

COMMITTEE
ON
SUBORDINATE LEGISLATION

(FOURTH LOK SABHA)

THIRD REPORT

(Presented on the 14th December, 1968)



LOK SABHA SECRETARIAT
NEW DELHI

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (1968-69)**

1. Shri N. C. Chatterjee—*Chairman*.
2. Shri Bimal Kanti Ghosh.
3. Shri Shri Chand Goyal.
4. Shri Tulsiram Dashrath Kamble.
- *5. Shri Arjun Shripat Kasture.
6. Shri Narendra Singh Mahida.
7. Shri M. Meghachandra.
8. Dr. G. S. Melkote.
9. Shri V. Viswanatha Menon.
10. Shri Srinibas Mishra.
11. Shri G. S. Reddi.
12. Shri N. K. Sanghi.
13. Shri Nuggehalli Shivappa.
14. Shri Balgovind Verma.
15. Shri G. Viswanathan.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary*.

*Nominated w.e.f. 23rd July, 1968 in the vacancy caused by the death of Shri Mali Mariyappa.

THIRD REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(Fourth Lok Sabha)

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 Third Report on the following points referred to the Committee by the Deputy Speaker in the House on the 12th December, 1968 during the discussion on the motion for consideration of the Essential Services Maintenance Bill, 1968:—

- (1) Whether the provisions relating to delegation of powers contained in the Essential Services Maintenance Bill, 1968 are of a normal or exceptional nature? and
- (2) Whether the notifications to be issued under the said Bill, when enacted, should be laid on the Table of the House before they come into operation or after?

2. The Committee held two sittings on the 13th December, 1968, and adopted this Report on the 13th December, 1968. The minutes of both these sittings which form part of the Report are appended to it.

3. Findings of the Committee on the points referred to them are set out in the succeeding paragraphs.

II

PART (IX) OF CLAUSE 2(1) (a) OF THE ESSENTIAL SERVICES MAINTENANCE BILL, 1968

4. Item (a) of clause 2(1) of the Essential Services Maintenance Bill, 1968 defines "essential service". Part (ix) of this item empowers the Central Government to declare, by notification in the Official Gazette, certain other services connected with matters with respect to which Parliament has power to make laws, also to be essential services for the purposes of the proposed legislation. This is subject to the condition that the Central Government is of opinion that strikes in such services would prejudicially affect the maintenance of any public utility service, the public safety or the maintenance of supplies and services necessary for the life of

the community or would result in the infliction of grave hardship on the community. The Committee note that provisions similar to those contained in clause 2(1) (a) (ix) of the Bill were also contained in the Essential Services Maintenance Bill, 1957 (Bill No. 54 of 1957) and the Essential Services Maintenance Ordinance, 1960.

5. During the discussion on the Essential Services Maintenance Bill, 1957 in Lok Sabha, when objection was taken to a similar provision in that Bill, Mr. Speaker Ayyangar had ruled:—

"Now, it is not possible to say what exactly are the essential services. It is contingent. Times may change and a service may become essential."

[L.S. Deb., Dt: 5-8-1957, c. 7018].

The Essential Services Maintenance Ordinance, 1960 which also contained a similar provision, was challenged in the Bombay High Court on the ground that it involved excessive delegation of legislative power to the Executive. Negating that view, the Bombay High Court ruled as follows:

"(39) The Ordinance has already been reproduced above. In our view, the President has laid down with sufficient definiteness the legislative policy and that policy is maintenance of certain essential services for the purposes of ensuring normal life of the community. The President is at pains to enumerate Essential Services in section 2(1) (a) (i) to (viii). It cannot be disputed that maintenance of these services is essential for ensuring normal life of the community. After having enumerated these services, the President has in section 2(1) (a) (viii) empowered the Central Government to enlarge this list to a certain extent, but again it has to be noticed that it is not left at the sweet will of the executive to include any and every service under this category. It must be such a service that strike therein would prejudicially affect the maintenance of any public utility service or would result in the infliction of grave hardship on the community. A further safeguard is also provided by making it obligatory on the Central Government to place before each House of Parliament the notification issued under this clause. It has then been provided in sub-section (1) of section 3 that if the Central Government is satisfied that in the public interest it is necessary or expedient so to do, it

may, by general or special order, prohibit strikes in any essential service specified in the Order i.e. specified in section 2(1) (a) (i) to (viii). When these provisions are read together, it is abundantly clear that the President has not delegated any essential legislative function to the Central Government. The Central Government has to act within the ambit of the legislative policy laid down in the Ordinance. The limits of delegated powers have been specifically stated in the Ordinance. In our judgment, therefore, the Ordinance is not bad on account of excessive delegation of legislative power to the Central Government. The contention raised on behalf of the petitioners by Mr. Singhvi, therefore, also must fail."

[S. Vasudevan vs. S. D. Mital, A.I.R. 1962 Bombay 53 at p. 64.]

The Committee respectfully agree with the view expressed by the Division Bench of the Bombay High Court in the above case.

6. The Committee have also, in this connection, perused the judgements of the Supreme Court in the following cases:—

- (i) In re Article 143, Constitution of India and Delhi Laws Act (1912), A.I.R. 1951 S.C. 332.
- (ii) Harishankar Bagla vs. The State of Madhya Pradesh, A.I.R. 1954 S.C. 465.
- (iii) Edward Mills Co. Ltd., Beawar vs. State of Ajmer, A.I.R. 1955 S.C. 25.
- (iv) Hamdard Dawakhana (Wakf) Lal Kuan, Delhi vs. Union of India, A.I.R. 1960, S.C. 554; 1960 (2) S.C.R. 671.
- (v) Radhey Shyam Sharma, vs. Post Master General, Central Circle, Nagpur, A.I.R. 1965, S.C. 311.

7. In the light of the previous precedents and the aforesaid judgements of the Supreme Court and the Bombay High Court, and after considering all aspects of the matter, the Committee are of the opinion that the provisions of part (ix) of clause 2(1) (a) of the Essential Services Maintenance Bill, 1968 are normal in the sense that they are constitutional and not bad on account of excessive delegation of legislative power as the criteria or standards or policy on the basis of which essential services may be notified have been spelt out, and are within the ambit of the legislative policy laid down, in clause 2(1) of the Bill.

8. As regards the question whether a notification issued under clause 2(1) (a) (ix) of the Bill, when enacted, should come into

force immediately on its publication in the official Gazette or after it is laid on the Table of the House or approved by the House, the Committee, after careful consideration, are of the opinion that instead of leaving it to the Members to move for modification or annulment of the notification after it is laid on the Table, as provided in sub-clause (2) of clause 2 of the Bill, the Government should themselves come forward to seek the approval of each House within 40 days of the re-assembly of Parliament and the notification should cease to be operative unless approved by both Houses of Parliament before the expiration of that period. This will be in accord with the provisions of sub-section (2) of section 2 of the Essential Services Maintenance Ordinance, 1960.

III

RECOMMENDATION OF THE COMMITTEE

9. The Committee accordingly recommend that for sub-clause (2) of clause 2 of the Bill, the following may be substituted:—

“(2) Every notification issued under sub-clause (ix) of clause (a) of sub-section (1) shall be laid before each House of Parliament immediately after it is made if it is in session and on the first day of the commencement of the next session of the House if it is not in session, and shall cease to operate at the expiration of forty days from the date of its being so laid or from the re-assembly of Parliament, as the case may be, unless before the expiration of that period a resolution approving the issue of the notification is passed by both Houses of Parliament.

Explanation.—Where the Houses of Parliament are summoned to re-assemble on different dates, the period of forty days shall be reckoned from the later of those dates.”

NEW DELHI;
The 13th December, 1968.

N. C. CHATTERJEE,
Chairman,
Committee on Subordinate Legislation.

XVIII

MINUTES OF THE EIGHTEENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION

The Committee met on Friday, the 13th December, 1968 from 10.00 to 10.55 hours.

PRESENT

Shri N. C. Chatterjee—*Chairman*.

MEMBERS

2. Shri Shri Chand Goyal

3. Shri Narendra Singh Mahida

4. Shri M. Meghachandra

5. Shri Srinibas Mishra

6. Shri G. S. Reddi

7. Shri Balgovind Verma

Shri P. Govinda Menon } were also present.
Shri Vidya Charan Shukla }

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary*.

2. The Committee took up for consideration the following points referred to the Committee by the Deputy Speaker in the House on the 12th December, 1968:—

- (1) Whether the provisions relating to delegation of powers contained in the Essential Services Maintenance Bill, 1968 are of a normal or exceptional nature? and
- (2) Whether the notifications to be issued under the said Bill, when enacted, should be laid on the Table of the House before they come into operation or after?

3. At the outset, the Chairman read out to the Committee the letter dated the 12th December, 1968 addressed to him by Shri Madhu Limaye, M.P. requesting that he might be given about a week's time to prepare a statement for submission to the Committee on the

matter and also the letter dated the 12th December, 1968 from Shri D. K. Kunte, M.P., expressing his views on the matter (See Annexure I).

4. The Committee perused in this connection the ruling given by Mr. Speaker Ayyangar in Lok Sabha on the 5th August, 1957 when the Essential Services Maintenance Bill, 1957 was under discussion (vide L.S. Deb., dated 5-8-1957 cc. 7017—19). The Committee also perused the judgements in the following Supreme Court and Bombay High Court cases:—

- (i) S. Vasudevan vs. S. D. Mittal, A.I.R. 1962 Bombay 53.
- (ii) In re Article 143, Constitution of India, and Delhi Laws Act (1912), A.I.R. 1951 S.C. 332.
- (iii) Harishankar Bagla vs. The State of Madhya Pradesh, A.I.R. 1954 S.C. 465.
- (iv) Edward Mills Co. Ltd., Beawar vs. State of Ajmer, A.I.R. 1955 S.C. 25.
- (v) Hamdard Dawakhana (Wakf) Lal Kuan, Delhi vs. Union of India, A.I.R. 1960, S.C. 554: 1960 (2) S.C.R. 671.
- (vi) Radhey Shyam Sharma, vs. Post Master General, Central Circle, Nagpur, A.I.R. 1965, S.C. 311.

5. After considering all aspects of the matter, the Committee were of the opinion that the provisions of part (ix) of clause 2(1) (a) of the Essential Services Maintenance Bill, 1968 were normal in the sense that they were constitutional and not bad on account of excessive delegation as the principles of criteria and the ambit of the legislative policy were laid down in clause 2(1) of the Bill.

6. As regards the question whether a notification issued under clause 2(1) (a) (ix) of the Bill, when enacted, should come into force immediately on its publication in the Gazette or after it is laid on the Table of the House or approved by the House, the Committee, after careful consideration, decided to recommend that instead of leaving it to the Members to move for modification or annulment of the notification, after it was laid on the Table, Government themselves should come forward to seek the approval of each House within 40 days of the re-assembly of Parliament and the notification should cease to be operative unless approved by both Houses of Parliament before the expiration of that period. This would be in accord with the provisions of sub-section (2) of section 2 of the Essential Services Maintenance Ordinance, 1960.

7. The Committee decided to meet again at 17.00 hours to consider their draft Third Report.

8. The Committee then considered their draft Second Report and adopted it.

The Committee then adjourned to meet again at 17.00 hours.

XIX

MINUTES OF THE NINETEENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION

The Committee met on Friday, the 13th December, 1968 in the afternoon from 17.00 to 18.00 hours.

PRESENT

Shri N. C. Chatterjee—*Chairman.*

MEMBERS

2. Shri Shri Chand Goyal
3. Shri Narendra Singh Mahida
4. Shri M. Meghachandra
5. Shri Srinibas Mishra
6. Shri N. K. Sanghi
7. Shri Balgovind Verma.

Shri Vidya Charan Shukla } were also present.
Shri Madhu Limaye }

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. The Committee considered the letter dated the 13th December, 1968 from Shri Madhu Limaye, M.P. setting forth his views on the scope of the Delegated Legislation as envisaged in the Bill (Annexure II) and thereafter heard his views in person.

3. The Committee then considered and approved their draft Report.

4. The Committee authorised the Chairman and in his absence Shri Narendra Singh Mahida to present their Second and Third Reports to the House on Saturday, the 14th December, 1968.

The Committee then adjourned.

ANNEXURE I

(See para 3 of the Minutes of the 18th Sitting)

D. K. KUNTE
Member of Parliament
(Lok Sabha)

6, Raisina Road,
New Delhi
December 12, 1968.

The Chairman,
Delegated Legislation Committee,
Lok Sabha,
New Delhi.

Sir,

The Deputy Speaker, who presided over the House today, made a certain observation under which the Essential Services Bill, along with the explanations to be offered by the Minister concerned, would be sent to you for examination as to whether the delegation intended in the said piece of legislation was a normal one. The Deputy Speaker also mentioned that members could send in their submission to you for consideration. Hence this letter.

According to me, the legislation suffers from vagueness and from being indefinite. While defining the words 'Essential Services' in Clause 2, sub-clause 1, in the first seven or eight sub-clauses a number of services have been enumerated. After enumerating these services, Clauses 8 and especially 9 propose to give power to Government in the matter of services which are not clearly defined. Explaining the Government's position on this point, the Minister of State for Home Affairs was pleased to say that it is impossible to enumerate the essential services as well as what categories of services ought to be considered under this clause. This clearly shows that the Government have no clear idea as to what services do they want this bill to be made applicable to when it becomes an Act and unless the intention of legislation is defined, Government cannot expect the Parliament to delegate that authority to Government. If it was proper to ask for delegation on such a point, then the exercise done in enumerating a number of services in sub-clauses 1 to 7 was not called for. The very fact that Government thought it necessary that they must enumerate what is meant by the word

'Essential Services' and at the same time to admit that after enumerating certain services, in the matter of others they did not have a clear idea, it makes it very clear that the legislation ought really to have its scope as far as where Government had very clear ideas. As it is said, it is not possible for a blind man to lead another blind man. So if Government is not clear, how could they convince the House and obtain the consent of the House?

The Minister further tried to point out that as this notification would be placed on the Table of the House, no harm was intended or would be caused. The Minister forgot that though he might place the notification on the Table of the House, immediately the notification is issued, the Executive will be in a position to act upon the said notification as if it was good law until it is possible for the House to discuss the same and come to any opinion. This could never be the intention of a legislation which is sovereign.

Such an attempt to obtain power on areas undefined, vague, nebulous, nay, impossible to enumerate, as the Minister said, is not a proper way of legislation. This reminds one of the Defence of India Act which contained only two sections and had under it more than 500 rules.

I hope your committee will take the submission of mine into consideration before advising the House.

Yours faithfully,
Sd/- D. K. KUNTE

ANNEXURE II

(See para 2 of the Minutes of the 19th Sitting)

MADHU LIMAYE, M.P.

6, Rakabganj Road,
New Delhi,
13th December, 1968.

The Chairman,
Committee on Subordinate Legislation,
Lok Sabha,
New Delhi.

Sir,

On 11th of December, after the Minister of State, Home Affairs, moved his consideration motion in relation to the Essential Services Maintenance Bill, I immediately rose on a point of order to say that the Bill palpably violated Rule 70 in regard to the Memorandum on Delegated Legislation.

This Rule has made it mandatory for the sponsor (in this case the Government) of the Bill:

- (a) to explain the proposals,
- (b) to draw attention to their scope, and
- (c) to state whether they are of *normal* or *exceptional* character (in the accompanying Memorandum).

What was the purpose in framing this Rule? One was, obviously, to enable Parliament to judge whether this is excessive delegation and hence a violation of the tests laid down by the Supreme Court. What were these tests? They were:

- (a) that the essential characteristic of legislative power is the laying down of "policy" or "standard".
- (b) that the rule-making power or the Govt's power to make modifications should not involve a change in this essential policy.

These tests were prescribed in view of our written Constitution and the principles laid down in specific provisions such as Article 22(7) which were taken as providing guidance.

But there is another aspect of this matter which has bearing on the adoption by us of a Parliamentary system patterned on the British model.

In England the initial reaction was against delegation of power and the creation of a large body of French-style administrative law. But in view of the growing intervention of the state in practically all departments of human life and the complexities of modern administration Parliament has of late diverted its attention to:

- (a) prevention of abuse of delegated legislation, and
- (b) ensuring of parliamentary control over such legislation.

So it is not enough to place the Rules on the table and enable members to move amendments and changes. That is not acceptance of the principle of parliamentary control but confronting parliament with an accomplished fact.

The Minister said that the Government cannot at this point of time visualise what services, (not even what classes or categories of services), will be considered essential by the Government. That is why it is all the more necessary that the bill should in clear terms lay down that no rules or notifications issued under sub-clause (ix) of clause (a) of sub-section (I) shall become operative unless ratified by Parliament within a certain period. This will ensure effective parliamentary control over this delegation of power and prevent its abuse.

The Committee, acting for the entire House, should lay down this salutary principle not only in this case but in *all* important matters that might arise in future. May's Parliamentary Practice has also distinguished between two procedures, one negative and the other affirmative, the affirmative be used in important cases. (May p. 603, 17th Edition).

Rule 320 of our procedure refers to cases of "negative" parliamentary control, or what I would call *post facto* intervention. The Dy. Speaker has broken new ground and has now issued directions under rule 322 (which gives him power to do so in respect of "all matters connected with the consideration of any question of Sub-ordinate Legislation").

It is, therefore, open to the Committee now to make use of the procedure of affirmative control mentioned in May referred to above. This matter the Committee has to consider and will, I am sure, consider, fearlessly. To ensure this it has been specifically laid down in our Procedure that no Minister shall be a member of this Committee [see Proviso to Rule 318(I)], I also believe the Government will not oppose the Committee's recommendation in the matter.

Yours Sincerely,

Sd/- MADHU LIMAYE

P.S.—This may please be appended to the Report of the Committee.

Sd/- Madhu Limaye.

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