

**COMMITTEE ON SUBORDINATE
LEGISLATION
(2009-2010)**

(FIFTEENTH LOK SABHA)

ELEVENTH REPORT

**[Action Taken Report of the Committee on the Recommendations/Observations
contained in Twenty-Second Report (2008-2009)
(Fourteenth Lok Sabha)]**

(Presented on 18.08.2010)



**LOK SABHA SECRETARIAT
NEW DELHI**

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2009-2010)

Shri P. Karunakaran—Chairman

MEMBERS

2. **Shri Paban Singh Ghatowar**
3. **Shri Rajen Gohain**
4. **Shri D.B. Chandre Gowda**
5. **Shrimati Paramjit Kaur Gulshan**
6. **Shri Jitender Singh Malik**
7. **Shri Mangani Lal Mandal**
8. **Shri Pinaki Misra**
9. **Dr. Sanjeev Ganesh Naik**
10. **Shri Rajaram Pal**
11. **Shri Anantha Venkatarami Reddy**
12. **Shri Hamdullah Sayeed**
13. **Shri Adhalrao Patil Shivaji**
14. **Dr. Rajan Sushant**
15. **Shri Madhu Goud Yaskhi**

SECRETARIAT

- | | | |
|-----------------------------|---|-------------------------------|
| 1. Shri P.K. Misra | — | <i>Joint Secretary</i> |
| 2. Shri J.S. Chauhan | — | <i>Director</i> |

INTRODUCTION

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

2. This Report relates to the action taken on the recommendations of the Committee contained in the Twenty-Second Report (Fourteenth Lok Sabha) (2008-09) which was presented to Lok Sabha on 16 December, 2008.

3. The Committee also wish to place on record their appreciation of the valuable work done by the predecessor Committee.

4. The Committee considered and adopted this Report at their sitting held on 3.8.2010.

5. The summary of recommendations contained in the Twenty-Second Report and action taken reply of the Government thereon have been reproduced in Appendix I of the Report.

6. The Extracts of the Minutes of the sitting of the Committee relevant to this report are brought out in Appendix II.

7. An Analysis of the action taken by Government on the recommendations contained in the Twenty-Second Report of the Committee (Fourteenth Lok Sabha) is given in Appendix III.

NEW DELHI;
August, 2010
Sravana, 1932 (Saka)

P. KARUNAKARAN,
Chairman,
Committee on Subordinate Legislation.

REPORT

This Report of the Committee on Subordinate Legislation deals with the action taken by Government on the recommendations contained in their Twenty-Second Report (Fourteenth Lok Sabha) which was presented to Lok Sabha on 16 December, 2008. The Twenty-Second Report dealt with the following Chapters:—

- I. Shortcomings in the National Sugar Institute, Kanpur [Research Assistant (Engineering)] Recruitment Rules, 2002 (GSR 583-E of 2003).
- II. The Narcotic Drugs and Psychotropic Substances (National Fund for Control of Drug Abuse) Rules, 2006 (GSR 177-E of 2006).
- III. The Mumbai Port Trust (Pension Fund) Regulations, 2004 (GSR 341-E of 2004).
- IV. Infirmities in the National Institute of Pharmaceutical Education and Research (Degree of Masters' and Doctor of Philosophy) Ordinance, 2005 (GSR 406 of 2005).

2. The shortcomings observed during scrutiny of the rules mentioned in Chapters (I) to (IV) above were brought to the notice of the Ministries concerned for their comments/necessary corrective action. The Ministries concerned have accepted those shortcomings and have rectified the same. A statement showing the Action Taken by the Government on the recommendations contained in the Twenty-second Report is given in Appendix-I.

NEW DELHI;
August, 2010 Sravana
1932 (Saka)

P. KARUNAKARAN,
Chairman,
Committee on Subordinate Legislation.

APPENDIX I

(Vide Para 5 of Introduction of the Report)

STATEMENT SHOWING THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS/OBSERVATIONS CONTAINED IN THE TWENTY-SECOND REPORT OF THE COMMITTEE (14TH LOK SABHA)

I Shortcomings in the National Sugar Institute, Kanur [Research Assistant (Engineering)] Recruitment Rules, 2002 (GSR 583-E of 2003).

Recommendation (Paras 1.12, 1.13, 1.16, 1.19 & 1.21)

1.12 The Committee note that in the National Sugar Institute, Kanpur [Research Assistant (Engineering)] Recruitment Rules, 2002, the date of notification has been mentioned as '30 May, 2003' whereas the same were published on 25 July, 2003. As per the oft-repeated recommendation of the Committee on Subordinate Legislation, the rules which are to be published in the Extraordinary Gazette should be published on the same date. On being enquired about the discrepancy, the Ministry submitted that necessary corrigendum in this regard was being issued. However, the requisite corrigendum could not be issued even after a lapse of more than one year, as the old file which would facilitate the issue of necessary corrigendum to the rules was not traceable. On the matter being pursued repeatedly, the Ministry issued the necessary corrigendum carrying out the requisite amendments *vide* GSR 378E dated 8.6.2005. However, the Committee observed that there was again discrepancy in the dates *i.e.* the date of publication of rules was shown in the preamble of the rules as 25 July, 2003 whereas the date of notification was mentioned as 30 May, 2003. One perusal of the matter again the Ministry simply responded that the discrepancy in the dates occurred in the notification due to a typographical mistake. The Committee express their serious view that the matter relating to printing of rules under the Act has been dealt with by the Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution) in a very casual and lackadaisical manner and no serious attention is paid for expeditious printing/publication of the rules. In this regard, the Committee have time and again emphasized that the responsibility of a Ministry/Department is not ceased simply with the sending of a notification to the press. After the rules/regulations etc. have been published in the Gazette, the Ministries/Departments concerned should take immediate steps to examine whether the same have been correctly printed, and if necessary, to issue corrigendum thereto. The Committee desire the Ministry to be more careful in future and should evolve some procedural safeguards to ensure timely publication of their Notifications.

1.13 The Committee also observe with displeasure that the inability to trace the old file pertaining to the notification in question and furnishing wrong information to the Committee that corrigendum had been issued are matters of great concern that reflects the lack of seriousness of the Ministry. The Committee, therefore, desire that

responsibility may be fixed up in this case and the action taken in this regard may be apprised to the Committee within three months from the presentation of this report.

1.16 The Committee note that the Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution) issued the necessary corrigendum to the aforesaid rules, by indicating the correct year, in the short title *vide* GSR 378-E dated 8 June, 2005 after being pointed out by them. The Committee urge the Ministry to evolve suitable procedural safeguards against recurrence of such lapses and be more vigilant in future in such procedure and routine matter.

1.19 The Committee note that on being pointed out, the Ministry have amended the aforesaid rules as per extant orders of DOPT *vide* GSR 378-E dated 8 June, 2005. The Committee expect that in future the Ministry should be more careful to avoid recurrence of errors in such procedural and routine matter.

1.21 The Committee find that the Note (i) under col. 8 of the Schedule does not indicate the class or category of person to whom the relaxation was applicable. When this matter was taken up with the Ministry, the Ministry issued requisite corrigendum adding a new Note-2 *vide* GSR 378-E dated 8 June, 2005. The Committee, however, desire that the Ministry should be more vigilant in future so as to obviate minor errors in such procedural and routine matter.

Reply of the Ministry

The observation of the Committee has been noted for strict compliance in future.

[Ministry of Consumer Affairs, Food and Public Distribution
(Department of food and Public Distribution) O.M. No. A-12018/10/99-SA
(Pt) dated 28 May, 2009]

II. The Narcotic Drugs and Psychotropic Substances (National Fund for Control of Drug Abuse) Rules, 2006 (GSR 177-E of 2006).

Recommendation (Para 2.3)

The Committee note that Rule 6(6) and Para 4(6)(b)(iv) of the accounting procedure appended to Annexure-I to the Rules provides for revocation of grant of money from the National Fund for Control of Drug Abuse to an applicant by the Central Government without giving him an opportunity of being heard. The Committee feel that the above provision appears to be against the principle of natural justice. In this regard, the Committee have time and again emphasized that one of the basic requirements of natural justice is that before penal provisions of a law are invoked against a person, he should be given a reasonable opportunity of being heard. The Committee observe that the principles of natural justice, which are essential in imparting justice, appears to have been ignored by the Ministry in the extant rules. On being pointed out, the Ministry of Finance (Department of Revenue) clarified that the aforesaid provisions implied that the principle of natural justice would have to be followed before an order of revocation was made. The Committee do not agree with the reply of the Government and therefore impress upon the Ministry to make suitable amendments to the rules, in consultation with the Ministry of Law and Justice, to incorporate provisions for giving

a reasonable opportunity of being heard to an applicant whose grant has been revoked and a copy of the amended rule after it is published in the Gazette of India may also be sent to them.

Reply of the Ministry

Amendment to the Narcotic Drugs and Psychotropic Substances (National Fund for Control of Drug Abuse) Rules, 2006, has been made to incorporate the provisions for giving a reasonable opportunity of being heard to an applicant whose grant has been revoked.

[Ministry of Finance (Department of Revenue)
O.M. No. 664/08/99-NC-I (Vol. III) dated 28 April, 2009]

III. The Mumbai Port Trust (Pension Fund) Regulations, 2004 (GSR 341-E of 2004).

Recommendation (Para 3.5)

The Committee note that paragraphs 8 and 9 of the Trust Deed annexed to the Mumbai Port Trust (Pension Fund) Regulations, 2004 appeared to sub-delegate the amending power of the regulations which was not envisaged in the parent statute. For sub-delegation of legislative power, the Committee feel that there should be express authorization in the parent law. Even where sub-delegation is authorized, it should not be wide and general without proper safeguards. While scrutinizing the extant regulation, the Committee note that the executive have transgressed its jurisdiction by incorporating provisions for sub-delegation of the amending power of the regulations without any statutory backing. The Committee note with satisfaction that on being pointed out, the Ministry of Shipping, Road Transport and Highways subsequently notified an amendment to the regulations deleting the paragraphs which contained provisions for sub-delegation of the amending power. While taking note of the fact that the Ministry have taken appropriate action to rectify the deficiency in the Regulations, the Committee desire that the Ministry should exercise necessary care while drafting regulations framed under an Act so as to obviate scope for such anomalies.

Reply of the Ministry

This Department noted the recommendations/observations made in the Twenty-Second Report of the Committee on Subordinate Legislation for strict compliance and also *vide* its letter No. F.PR-12016/24/2002-PE.I dated 26.12.2008 to all the Major Port Trusts about the same to take necessary care while drafting regulations so as to obviate scope for anomalies.

[Ministry of Shipping OM No. FPR 12016/24/2002-PE.I
dated 20.1.2009]

IV. Infirmities in the National Institute of Pharmaceutical Education and Research (Degree of Masters' and Doctor of Philosophy) Ordinance, 2005 (GSR 406 of 2005).

Recommendation (Para 4.3)

The Committee find that the National Institute of Pharmaceutical Education and Research (Degree of Masters' and Doctor of Philosophy) Ordinance, 2005 was published in the Gazette of India on 26 November, 2005 and was laid on the Table of the House only on 15 May, 2006 *i.e.*, after a delay of more than 5 months. On being pointed out, the Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals) have not given any explanation for the delay in laying the Ordinance on the Table of the House and merely stated that they have noted for future compliance of the recommendation of the Committee on Subordinate Legislation prescribing the time limit for laying of Orders. The Committee would expect the Ministry to exercise extreme care in laying of notifications within the stipulated time in future and should evolve procedural safeguards so as to avoid such type of omission on their part.

Reply of the Ministry

The recommendation of the Committee has been noted for compliance.

[Ministry of Chemicals and Fertilizers (Department of Pharmaceuticals) O.M.
No. F 52/70/2008-NIPER, dated 24.2.2010]

Recommendation (Para 4.8)

The Committee note that Section 5(1) of the National Institute of Pharmaceutical Education and Research (Degree of Masters' and Doctor of Philosophy) Ordinance, 2005 provides for availability of a limited number of seats for sponsored candidates for admission to the various programmes. The Committee observe that the section, however, does not specify either the percentage or the total number of seats available for such sponsored candidates for admission to various academic programmes. This flaw in the rule may cause confusion and lead to avoidable litigation from the candidates aspiring for admission. On being pointed out by the Committee, the Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals) proposed to modify the section by making clear cut provision for sponsored candidates upto maximum of five percent of the total available combined seats in the Masters/Doctoral programme and that these five percent seats should be over and above the total seats available for these programmes. Since the NIPER have agreed to modify Section 5(1) of the Ordinance, the Committee desire that the Ministry should notify the proposed amendments at the earliest so that there remains no scope for any ambiguity in future.

Reply of the Ministry

NIPER, Mohali has since published the amendment in the Gazette of India dated 1.2.2010 in Part III, Section 4.

[Ministry of Chemicals and Fertilizers (Department of Pharmaceuticals) O.M.
No. F 52/70/2008-NIPER, dated 24.2.2010]

Recommendation (Para 4.13)

The Committee observe that all eligible applicants are, in practice, allowed to sit for the written test. So far the provision contained in Section 9(3) of the Ordinance regarding fixing the criteria higher than the minimum eligibility requirement for short listing the applicants has not been invoked. The Committee further note that for this reason, the Ministry have decided to delete Section 9(3) of the Ordinance altogether. While the Ministry are justified to take such a decision, the Committee may nevertheless emphasize that the necessity for setting up a special criteria higher than the minimum eligibility requirement for short listing of applications, was never in question. However, having made such a provision, it was felt that with a view to obviate any scope for abuse, the provisions should have incorporated the circumstances under which such special criteria are to be set and also the provisions regarding informing candidates fulfilling the minimum eligibility criteria after introduction of such special criteria. The Committee desire that they may be apprised of the action taken in this regard.

Reply of the Ministry

NIPER, Mohali has since published the amendment in the Gazette of India dated 1.2.2010 in Part III, Section 4. A copy of the Gazette Notification dated 1.2.2010 is enclosed.

[Ministry of Chemicals and Fertilizers (Department of Pharmaceuticals) O.M.
No. F. 52/70/2008-NIPER, dated 24.2.2010]

Recommendation (Para 4.18)

The Committee note that the provision for termination of scholarship/cancellation of registration contained in Sections 13(4), 14(12) (i), (iv) and (vi) of the Ordinance need to confirm to the principle of natural justice by providing for an opportunity of being heard to the affected candidates. The Committee are not convinced with the Ministry's contention that since the candidates are given ample time and opportunity to improve their performance and good conduct and during the process itself, proper opportunity is given to provide natural justice to the candidates, there is no need for amendment in the provision made in Sections 13(4) and 14(12) of the Ordinance. In this connection, the Committee have time and again recommended that giving an opportunity for being heard before any adverse action is taken against a party is one of the basic tenets of natural justice. The Committee had also pointed out that departmental instructions can hardly be a proper substitute for built in legal safeguard. The Committee desire that Sections 13(4) and 14(12) (i), (iv) and (vi) of the Ordinance should be amended to incorporate provision for giving an opportunity of being heard to the affected student before any adverse action is initiated against him/her.

Reply of the Ministry

NIPER, Mohali has reported that recommendation of the Committee to amend Section 13 (iv) and 14 (12) (i), (iv) and (vi) of the Ordinance to provide for giving an opportunity of being heard to the affected students before any adverse action is

initiated against him/her has been approved by the Senate. The decision of the Senate will be placed before the Board of Governors of the NIPER, Mohali.

[Ministry of Chemicals and Fertilizers (Department of Pharmaceuticals) O.M.
No. F 52/70/2008-NIPER, dated 4.6.2010]

Recommendation (Para 4.21)

The Committee note that the Ordinance was notified after a delay of about seven years in deviation of the Committee's recommendations in this regard that ordinarily subordinate legislations should be notified as soon as possible after the enactment of the Act and in no case this period should exceed 6 months so that the benefits of such legislation are not denied to the public at large. The Committee desire that the Ministry should streamline their procedure so as to avoid recurrence of such enormous delays in the publication of the final rules in future and whenever there is any delay in the finalization of the rules, the responsibility of such delay should be fixed. Where it is not possible to adhere to the time limit of six months, the Committee should be approached for extension of time.

Reply of the Ministry

The recommendation of the Committee has been noted for compliance.

[Ministry of Chemicals and Fertilizers (Department of Pharmaceuticals) O.M.
No. F 52/70/2008-NIPER, dated 15.1.2010]

APPENDIX II

(Vide Para 6 of Introduction of the Report)

MINUTES OF THE TENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2009-2010)

The Committee sat on Tuesday, the 3rd August, 2010 from 1500 to 1600 hours in Chairman's Room No. 143, Parliament House, New Delhi.

PRESENT

Shri P. Karunakaran—*Chairman*

MEMBERS

2. Shri Paban Singh Ghatowar
3. Shri Mangani Lal Mandal
4. Shri Sanjeev Ganesh Naik
5. Shri Rajaram Pal
6. Shri Anantha Venkata Rami Reddy
7. Shri Hamdulla Sayeed
8. Shri Adhalrao Shivaji Patil
9. Shri Madhu Goud Yaskhi

SECRETARIAT

- | | | |
|-------------------------|---|----------------------------|
| 1. Shri J.S. Chauhan | — | <i>Director</i> |
| 2. Shri S.C. Kaliraman | — | <i>Additional Director</i> |
| 3. Shri Raju Srivastava | — | <i>Deputy Secretary</i> |

2. At the outset, the Chairman welcomed the members of the sitting of the Committee.

3. The Committee, thereafter, took up for consideration the draft Tenth, Eleventh and Twelfth Action Taken Reports and adopted the same without any modifications. The Committee also authorized the Chairman to present the same to the House.

The Committee then adjourned.

APPENDIX III

(Vide Para 7 of Introduction of the Report)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS CONTAINED IN THE TWENTY-SECOND REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FOURTEENTH LOK SABHA)

I. Total No. of recommendations/observations made	12
II. Recommendations that have been accepted by the Government [vide recommendations at Sl. Nos. 1.12, 1.13, 1.16, 1.19, 1.21, 2.3, 3.5, 4.3, 4.8, 4.13, 4.18 & 4.21]	12
III. No. of recommendations which the Committee do not want to pursue in view of Government reply	Nil
IV. Percentage of recommendations accepted	100

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The Souvenir items with logo of Parliament are also available at Sales Counter, Reception, Parliament House, New Delhi. The Souvenir items with Parliament Museum logo are available for sale at Souvenir Shop (Tel. No. 23035323), Parliament Museum, Parliament Library Building, New Delhi. List of these items are available on the website mentioned above.”
