

COMMITTEE ON SUBORDINATE LEGISLATION
(2019-2020)

(SEVENTEENTH LOK SABHA)

THIRD REPORT



LOK SABHA SECRETARIAT
NEW DELHI
05 March, 2020/15 Phalguna, 1941(Saka)

COMMITTEE ON SUBORDINATE LEGISLATION
(2019-2020)

(SEVENTEENTH LOK SABHA)

THIRD REPORT

(PRESENTED TO LOK SABHA ON 16.03.2020)



LOK SABHA SECRETARIAT
NEW DELHI
05 March, 2020/15 Phalguna, 1941(Saka)

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MEMBERS OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2019-2020)

Shri Raghurama Krishnaraju Kanumuru

Chairperson

Members

2. Prof. S. P. Singh Baghel
3. Shri Ajay Bhatt
4. Shri Jyotirmay Singh Mahato
5. Shri Pinaki Misra
6. Shri Chandeshwar Prasad
7. Shri Suresh Pujari
8. Shri A. Raja
9. Shri Nama Nageshwar Rao
10. Shri N. Uttam Kumar Reddy
11. Shri Sanjay Seth
12. Shri Mahendra Singh Solanky
13. Shri Su Thirunavukkarasar
14. Shri B. Manickam Tagore
15. Shri Ram Kripal Yadav

SECRETARIAT

1. Shri P.C.Tripathy - Joint Secretary
2. Shri Ajay Kumar Garg - Director
3. Shri Nabin Kumar Jha - Additional Director

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 6.2.2020.

3. The Committee considered and adopted this Report at their sitting held on 5.3.2020.

4. For facility of reference and convenience, observations/recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in Appendix-I of the Report.

5. Extracts from Minutes of the Eighth sitting of the Committee (2019-20) held on 6.2.2020 and Extracts from Minutes of the Eleventh Sitting of the Committee (2019-20) held on 5.3.2020 relevant to this Report are included in Appendix-II of the Report.

New Delhi;
5 March, 2020
15 Phalguna , 1941 (Saka)

RAGHURAMA KRISHNARAJU KANUMURU
Chairperson,
Committee on Subordinate Legislation

REPORT

PART - I

Insurance (Appeal to Securities Appellate Tribunal) Rules, 2016 [GSR 179 (E) of 2016].

The Insurance (Appeal to Securities Appellate Tribunal) Rules, 2016 were published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 17.02.2016. Sub-rule (3) of Rule 5 of these Rules read as under:

“5(3) If an appeal on scrutiny is found to be defective and the defect noticed is formal in nature, the Registrar may allow the appellant to rectify the same in his presence and if the said defect is not formal in nature, the Registrar may allow the appellant such time to rectify the defect as he may deem fit and where such appeal has been sent by post and found to be defective, the Registrar may communicate the defects to the appellant and allow the appellant such time to rectify the defect as he may deem fit”

1.2. On scrutiny of the above sub-rule, it was observed that Rule 5 (3) of the Insurance (Appeal to Securities Appellate Tribunal) Rules, 2016 regarding rectification of defective memorandum of appeal, does not specify any minimum time period that may be given to the appellant to rectify the memorandum of appeal giving complete discretionary powers to the Registrar. It was further observed that where an appeal has been sent by post and found to be defective, the Rules do not specify the manner in which the Registrar shall communicate the defect to the appellant. Accordingly, the matter was taken up with the Ministry of Finance (Department of Financial Services) for obtaining their comments on the above observations.

1.3. In response, the Ministry of Finance (Department of Financial Services) *vide* their OM dated 22nd September, 2017 *inter-alia* stated as under:

“Rule 5 of the Insurance (Appeal to Securities Appellate Tribunal) Rules, 2016 relates to Presentation and scrutiny of memorandum of appeal. As per Rule 5 sub-rule 3

of the said Rules, if an appeal on scrutiny is found to be defective and the defect noticed is formal in nature, the Registrar may allow the appellant to rectify the same in his presence and if the said defect is not formal in nature, the Registrar may allow the appellant such time to rectify the defect as he may deem fit and where such appeal has been sent by post and found to be defective, the Registrar may communicate the defects to the appellant and allow the appellant such time to rectify the defect as he may deem fit. It is true that no specific time frame has been mentioned to rectify the defects and it is left for the decision of Registrar.

As per Rule 5 sub-rule 4 of the said Rules, if the appellant fails to rectify the defect within the time allowed in sub-rule (3), the Registrar, may, by order, and for reasons to be recorded in writing, decline to register such memorandum of appeal and communicate the order to the appellant within seven days thereof.”

1.4. The Committee note that Rule 5(3) of the Insurance (Appeal to Securities Appellate Tribunal) Rules, 2016 inter-alia provides that if an appeal on scrutiny is found to be defective and the defect noticed is formal in nature, the Registrar may allow the appellant to rectify the same in his presence, and if the said defect is not formal in nature the Registrar may allow the appellant such time to rectify the defect as he may deem fit. In cases, if an appeal has been sent by post and found to be defective, the Registrar may communicate the defects to the appellant and allow the appellant such time to rectify the defect as he may deem fit. The Committee further note that Rule 5 (4) provides that if the appellant fails to rectify the defect within the time allowed in sub-rule (3), the Registrar, may, by order decline to register such memorandum of appeal and communicate the order to the appellant within seven days thereof. Also, the Rule does not specify any minimum time period that may be given to the appellant to rectify the memorandum thereby leaving it totally at the discretionary powers of the Registrar. Taking into consideration the admission of the Ministry that no specific time frame has been mentioned to rectify the defects and it is left for the decision of the Registrar, the Committee feel that the use of discretion may lead to arbitrary use of powers which in turn can be misused. The Committee, therefore, recommend that some reasonable time

limit should be prescribed in the Rules themselves within which the appellant can rectify the defect in his memorandum of appeal.

1.5. The Committee also note that that where an appeal has been sent by post and found to be defective, the Rules do not specify the manner in which the Registrar shall communicate the defect to the appellant. The Committee observe that non-specifying of the manner of communication is a loophole in the Rules. Such a loophole can lead to denial of right to the appellant and is not in line with the principles of natural justice. The Committee, therefore, recommend that specific provisions in this regard may be incorporated in the Rules specifying the manner in which the defect in the Memorandum of Appeal shall be communicated to the appellant in respect of cases where the appeal has been sent by post. The Committee desire the Ministry to amend the rule accordingly and apprise the Committee of the action taken in this regard.

PART - II

Infirmities in the Merchant Shipping (Recruitment and Placement of Seafarers) Rules, 2016 (GSR 169 of 2016).

The Merchant Shipping (Recruitment and Placement of Seafarers) Rules, 2016 (GSR 169 of 2016) were published in the Gazette of India, Extraordinary, Part-II, Section 3 (i) dated 15th February, 2016. On scrutiny of the Rules, certain infirmities were observed which were referred to the Ministry of Shipping for their comments. The infirmities pointed out and the comments furnished by the Ministry are brought out in the succeeding paragraphs:

A. Procedure for issue of License & renewal

- 2.2. Rule 9(3) of the Merchant Shipping (Recruitment and Placement of Seafarers) Rules, 2016 prescribes that “Director on receipt of the inspection report from the inspecting authority may issue the license”

On scrutiny of the Rules it was felt that the aforesaid provision does not prescribe any time limit within which the license/ renewal of license is to be issued after receipt of the application. It was felt that a minimum reasonable time limit should be prescribed in the Rule itself to obviate any scope for harassment/inconvenience to the applicants.

- 2.3 The matter was referred to the Ministry for their comments. In response the Ministry *vide* their OM dated 5th December, 2017 have stated as under:

“Ministry has no objection for prescribing the time limit for issuance of License by Director in the said Rules. Time limit of 15 days could be prescribed for issuance of License.”

- 2.4. **The Committee note that Rule 9(3) of the Merchant Shipping (Recruitment and Placement of Seafarers) Rules, 2016 does not provide for any time limit within which the**

license/renewal of license is to be issued after receipt of the application. The absence of any time limit for issuance of license may give rise to arbitrary use of discretionary powers in the context of issuance/renewal of licence and also cause harassment and inconvenience to the applicants. Therefore, specific time limits are needed to be provided in the Rules to prevent such a scenario. The Committee note with satisfaction that on being pointed out, the Ministry of Shipping have agreed to amend the Rules to the desired effect by suggesting that a time limit of 15 days may be prescribed in the Rules for issuance of the License. The Committee recommend the Ministry to bring out the necessary amendment in the Rules at the earliest under intimation to the Committee.

2.5. Sub Rules (5) and (6) of Rule 9 of Merchant Shipping (Recruitment and Placement of Seafarers) Rules, 2016 prescribe that an application for renewal of License shall be submitted within 6 months prior to the expiry of the license and if the application is submitted after the expiry of license, the recruitment and placement service shall be liable to pay late fees of rupees three lakhs". On scrutiny it was observed that the reasons for prescribing such high fee and the statutory authority under the Act allowing such high imposition of the late fee has not been elaborated. The Ministry were requested to clarify why the same cannot be prescribed based on the extent of delay. The Ministry vide their OM dated 5th December, 2017 have stated as under:

"The late fee is prescribed to protect the interest of the serving seafarers for issues such as non-payment of wages, repatriation of seafarers if stranded at foreign port etc. The late fee is provided so that RPS agencies submit applications for renewal before expiry of their license.

2.6. The Committee note that the prescription of late fee for submission of application after expiration of license has been envisaged as a deterrent and to ensure that renewal applications are filed by the Recruitment and Placement Services well within time. The Committee find that the reply of the Ministry is silent on the aspect of the precise

statutory authority under the parent Act authorizing the Ministry to impose such kind of penalties. However, looking at the objective of the provision that the same is for the welfare of the seafarers, the Committee may not like to pursue this matter any further. At the same time, the Ministry may ensure that such provisions are able to withstand the judicial scrutiny if any such occasion arises.

B. No time-limit for disposal of appeal and use of vague expression:

2.7. Rule 19 of Merchant Shipping (Recruitment and Placement of Seafarers) Rules, 2016 reads as under:

“**19. Appeal** -- (1) Any person aggrieved by any order passed under rule 18, may, within a period of thirty days of the date of receipt of such order, appeal to the concerned jurisdictional Principal Officer, Mercantile Marine Department.

(2) The officer referred to in sub-rule (1), shall, after hearing both the parties, pass an order thereon within a period of sixty days from the date of receipt of such appeal.

(3) Any person aggrieved by any order passed under sub-rule (2) may, within a period of thirty days of the date of receipt of such order, appeal to the Director-General, who shall after hearing both the parties, pass an order thereon, as far as possible within reasonable time.”

2.8. On scrutiny of the Rules, it was felt that no time limit has been prescribed within which the Director-General shall pass an order on an appeal. Furthermore, the use of the term 'within a reasonable time' appears vague and liable to be interpreted differently by different persons. Comments of the Ministry were sought on this lacuna. The Ministry were also requested to provide details of the average time taken for disposal of appeals by the Director General during the last 3 years and to state the maximum time taken so far by a Director General for disposal of an appeal. In response the Ministry vide their OM dated 5th December, 2017 have stated as under:-

“Ministry of Shipping has no objection for prescribing the precise and specified time limit for passing the order. The Director General while considering the appeal may also have to consider the time required to examine papers of appeal, giving personal hearing to the RPS agencies/persons making appeal and finally passing of order after due consideration of the extant rules, orders, instructions and relevant material on record. Time limit for disposal of appeal by the Director General within 60 days is suggested.

The time taken for disposal of appeals by the Director General during the last three years in two appeals was thirty and one twenty days.”

2.9. The Committee note from the reply furnished by the Ministry that only two appeals have been received during the last three years. Further, the time taken for disposal of the appeal also appears reasonable. However, despite the reasonableness of the time taken for the disposal of the two appeals in question, there may arise situations where the use of the term ‘within reasonable time’ is misused. A fixed time limit for disposal of appeal will make the rules objective and also effective. Therefore, laying of time limit is necessary to ensure time bound disposal of appeals. In this regard, the Committee note with satisfaction that the Ministry, on being pointed out, have agreed to prescribe precise and specified time limit for passing the order. The Committee recommend the Ministry to bring out necessary amendment in the Rules to rectify the ambiguity.

New Delhi;
5 March , 2020

15 Phalgun, 1941 (Saka)

RAGHURAMA KRISHNARAJU KANUMURU
Chairperson,
Committee on Subordinate Legislation

APPENDIX I

(Vide Para 4 of the Introduction of the Report)

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

(SEVENTEENTH LOK SABHA)

Sl.No.	Reference to Para No. in the Report	Summary of Recommendations
1	2	3
1.	1.4	<p>Insurance (Appeal to Securities Appellate Tribunal) Rules, 2016 [GSR 179 (E) of 2016].</p> <p>The Committee note that Rule 5(3) of the Insurance (Appeal to Securities Appellate Tribunal) Rules, 2016 inter-alia provides that if an appeal on scrutiny is found to be defective and the defect noticed is formal in nature, the Registrar may allow the appellant to rectify the same in his presence, and if the said defect is not formal in nature the Registrar may allow the appellant such time to rectify the defect as he may deem fit. In cases, if an appeal has been sent by post and found to be defective, the Registrar may communicate the defects to the appellant and allow the appellant such time to rectify the defect as he may deem fit. The Committee further note that Rule 5 (4) provides that if the appellant fails to rectify the defect within the time allowed in sub-rule (3), the Registrar, may, by order decline to register such memorandum of appeal and communicate the order to the appellant within seven days thereof. Also, the Rule does not specify any minimum time period that may be given to the appellant to rectify the memorandum thereby leaving it totally at the discretionary powers of the Registrar. Taking into consideration the admission of the Ministry that no specific time frame has been mentioned to rectify the defects and it is left for the decision of the Registrar, the Committee feel that the use of discretion may lead to arbitrary use of powers which in turn can be misused. The Committee, therefore, recommend that some reasonable time limit should be prescribed in the Rules themselves within which the appellant can rectify the defect in his memorandum of appeal.</p>

	<p style="text-align: center;">2.9</p>	<p>applications are filed by the Recruitment and Placement Services well within time. The Committee find that the reply of the Ministry is silent on the aspect of the precise statutory authority under the parent Act authorizing the Ministry to impose such kind of penalties. However, looking at the objective of the provision that the same is for the welfare of the seafarers, the Committee may not like to pursue this matter any further. At the same time, the Ministry may ensure that such provisions are able to withstand the judicial scrutiny if any such occasion arises.</p> <p>The Committee note from the reply furnished by the Ministry that only two appeals have been received during the last three years. Further, the time taken for disposal of the appeal also appears reasonable. However, despite the reasonableness of the time taken for the disposal of the two appeals in question, there may arise situations where the use of the term 'within reasonable time' is misused. A fixed time limit for disposal of appeal will make the rules objective and also effective. Therefore, laying of time limit is necessary to ensure time bound disposal of appeals. In this regard, the Committee note with satisfaction that the Ministry, on being pointed out, have agreed to prescribe precise and specified time limit for passing the order. The Committee recommend the Ministry to bring out necessary amendment in the Rules to rectify the ambiguity.</p>
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APPENDIX II

(Vide Para 5 of the Introduction of the Report)

EXTRACTS FROM MINUTES OF THE EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2019-2020)

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The eighth sitting of the Committee (2019-20) was held on Thursday, the 6th February, 2020 from 1500 to 1530 hours in Chairperson's Chamber, Room No. 209, Extension Building, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Raghurama Krishnaraju Kanumuru Chairperson

MEMBERS

2. Shri Ajay Bhatt
3. Shri Pinaki Misra
4. Shri Chandeshwar Prasad
5. Shri A. Raja
6. Shri Nama Nageshwar Rao
7. Shri Sanjay Seth
8. Shri B. Manickam Tagore

SECRETARIAT

1. Shri Ajay Kumar Garg - Director
2. Shri Nabin Kumar Jha - Additional Director

2. At the outset, the Chairperson welcomed the members to the sitting of the Committee (2019-20). The Committee, thereafter, considered the following Memoranda:-

(i) XX XX XX XX

(ii) XX XX XX XX

(iii) **Memorandum No. 4** - Infirmities in the Merchant Shipping (Recruitment and Placement of Seafarers) Rules, 2016 (GSR 169 of 2016).

(iv) **Memorandum No. 5** - Insurance (Appeal to Securities Appellate Tribunal) Rules, 2016 (GSR 179-E of 2016).

3. After deliberations, the Committee decided to incorporate the points raised in the Memoranda Nos. 2 to 5 in their Reports to be formulated in this regard.

The Committee then adjourned.

XX Omitted portion of the Minutes are not relevant to this Report

**EXTRACTS FROM MINUTES OF THE ELEVENTH SITTING OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (2019-2020)**

—

The eleventh sitting of the Committee (2019-20) was held on Thursday, the 5th March, 2020 from 1500 to 1530 hours in Chairperson's Chamber, Room No. 209, Extension Building, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Raghurama Krishnaraju Kanumuru Chairperson

MEMBERS

2. Prof. S. P. Singh Baghel
3. Shri Ajay Bhatt
4. Shri Jyotirmay Singh Mahato
5. Shri Chandeshwar Prasad
6. Shri Suresh Pujari
7. Shri A.Raja
8. Shri Nama Nageshwar Rao
9. Shri Mahendra Singh Solanky
10. Shri Su Thirunavukkarasar
11. Shri Ram Kripal Yadav

SECRETARIAT

1. Shri Ajay Kumar Garg - Director
2. Shri Nabin Kumar Jha - Additional Director
3. Smt. Jagriti Tewatia - Additional Director

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee.

The Committee then considered the following draft Reports:-

(i) XX XX XX XX

(ii) XX XX XX XX

(iii) Draft Third Report of the Committee on Subordinate Legislation based on the infirmities observed by the Committee during examination of 'Statutory Orders' notified by the Ministries of Finance and Shipping under delegated legislation.

3. After deliberations, the Committee adopted the same without any modification. The Committee also authorized the Chairperson to present the same to the House.

4. XX XX XX XX

The Committee then adjourned.

XX Omitted portion of the Minutes are not relevant to this Report