

COMMITTEE ON SUBORDINATE LEGISLATION

FIRST REPORT

(THIRD LOK SABHA)

(Presented on the 7th September, 1962)



**LOK SABHA SECRETARIAT
NEW DELHI**

September, 1962/Bhadra, 1884 (Saka)

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COMPOSITION OF COMMITTEE ON SUBORDINATE LEGISLATION (1962-63)

Shri S. V. Krishnamoorthy Rao—*Chairman*

2. Shri Bhagwat Jha Azad
3. Shri Rajendranath Barua
4. Shri Sachindra Chaudhuri
5. Shri Homi F. Daji
6. Shri M. M. Haq
7. Shri H. C. Heda
8. Shri Gauri Shanker Kakkar
9. Shri R. R. Morarka
10. Shri C. L. Narasimha Reddy
11. Shri H. Siddananjappa
12. Shri M. P. Swamy
13. Shri U. M. Trivedi
14. Shri Mahavir Tyagi
15. Shri N. M. Wadiwa.

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

REPORT

I

INTRODUCTION

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

2. The Speaker inaugurated the first sitting of the Committee held on the 31st August, 1962. Addressing the members of the Committee he stressed the importance of the Committee and hoped that the members would take up the work of the Committee with enthusiasm and in a spirit of co-operation, keeping in view the larger public good. (Text of the Speaker's address is reproduced in the Appendix).

3. The Committee have held three sittings and considered 713 'Orders'. At their sitting held on the 6th September, 1962, the Committee considered and adopted this Report.

4. Observations of the Committee on matters of special interest made during the course of their examination of the 'Orders', matters which required to be brought to the notice of the House as well as the recommendations of the Committee, have been included in this Report.

II

THE DELHI DEVELOPMENT (BETTERMENT CHARGE ARBITRATION) RULES, 1961 (G.S.R. 1111 of 1961)

5. The Delhi Development (Betterment Charge Arbitration) Rules, 1961, have been made under section 56(1), (2) (l) and (r) of the Delhi Development Act, 1957.

6. Rule 6 thereof vests the arbitrators, appointed by the Central Government under section 39 of the Delhi Development Act, 1957 for settlement of betterment charges, with the powers of a Civil Court exercisable under the Code of Civil Procedure, 1908 when holding an inquiry, in respect of summoning and enforcing attendance of a person, examining him on oath etc. The parent Act merely empowers the Central Government to make rules to lay down the procedure to be followed by the arbitrators.

7. It was felt that the power to compel persons to give evidence on oath etc. was a substantive power which ought to have been provided for in the parent Act instead of in the rules made thereunder.

8. The concerned Ministry of Health, on a reference being made to them, have stated that certain sections of the Delhi Development Act, 1957 will not be available unless the powers of a Civil Court are conferred on the arbitrators. Therefore, the Ministry have added, the Delhi Development (Betterment Charge Arbitration) Rules, 1961 may be allowed to stand for the present and an opportunity will be taken by the Ministry when any other amendments of the said Act are proposed, to provide also a suitable amendment conferring the necessary powers of a Civil Court on the arbitrators.

The Committee note the assurance given by the Ministry.

III

AMENDMENTS TO THE FUNDAMENTAL RULES (S.O. 2922 of 1961)

9. S.O. 2922 of 1961 amending the Fundamental Rules 45A and 45B relating to assessment of rent etc. has been issued under the proviso to Article 309 of the Constitution.

10. The said rules, as amended, lay down *inter alia* that when the standard rent for a residence has not been calculated at the time of its allotment, the Government servant shall pay a provisional rent, not exceeding 10% of his monthly emoluments, as may be fixed on the basis of actual expenditure on the construction, fittings etc. The rules further lay down that if the variation between the standard rent, as subsequently determined and the provisional rent is more than 10% of the provisional rent, the amount equivalent to the difference shall, as the case may be, be recovered from, or refunded to, the Government servant but such an adjustment shall be limited to a period of 12 months prior to the date of sanction of the standard rent.

11. In view of the time limit of 12 months for adjustment of variations in the provisional rent and the standard rent, it was felt that in the absence of any fixed period within which the standard rent should be determined, an allottee would be put to disadvantage for no fault of his, in case, the standard rent was fixed after a period of 12 months and the provisional rent realised was in excess of the standard rent by more than 10% of the provisional rent.

12. On a reference, the concerned Ministry of Finance have stated that there is nothing in the amendment to suggest that where the provisional rent realised is in excess of the standard rent by more than 10% and the same has been realised for more than 12 months,

the excess recovery should not be refunded. Rules F.R. 45-A/B IV(d) make a mention only of the 'short' recovery and the rules F.R. 45-A/B IV (e), of variation of not more than 10% of the provisional rent.

13. The above statement of the Ministry does not appear to be borne out by the existing wording of the rules wherein it is provided that "Such an adjustment shall, however, be limited to a period of 12 months prior to the date of sanction of the standard rent".

14. The Committee feel that the standard rent should be determined as early as possible and in any case within 2 years of the completion of the building. If the provisional rent realised is in excess of the standard rent by more than 10% the amount so realised should be refunded to the allottee. The Committee also feel that if the standard rent exceeds the realised provisional rent by more than 10% the recovery of excess rent from the allottee should be limited to a period of two years prior to the date of sanction of the standard rent.

IV

THE RUBBER RULES, 1955 (S.R.O. 1662 of 1955)

15. The following two points relating to rules 21 and 25 of the Rubber Rules, 1955, made under section 25 of the Rubber Act, 1947, were referred to the concerned Ministry of Commerce and Industry:

(i) Two terms "vacancy" and "permanent vacancy" were used in rule 21. If the term "vacancy" included "temporary vacancy" then sub-rule (1) thereof appeared to be in conflict with rule 22 which provided for filling of temporary vacancies.

(ii) Under sub-rule (2) of rule 25, the Chairman of the Rubber Board could impose penalties mentioned in sub-rule (1) on officers whom he is empowered to appoint. Under sub-rule (4) the Rubber Board could also impose the same penalties on the officers appointed by the Board subject to the conditions detailed therein. If certain checks have to be imposed on the punishing powers of the Board to safeguard some important rights of the staff the same should also be imposed on the punishing powers of the Chairman.

16. The Committee note that the Ministry have, after protracted correspondence, rectified the defects by omitting rules 21 and 25 and making consequential changes in other rules (*vide* G.S.R. 206 of 1962).

BYE-LAWS FOR THE CONTROL AND SUPERVISION OF FLOUR MILLS IN THE SHAHJAHANPUR CANTONMENT (S.R.O. 97 of 1961)

17. Bye-laws for the control and supervision of flour mills in Shahjahanpur Cantonment were framed under sections 282(17) and 283 of the Cantonments Act, 1924. Bye-law 8 thereof provided that the flour mill should at any time be opened for inspection by the officers and servants of the Board so authorised.

18. The bye-law as such was liable to cause hardship to the owners of the mills if they had to open their flour mills for inspection at any odd hour. The purpose of the bye-laws was to see that the mills were constructed according to the approved specifications and that the premises and machinery of the mill were kept clean. It was, therefore, felt that the inspection hours ought to be fixed during the working hours of the mills or between sun-rise and sun-set.

19. The Committee note that the concerned Ministry of Defence, to whom the matter was referred for comments, have amended the said bye-laws by providing that the mills shall be open for inspection by the authorised officers and servants of the Board during working hours (*vide* S.R.O. 374 of 1961).

VI

DEFECTS IN 'ORDERS'

(a)

Amendment to the Bye-laws for the registration and control of dogs and the prevention of rabies in Meerut Cantonment (S.R.O. 182 of 1961)

20. Under sections 119 and 282(30) of the Cantonments Act, 1924, the following amendment to the Bye-laws for the registration and control of dogs and the prevention of rabies within Meerut Cantonment was published in the Gazette of India under S.R.O. 182 of 1961, namely:—

"In bye-law Nos. 6 and 9 of the said Bye-laws, for the words 'two annas'."

The amendment as such was not complete and, therefore, incomprehensible.

21. The Committee note that the concerned Ministry of Defence, on a reference made to them, have superseded the said S.R.O. 182 of 1961 and republished a comprehensive amendment under S.R.O. 90 of 1962.

(b)

The Reception Officers (Press Security Organisation) Recruitment Rules, 1961 (S.O. 2898 of 1961)

22. The Reception Officers (Press Security Organisation) Recruitment Rules, 1961, framed under the proviso to Article 309 of the Constitution, were published under S.O. 2898 in the Gazette of India, dated the 9th December, 1961. It was noticed that the same rules had already been published under S.O. 2504 in the Gazette of India, dated the 21st October, 1961, with a note suspending the operation of the rules which were subsequently published under the said S.O. 2898. There was thus an anomaly as the rules so suspended were published in the Gazette after the notification suspending them had appeared in the Gazette.

23. The Committee note that the concerned Ministry of Works, Housing and Supply, whose attention was drawn to the matter, have removed the anomaly by withdrawing the notification published under S.O. 2504 of 1961 (*vide* S.O. 703 of 1962).

(c)

Amendment in the Kandla (Limitation of Powers and Duties of Customs Officers) Rules, 1961.

24. S.O. 1221 of 1962 with the title "The Kandla (Limitation of Powers and Duties) Amendment Rules, 1962" was issued under section 9 of the Sea Customs Act, 1878. It was noticed that the reference to the title of the principal rules made therein was not correct. The correct reference should have been "The Kandla (Limitation of Powers and Duties of Customs Officers) Rules." The Ministry concerned had not taken note of an earlier amendment issued under S.O. 2138 of 1961, which had added the words 'of Customs Officers' in the title of the principal rules.

25. The Committee note that the Ministry of Finance (Central Board of Revenue), whose attention was drawn towards the matter, have rectified the mistake by a corrigendum issued under S.O. 1886 of 1962.

(d)

Amendments in the Customs and Central Excise Duties Export Drawback (General) Rules, 1960 (G.S.Rs. 581-82 of 1962).

26. It was noticed that an amendment to the Customs and Central Excise Duties Export Drawback (General) Rules, 1960, had been published in the Gazette of India, Part II, Section 3 (i), dated 28-4-1962 by mistake under two G.S.R. Nos. 581 and 582.

27. The Committee note that the concerned Ministry of Finance (Department of Revenue), on being pointed out, have since cancelled G.S.R. No. 581 by publishing a corrigendum in the Gazette, Part II, Section 3 (i), dated 7-7-1962 at page 850.

NEW DELHI;

S. V. KRISHNAMOORTHY RAO,

The 6th September, 1962.

Bhadra 15, 1884 (Saka)

Chairman,

*Committee on Subordinate
Legislation.*

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

First Report

Serial No.	Reference to para No. of the Report	Summary of recommendation/assurance
1	8	When the Delhi Development Act, 1957 is next amended, the Ministry of Health will also seek to include an amendment therein conferring necessary powers of a Civil Court on the arbitrators appointed under section 39 of the Act.
2	14	With reference to rules 45-A and 45-B of the Fundamental Rules the standard rent should be determined as early as possible and in any case within 2 years of the completion of the building. If the provisional rent realised is in excess of the standard rent by more than 10% the amount so realised should be refunded to the allottee. If the standard rent exceeds the realised provisional rent by more than 10%, the recovery of excess rent from the allottee should be limited to a period of two years prior to the date of sanction of the standard rent. } }

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APPENDIX

(See Para 2)

**ADDRESS BY THE SPEAKER (SARDAR HUKAM SINGH) TO
THE MEMBERS OF THE COMMITTEE ON SUBORDINATE
LEGISLATION ON THE 31ST AUGUST, 1962.**

MR. SPEAKER: Mr. Chairman and Members of the Committee,

I am very happy to be here today. I am thankful to you for having asked me to come over here. It gives me great pleasure in meeting you all here. It has just been disclosed that all of you are new to this Committee excepting Shri Siddananjappa. Then, the Chairman has asked me, as he is new to the Committee and most of the members are also new to the Committee, that I should give some words of advice. In such Committees, only the advice given is not enough. It is during the course of the working, when you come to grips with actual problems, that you can learn the work.

2. As has just been said by the Chairman, the work of framing all the legislation has become so complex that it is not possible for the Parliament—in fact, for any Parliament—to go into the details of the policies that are to be worked. Of course, the Parliament has to legislate and the executive has to govern. Parliament can only lay down the broad policies. Particularly in a welfare State, the legislation that has to be undertaken is so vast, is so varied, that it must touch every aspect of the individual's life, if really a welfare State is to be run. Therefore, the legislation is to be undertaken to a very large extent. Even the other day, one of the very prominent lawyers of the Bar was telling me that it was not possible for those expert lawyers—whose business is to study the laws—just to keep abreast of the legislation that was being passed. Though it is a necessity that certain powers must be given to the executive so that it might just frame rules to work those laws, it involves a great risk as well. The necessity, as I have said, arises on account of the vast number of laws that we have to pass. Parliament has got limited time. We are meeting for about six or seven months during the year. But we always find that the legislation remains in arrears and complaints are always made that the members do not get sufficient time inside the House just to have

their say. Last time, when the figures were collected and some facts given, it was found that more than a hundred members had not the occasion to speak during the whole period of five years. With the limited time that Parliament has and even with the adjustments and limitations that are placed, it is not possible to go into the details of the legislation. Therefore, it becomes a necessity that some powers should be given to the executive to frame rules under those laws, so that the details might be worked out. But the necessity is not confined to that aspect only. There ought to be some flexibility also. There are certain circumstances which we cannot foresee at the time of passing an Act. Then, certain circumstances also keep on changing. Therefore, if everything was to be framed and all legislation to be undertaken by Parliament, then for every little thing Government might have to come to Parliament.

Therefore, some latitude is to be given to the executive. But Parliament has to keep on overall control over the executive, be it financial, be it legislative or in other respects. Therefore, it becomes incumbent that in order to keep that control there ought to be a Committee of Parliament that might look into the rules made by the executive in exercise of legislative powers delegated to it. Of course, the financial supervision is done by the two Financial Committees—the Estimates Committee and the Public Accounts Committee. But so far as legislative aspect is concerned, there are dangers that the executive might assume powers and exercise jurisdiction which might not have even been conferred on it. So, every law has to be studied and closely scrutinised.

3. There are instances, within my own experience, of cases where the laws leave vast powers in the hands of the executive. Until those powers are defined by rules there is no security for the citizens. So, it becomes incumbent that the rules are framed first. Many instances have come to my notice—when I was the Chairman of this Committee—of cases when the executive did not care to frame rules for a very long time. We had instances where rules in respect of certain matters had not been framed at all even for two years and the executive went on doing what they liked according to their whims and fancies.

4. We have a maxim that ignorance of law is no excuse. But what about ignorance of rules? They have also the effect of law. The people cannot plead that they have no knowledge of the

rules. If the rules are not framed, the public are ignorant of what to do and of the intentions of the Government. Even when the rules are framed, they do not get as wide a publicity as the Bills get. Bills are published in papers and criticised. The members discuss every aspect of a Bill. Thus the Bills gain sufficient publicity and most of the citizens, at least those who read papers, become aware of what is happening inside the Legislature and what the Bill is about. But so far as rules are concerned, they do not get such publicity. They are, of course, published in the Gazettes, when they are framed. But it is very few people who have recourse to these Gazettes. They are not available to most of the people. It is very seldom that rules are printed in papers. Therefore, an average citizen remains ignorant of the rules. Then, the rules are also changed from time to time. If lawyers find it difficult to have up-to-date knowledge of the laws, it is much more difficult for ordinary citizens to know about the rules that are being framed and that are being modified from time to time. Therefore, an average citizen cannot just have that occasion to know them or to challenge them. There are, of course, judicial courts to test the validity and constitutionality of the rules as well. But there are very few people who take the rules to the Courts even when they affect them adversely.

5. Parliament being the custodian of the interests of the people and the State being a welfare State, it is really incumbent upon Parliament to exercise strict control over such powers that are left with the executive. I have told you that sometimes rules are not framed at all. There is another aspect also. Sometimes even when rules are framed, the executive exceed their powers. They sometimes raise money by levying duties, fines, cesses and other things. According to the Constitution money can be raised by way of a tax only under the authority of Parliament. Without Parliamentary sanction the executive has no power to do that. Sometimes it is left to the executive to vary the railway fares, the postal rates and other rates to a certain extent but in such cases also Parliament is apprised of the entire position. It is only under an Act of Parliament that the executive can tax a citizen.

6. Sometimes Bills seek to delegate legislative powers to the executive. Your Committee shall have to look into these powers and see what these powers are, the extent to which they are being delegated and the manner in which they are to be exercised. After the introduction of Bills you will have to take note of these things

and to see whether sufficient provision regarding laying of the rules before Parliament, has been made therein and also whether members have been enlightened regarding legislative powers sought to be delegated. Of course, hon'ble Members inside Parliament take note of all these matters. Even so, you can scrutinise that aspect and bring to the notice of Parliament as to what kind of legislative powers—normal or exceptional—are sought to be delegated under the Bill. After that has been done, when you deal with particular rules you have to scrutinise the authority given to the executive, the extent to which they could exercise it and the manner in which that could be done and whether all the conditions have been fulfilled or the executive has exceeded its powers. The executive can only exercise those legislative powers which are given to it by Parliament. It cannot go beyond those powers. Certainly, the cases where the executive has exceeded its powers will come to your notice and so also cases where it has not conformed to the intentions of Parliament.

7. We have, I remember, laid down certain propositions and given certain directions to the executive to the effect that when rules are framed there ought to be a proper heading or title given to them and that every rule must say under which section of a particular Act it is being framed.

8. Sometimes under certain laws the executive is given vast rule-making powers. Sometimes the executive puts in a Bill to do "all other things that might be considered necessary for the implementation of the Act". That is too wide a power and the executive takes refuge under that clause to do anything it likes. That is not right. The executive must be given definite and positive authority to legislate on specified matters. This Committee can see whether that is really adhered to and whether the executive has kept itself within these bounds.

9. When this Committee was first constituted in December, 1953, it was found that even rules were not numbered properly. It was very difficult to trace them. You can very well imagine what difficulty the ordinary citizen had to face in those circumstances.

10. Two Committees have functioned in earlier years, one for the duration of the First Lok Sabha and the other during the Second Lok Sabha. I presided over the Committee on Subordinate Legislation of the Second Lok Sabha. We have seen the contribution which this new Committee has been making in regard to the powers of Parliament over the executive. Slowly and gradually, as we worked on,

the executive felt the impact of the deliberations and the decisions of this Committee.

11. The work of the Estimates Committee and the Public Accounts Committee and their decisions get wide publicity and they are known to everybody because they relate primarily to financial matters, but this Committee is no less important. It has a very vital role to play. It has been recognised by all authorities and by people who have seen its work. I remember, Sir Cecil Carr, formerly Counsel to the Speaker of the House of Commons, spoke about the usefulness and effectiveness of this Committee. The Indian Law Institute sometime back called a conference and one of the subjects discussed there was Subordinate Legislation. Shri Ayyangar went there and he took me also. There we told them what we had been doing. They had words of appreciation for exercising real check on the executive by this Committee. The Law Commission has also recognised the efficacy and effectiveness of the work that this Committee has done.

12. So, you have got supreme responsibilities to undertake. It does not matter if most of the members are new. Rather, it is a good thing because they would bring in a fresh approach to all the problems that present themselves to them. I find young and enthusiastic Members of Parliament labour hard and make their contributions inside the House. Here also, they are bound to devote as much labour and industry as they do inside the House. I am convinced that those Hon'ble Members' labours will bring about very useful results.

13. There is another thing that I wish to point out, and that is, your decisions have to be pursued consistently. It is a process that is always going on. It is not only the suggestions that you make which are important. It is not as if you take a decision and leave it there. Unless you pursue it, your work will not be complete. It would not have its effect. You take a decision and write to the executive. They may have some excuses, that it was not possible to do this or this was the reason why this was exceeded. But, by this time at least, they have come to realise that they cannot escape by offering excuses.

14. Here I must pay a tribute to our office. The decisions of the Committee had been diligently pursued in the past and ultimately there was no such thing where the executive had its way. But we are not antagonistic to the executive. We are Members of Parliament. The executive also is responsible to the Parliament. But, as custodians of the rights of the citizens, we have to look to the interests of the citizens. We always watch whether that

interest is being safeguarded and whether the rules made are really the attainment of the objective for which that law was made.

15. It is, therefore, not in a spirit of any antagonism or hostility to the executive but in a spirit of friendliness, of cooperation, of making improvements, of discharging our obligations that we have undertaken this task. In that spirit, of course, we give them useful suggestions. When they have excuses to offer, we consider them. It may be possible that this Committee makes a recommendation but in the mean time certain things have changed. They have a plausible explanation for that. They send us their explanation. If really it has some substance in it, there is no harm in accepting it. There are occasions when we could not accept that explanation and we could not reconcile ourselves. If we don't agree with them, we should refer the matter to them. We should say why we do not agree. We should be in a position to tell them that they have exceeded in something, they have not complied with some other things, etc. Now, the rules are not made by the Ministers themselves though the Ministers are as good representatives as the members of this Committee. They are made by those officers who sit in their rooms, who have no contacts with the public outside. They cannot realise the feelings that an ordinary citizen has. The officers do not know how it affects the citizens. They do not know what reaction the citizen has to the rules that are made and how harshly they have affected the citizens. But the Members of Parliament and the members of this Committee have that opportunity and that facility, to meet those citizens, find out their reactions and bring their dispassionate view about the rules. They know what the objective of Parliament was when the law was passed, what the spirit and what the intention was behind such legislation. Members have the opportunity to know what the effect has been, how the citizen has been influenced and whether the rules have been working harshly against him or not.

The officers who are responsible for making the rules cannot be expected to know all those things. They have a certain rigid attitude inside their offices. They cannot have first hand information about the sentiments and the feelings of the public. Therefore, you shall have to take into account all those things when you deliberate and take your decisions.

16. Then, there is one more aspect which I wish to mention. So far as the past work of the Committee is concerned we are really proud of that. Members are put in this Committee who are representatives of the various sections and different parties inside the House. I do not remember of even one single occasion when

the deliberations of the Committee were on party lines because members come here with a single purpose, namely, the supervision of the exercise of rule making powers by the executive for larger interest of the public. The Committee is a miniature Parliament. Whenever a decision is taken inside Parliament, that becomes a decision of Parliament as a whole and not of the party in power. When you keep that spirit before you and go on with your work in that spirit, certainly there will be no difficulty. All of you would be united in your effort to achieve that mission that is before you, and that always should be the welfare of the citizens. You will attain greater and greater success.

I thank you again for this opportunity to say something to you. I wish to express my good wishes to you that you may proceed in your mission which I am sure will meet with all success. Thank you. (Cheers).
