

COMMITTEE ON SUBORDINATE
LEGISLATION

TENTH REPORT
(SECOND LOK SABHA)

(Presented on the 23rd December, 1960)



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 1960

Price : 20 nP.

CONTENTS

	PARA Nos.	PAGE Nos.
COMPOSITION OF THE COMMITTEE REPORT—		(iii)
I. Introduction	1—3	1
II. The Punjab Sugarcane (Prohibition of Use for Manufac- ture of Gur) Order, 1959 (G.S.R. 220 of 1959)	4—11	1-2
III. The Telegraph Engineering Service (Class I) Rules, 1960 (G.S.R. 64 of 1960)	12—15	2-3
IV. Amendments in the Customs House Agents Licensing Rules, 1960 (G.S.R. 775 of 1960)	16—17	3
V. The National Shipping Board Rules, 1960 (G.S.R. 92 of 1960)	18—20	3-4
VI. Non-citation of Statutory Authority	21—22	4
VII. Ambiguity in Rules	23—25	4
VIII. Action taken or proposed to be taken by Government on various Recommendations of and assurances given to the Committee on Subordinate Legislation	26	4-5
SUMMARY OF RECOMMENDATIONS		6
APPENDIX I—Recommendations of the Committee that have been accepted by the Government		7
APPENDIX II.—Recommendation in respect of which Government's reply has been accepted by the Committee.		8

COMPOSITION OF COMMITTEE ON SUBORDINATE
LEGISLATION (1960-61)

Sardar Hukam Singh—*Chairman.*

2. Shri Bahadur Singh
3. Shri Aurobindo Ghosal
4. Shri N. R. Ghosh
5. Dr. A. Krishnaswami
6. Shri Kanhaiyalal Bherulal Malvia
7. Shri T. C. N. Menon
8. Shri J. M. Mohamed Imam
9. Shri Ghanshyamlal Oza
10. Shri Karsandas Parmar
11. Shri Raghbir Sahai
12. Shri K. S. Ramaswamy
13. Shri Vutukuru Rami Reddy
14. Shri Ajit Singh Sarhadi
15. Shri Satyendra Narayan Sinha.

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

I

INTRODUCTION

1. 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 Tenth Report.

2. Subsequent to the presentation of the Ninth Report, the Committee have held two sittings and considered 275 new 'Orders'. The Committee also considered the 'Orders' that were pending for final disposal at the time of presentation of the Ninth Report. At the sitting held on the 21st December, 1960, the Committee considered and passed this Report.

3. Observations of the Committee on matters of special interest made during the course of 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 PUNJAB SUGARCANE (PROHIBITION OF USE FOR MANUFACTURE OF GUR) ORDER, 1959 (G.S.R. 220 OF 1959)

4. The Punjab Sugarcane (Prohibition of Use for Manufacture of Gur) Order, 1959, which was issued under section 3 of the Essential Commodities Act, 1955, laid down that no person shall use sugarcane for the manufacture of gur (jaggery) within a radius of ten miles of any sugar mill manufacturing sugar by vacuum pan process in the State of Punjab.

5. It appeared that the order might cause hardship to cane growers as jaggery was used in large quantities in practically every house in the country-side.

6. A reference was made to the concerned Ministry of Food and Agriculture who after consulting the Ministry of Law, had *inter alia* stated that the main purpose of the order was to ensure adequate supply of sugarcane to the sugar mills in the Punjab as the cane growers preferred to manufacture Gur instead of selling the sugarcane to the sugar mills. The cane growers were not prevented absolutely, the Ministry added, from using sugarcane for a purpose other than manufacture of Gur *viz.* Khandsari, Rab etc. and in the circumstances there was neither an absolute nor unreasonable restriction on the use of sugarcane.

7. The Committee after considering the matter sought the opinion of the Attorney-General as to whether the order in question was in conflict with Article 19(1) (f) and (g) of the Constitution.

8. Subsequently, the 'Order' was rescinded by the Central Government on the 25th May, 1959. The Committee, however, felt that in any case the opinion of the Attorney-General on the reasonableness of the said 'Order' ought to be obtained as it might be useful in scrutiny of similar 'Orders' in the future.

9. The Attorney-General after having considered the circumstances in which the said 'Order' was issued is of the opinion that the restriction imposed by the 'Order' was a reasonable restriction in the interests of the general public and the 'Order' did not offend the rights of the cane growers under Article 19(1)(f) and (g).

10. Having reconsidered the facts of the present case the Committee are inclined to take the view that the restriction imposed by the 'Order' in question was disproportionate to the evil sought to be remedied thereby mainly because the sugarcane growers were not even allowed to manufacture Gur in small quantities for their own consumption if they so desired.

11. Since the 'Order' has been rescinded the Committee do not consider it necessary to pursue the matter further. However, the Committee hope that an 'Order' of this nature will not be repeated in future.

III

THE TELEGRAPH ENGINEERING SERVICE (CLASS I) RULES, 1960 (G.S.R. 64 OF 1960)

12. Clause 6 of Appendix IV of the Telegraph Engineering Service (Class I) Rules, 1960, issued under proviso to Article 309 of the Constitution lays down that the relative seniority of officers appointed through competitive examination will ordinarily be determined by their order of merit in the competitive examination but the Government of India 'reserve the right of fixing the seniority at their discretion in individual cases'.

13. The Committee enquired from the concerned Ministry of Transport and Communications as to why such vast discretionary power as contained therein was being taken when the purposes for which it was to be used, as had been explained by the Ministry in their earlier communication, were limited and normally no departure was to be made from the established principle of determining seniority on the basis of marks obtained in the competitive examination.

14. The Ministry have stated the spirit underlying the provision in the aforementioned clause 6 of Appendix IV is not to give vast discretionary power regarding fixation of seniority but to spare Government from embarrassment which might result from the introduction of measures meant to improve the efficiency of direct recruits to the Telegraph Engineering Service Class I. Such measures as may

have to be introduced, in future, are unforeseen and, therefore, the discretionary power as contained in the said clause is necessary in order to make their promulgation possible without causing embarrassment to the Government.

15. Appreciating the fact that there may be some exceptional cases where such power is needed the Committee express their apprehension that the wide discretion thus acquired might be misused or exercised too frequently. The Committee hope that whenever it is found advisable or necessary to disturb seniority of an officer it would not be done simply by the Head of the Department but only with the approval of the Minister concerned.

IV

AMENDMENTS IN THE CUSTOMS HOUSE AGENTS LICENSING RULES, 1960 (G.S.R. 775 OF 1960)

16. G.S.R. 775 of 1960 which was issued under section 202(2) of the Sea Customs Act, 1878, added rule 25 to the Customs House Agents Licensing Rules, 1960, providing for appeals against the orders of the Customs Collectors in specified cases to the Chief Customs Authority. Clause 2 of the new rule 25 imposed a fee of Rs. 50 on every application of appeal made to the Chief Customs Authority.

The imposition of such a fee appeared to be outside the scope of section 202(2) under which the rules were framed as there was no authorisation to that effect.

17. The Committee note that on a reference being made to the concerned Ministry of Finance the rule has been amended by deleting the provision relating to fee (*vide* G.S.R. 1015 of 1960).

V

THE NATIONAL SHIPPING BOARD RULES, 1960 (G.S.R. 92 OF 1960)

18. Rule 6 of the National Shipping Board Rules, 1960 which were framed under section 6 of the Merchant Shipping Act, 1958, provided that the Chairman or the members of the National Shipping Board might resign their offices but they would continue in office until their resignations were accepted by the Central Government.

19. There was no provision in the rules directing the Central Government to accept the resignation within a specified or reasonable time.

20. The Committee note that on being pointed out the concerned Ministry of Transport and Communications, have amended the said

rule 6 by providing a time limit of 30 days from the date of receipt of letter of resignation for its acceptance by the Central Government (*vide* G.S.R. 1242 of 1960).

VI

NON-CITATION OF STATUTORY AUTHORITY

21. S.O. 2155 of 1960 containing the draft of the Jute Grading and Marking Rules, 1960 did not cite the authority under which it was issued.

22. The Committee note that on being pointed out, the concerned Ministry of Food and Agriculture have issued a fresh notification of the draft of Jute Grading and Marking Rules, 1960, in supersession of the said S.O. 2155 of 1960, citing the authority of the Act under which the draft rules are published (*vide* S.O. 2325 of 1960).

VII

AMBIGUITY IN RULES

23. The Ministry of Defence Library [Class II (Gazetted) Non-ministerial] Recruitment Rules, 1960 as published under S.R.O. 270 of 1960, lay down that method of recruitment and other matters pertaining to a post in the Ministry of Defence Library shall be as specified in the Schedule appended thereto, but the Schedule in question has not been published along with the rules.

24. The Ministry of Defence whose attention was drawn towards this lacuna replied that the Schedule was inadvertently not sent to the Manager of Publications and the same was forwarded to the Press later on with instructions that it should be published on a separate paper and copies thereof should be sent to all those whom the rules were sent.

25. The Committee feel that this internal arrangement between the Ministry and the Press will not ensure that the Schedule has reached all the persons concerned. Moreover, since the Schedule constitutes the substantive part of the rules, the Committee are of the view that it should be published in the Gazette.

VIII

ACTION TAKEN OR PROPOSED TO BE TAKEN BY GOVERNMENT ON VARIOUS RECOMMENDATIONS OF AND ASSURANCES GIVEN TO THE COMMITTEE ON SUBORDINATE LEGISLATION

26. The Committee have considered the replies sent by the Government in respect of the action taken or proposed to be taken by the

Government on various recommendations of, and assurances given to, the Committee.

- The recommendations which have been accepted and assurances implemented by the Government are given in Appendix I. A recommendation in respect of which the Government have given their own views and the same were accepted by the Committee is given in Appendix II.

NEW DELHI;

December 22, 1960.

Pausa 1, 1882 (S).

HUKAM SINGH,

Chairman,

Committee on Subordinate Legislation.

SUMMARY OF RECOMMENDATIONS MADE IN THE TENTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SECOND LOK SABHA)

Serial No.	Reference to para No. in the Report	Summary of Recommendations
1	10—11	The restriction imposed on certain sugarcane growers in the State of Punjab by the Punjab Sugarcane (Prohibition of Use for Manufacture of Gur) Order, 1959 (G.S.R. 220 of 1959) was disproportionate to the evil sought to be remedied thereby because the sugarcane growers were not even allowed to manufacture Gur in small quantities for their own consumption if they so desired. Since the 'Order' has been rescinded the Committee do not consider it necessary to pursue the matter further. However, the Committee hope that an 'Order' of this nature will not be repeated in future.
2	15	There may be some exceptional cases where power of fixing seniority of officers appointed through competitive examination at the discretion of the Government is needed but the Committee apprehend that the wide discretion might be misused or exercised too frequently. The Committee hope that whenever it is found advisable or necessary to disturb seniority of an officer it would not be done simply by the Head of the Department but only with the approval of the Minister concerned.
3	25	Since the Schedule to the Ministry of Defence Library [Class II (Gazetted) Non-ministerial] Recruitment Rules, 1960, constitutes the substantive part of the rules, the Committee are of the view that it should be published in the Gazette.

• APPENDIX I
(See para 26)

Recommendations of the Committee that have been accepted by the Government

Serial No.	Ref. to para No. of the Report	Summary of recommendation/ assurance	Gist of Government's reply
1	FOURTH REPORT (Second Lok Sabha) 37—40	<p>Bye-Law 7(b) of the Ahmedabad Cantonment Board Bye-laws for regulation of grazing of animals had provided that in case a grazing token was lost, a duplicate might be issued on payment of Rs. 5/- plus the value of the token. The additional charge of Rs. 5/- was in the nature of penalty for which there was no authorisation in the Cantonments Act, 1924, under which the bye-laws were framed. The Committee note the assurance given by the Ministry of Defence that offending provision would be deleted.</p>	<p>The additional fee Rs. 5/- has since been dispensed with (S.R.O. 355 of 1959). [<i>Min. of Defence O.M. No. 53/29/G/L&C/57/1332-G/D (C&L)(i) dated 18th June, 1960.</i>]</p>
2	SIXTH REPORT (Second Lok Sabha) 7—8	<p>Matters provided in rule 22 of the Minerals Conservation and Development Rules, 1958 which were framed under sec. 18 of the Mines and Minerals (Regulation and Development) Act, 1957, were not contemplated by that section.</p>	<p>This has since been done (<i>vide</i> G.S.R. 1353 of 1960).</p>
4	NINTH REPORT (Second Lok Sabha) 11	<p>The Committee note the assurance given by the Ministry of Steel, Mines and Fuel that the existing rule 22 would be omitted from the said rules and incorporated in the revised Minerals Conc- ession Rules to be framed under sec. 13 of the Act which conferred necessary powers in that respect.</p>	<p>All the Ministries and Departments of the Government of India have been requested to give highest priority to requests for information coming from Parliamentary Committees.</p>

[*D.P.A. O.M. No. SRIX (8-11) CB/60 dated 23rd November, 1960.*]

APPENDIX II

(See para 26)

Recommendations in respect of which Government's reply has been accepted by the Committee

Serial No. of Ref. to para No. of the Report.	Summary of recommendation	Gist of Government's reply
1	3	4
1 SEVENTH REPORT (Second Lok Sabha) 30—32	A Corrigendum to G.S.R. 30 of 1959 containing the Mechanical Engineering and Transportation (Power) Department of the Superior Revenue Establishment of Indian Railways Recruitment Rules, giving the exact statutory authority under which the rules were framed may be issued.	As G.S.R. 30 of 1959 has already served the purpose for which it was intended any amendment at this stage will have only an academic value. The statutory authority will be quoted in the Recruitment Rules published as G.S. Ra. in future.

[*Min. of Railways (Railway Board O.M. No. 59/Parl/21, dated 10th February, 1960).*]

© 1960 BY LOK SABHA SECRETARIAT

PUBLISHED UNDER RULES 379 AND 382 OF THE RULES OF PROCEDURE AND CONDUCT
OF BUSINESS IN LOK SABHA (FIFTH EDITION) AND PRINTED AT THE
PARLIAMENTARY WING OF THE GOVERNMENT OF INDIA PRESS, NEW DELHI.
