is issued when the judgement debtor fails to satisfy the judgement amount. Only then a decree is issued for recovery of the judgement amount from the judgement debtor. Again as per provisions of clause (b) of sub-rule (11) of rule 37, the recovery officer also allows time, to the judgement debtor, for payment. The Sale Officer shall also give an opportunity for payment of the decree amount before the property distrained is actually put to sale (Clause (d) of sub-rule (11) of rule 37)."

1.6. Clauses (b) and (d) of Sub-rule (11) of rule 37 quoted above by the Ministry is applicable only to "immovable property" and not to "movable property". When the

Committee pointed out this error, the Secretary, Agriculture & Cooperation expressed regret and admitted during oral evidence (20.1.2004) as follows:-

> "At the outset, I regret the inadvertent mistake committed by the Ministry in quoting a wrong rule. Sir, you are right that the rule was not applicable in this case, which was quoted by mistake by the Ministry. I regret that mistake."

1.7. Considering that the judgement debtor is not given an opportunity before the decree is issued, the witness said,

> "It is true that the judgement debtor is not given an opportunity before the decree is issued. But then, Sir, this notice is given to the judgement debtor in the process of adjudication of the matter. So, he is already aware of the matter and it is only at the second stage that no notice has been given. There is also a practical problem, namely if you give a notice to the judgement debtor, then it is possible that he may remove the movable property. So, in view of that we have not provided for a second notice to the judgement debtor."

He, however, added,

> "Sir, if the hon. Committee feels and makes a suggestion that it should be made more fair and equitable to the judgement debtor and some notice period is required, then we will definitely do it."

1.8. The Committee are dismayed to note that there is no provision in the Multi-State Co-operative Societies Rules, 2002 to allow notice period to judgement debtor before attachment of 'movable' property. Immediately after demand notice is served, the judgement debtor is expected to settle all his dues failing which his movable property, according to the rules, will be distrained. The Committee feel that such a measure against poor debtors is too harsh and draconian. The Committee are of the view that the apprehension of the Ministry of Agriculture (Department of Agriculture and Cooperation) that extension of usual notice period might enable debtors to displace his property cannot justify violation of the principle of natural justice. It is not clear how the Ministry of Law and Justice also overlooked such a serious lacuna in the rules. The Committee would like to have the

comments of the Ministry of Law and Justice in this regard. The Committee expect that as assured by the Secretary, Department of Agriculture and Cooperation during oral evidence, reasonable notice period to judgement debtors be provided for in the Multi-State Cooperative Societies Rules before attachment of 'movable property'.

1.9. Incidentally, the Ministry of Agriculture (Department of Agriculture and Cooperation) contended that the rule 37 (11) did provide for allowing time to judgement debtor before attachment of property. It was observed that this contention of the Ministry was misleading as the rule quoted by the Ministry was applicable only to "immovable" property and not to "movable" property. The Secretary, Agriculture and Cooperation admitted during oral evidence that the rule was wrongly quoted by the Ministry and that the mistake was inadvertent. He also tendered apologies for the mistake. The Committee stress that due care should be exercised by the Ministry in furnishing replies to a Parliamentary Committee and it should be ensured that information furnished to them is always accurate and well founded.

B. Authority to force open building, etc.

1.10. The Rule 37(5)(g) of the Multi-State Cooperative Societies Rules, 2002 empowers the Sale Officer to force open stable, cow house, granary, godown, out house or other building and enter any dwelling home. The rule is as follows:-

> *"It shall be lawful for the Sale Officer to force open any stable, cow house, granary, godown, out-house or other building and he may also enter any dwelling house, the outer door of which may be open and may break open the door of any room in such dwelling house for the purpose of attaching property belonging to a defaulter and lodged therein, provided always that it shall not be lawful for the officer to break open or enter apartment in such dwelling house appropriate for the zenana or residence of women except as hereinafter provided".*

1.11. The authority to force open stable, etc. and authority to enter a dwelling house and break open the door of any room relates to "substantial aspects" and should, more appropriately, be dealt with in the Act itself. In this connection, the Department of Agriculture and Co-operation in a written reply stated that Rule 37 provided for the procedure to be adopted by the Sale Officer and his powers and obligations to carry out attachment / sale of a property effectively. It was stated further that as the provisions of rule 37 (5)(g) relate to procedural aspects, it was felt that such powers could be vested in a Sale Officer under the Rules for enforcing effective execution of decree.

1.12. During the oral evidence, the Secretary, Department of Agriculture and Cooperation stated in this connection as follows:-

> "I would like to submit here that the rule provides for entry into a dwelling house, the outer door of which may be open. If the main door is closed, the rule does not provide that the authority can force into that house. If the outer door is opened, then they can force open the inner rooms. If they suspect that there is property lying locked inside the house, they get lawful access. In other words, if there is a room which is locked and which they think is having some property which could be attached, the officer concerned can force his entry. There is a distinction. It is not forcing entry into a house. He has lawfully got into the house, if the outer door is opened. After he enters the house, he can order the persons to open the rooms that have been kept closed. That is the intention and, therefore, in that case, this rule could be left as it is."

The witnesses further stated as under:-

> "It is not an adjudication of a right. The substantive matter would be when you are adjudicating on somebody's rights. It is not that; it is the implementation or enforcement of a decree, which has already been passed. Therefore, we feel that this would fall in the realm of procedure for enforcement."

1.13. The Committee note that the Rule 37(5)(g) empowers the Sale Officer to enter any dwelling house and break open the door of any room in such dwelling house and also empowers him to force open stable, granary, godown, etc. The Committee are not convinced by the Ministry's plea that conferring such powers in

the process of enforcement of a decree falls within the realm of procedure for enforcement. The Committee feel that provisions of extreme nature such as the above should be provided for in the parent Act and should not form part of the rules. The Committee would however, like to have the opinion of the Ministry of Law and Justice in this matter.

C. Designating minimum rank of officer for issue of summon and execution of decrees.

1.14. Under rule 36(1), summons for attendance, etc. shall be authenticated by the seal, if any, of the officer by whom it is issued and shall be signed by such officer or by any person authorized by him in that behalf. The minimum rank of the officer who could be authorised to issue the summons has not been specified either in the Act or in the Rules made thereunder. Similarly, under Rule 37 (8)(i) where the property to be attached is a decree either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made if the decree sought to be attached was passed by the Central Registrar or any other person authorised by him. The minimum rank of officer who could be authorisd for this purpose has also not been mentioned in the rules.

1.15. The execution of a decree leads to searches / seizures involving questions of personal liberty and individual rights. Hence, delegated powers in such cases ought to be exercised with care and caution by responsible officers. Those powers cannot be delegated to all and sundry and the rules cannot remain wide open enabling delegation of

these powers to any person to be authorized. The Committee on Subordinate Legislation have repeatedly stressed the need for indication of minimum rank of the persons to be authorized for such tasks. Safeguards such as presence of witnesses at the time of seizure of property should also be provided for in the rules.

1.16. In response to this observation, the Ministry stated in a written reply that normally, the Registrar of Cooperative Societies and other senior officers of the State Government are delegated the powers of the Central Registrar. The Ministry further stated that as the process of issuing summons and executions of decree is to be undertaken by the officers to whom the powers of the Central Registrar have been delegated, the mention of the rank of officers was not considered feasible to be specified in the rules either in case of issuing summons or authorization as Recovery / Sale Officer.

1.17. When asked whether there is any difficulty in specifying in the rules the minimum rank of officer who could be authorised to undertake the process of issuing summons and execution of decree, the Secretary. Department of Agriculture and Cooperation agreed to do that and stated as under:-

> "In deference to the hon. Committee's observations, we accept that. We would prescribe the rank which would not be below the rank of ARCS, that is, the Assistant Registrar of Cooperative Societies. We agree to do that".

1.18. The Multi–State Cooperative Societies Rules, 2002 did not prescribe the minimum rank of the officer who can be authorized to undertake the process of issuing summons (Rule 32(1)), for execution of decrees and to act as Recovery / Sale Officer (Rule 37). The execution of a decree leads to searches / seizures involving questions of personal liberty and individual rights. Hence, delegated powers in such cases ought to be exercised with care and caution by responsible officers. Those powers cannot be delegated to all and sundry and the rules cannot remain wide open enabling delegation of these powers to any person to be authorized. Though the Ministry initially conveyed that it was not considered feasible to specify the minimum rank of the Officer in the rules, the Secretary, (Department of Agriculture) agreed during oral evidence to suitably amend the rules. The Committee would like to be apprised of the action taken in this regard.

D. Absence of time limit for disposal of Appeal

1.19. Section 99(2) of the Multi State Co-operative Societies Act, 2002, provides that appeal should be made within a period of 60 days from the date of decision and Section 101 (1) provides that application for review should be made within 30 days from the date of communication of the order of the appellate authority. However, no time limit has been prescribed for disposal of such appeals or for review applications either in the Act or Rules made thereunder. The Ministry of Agriculture stated in this connection in a written reply that the Multi-State Cooperative Societies Rules, 1985 did not prescribe any time limit for disposal of an appeal or an application for review. The Ministry further stated that a rigid time frame had not been provided in the rules as "disposal of an appeal or an application for review is a quasi-judicial proceeding which, inter-alia, require

providing opportunity to all the parties concerned to present their case, appreciation of pleadings, evidence, etc".

1.20. The need for timely disposal of any appeal or review application cannot be over emphasized. During oral evidence when it was enquired whether it was not possible to specify an indicative time limit for disposal of appeals and review applications with due allowances for completion of quasi-judicial process, the Secretary, Department of Agriculture and Cooperation agreed to prescribe 180 days time limit for disposal of appeals.

1.21. The Committee observe that the Multi-State Cooperative Societies Act provides a time limit of sixty days and thirty days for filing of appeals and filing of review applications respectively. There is, however, no time limit for disposal of such appeals and review applications either in the Act or the rules made thereunder. The Committee are glad that when this lacuna was pointed out the Secretary, Department of Agriculture and Cooperation agreed to prescribe a time limit of 180 days for disposal of appeals. The Committee hope that necessary action would be taken by the Ministry of Agriculture (Department of Agriculture and Cooperation) to prescribe a suitable time limit for disposal of appeals and disposal of review applications.

E. Grounds for recovery officer to arrive at conclusion

1.22. The Proviso to Rule 37(11)(b) governing immovable property reads as under:-

"Provided that where the recovery officer is satisfied that a judgement debtor with intent to defeat or delay the execution proceedings against him is about to dispose of whole or any part of his property, the demand notice issued by the recovery officer

under sub-rule (3) shall not allow any time to the judgement debtor for payment of the amount due by him and the property of the judgement debtor shall be attached forthwith."

1.23. It may be observed that the basis on which the Recovery Officer might arrive at the conclusion that the judgement debtor is about to dispose of the distrained property has not been indicated in the rules. Unless this is specifically indicated, it may lead to arbitrary exercise of powers. The Department of Agriculture and Cooperation stated in a written reply that there might be several grounds with the Recovery Officer to arrive at a conclusion that the judgement debtor might dispose of the property and therefore, an exhaustive list of reasons might not be provided in the Rules as grounds for satisfaction of the Recovery Officers.

1.24. On this issue being taken up with the Secretary, Department of Agriculture and Cooperation when he appeared before the Committee, he agreed to amend the rules and stated as follows:-

> "We can amplify the Rule and prescribe that the officer will record his reasons in writing. That will bring in more transparency."

1.25. Rule 37 (11)(b) enables the Recovery Officer to attach the property of judgement debtor without allowing him any time for payment of the due, if the former is satisfied that the judgement debtor is about to dispose of his property. The rule, however, does not indicate the grounds on which the Recovery Officer may arrive at such a conclusion. Absence of a suitable provision in this regard in the rules could lead to arbitrary exercise of powers by the Recovery Officer. It is a matter of satisfaction to the Committee that the Secretary, Department of Agriculture and Cooperation has agreed to amend Rule 37 (11) providing that the Recovery Officer shall record reasons in writing before arriving at such a conclusion.

II

The Petroleum and Natural Gas (Amendment) Rules, 2003

The Petroleum and Natural Gas (Amendment) Rules, 2003 (GSR 295-E of 2003) published in Gazette of India, Part-II Section 3(i) dated 1 April, 2003 contained a number of shortcomings. Comments from the Ministry of Petroleum on the shortcomings were received vide their OM dated 5th September, 2003. The Committee held discussion on these issues with the Representatives of the Ministry of Petroleum and Natural Gas on 20.1.2004. These issues are brought out below :

A Delivery of Premises upon determination of licence or lease.

2.2. Sub-rule (5) of the amended Rule 22 reads as under:-

> "The licensee or lessee shall, prior to the determination or cancellation or relinquishment of licensed or leased area, remove and dispose of any petroleum, stores, equipment, tools, machinery from such area within six months of handing over the area."

2.3. The above Sub-rule does not appear to be properly worded and it is not comprehensible as to what it intends to convey. In other words, it is not clear as to whether removal and disposal of petroleum, stores, etc. should be done prior to determination/ cancellation or within six months of handing over the area and when exactly handing over area is to take place i.e. whether immediately after determination/cancellation or six months after determination/cancellation.

2.4 Clarifying the intention of Sub-rule (5), the Ministry of Petroleum and Natural Gas in their O.M. dated 5.9.2003 stated as under:-

"With regard to sub-rule(5) of Rule 22, the intention of the amendment is to ensure removal & disposal of all petroleum, stores, equipment, tools, machinery from the areas either prior to or within a reasonable time period, i.e. within 6 months of handing over. Whereas, prior removal or disposal is feasible in case of determination or relinquishment of the area but in case of cancellation, prior removal or disposal may not be feasible. Hence, a time limit of six months has also been provided for removal/disposal of the material after handing over".

2.5. A reading of Sub-rule (5) in conjunction with Sub-rule (1) would show that the former appears to provide an unintended benefit to a licensee. The Sub-rule (1) reads as follows :-

"Upon determination or cancellation or relinquishment in part or in full of a license, the licensee shall deliver the area released on account of the determination or cancellation or relinquishment after restoring it in good order and condition in accordance with international practices within six months from the date of such determination or cancellation or relinquishment, or within such further time as the Central Government or the State Government, as the case may be, may allow."

2.6. It may be observed that Sub-rule(1) allows six months period to the licensee for delivering the area after cancellation of a licence. According to Sub-rule(5) after delivery of the area, six months time is allowed for removal or disposal of any petroleum, stores, equipment, tools and machinery. A careful reading of the words "delivering the area" and "handing over the area" in Sub-rules (1) and (5) would show that licensee can claim six months for handing over the area after cancellation of license under Sub-rule (1) and another six months for removal of stores after handing over the area under Sub-rule (5).

2.7. A representative of the Ministry of Petroleum and Natural Gas stated in this connection during oral evidence as under :

"I would submit that Sub rule (5) and Sub Rule (1) have to be read harmoniously. Sub-rule (1) deals with the delivery of area after restoring it in good order and in accordance with the international practices. It basically deals with environmental aspects. Our experience in the past was that even after the termination, the lessee had a lot of stores and

equipment lying and it took a lot of time to hand over the area. This made it necessary to give another six month period in this case. So, the total time given is only six months and this derives from the holistic and harmonious interpretation of the clauses. So, it is not six months plus another six months"

He also added that he would consult the Ministry of Law and Justice and find out whether the sub-rule (5) could be expressed more clearly and unambiguously.

2.8. The Committee observe that Sub-rule (5) of Rule 22 of the Petroleum and Natural Gas Rules as amended on 1st April, 2003 has not been properly constructed and it is not comprehensible as to what exactly it conveys. The Ministry of Petroleum and Natural Gas have clarified that the intention of the amendment is to provide six months time for removal/disposal of material after handing over the area by a licensee. It is observed that Sub-rule (1) provides six months time for handing over the area after cancellation of license. This would mean that a total period of 12 months would be available to a licensee i.e. six months prior to handing over after cancellation and six months after handing over the area for removal of stores etc. The Ministry have pleaded that their intention is to give only a six months period after cancellation of license for removal of stores etc. The Committee regret to point out that this position is not reflected in the rules properly and has left room for different interpretations. The Committee urge that as assured during oral evidence, the Ministry of Petroleum & Natural Gas should get the Sub-rule (5) suitably amended in consultation with the Ministry of Law and Justice and it should be ensured that ambiguity in the rules does not provide scope for any unintended benefit to any one.

B. Royalty rates

2.9. Clause (a) of Sub-rule (1) of Rule 14 of the principal Rules has been amended to the effect that a lessee will pay to respective Governments a royalty in respect of any mineral oil mined, quarried, excavated or collected by him from the leased area at the rate specified in schedule of the Oil fields (Regulation and Development) Act, 1948 from time to time. On examination of the schedule to the Act, it was seen that no rates have been specified in the schedule to the Act as indicated in the amendment to the rule.

2.10. Responding to the above issue, the Ministry of Petroleum and Natural Gas stated as under:-

> "The royalty rates are different for different areas like onland, shallow water offshore and deepwater offshore. The royalty rates in respect of the period from 1.4.1996 to 31.3.1998 were determined on provisional basis pending audited figures from C&AG for the years 1995-96, 1996-97, 1997-98. The final rates for the period would be specified in the schedule of the Act after finalization of the audited accounts. Under the new royalty regime, royalty rates are fixed on advelorem basis and thus vary with variation in crude prices. The advelorem basis for royalty fixation is proposed to be specified in the schedule of the Act after finalization of royalty rates based on the audited accounts for the period 1.4.1996 to 31.03.1998."

2.11. During the evidence, a representative of the Ministry of Petroleum and Natural Gas stated that by March 2004, the royalty rates for l996-98 would be put into the Schedule of the Act. The Ministry, however, in their communication dated 24 June, 2004 have stated that the rates of royalty on crude oil for the period 1.4.1993 to 31.3.2002 can be notified in the schedule of ORD Act, 1948 duly after the crude price for 1996-98 has been finalized by the Ministry after audit by C&AG. The matter is stated to be at an

advanced stage of consideration in consultation with C&AG and may take some more time.

2.12. It appears strange that the Ministry of Petroleum & Natural Gas have made an amendment in the P& NG Rules making reference to non-existing royalty rates. The Committee observe that Clause (a) of Sub-rule (1) of Rule 14 of the Principal rule has been amended to the effect that a lessee will pay to respective Governments a royalty in respect of any mineral oil, mined, quarried, excavated or collected by him from the leased area at the rate specified in Schedule of the Oil fields (Regulation and Development) Act, 1948. However, no rate has been specified in the schedule to the Act as indicated in the amendment. It was stated during evidence that the rates would be put into the Schedule of the Act by March, 2004. The Ministry have since informed that the matter is at advanced stage of consideration in consultation with C&AG and the notification of the rates in Schedule of the Act may take some more time. The Committee regret to note that even one year after amendment of rules (on 1st April, 2003), the Ministry are not in a position to notify the royalty rates, reference of which was made in the amendment. The Committee feel that Government should avoid such anachronistic amendments in rules and ensure that all inter-related information is in place at the time of amendment. So far as the present case is concerned, the Committee expect the Government to take expeditious action for notification of the royalty rates in the Schedule without any further delay.

C. Terms of lease.

2.13. Rule 12 of the principal rules reads as under:-

> Area and term of lease: The area covered by a lease shall ordinarily be 250 sq. kilometers and the term of a lease shall ordinarily be twenty years.
>
> Provided that the Central Government may, if satisfied that it is necessary in public interest so to do, by notification, relax the condition regarding area aforesaid, in relation to any application for lease.

2.14. The amendment to rule 12 seeks to provide the term of lease as twenty years and also to insert the provision which was already in the rules. The amendment is a repetition of an amendment already carried out in 1973. The Ministry of Petroleum and Natural Gas stated in this regard as under:-

> "The present amendment in Rule 12 has been notified/ renotified as there was no mention of this amendment in the previous notifications and the amendment in question was not figuring in the list of previous notification mentioned in the foot note(s) published earlier".

2.15. During oral evidence when it was enquired as to how a provision which had been in vogue during the last three decades had gone unnoticed by the Ministry, a representative of the Ministry of Petroleum and Natural Gas said :

> " Sir, as I could see, lack of continuity at the senior officers' level could be one of the reason".

He added :

> "In fact, even though it had been notified, this was re-notified because in some of the notifications in the interim period, we did not find this in the foot note. So, some of our officers took it seriously. They said that it is necessary to safeguard the interest. So, let us insert this thing and that is how it was done. The intention was good. It may be that the procedure should have been followed rigorously and religiously. This was presumably not done. We will guard against such things in future"

2.16 The Committee are surprised to note that the Ministry of Petroleum and Natural Gas were not aware of a provision in the P&NG Rules which had been in vogue during the last three decades and went on to make the provision again in the Rules in the year 2003. This reflects poorly on the working of the Ministry. The Committee emphasise that the legislative power delegated to the Executive ought to be exercised with care and caution and should not be used to make upfor their ignorance of the legislative provision already in vogue.

D. Failure to make consequential amendment

2.17. Rule 10 of the Principal Rules reads as under:-

> Area & Terms of Licence : The area covered by licence shall be specified therein and the licence shall in the first instance be valid for a period of four years, which may be extended for two further periods of one year each.

2.18. The above rule has been amended to insert the words "till the expiry of the exploration period(s) provided under the agreement if any, or unless otherwise specified by the Central Government in this regard" after the words "one year each". The amendment has failed to make consequential amendment in the existing sentence by deleting the redundant words. Enquired as to how this technicality escaped their notice, the Ministry replied as follows :

> "Today the Petroleum Exploration Licensing (PEL) regime relates to four distinct categories of exploration acreages, viz., Nomination Blocks awarded to NOCs and also Pre- NELP blocks, NELP blocks and CBM blocks awarded under contractual regimes wherein Agreements are signed with the licensees / parties. The terms of Licenses under each of the categories vary. Earlier provision under Rule 10 provided the term for license mainly for nomination blocks awarded to NOCs where the initial term of 4 years was granted with provisions for two further extensions of

one year each, thus limiting the total license period to 6 years. The present amendment was intended to cover all the four categories.

In light of the Hon'ble Committee's observations, this Ministry will effect further amendments in consultation with Ministry of Law and Justice".

2.19. During oral evidence, a representative of the Ministry stated as under :

"We take note of the observation of this august Committee. I think, the observation is valid. There is only one submission in this regard that whatever clauses, whatever rules or whatever amendment of the rules including foot notes are concerned they are introduced by us and published by us. This in toto gets vetted hundred per cent by the Ministry of Law and Justice, by both the Departments - the Department of Legal Affairs as well as the Department of Legislative Affairs. But we take note of the observations of this august Committee. We will go back to the Ministry of Law and Justice and after taking their advice, we will introduce the necessary improvements in the clause".

2.20 This is another amendment where the Ministry of Petroleum & Natural Gas have not carried out the task of amendment properly. While inserting certain words in Rule 10 of the Petroleum & Natural Gas Rules, the Ministry have failed to delete the resultant redundant words. As a result, the amended rule is unclear and misleading. The Committee desire that necessary correction be made in the rule expeditiously and care should be taken to prevent such amateurish handling of amendments in future.

E. <u>Absence of foot note to the amending rules –</u>

2.21. The Petroleum and Natural Gas (Amendment) Rules, 2003 are in the nature of amendment to the Principal Rules of 1959. However, these were not accompanied by a foot note to indicate the particulars of publication of Principal Rules and the subsequent amendments made thereto, without which it is difficult to trace the particulars of earlier

amendments made in this regard. The Committee on Subordinate Legislation have emphasized in the past that in order to facilitate easy referencing, all amendment rules should contain a foot-note giving particulars of preceding amendments. The Committee have also emphasized that when the new rules amending the original rules are notified, the relevant extract from the original rules should be appended to sub rules. The Ministry of Petroleum & Natural Gas stated in this connection that the foot-note indicating the particulars of publication of principal rules and subsequent amendments will be brought out as a supplement.

2.22. Explaining the reasons for taking long time in bringing out the supplement, a representative of the Ministry, stated during evidence on 20.1.04 as follows:

> "The records were so very old in many cases. Our people had to go to Archives to trace or cull out the records and so on. It is taking time. We want to avoid any possible lapse in this regard. That is why, it is taking a lot of time. But we are extremely confident and we would like to assure this august Committee that within the next three months we will be coming out with a comprehensive list of all the foot-notes and amendments".

2.23. During oral evidence, a representative of the Ministry sought time until end of May, 2004 for completing the above task. In a communication dated 24 June, 2004, the Ministry have requested for extention of time upto 31st August, 2004 for completing the above job.

2.24. The Committee observe that Petroleum and Natural Gas (Amendment) Rules 2003 are in the nature of amendment to the Principal Rules of 1959. However, these were not accompanied by a footnote to indicate the particulars of publication of Principal rules and the subsequent amendments made thereto, without which it is difficult to trace the particulars of earlier amendments made in

this regard. The Ministry of Petroleum & Natural Gas are now stated to have been undertaking an exercise to bring out a completely amended and updated version of Petroleum and Natural Gas Rules, 1959. The Ministry have sought time upto August, 2004 to complete this task. The Committee would await the action taken in this regard.

F. General

2.25. The shortcomings and infirmities in the Petroleum and Natural Gas (Amendment) Rules, 2003 brought out in the preceding paragraphs are indicative of the casual manner in which the powers delegated by the Parliament for enacting the subordinate legislation have been exercised by the Ministry of Petroleum and Natural Gas. The Ministry's plea that the rules were vetted and cleared by the Department of Legal Affairs and by the Department of Legislative Affairs of the Ministry of Law and Justice cannot absolve the former of their responsibilities for the flaws in the rules. The Committee feel that the Ministry of Petroleum and Natural Gas should look into their set-up involved in rule making to see whether there is any inadequacy in the machinery and take appropriate corrective measures.

2.26. The Committee wonder how the infirmities in the Petroleum and Natrual Gas (Amendment) Rules, 2003 escaped the scrutiny of the Ministry of Law and Justice. It is learnt that both the Department of Legislative Affairs and the Department of Legal Affairs of the Ministry of Law and Justice have gone into these rules and given their concurrence. The Committee would await an explanation from them in this regard.

III

COST ACCOUNTING RECORDS RULES

The Cost Accounting Records (Plantation Products) Rules, 2002 (GSR 685-E of 2002) and the Cost Accounting Records (Petroleum Industry) Rules, 2002 (GSR 686-E of 2002) were published in the Gazette of India, Extraordinary Part-II, Section 3 (i) dated 8 October, 2002.

3.2. Provisions for maintenance of cost records were introduced under Section 209(1)(d) by Companies (Amendment) Act, 1965 (w.e.f. 15.10.1965) in the Companies Act, 1956. In terms of Section 209 1(d) of the Companies Act every company shall keep at its registered office proper books of account and in the case of a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour or to other items of cost as may be prescribed shall be kept, if such class of companies is required by the Central Government to include such particulars in the Books of Accounts. Accordingly, Cost Accounting Records Rules (CARRs) are being prescribed by the Government.

3.3. The Central Government have notified the Cost Accounting Records Rules for 47 industries, beginning from March, 1967. These include (1) Cycle (2) Tyres & Tubes (3) Caustic Soda (4) Room Air Conditioners (5) Refrigerators (6) Batteries other than Dry Cell Batteries (7) Electric Lamps (8) Electric Fans (9) Electric Motors (10) Aluminium (11) Vanaspati (12) Bulk Drugs (13) Jute Goods (14) Papers (15) Rayon (16) Dyes (17)

Soda Ash (18) Polyester (19) Nylon (20) Textiles (21) Dry Cell Batteries (22) Sulphuric Acid (23) Steel Tubes and Pipes (24) Engineering Industries (25) Electric Cables and Conductors (26) Bearings (27) Milk Food (28) Chemical Industries (29) Formulations (30) Steel Plant (31) Insecticides (32) Fertilizers (33) Soaps and Detergents (34) Cosmetics and Toiletries (35) Footwear (36) Shaving Systems (37) Industrial Gases (38) Sugar (39) Cement (40) Motor Vehicles (41) Industrial Alcohol (42) Mining and Metallurgies (43) Electronic Products (44) Electricity Industry (45) Plantation Products (46) Telecommunications (47) Petroleum Industry.

3.4. When asked to indicate whether any study had been made as to which are the remaining industries which require Cost Accounting Records Rules and whether any time-frame has been envisaged for formulating these rules, the Ministry in their response dated 26 June, 2003 stated as under:-

> *"The first schedule to the Industries (Development and Regulations) Act, 1951 features the list of industries engaged in the manufacture or production of various articles. Though number of industries/products indicated therein have already been covered by notifying the Cost Accounting Record Rules for the respective products, following are the major industries for which the said rules are yet to be framed:-*
>
> *i) Fuels like Coal, fuel gases*
> *ii) Transportation-Aircraft, Ship, Railway locomotives*
> *iii) Industrial Machinery, Agricultural/Earth-moving machinery*
> *iv) Medical and Surgical Appliances*
> *v) Food Processing Industries*
> *vi) Glass*
> *vii) Ceramics*
> *viii) Defence Industries-Arms and Ammunition*

In addition, following industrial/service sectors have attained strategic importance to the economy and public at large, particularly after the opening of the economy for private/foreign companies. An authentic cost data base to various existing and new regulatory bodies (such as Insurance Regulatory and Development Authority, RBI), Competition Commission, various States and Central Government departments for fixation of user charges in respect of services provided by them, revenue departments etc. is of paramount importance and would go a long way in fulfilling their respective objectives. It is, therefore, envisaged to prepare Cost Accounting Records Rules for these sectors in a phased manner:-

i) Banking
ii) Insurance
iii) Media/Broadcasting
iv) Health Services
v) Education
vi) Hotel(Hospitality Industry)
vii) Tourism
viii) Airlines

Regarding the time schedule for framing the Cost Accounting Records Rules for the above industrial/service sectors, it may be submitted that framing of new Cost Accounting Records Rules involves various stages such as visit to select units, preparation of draft rules after incorporating the suggestions received from the industry, professional bodies and practicing cost accountants, consideration of the draft rules by Informal Advisory Committee, approval of the rules by Hon'ble Minister of Finance, legal vetting of the rules, translation of the same into Hindi, publication of the notification and finally laying the rules on the table of both the Houses of Parliament. The entire procedure spans over a period of nearly a year and a half. In view of the above and taking into account the work force available and other exigencies, minimum of four to five years may be required to frame Cost Accounting Records Rules in respect of the industries/services mentioned above."

3.5. The Committee considered this matter at their sitting held on 4 August, 2003 and took oral evidence of the representatives of the Department of Company Affairs on 14 October, 2003.

3.6. Even 38 years after passing the relevant provision of Legislation, the Government have not been able to frame the Cost Accounting Records Rules to cover all major industries / products. The slow pace of framing rules negates the very purpose of the important provision of the legislation passed by the Parliament. In this connection a representative of the Department of Company Affairs stated during oral evidence :-

> "Sir, I just want to clarify two things about this legislation. This legislation is enabling. It is not a legislation that is intended to create anything permanent. It is not a fresh legislation to create something specific on the lines of CCI (Competition Commission of India). It enables us to do something. It is not compulsory to do that thing, even if it is not required.
>
> Secondly, the misunderstanding seems to be that we are controlling the cost. But we are not controlling the cost. This legislation only enables us to compel companies to keep the cost records. That is all we can do. Keeping the cost record per se is not cost control. Cost control will have to come from somewhere else."

3.7. Clarifying the position further, the Secretary, DCA added:

> "As far as price control is concerned, this will not be coming through by the sole mechanism of CARRs. It is only one of the aids that may help in arriving at the cost of production of industrial products. Ultimately the price control would depend on freight factors, on Government Policies, on monsoon and such other things."

3.8. During the course of oral evidence, the Committee desired to know whether the Ministry laid down immediately after passing the legislation in the year 1965 any time-frame for framing Cost Accounting Records Rules to cover all major industries/products and the reasons for delay, if any, in not adhering to the time frame. The Secretary, DCA stated in reply as follows:-

> "I would like to mention here that in a meeting which was chaired by the Company Law Board at one point of time there was a priority assigned for

choosing the industries. These priorities were broadly that the industry should be consumer-oriented where any change in sales price would impact the consumers; it should be producing basic raw materials like caustic soda, soda ash and sulphuric acid; it should be an industry dealing with short supply goods, capital intensive industries where capacity remains unutilised, etc. Thus, the Cost Accounts Branch of the Department of Company Affairs has been responding to the request of the line Ministries and the regulators to prescribe relevant CARRs through the enabling provisions of the amended Companies Act.

In fact, on that reckoning there is hardly any arrears with the Department of Company Affairs except that out of that list only five industries, notable among them being coal, are left out for which CARRs should have been in position. The reasons for these industries being left out have not come out clearly from the records available. In fact there is no evidence available at this stage which may suggest that the concerned Ministries or the regulators have been pursuing the matter with the Departments of Company Affairs as far as these given industries are concerned."

3.9. The Department of Company Affairs stated in a note that the main objective of Cost Audit when introduced was mainly to meet Government requirements for regulating the price mechanism in certain industries. DCA further stated that in the present scenario of liberalisation and globalisation, to ensure free trade and absence of unfair practices, authentic cost data base is not only essential for the industries to improve upon their performance and face competitive environment, but is useful to various Government agencies, revenue authorities, regulatory bodies, bank and financial institutions for meeting their respective objectives. Deviating from the above position stated in a note, the Secretary, DCA submitted during oral evidence (on 14.10.2003) as follows:-

"Of late there has been a school of thought developing in the country who have been advocating dilution of CARRs to the extent of eliminating them from the statutory list in the face of competitive regime now in vogue. This regime calls for companies to be competitive, cost-conscious and secretive if they have to be on a continuous edge. Also, the line Ministries' and the regulators' requests for placing more and more industries towards CARRs are not coming up. Perhaps the regime of administered prices and subsidies is on the decline."

3.10. Cost Accounting Records Rules have not been formulated for some of the major industries/products such as Coal, Transportation, (Aircraft, Ship and Railway Locomotives), Industrial Machinery, (including Agricultural Machinery and Earth moving Machinery), Medical and surgical appliances, Food Processing Industries, Glass, Ceramics, etc. When asked whether any time frame had been formulated to frame CARRs for the industries/products mentioned above and to specify targets in respect of each of the above industries, the Secretary DCA submitted as under:-

> "We shall be undertaking this exercise and we will be writing to the concerned Ministries in the light of the new regimes, new regulators which are being foreseen like the Competition Commission of India or Anti-Dumping, WTO regime. If the line Ministries want us to prioritise certain set of industries or certain set of services, we will be working out as per their schedule."

3.11. When asked about the progress made in evolving CARRs for service sectors like Banking, Insurance, Media/Broadcasting, Health, Education, Hotel, Tourism and Airlines Sections etc. the Secretary, DCA responded as under:-

> "As the Act stands today, section 209(1)(d) talks about the class of company, engaged in production, processing, manufacturing or mining activities. These are the four categories of companies that they have expressed. We will have to think about carefully whether the service sector falls within these."

3.12. The Committee regret to note that even 38 years after enactment of the relevant provisions empowering the Government to prescribe Cost Accounting Records Rules (CARRs), these have not been framed to cover all major industries / projects. CARRs have so far been notified only in respect of 47 industries. The slow pace of framing rules negates the very purpose of the important provision of the legislation passed by the Parliament. Though it has been contended that the

legislation is "enabling" and is not "mandatory", the Secretary, Department of Company Affairs indicated during evidence that at one point of time priority had been assigned to certain industries in the preparation of CARRs. He admitted that out of the prioritized industries for which CARRs should have been in position, five major industries have been left out, notable among them being the Coal Industry. It is strange that the Department of Company Affairs could not ascertain the reasons why CARRs could not be framed for a major industry such as "Coal" all these years. The Secretary, Department of Company Affairs has assured that the Department would now be writing to Ministries concerned regarding formulation of CARRs and prioritize Industries / Services on the basis of urgency expressed by them. The Committee would like to be apprised of the action taken in this regard and the time frame laid down by the Department for completing the task.

3.13. Service sectors such as Banking, Insurance, Health Services, Education, Hotel, etc. have admittedly "attained strategic importance to the economy and the public at large, particularly after opening of the economy for private / foreign companies". It has been stated that an authentic cost data base is of paramount importance to various existing and new regulatory bodies, Competition Commission and Government Departments for fixation of user charges in respect of services provided by them and would go a long way in fulfilling their respective objectives. The existing provisions of the Companies Act, however, do not require formulation of CARRs for service industries. The Committee feel that absence of 'enabling' provision in the Companies Act should not be a reason for not prescribing CARRs

for service industries. If the need for cost audit is otherwise found to be vital for service industries, the Committee emphasise that expeditious action should be taken to remove the lacuna in the Companies Act by suitably amending it.

3.14. The Committee are concerned to note that the Department of Company Affairs do not have a definite idea about the relevance and significance of CARRs in the present day scenario of liberalization and globalisation. The Department have held out two different views before the Committee. In a note submitted to the Committee, the Department opined that the main objective of cost audit when introduced was mainly to meet Government requirements for regulating the price mechanism in certain industries and that in the present scenario authentic cost data base is not only essential for the industries to improve upon their performance and face competitive environment but is useful to various Government agencies, revenue authorities, regulatory bodies, banks and financial institutions for meeting their respective objectives. The Secretary, Department of Company Affairs, however, quoted during evidence another school of thought according to which the competitive regime which is now in vogue calls for companies to be competitive, cost conscious and secretive if they have to be on a continuous edge. This view advocates dilution of CARRs to the extent of eliminating them from the statute. The Committee note that one of the objects of the Companies (Second Amendment) Bill, 1964, [which on enactment became Companies (Amendment) Act, 1965] as stated in the Statement of Objects and Reasons appended to the Bill, was " to strengthen the provisions relating to investigation into the affairs of Companies and to provide for more effective audit

in dealing with cases of dishonesty and fraud in the corporate sector". In view of a number of cases of financial irregularities in the corporate sector recently coming to light, the Committee find it difficult to subscribe to this school of thought. The Committee feel that holding divergent views and lack of clear policy about CARRs is not conducive to the functioning of the Department. The Committee urge that the Department of Company Affairs in consultation with Ministries and regulators concerned should examine thoroughly from all angles the need and importance of the Cost Accounting Records Rules in the present day scenario and lay down clear, coherent and unambiguous policy guidelines in regard to CARRs.

N.N. KRISHNADAS
CHAIRMAN
COMMITTEE ON SUBORDINATE LEGISLATION

NEW DELHI;
AUGUST,2004

APPENDIX –I

(Vide Para 6 of the Introduction of the Report)

SUMMARY OF RECOMMENDATIONS MADE IN THE REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FOURTEENTH LOK SABHA)

Sl. No.	Reference to Para No. in the Report	Summary of Recommendations
1	2	3
1.		The Multi-State Co-operative Societies Rules, 2002
	1.8	The Committee are dismayed to note that there is no provision in the Multi-State Co-operative Societies Rules, 2002 to allow notice period to judgement debtor before attachment of 'movable' property. Immediately after demand notice is served, the judgement debtor is expected to settle all his dues failing which his movable property, according to the rules, will be distrained. The Committee feel that such a measure against poor debtors is too harsh and draconian. The Committee are of the view that the apprehension of the Ministry of Agriculture (Department of Agriculture and Cooperation) that extension of usual notice period might enable debtors to displace his property cannot justify violation of the principle of natural justice. It is not clear how the Ministry of Law and Justice also overlooked such a serious lacuna in the rules. The Committee would like to have the comments of the Ministry of Law and Justice in this regard. The Committee expect that as assured by the Secretary, Department of Agriculture and Cooperation during oral evidence, reasonable notice period to judgement debtors be provided for in the Multi-State Cooperative Societies Rules before attachment of 'movable property'.
	1.9	Incidentally, the Ministry of Agriculture (Department of Agriculture and Cooperation) contended that the rule 37 (11) did provide for allowing time to judgement debtor before attachment of property. It was observed that this contention of the Ministry was misleading as the rule quoted

		by the Ministry was applicable only to "immovable" property and not to "movable" property. The Secretary, Agriculture and Cooperation admitted during oral evidence that the rule was wrongly quoted by the Ministry and that the mistake was inadvertent. He also tendered apologies for the mistake. The Committee stress that due care should be exercised by the Ministry in furnishing replies to a Parliamentary Committee and it should be ensured that information furnished to them in all ways accurate and well founded.
	1.13	The Committee note that the Rule 37(5)(g) empowers the Sale Officer to enter any dwelling house and break open the door of any room in such dwelling house and also empowers him to force open stable, granary, godown, etc. The Committee are not convinced by the Ministry's plea that conferring such powers in the process of enforcement of a decree falls within the realm of procedure for enforcement. The Committee feel that provisions of extreme nature such as the above should be provided for in the parent Act and should not form part of the rules. The Committee would however, like to have the opinion of the Ministry of Law and Justice in this matter.
	1.18	The Multi–State Cooperative Societies Rules, 2002 did not prescribe the minimum rank of the officer who can be authorized to undertake the process of issuing summons (Rule 32(1)), for execution of decrees and to act as Recovery / Sale Officer (Rule 37). The execution of a decree leads to searches / seizures involving questions of personal liberty and individual rights. Hence, delegated powers in such cases ought to be exercised with care and caution by responsible officers. Those powers cannot be delegated to all and sundry and the rules cannot remain wide open enabling delegation of these powers to any person to be authorized. Though the Ministry initially convened that it was not considered feasible to specify the minimum rank of the Officer in the rules, the Secretary, (Department of Agriculture) agreed during oral evidence to suitably amend the rules. The Committee would like to be apprised of the action taken in this regard.
	1.21	The Committee observe that the Multi-State Cooperative Act provides a time limit of sixty days and thirty days for filing of appeals and filing of review applications respectively. There is, however, no time limit for disposal of such appeals

		and review applications either in the Act or the rules made thereunder. The Committee are glad that when this lacuna was pointed out the Secretary, Department of Agriculture and Cooperation agreed to prescribe a time limit of 180 days for disposal of appeals. The Committee hope that necessary action would be taken by the Ministry of Agriculture (Department of Agriculture and Cooperation) to prescribe a suitable time limit for disposal of appeals and disposal of review applications.
	1.25	Rule 37 (11)(b) enables the Recovery Officer to attach the property of judgement debtor without allowing him any time for payment of the due, if the former is satisfied that the judgement debtor is about to dispose of his property. The rule, however, does not indicate the grounds on which the Recovery Officer may arrive at such a conclusion. Absence of a suitable provision in this regard in the rules could lead to arbitrary exercise of powers by the Recovery Officer. It is a matter of satisfaction to the Committee that the Secretary, Department of Agriculture and Cooperation has agreed to amend Rule 37 (11) providing that the Recovery Officer shall record reasons in writing before arriving at such a conclusion.
2.		**The Petroleum and Natural Gas (Amendment) Rules, 2003T**
	2.8	The Committee observe that Sub-rule (5) of Rule 22 of the Petroleum and Natural Gas Rules as amended on 1st April, 2003 has not been properly constructed and it is not comprehensible as to what exactly it conveys. The Ministry of Petroleum and Natural Gas have clarified that the intention of the amendment is to provide six months time for removal/disposal of material after handing over the area by a licensee. It is observed that Sub-rule (1) provides six months time for handing over the area after cancellation of license. This would mean that a total period of 12 months would be available to a licensee i.e. six months prior to handing over after cancellation and six months after handing over the area for removal of stores etc. The Ministry have pleaded that their intention is to give only a six months period after cancellation of license for removal of stores etc. The Committee regret to point out that this position is not reflected in the rules properly and has left room for different interpretations. The Committee urge that as assured during

		oral evidence, the Ministry of Petroleum & Natural Gas should get the Sub-rule (5) suitably amended in consultation with the Ministry of Law and Justice and it should be ensured that ambiguity in the rules does not provide scope for any unintended benefit to any one
	2.12	It appears strange that the Ministry of Petroleum & Natural Gas have made an amendment in the P& NG Rules making reference to non-existing royalty rates. The Committee observe that Clause (a) of Sub-rule (1) of Rule 14 of the Principal rule has been amended to the effect that a lessee will pay to respective Governments a royalty in respect of any mineral oil, mined, quarried, excavated or collected by him from the leased area at the rate specified in Schedule of the Oil fields (Regulation and Development) Act, 1948. However, no rate has been specified in the schedule to the Act as indicated in the amendment. It was stated during evidence that the rates would be put into the Schedule of the Act by March, 2004. The Ministry have since informed that the matter is at advanced stage of consideration in consultation with C&AG and the notification of the rates in Schedule of the Act may take some more time. The Committee regret to note that even one year after amendment of rules (on 1st April, 2003), the Ministry are not in a position to notify the royalty rates, reference of which was made in the amendment. The Committee feel that Government should avoid such anachronistic amendments in rules and ensure that all inter-related information is in place at the time of amendment. So far as the present case is concerned, the Committee expect the Government to take expeditious action for notification of the royalty rates in the Schedule without any further delay.
	2.16	The Committee are surprised to note that the Ministry of Petroleum and Natural Gas were not aware of a provision in the P&NG Rules which had been in vogue during the last three decades and went on to make the provision again in the Rules in the year 2003. This reflects poorly on the working of the Ministry. The Committee emphasise that the legislative power delegated to the Executive ought to be exercised with care and caution and should not be used to make upfor their ignorance of the legislative provision already in vogue.
	2.20	This is another amendment where the Ministry of Petroleum & Natural Gas have not carried out the task of

		amendment properly. While inserting certain words in Rule 10 of the Petroleum & Natural Gas Rules, the Ministry have failed to delete the resultant redundant words. As a result, the amended rule is unclear and misleading. The Committee desire that necessary correction be made in the rule expeditiously and care should be taken to prevent such amateurish handling of amendments in future.
	2.24	The Committee observe that Petroleum and Natural Gas (Amendment) Rules 2003 are in the nature of amendment to the Principal Rules of 1959. However, these were not accompanied by a footnote to indicate the particulars of publication of Principal rules and the subsequent amendments made thereto, without which it is difficult to trace the particulars of earlier amendments made in this regard. The Ministry of Petroleum & Natural Gas are now stated to have been undertaking an exercise to bring out a completely amended and updated version of Petroleum and Natural Gas Rules, 1959. The Ministry have sought time upto August, 2004 to complete this task. The Committee would await the action taken in this regard.
	2.25	2.25. The shortcomings and infirmities in the Petroleum and Natural Gas (Amendment) Rules, 2003 brought out in the preceding paragraphs are indicative of the casual manner in which the powers delegated by the Parliament for enacting the subordinate legislation have been exercised by the Ministry of Petroleum and Natural Gas. The Ministry's plea that the rules were vetted and cleared by the Department of Legal Affairs and by the Department of Legislative Affairs of the Ministry of Law and Justice cannot absolve the former of their responsibilities for the flaws in the rules. The Committee feel that the Ministry of Petroleum and Natural Gas should look into their set-up involved in rule making to see whether there is any inadequacy in the machinery and take appropriate corrective measures.
	2.26	2.26. The Committee wonder how the infirmities in the Petroleum and Natrual Gas (Amendment) Rules, 2003 escaped the scrutiny of the Ministry of Law and Justice. It is learnt that both the Department of Legislative Affairs and the Department of Legal Affairs of the Ministry of Law and Justice have gone into these rules and given their concurrence. The Committee would await an explanation from them in this regard.

3.		<u>The Cost Accounting Records Rules</u>
	3.12	The Committee regret to note that even 38 years after enactment of the relevant provisions empowering the Government to prescribe Cost Accounting Records Rules (CARRs), these have not been framed to cover all major industries / projects. CARRs have so far been notified only in respect of 47 industries. The slow pace of framing rules negates the very purpose of the important provision of the legislation passed by the Parliament. Though it has been contended that the legislation is "enabling" and is not "mandatory", the Secretary, Department of Company Affairs indicated during evidence that at one point of time priority had been assigned to certain industries in the preparation of CARRs. He admitted that out of the prioritized industries for which CARRs should have been in position, five major industries have been left out, notable among them being the Coal Industry. It is strange that the Department of Company Affairs could not ascertain the reasons why CARRs could not be framed for a major industry such as "Coal" all these years. The Secretary, Department of Company Affairs has assured that the Department would now be writing to Ministries concerned regarding formulation of CARRs and prioritize Industries / Services on the basis of urgency expressed by them. The Committee would like to be apprised of the action taken in this regard and the time frame laid down by the Department for completing the task.
	3.13	Service sectors such as Banking, Insurance, Health Services, Education, Hotel, etc. have admittedly "attained strategic importance to the economy and the public at large, particularly after opening of the economy for private / foreign companies". It has been stated that an authentic cost data base is of paramount importance to various existing and new regulatory bodies, Competition Commission and Government Departments for fixation of user charges in respect of services provided by them and would go a long way in fulfilling their respective objectives. The existing provisions of the Companies Act, however, do not require formulation of CARRs for service industries. The Committee feel that absence of 'enabling' provision in the Companies Act should not be a reason for not prescribing CARRs for service industries. If the need for cost audit is otherwise found to be vital for service industries, the Committee

		emphasise that expeditious action should be taken to remove the lacuna in the Companies Act by suitably amending it.
	3.14	The Committee are concerned to note that the Department of Company Affairs do not have a definite idea about the relevance and significance of CARRs in the present day scenario of liberalization and globalisation. The Department have held out two different views before the Committee. In a note submitted to the Committee, the Department opined that the main objective of cost audit when introduced was mainly to meet Government requirements for regulating the price mechanism in certain industries and that in the present scenario authentic cost data base is not only essential for the industries to improve upon their performance and face competitive environment but is useful to various Government agencies, revenue authorities, regulatory bodies, banks and financial institutions for meeting their respective objectives. The Secretary, Department of Company Affairs, however, quoted during evidence another school of thought according to which the competitive regime which is now in vogue calls for companies to be competitive, cost conscious and secretive if they have to be on a continuous edge. This view advocates dilution of CARRs to the extent of eliminating them from the statute. The Committee note that one of the objects of the Companies (Second Amendment) Bill, 1964, [which on enactment became Companies (Amendment) Act, 1965] as stated in the Statement of Objects and Reasons appended to the Bill, was " to strengthen the provisions relating to investigation into the affairs of Companies and to provide for more effective audit in dealing with cases of dishonesty and fraud in the corporate sector". In view of a number of cases of financial irregularities in the corporate sector recently coming to light, the Committee find it difficult to subscribe to this school of thought. The Committee feel that holding divergent views and lack of clear policy about CARRs is not conducive to the functioning of the Department. The Committee urge that the Department of Company Affairs in consultation with Ministries and regulators concerned should examine thoroughly from all angles the need and importance of the Cost Accounting Records Rules in the present day scenario and lay down clear, coherent and unambiguous policy guidelines in regard to CARRs.

APPENDIX-II

(Vide Para 5 of the Introduction of the Report

CONFIDENTIAL

MINUTES OF THE SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2003-2004)

The Committee met on Monday, 4 August, 2003 from 15.00 to 15.30 hours in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Dr. B.B. Ramaiah - Chairman

MEMBERS

2. Shri Ramdas Rupala Gavit
3. Shri Paban Singh Ghatowar
4. Shri Talib Hussain Chowdhary
5. Dr. M. Jagannath
6. Shri Ram Singh Kaswan
7. Shri Suresh Kurup
8. Shri Anadicharan Sahu
9. Dr. N. Venkataswamy

SECRETARIAT

1.	Shri S.K. Sharma	-	Joint Secretary
2.	Shri A. Louis Martin	-	Deputy Secretary
3.	Shri Ashok Balwani	-	Under Secretary

2. XXX XXX XXX

3. The Committee then considered Memorandum No. 60 regarding the Cost Accounting Records (Plantation Products) Rules, 2002 (GSR 685-E of 2002) and the Cost Accounting Records (Petroleum Industry) Rules, 2002 (GSR 686-E of 2002). The Committee observed that Cost Accounting Records Rules for a number of major industries/products and a number of Industrial Service Sectors have not been framed even 37 years after passing the relevant provision of Legislation. An authentic cost data base to various existing and new regulatory bodies (such as Insurance Regulatory and Development Authority, RBI), Competition Commission, various States and Central Government departments for fixation of user charges in respect of services provided by them, revenue departments etc. is of paramount importance which would go a long way in fulfilling their respective objectives. Having noted the importance of the matter the Committee desired that a background note on Cost Accounting Record Rules in the context of Consumer Protection Act, establishment of Competition Commission and Abolition of MRTPC, WTO General Agreement Trade and Services (GATS), and recent amendments in the Companies Act etc. be obtained from the Ministry. The Committee also decided to call the representatives, of the Ministry/bodies concerned for evidence.

Para 4-8 XXX XXX
XXX

The Committee then adjourned.

Omitted portions of the Minutes are not included in this Report

CONFIDENTIAL

MINUTES OF THE NINTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2003-2004)

The Committee met on Tuesday, 14 October, 2003 from 15.00 to 16.30 hours in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Dr. B.B. Ramaiah - Chairman

MEMBERS

2. Shri Paban Singh Ghatowar
3. Dr. M. Jagannath
4. Shri Ram Singh Kaswan
5. Shri Pravin Rashtrapal
6. Shri Anadicharan Sahu
7. Prof. I.G. Sanadi
8. Dr. Ram Lakhan Singh
9. Shri Ramjiwan Singh
10. Dr. N. Venkataswamy

SECRETARIAT

1.	Shri S.K. Sharma	-	Joint Secretary
2.	Shri A. Louis Martin	-	Director
3.	Shri Ashok Balwani	-	Under Secretary

2. The Committee took oral evidence of the representative of the Ministry of Finance (Department of Company Affairs) regarding Cost Accounting Records Rules (CARRs).

3. The following were present:-

1. Shri M.M.K. Sardana, Secretary
2. Shri Rajiv Mehrishi, Joint Secretary
3. Shri A.K. Kapoor, Adviser (Cost)
4. Shri J. Bose, Deputy Director (Cost)
5. Shri G. Venkatesh, Deputy Director (Cost)

4. Verbatim proceedings of the discussions were kept on record.

The Committee then adjourned.

CONFIDENTIAL

MINUTES OF THE ELEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2003-2004)

The Committee met on Wednesday, 10 December, 2003 from 15.30 to 16.00 hours in Committee Room No. '139', First Floor, Parliament House Annexe, New Delhi.

PRESENT

Dr. B.B. Ramaiah - Chairman

MEMBERS

2. Shri Talib Hussain Chowdhary
3. Dr. M. Jagannath
4. Shri Ram Singh Kaswan
5. Prof. I.G. Sanadi
6. Shri Tufani Saroj
7. Dr. N. Venkataswamy

SECRETARIAT

1. Shri A. Louis Martin - Director
2. Shri Ashok Balwani - Under Secretary

….2/-

2. XXX XXX XXX

3. Thereafter, the Committee considered Memorandum No. 70, regarding the Multi State Cop-operative Societies Rules, 2002 (GSR 790-E of 2002O and decided to take oral evidence of the representatives of the Ministry of Agriculture on the subject for further elucidation in the matter.

4. XXX XXX XXX
5. XXX XXX XXX

The Committee then adjourned.

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* Omitted portions of the Minutes are not included in this Report

CONFIDENTIAL

MINUTES OF THE TWELFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2003-2004)

The Committee met on Tuesday, 20 January, 2004 from 14.30 to 16.00 hours in Committee Room No. "53", Parliament House, New Delhi.

PRESENT

Dr. B.B. Ramaiah - Chairman

MEMBERS

(2) Shri Talib Hussain Chowdhary

(3) Dr. M. Jagannath

(4) Shri Ram Singh Kaswan

(5) Shri Suresh Kurup

(6) Shri Pravin Rashtrapal

(7) Prof. I.G. Sanadi

(8) Dr. Ram Lakhan Singh

(9) Shri Ramjiwan Singh

(10) Dr. N. Venkataswamy

SECRETARIAT

(1) Shri A. Louis Martin - Director

(2) Shri Ashok Balwani - Under Secretary

2. The Committee took oral evidence of the representatives of two Ministries/ Departments, one after the another.

3. The representatives of the Ministry of Petroleum and Natural Gas were called in first. The following were present:-

(1)	Shri M.S. Srinivasan	Addl. Secretary
(2)	Shri J.M. Mauskar	Joint Secretary
(3)	Shri N.K. Singh	Director
(4)	Shri N.C. Zakhup	Under Secretary
(5)	Shri R.C. Khurana	DGM(P), ONGC, New Delhi

4. The Committee then took oral evidence of the representatives of the Ministry of Petroleum and Natural Gas regarding Petroleum and Natural Gas (Amendment) Rules, 2003.

5. Verbatim proceedings of the evidence was kept on record.

The witnesses then withdrew.

6. Next, the representatives of the Ministry of Agriculture (Department of Agriculture and Cooperation) were called in. The following were present:-

(1)	Shri RCA Jain	Secretary
(2)	Shri A.K. Singh	Additional Secretary
(3)	Smt. Anjali Prasad	Joint Secretary
(4)	Shri S.D. Indoria	Director (Co-operation)

7. The Committee then took oral evidence of the representatives of the Ministry of Agriculture (Department of Agriculture and Cooperation) regarding Multi-state Cooperative Societies Rules, 2002.

8. Verbatim proceedings of the evidence was kept on record.

The witnesses then withdrew.

*9. XXX XXX XXX

The Committee then adjourned.

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* Omitted portions of the Minutes are not included in this Report

MINUTES OF THE SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FOURTEENTH LOK SABHA)(2004-2005)

The Committee met on Thursday, 26 August, 2004 from 1500 to 1600 hours in Committee Room 'E', Parliament House Annexe, New Delhi.

PRESENT

Shri N.N. Krishnadas - Chairman

MEMBERS

2. Shri Ajay Chakraborty
3. Justice (Retd.) N.Y. Hanumanthappa
4. Shri Ram Singh Kaswan
5. Shri Sitaram Singh
6. Shri Ramji Lal Suman
7. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri A. Louis Martin, Director
2. Shri Ashok Balwani, Under Secretary

2. 2. The Committee took up for consideration the draft First and Second Reports and adopted the same without any modification. .

3. XX XX XX

The Committee then adjourned ..

* Omitted portion of the Minutes is not included in this Report.