

**COMMITTEE
ON
SUBORDINATE LEGISLATION**

(FIFTH LOK SABHA)

EIGHTH REPORT

(Presented on the 30th August, 1973)



**LOK SABHA SECRETARIAT
NEW DELHI**

August, 1973 | Bhadra, 1895 (Saka)

Price : Re. 1.45 Paise

LOK SABHA SECRETARIAT

Corrigenda to the Eighth Report of
the Committee on Subordinate
Legislation (Fifth Lok Sabha).

<u>Page</u>	<u>Line</u>	<u>for</u>	<u>read</u>
(1)	3	rts	The Exports
5	4	ZILLA	ZILA
11	13	buil ting	building
12	3 from bottom	ommission	omission
34	9 from bottom	not	note
35	7	and	or
36	17	suitable	suitably
37	2	cycles tricyclas	cycles and tricycles
38	14 from bottom	Committes	Committee

CONTENTS

COMPOSITION OF THE COMMITTEE		PARA Nos.	PAGE- No.
			(iii)
I.	Introduction	1—4	1
II.	rts (Control) Order, 1968 (S.O. 927 of 1968)	5—20	1
III.	(i) The Punjab State Agricultural Marketing Board and Market Committees (Reconstitution and Reorganisation) Order, 1969 (S.O. 3021 of 1969)		5
	(ii) The Punjab Zila Parishads Panchayat Samitis and Gram Sabhas (Reconstitution and Reorganisation) Order, 1969 (S.O. 2933 of 1969)	21—24	5
IV.	(i) Bye-laws regulating the conditions to be imposed by licences granted to barbers and keepers of shaving saloons in the Secunderabad Cantonment (S.R.O. 39 of 1969)		7
	(ii) Bye-laws for regulating the collection and recovery of tax on cycles and tri-cycles in Jullundur Cantonment (S.R.O. 319 of 1969)		7
	(iii) Saugar Cantonment imposition of tax on advertisement Order, 1970 (S.R.O. 449 of 1970)	25—33	7
V.	The Directorate of Extension (Horticulture Officer) Recruitment Rules, 1969 (G.S.R. 2781 of 1969)	34—36	9
VI.	Amendments to Civil Service Regulations, 1970 (S.Os. 399 and 400 of 1970)	37—40	9
VII.	The Bye-laws for regulation, conservation and protection from injury, contamination or trespass of sources and means of public water supply, construction and maintenance of connections with water works and the regulation of all matters relating to the supply and use of water in the Nasirabad Cantonment (S.R.O. 150 of 1969)	41—62	10
VIII.	The India Meteorological Department (Allotment of Residences) Rules, 1969 (G.S.R. 543 of 1969)	63—66	14
IX.	The Directorate General of Technical Development (Class I Posts) Recruitment (First Amendment) Rules, 1969 (G.S.R. 805 of 1969)	67—70	16
X.	Bye-laws for regulating the registration and classification of contractors in Morar Cantonment (S.R.O. 128 of 1969)	71—79	17
XI.	Central Excise (Tenth Amendment) Rules, 1969 (G.S.R. 1723 of 1969)	80—82	19

	PARA Nos.	PAGE No.
XII.	Bye-laws for regulating the collection and recovery of tax on cycles and tricycles in the Jullundur Cantonment (S.R.O 319 of 1969)	83—85 19
XIII.	Export of Dried Fish (Inspection) Rules, 1970 (S.O. 2138 of 1970)	86—92 21
XIV.	The Aluminium (Control) Order, 1970 (S.O. 1103 of 1970)	93—96 22
XV.	Payment of Wages (Mines) Amendment Rules, 1970 (S.O. 3844 of 1970)	97—102 23
XVI.	The Khuda Bakhsh Oriental Public Library Rules, 1970 (G.S.Rs. 1256 and 1695 of 1970)	103—106 25
XVII.	The PEPSU Road Transport Corporation (Re-organisation) Order, 1972 (S.O. 328 (E) of 1972)	107—111 26
XVIII.	Drugs (Prices Control) Order, 1970 (S.O. 1752 of 1970)	112—115 28
XIX.	Delay in sending the replies by Ministries to references made by the Committee on Subordinate Legislation	116—120 30

APPENDICES

I.	Summary of recommendations/observations made by the Committee	31
II.	Letter from the Ministry of Petroleum and Chemicals to the Chief Secretaries of all State Governments regarding the setting up of machinery for the enforcement of the Drugs (Prices Control) Order, 1970	40
III.	A copy of the Order authorising the officers to take action under Drugs (Prices Control) Order, 1970	43
IV.	Minutes of the Thirty-second, Thirty-third, Thirty-fourth and Thirty-Seventh sittings of the Committee	47

COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION

(1973-74)

1. Shri Vikram Mahajan—*Chairman*
2. Shri T. Balakrishnaiah
3. Shri M. C. Daga
4. Shri T. H. Gavit
5. Shri Samar Guha
6. Shri S. A. Kader
7. Dr. Karni Singh
8. Shri K. Lakkappa
9. Shri Y. S. Mahajan
10. Shri Murasoli Maran
11. Shri S. N. Misra
12. Shri Mohan Swarup
13. Shri D. K. Panda
14. Shri K. Narayana Rao
15. Shri Tulmohan Ram

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary.*

Shri H. G. Paranjpe—*Deputy Secretary.*

REPORT

I INTRODUCTION

1. The Chairman of the Committee on subordinate Legislation, having been authorised by the Committee to present the Report on their behalf, present this their Eighth Report.

2. The Committee took evidence of the representatives of the Ministry of Commerce regarding Exports (Control) Order, 1968 at their sitting held on the 23rd May, 1973.

3. The Committee considered and adopted this Report at their sitting held on the 27th August, 1973. The Minutes of the sittings which form part of the Report are appended to it.

4. A Statement showing the summary of recommendations/observations of the Committee is also appended to the Report (Appendix I).

II

THE EXPORTS (CONTROL) ORDER, 1968 (S.O. 927 of 1968)

(A)

5. Clause 6 of the Exports (Control) Order, 1968 empowered the licensing authority to refuse to grant a licence on any of the grounds mentioned therein. There was, however, no provision for communicating the grounds of refusal to an applicant.

6. The Ministry of Commerce who were requested to state whether they had any objection to the making of such a provision in the Order stated in their reply as under:—

“No objection. In fact, the Licensing Authorities have been instructed to communicate reasons of rejection to the applicants (*vide* Office Order No 25/66, dated 13th October, 1968).

7. The representatives of the Ministry of Commerce, who appeared before the Committee at their sitting held on the 23rd May,

1973 stated that they had no objection to a provision being made in the 'Order' in this regard except when it might not be desirable to do so in public interest.

8. The Committee note the Ministry's reply that administrative instructions have been already issued to the licensing authorities to communicate to the applicants reasons for refusal to grant licences unless such reasons cannot be divulged in public interest. The Committee desire the Ministry of Commerce to give statutory shape to the same by including them in the Exports (Control) Order, 1968 at an early date.

(B)

9. Sub-clause (d) of Clause 6 of the Exports (Control) Order, 1968, empowered the licensing authority to refuse to grant a licence if it considered that the grant of the licence would not be in the interest of the country. Sub-clause (e) of Clause 6 of the said Order empowered the licensing authority to refuse to grant a licence if the activities of the applicant were prejudicial to the interest of the country. Further under the proviso to Clause 9 of the Order, the Central Government or the Chief Controller of Imports and Exports or any other officer authorised in this behalf might, if satisfied that it was expedient so to do in the public interest cancel any licence or render it ineffective without assigning any reason.

10. There was no indication in the Order as to the minimum level for exercise of powers under the above clauses and whether the licensing authorities were required to record the reasons in writing before refusing the licences under Clause 6(d) and (e) or cancelling them under the proviso to Clause 9.

11. The Ministry of Commerce with whom the matter was taken up have stated in their reply as under:—

"The licensing authority has been defined in sub-clause 2(e) of the Exports (Control) Order. The cases falling within the purview of sub-clauses (d) and (e) are of two types, namely:

- (i) cases in which specific directions have been issued from Government or the CCI&E and the licensing authorities exercise no discretion in dealing with such cases or which do not involve questions of any doubt on interpretation of rules; and
- (ii) the cases pertaining to which there are no specific directions from Government or the CCI&E and the licensing authorities have to use their judgement in de-

cluding whether the case would fall within the purview of these clauses. The former type of cases can be dealt with by the licensing authorities normally competent but in respect of latter type, instructions will be issued that these powers shall be exercised by an officer not lower than the Joint Chief Controller of Imports and Exports.

Reasons for refusal of a licence are recorded on the file, but their communication to the applicant will depend on whether these could be divulged in public interest as indicated in Office Order No. 25/65.

The reasons for cancelling of a licence are recorded on the file even though these reasons are not to be communicated to the licensee."

12. During evidence the representative of the Ministry of Commerce stated that the reasons of 'public interest' referred to in clause 6(d) was invoked during war time. 'Public interest' could also be made a ground for refusal of licence due to security reasons or commercial reasons and also when there was a state of emergency. He further said that the Department had a secret list containing the names of countries and commodities that were not allowed to be exported to those countries, as also the names of parties who were not allowed to deal with these countries. Secret orders were issued to the licence issuing authorities. Whenever these parties approached for licences, they were refused licence on ground of public interest.

13. Regarding the refusal on ground of being prejudicial to the interest of the country referred to in clause 6(e) the representative of the Ministry stated that there had been no occasion to invoke the powers under clause 6(e) except in 1962-63, when there had been one or two cases under the Order then in force. A secret list was prepared of those who were black listed and considered under clause 6(e) for rejection. This list was supplied to the Department by the Home Ministry and was modified from time to time by addition or deletion.

14. Asked whether the power of refusal of licece provided for in clause 6(d) and (e) could be used arbitrarily by the licensing authority, the representative of the Ministry stated that the powers under these clauses were exercised by an officer not below the rank of Chief Controller, Joint Chief Controller or the Deputy Chief Controller.

15. When asked why the reasons were not disclosed before a licence was cancelled or suspended under Clause 9, he stated that the Central Government or the Chief Controller of Imports and Exports exercised this power at the time of emergency. The question of providing guidelines for exercise of this power would, however, be considered.

16. The Committee note that in cases where licences are either refused under sub-clauses (d) and (e) of Clause 6 or cancelled under the proviso to Clause 9, reasons for refusal or of cancellation as the case may be, are recorded in writing by the competent authority. Disclosure of reasons is normally a safeguard against arbitrary use of powers. In this case the Committee appreciate that disclosure of reason for refusal or cancellation would depend upon public interest. The Committee, therefore, desire that suitable guidelines should be prescribed for exercise of powers under these Clauses so that they are not misused against innocent persons.

(C)

17. Clause 10 (2) of the Exports (Control) Order, 1968 provided as under:—

“Where any person is aggrieved by any action taken under clause 8 or clause 8A he may prefer an appeal against such action to such authority as the Central Government may, by notification in the Official Gazette, constitute for the purpose of hearing appeals, within thirty days from the date of communication of the action taken.”

18. The above clause did not allow the right of appeal to persons aggrieved by an action under other clauses.

19. The Ministry of Commerce with whom the matter was taken up stated in their reply as under:

“Such appeals are already being entertained under the inherent administrative powers of the CCI&E. However, there is no objection to make a specific provision allowing the right of appeal against such decisions, with the next higher authority.”

20. The Committee note the reply of the Ministry of Commerce and desire them to amend the Exports (Control) Order at an early date so as to provide statutory right of appeal against decisions of the Licensing Authorities in cases where it does not exist at present.

III

(i) THE PUNJAB STATE AGRICULTURAL MARKETING BOARD AND MARKET COMMITTEES (RECONSTITUTION AND RE-ORGANISATION) ORDER, 1969 (S.O. 3021 OF 1969); AND

(ii) THE PUNJAB ZILLA PARISHADS PANCHAYAT SAMITIS AND GRAM SABHAS (RECONSTITUTION AND RE-ORGANISATION) ORDER, 1969 (S.O. 2933 OF 1969).

21. Clause 14 of the Punjab State Agricultural Marketing Board and Market Committees (Reconstitution and Re-organisation) Order, 1969 read as under:

"Provisions relating to employees of Market Committees.—
Every employee of an existing Market Committee holding office immediately before the appointed day shall be allotted to such successor Market Committee in whose jurisdiction the Headquarters of the existing Market Committee falls.

Provided that the employees working in a principal yard or sub-yard shall be allotted to the successor Market Committee in whose jurisdiction such yard falls on the appointed day.

Provided further that the condition of the service applicable immediately before the appointed day to the case of any such employee of the existing Market Committee, shall not be varied to his disadvantage except with the previous approval of the successor Government concerned."

A similar provision exists in clause 10 of the Punjab Zila Parishads, Panchayat Samitis and Gram Sabhas (Reconstitution and Re-organisation) Order, 1969.

22. The inter-State Corporations Act, 1957 under which the above Orders were issued did not seem to empower the Government to vary the conditions of service of an employee to his disadvantage. The Ministry of Home Affairs were therefore asked to state whether they had any objection to amending clause 14 of the Order so that it did not go beyond the scope of the Act.

23. The Ministry of Home Affairs stated as under in their reply dated 5th July, 1972:

"Under (1) The Punjab Agricultural Produce Markets Act, 1961 (Sections 20 and 43);

(2) The Punjab Panchayat Samitis and Zila Parishad Act, 1961 (Sections 21, 33, 34, 36 and 115);

- (3) The Punjab Gram Panchayat Act, 1952 (Sections 16, 17, 18 and 101)

the concerned State Government or the corporate body can prescribe and regulate the conditions of service of the employees of the Corporations in question. The provisos referred to in the Memoranda under reference merely safeguard the conditions of service of existing employees where this can otherwise be altered to their disadvantage by the corporate body under the normal law. These provisos are well within the provisions of Section 4(2) (f) of the Inter-State Corporations Act."

24. The Committee are not convinced with the reply of the Ministry of Home Affairs that the proviso to clause 14 of the Punjab State Agricultural Marketing Board and Market Committees (Reconstitution and Re-organisation) order, 1969, and clause 10 of the Punjab Zila Parishads Panchayat Samitis and Gram Sabhas (Reconstitution and Re-organisation) Order, 1959, under which the condition of service of an employee can be varied to his disadvantage with the aproved of the successor Government are within the provisions of Section 4(2)(E) of the Inter-State Corporations Act, 1957.

Section 4(2)(f) of the Inter-State Corporations Act, 1957 merely read as follows:

"4(2): An order made under sub-section (1) may provide for all or any of the following matters, . . .

* * * * *

(f) the transfer or re-employment of any employees of the Inter-state Corporation to, or by, any such transferee and subject to the provisions of section 111 of the States Re-organisation Act, 1956, the terms and conditions of service applicable to such employees after such transfer or re-employment."

Section 4(2)(f) of the Act as worded does not empower the successor Market Committee to vary the conditions of service of employees allotted to it. The Committee, are, therefore, of the view that the existing conditions of service of an employee should not be varied to his disadvantage and desire the Ministry of Home Affairs to amend the Order suitably.

IV

- (i) BYE-LAWS REGULATING THE CONDITIONS TO BE IMPOSED BY LICENCES GRANTED TO BARBERS AND KEEPERS OF SHAVING SALOONS IN THE SECUNDERABAD CANTONMENT (S.R.O. 39 OF 1969).
- (ii) BYE-LAWS FOR REGULATING THE COLLECTION AND RECOVERY OF TAX ON CYCLES AND TRI-CYCLES IN JULLUNDUR CANTONMENT (S.R.O. 319 OF 1969).
- (iii) SAUGAR CANTONMENT IMPOSITION OF TAX ON ADVERTISEMENT ORDER, 1970 (S.R.O. 449 OF 1970).

(A)

25. It was seen that bye-laws relating to the Secunderabad and Jullundur Cantonments which were published in the Gazette of India dated the 25th January and 8th November, 1969 respectively did not bear any short title.

26. The Ministry of Defence who were asked to state the reasons for not giving short titles to above bye-laws have stated that the recommendation of the Committee on Subordinate Legislation about giving of short titles had not been brought to the notice of all concerned at the time the bye-laws were published.

27. The Committee are surprised at the reply of the Ministry of Defence.

28. The Committee first made recommendation about giving short title to all rules and amendments to all rules in para 44 of their Third Report (First Lok Sabha) presented to the House on 3rd May, 1955. This recommendation was reiterated* in their subsequent Reports. The Department of Parliamentary Affairs had also [vide their O.M. No. S.R. 1/CB 57 dt. 14-2-1958, No. S.R. III (58-59) CB|58 dt. 27-5-1958 and No. S.R. II(20-21)|LS|68-CB dt. 7-3-1969] brought the above recommendation to the notice of all Ministries|Departments of the Government of India. This was well before the above bye-laws were published in the Gazette. It is obvious that the Ministry of Defence had failed to follow the

*First Report (Second Lok Sabha) para 139 presented to the House on 12th September, 1957, Third Report (Second Lok Sabha) para 58-59 presented to House on 2nd May, 1958 and First Report (Fourth Lok Sabha) para 57 presented to the House on 5th March, 1968.

above recommendation/instructions. The Committee desire the Ministry to be careful in future about such matters. They also desire the Ministry to give short titles to the above bye-laws as these are principal bye-laws and absence of short titles would cause inconvenience to all concerned in tracing out the bye-laws.

(B)

29. While examining the above 'Orders' relating to Secunderabad and Saugar Cantonments it was noticed that the preamble to the final 'Orders' did not contain the following particulars.

- (i) The date on which the draft rules were published in the Gazette.
- (ii) The date on which the Gazette copies containing the draft rules were made available to the public.
- (iii) The last date fixed for the receipt of public comments thereon.

30. Attention of the Ministry of Defence was invited to the following recommendation of the Committee on Subordinate Legislation contained in para 28 of their First Report (Fourth Lok Sabha):-

"The Committee... recommend that sufficient time should be given to the public to study the draft rules, and send their comments thereon before the rules are finalised. To ensure this, Government may, perhaps, do well if they issue some standing instructions that the date of the Gazette in which the draft rules were published and the last date fixed for receipt of public comments thereon and also the date on which the Gazette copies containing the draft rules were made available to the public are specifically mentioned in the preamble to the final rules."

31. The Ministry of Defence were asked whether they had any objection to make above provisions in the Rules.

32. The Ministry of Defence have stated that the bye-laws were framed by the Cantonment Board and were not published by the Government of India for inviting objections and suggestions from the members of the public, but were locally published in accordance with the provisions of the Cantonment Board Act, 1924. The Ministry have also stated that when any proposal of imposition of new tax in the Cantonment Board was submitted to the Central Government it carried with it the necessary implication that the notice was locally published and time was given to the local public for raising objections/suggestions. The proposals were

not entertained by the Central Government unless they had already been published.

33. The Committee are not satisfied with the reply furnished by the Ministry of Defence. They are of the view that although the public at large is not concerned with the bye-laws of a particular Cantonment Board but if the particulars of previous publication of the draft bye-laws are indicated in the preamble to the final bye-laws it would make the position more clear and all concerned will know from the first glance the details of previous publication. The Committee desire the Ministry of Defence to give particulars of pre-publication of draft bye-laws in the preamble to all the final bye-laws in future as is being done in the case of Rules, which are required to be pre-published.

V

THE DIRECTORATE OF EXTENSION (HORTICULTURE OFFICER) RECRUITMENT RULES, 1969 (G.S.R. 2781 OF 1969).

34. In Rule 2 of the Directorate of Extension (Horticulture Officer) Recruitment Rules, 1969 it was stated that the number of posts, their classification and the scale of pay attached thereto shall be as specified in column 2 to 4 of the schedule. Likewise, in Rule 3 *ibid* also, a reference to the said schedule had been made. It was noticed that no schedule was appended to the Rules.

35. The Ministry of Agriculture (Department of Agriculture), who were asked to state whether they had any objection to the re-publication of the Rules, alongwith the schedule thereto, stated that they had no objection to the re-publication of the rules alongwith the Schedule thereto. They further stated that steps were being taken by them to notify the same.

36. The Committee regret to note that Schedule to the Directorate of Extension (Horticulture Officer) Recruitment Rules, 1969 reference of which had been made in the Rules was not appended at the time of their publication. The Committee desire the Ministry of Agriculture to take necessary steps for avoiding such a laps in future. The Committee also desire the Ministry to republish the above Rules alongwith the Schedule thereto at an early date.

VI

AMENDMENTS TO CIVIL SERVICE REGULATIONS, 1970

(S. Os. 399 AND 400 OF 1970)

37. It was noticed that in the short title, S.O. 399 was shown as the Second Amendment and S.O. 400 as the First Amendment of that year.

38. Attention of the Ministry of Finance was invited to the hortation of the Committee on Subordinate Legislation made in para 13 of their Twelfth Report (Second Lok Sabha) to the effect that the amendments to the same Rules or Regulations should be published in the Gazette bearing the order numbers in the same sequence as assigned to the amendments.

39. In their reply, the Ministry of Finance have stated that the anomaly occurred because of inadvertent slip in their office and came to their notice only on the receipt of communication from the Committee on Subordinate Legislation. They have further stated that steps have been taken to rectify the anomaly by issuing the corrigenda.

40. The Committee are glad to note that the Ministry have issued Notification Nos. 22(2)-E.V. (A)|71-I and 22(2)-E.V. (A)|71-I dated the 4th January, 1972 containing corrigenda. They, however, desire the Ministries to be more vigilant in future in such matters as the wrong amendment number causes inconvenience to all concerned in tracing and referencing of the Regulations. The Committee also desire that necessary instructions in this regard should be issued to all Ministries|Departments of the Government.

VII

THE BYE-LAWS FOR REGULATION, CONSERVATION AND PROTECTION FROM INJURY, CONTAMINATION OR TRESPASS OF SOURCES AND MEANS OF PUBLIC WATER SUPPLY CONSTRUCTION AND MAINTENANCE OF CONNECTIONS WITH WATER WORKS AND THE REGULATION OF ALL MATTERS RELATING TO THE SUPPLY AND USE OF WATER IN THE NASIRABAD CANTONMENT (S.R.O. 150 OF 1969).

(A)

41. Bye-law 7(d) of the bye-laws regulating the supply and use of water in Nasirabad Cantonment provided that any person receiving notice issued under bye-law 7(c) shall be bound to comply therewith within the time specified in the said notice and failure to comply with such notice shall be punishable as a breach of the bye-law.

42. The Ministry of Defence were asked whether they had any objection to laying down in the bye-laws the minimum time-limit within which the person concerned shall be bound to comply with the notice issued under the above bye-laws.

43. The Ministry in their reply dated 15-3-73 stated that the suggestion to incorporate the minimum time limit within which the person concerned shall be bound to comply with the notice issued under bye-law was acceptable and the Cantonment Board have resolved that 7 days time be given for the purpose.

44. The Committee note with satisfaction that the Ministry of Defence have agreed to provide seven days' time limit within which the person concerned would be bound to comply with the notice issued to him under bye-law 7 (d). The Committee desire the Ministry to amend the bye-laws at an early date.

(B)

45. Bye-law 24 of the bye-laws regulating the supply and use of water in Nasirabad Cantonment provided as under:—

“The owner, lessee or occupier of the building or land to which house service connection is given shall at any time, on receipt of notice to do so, from the Cantonment Executive Officer pay the entire cost of any repairs or alterations to the connection or any part thereof that the Cantonment Executive Officer may consider necessary to put it in a satisfactory condition or which may be necessitated by any change in the Cantonment water supply system or distribution or by the defective condition of connection or any part thereof or by any other cause whatever.”

46. It was felt that party concerned should be given a reasonable period for paying the cost of repair or alterations to a connection to be carried out under above bye-law.

47. The Ministry of Defence who were asked whether they had any objection to laying down in the bye-laws itself the time limit within which the party concerned should be required to pay the cost of repairs|alterations, stated that the suggestion regarding time limit was acceptable to them and the Cantonment Board have proposed 7 days time for the same.

48. The Committee note with satisfaction that Ministry of Defence have agreed to provide seven days' time limit within which the party concerned would be required to pay the cost of repairs|alterations to the water connection to be carried out under bye-law 24. The Committee desire the Ministry to amend bye-laws at an early date,

(c)

49. Bye-law 30 of the Bye-laws regulating the supply and use of water in Nasirabad Cantonment reads under:—

“Meters may be supplied by the Cantonment Board on payment if available. If not, the consumer shall provide the same at his own cost. In the latter case, the meter shall be approved by the Cantonment Executive Officer before installation. The measurement shall not under any circumstances be interfered with by the consumer. Any infringement of this bye-law shall involve immediate disconnection of the water supply and also payment by the consumer of the cost of repairing and damage caused to the meter.”

50. There was no indication in the bye-law to show that before the water supply was disconnected under above bye-law, a reasonable opportunity of being heard would be provided to the person concerned.

51. The Ministry of Defence were asked to state whether they had any objection to the inclusion of such a provision in the bye-law. They stated that the suggestion was acceptable to them and the Cantonment Board have proposed that a reasonable opportunity of being heard be given to the person concerned before the water supply is disconnected.

52. The Committee note with satisfaction that the Ministry of Defence have accepted the suggestion of giving a reasonable opportunity of being heard to the person concerned before the water supply is disconnected due to infringement of bye-law 30. The Committee desire the Ministry to amend the bye-law at an early date.

(d)

53. Bye-law 37 of the bye-laws regulating the supply and use of water in Nasirabad Cantonment reads as follows:

“The Cantonment Board shall be at liberty in its discretion to close, stop or reduce or restrict the supply of water either in respect of the quantity or hours of supply of classes of persons or premises or purposes and the Cantonment Board shall not be liable to pay any damage for any such act or omission.”

54. It was felt that this provision was not in conformity with the provisions contained in Sections 222(2) and 223 of the Cantonments

Act, 1924 which empowered the Board to *withdraw or curtail the supply of water when it appears necessary to do so far the purpose of maintaining sufficient supply of water for domestic use by the inhabitants of the Cantonment or when it was due to accident, drought or other unavoidable cause.*

55. Attention of the Ministry was invited to a similar point raised by the Committee on Subordinate Legislation* in case of bye-laws for the regulation of supply and use of water including the collections and recovery of charges therefor in Belgaum Cantonment (S. R. O. 220 of 1962).

56. The Ministry of Defence with whom the matter was then taken up had amended the relevant bye-law to read as under:

“The Cantonment Board shall be at liberty to withdraw and curtail the supply of water when it appears necessary to do so for the purpose of maintaining sufficient supply of water for the domestic use by inhabitants of the Cantonment or due to any accident, drought or other unavoidable cause.”

The Committee agreed to the above amendment subject to the following further modifications:—the words “shall be at liberty to withdraw and curtail” occurring in the amended bye-law should be substituted by the words “shall be at liberty to withdraw or curtail” [*vide* paras 31—33 of the Fourth Report (Third Lok Sabha)].

The Ministry of Defence subsequently amended the bye-laws accordingly *vide* S.R.O. 206 of 1966.

57. The Ministry of Defence who were asked in the present case to state whether they had any objection to the amendment of the bye-law in question on the above lines, stated that the Cantonment Board has proposed that the bye-laws be amended to read as under:—

“The Cantonment Board shall be at liberty to withdraw and curtail the supply of water when it appears necessary to do so for the purpose of maintaining sufficient supply of water for domestic use by inhabitants of the Cantonment or due to any accident, drought or other unavoidable cause.”

58. The Committee are not fully satisfied with the proposed amendment to bye-law 37 as it is not in conformity with the provision contained in Sections 222(2) and 223 of the Cantonments Act.

**Vide* para 31 of the Fourth Report (Third Lok Sabha).

1924, which empowers the Board to withdraw or curtail the water supply and not withdraw and curtail as proposed in the amendment. In this connection, it is pointed out that the amendment suggested in respect of bye-laws of Belgium Cantonment referred to in para 56 has been accepted by the Ministry of Defence.

59. The Committee therefore, desire the Ministry of Defence to further amend bye-law 37 of the Nasirabad Cantonment to bring it in conformity with the provisions of the Cantonments Act.

(E)

60. Bye-law 43 of the bye-laws regulating the supply and use of water in Nasirabad Cantonment provided as under:

"In case where a meter is found to give incorrect reading and is out of repair for any period exceeding one month, the consumption recorded during the corresponding month or months during the year immediately preceding, or where such record is not available such data as the Cantonment Executive Officer considers most suitable, shall be deemed to be the basis for working out the charges and the quantity so arrived at shall be deemed to be the actual consumption and a decision of the Cantonment Board in the matter shall be final."

61. It was felt that the bye-law as worded, gave an impression that it seeks to bar the jurisdiction of courts. Attention of the Ministry was invited to para 18 of the Fourth Report (Third Lok Sabha) wherein the Committee on Subordinate Legislation stressed that the rules should not be worded in a manner which may give an impression that jurisdiction of courts was being ousted.

62. The Committee note with satisfaction that Ministry of Defence have decided to amend bye-law 43 by deleting the words "... decision of the Cantonment Board shall be final." They desire the Ministry to take early action in the matter.

VIII

THE INDIA METEOROLOGICAL DEPARTMENT (ALLOTMENT OF RESIDENCES) RULES, 1969 (G.S.R. 543 OF 1969).

63. S. R. 317-XXVI-W-22 of the India Meteorological Department (Allotment of Residences) Rules, 1969 reads as follows:

"S. R. 317-XXVI-W-22.—Consequences of Breach of Rules and Conditions.—(1) If an officer to whom a residence has been allotted commits any breach of these rules, or uses the residence or premises to be used for any purpose which the competent authority considers to be improper, or conducts himself in a manner which, in the opinion

of the competent authority is prejudicial to the maintenance of harmonious relations with his neighbours, or it is found that the officer has knowingly furnished incorrect information in any application or written statement with a view to securing the allotment, the competent authority may, without prejudice to any other disciplinary action that may be taken against him:—

- (a) cancel the allotment of that residence to him, and
- (b) declare him to be ineligible for allotment under these rules next time for a specified period:

Provided that where the allotment of a residence is cancelled for conduct prejudicial to maintenance of harmonious relations with the neighbours the officer may be allotted residence in the same type at any other place.

(2) For the purposes of this rule unless the context otherwise requires:—

(a) 'improper use' includes,

- (i) charging of excessive rent from the sub-allottee or from the guest;
- (ii) erecting unauthorised structures in any part of the residence;
- (iii) using the residence or a portion thereof for purposes other than those for which they are meant;
- (iv) unauthorised extension from electric and water connection or tampering therewith.

(b) 'officer' includes, a member of his family and any person claiming through the officer."

64. There was no indication in the rules that reasonable opportunity of being heard will be given to an allottee before action is taken against him under above rule.

65. The Ministry of Tourism and Civil Aviation to whom the matter was referred, have stated as under:—

"The matter has been examined in consultation with the Directorate of Estates and the Director General of Observatories. This Ministry has no objection to the inclusion of the clause regarding affording of reasonable opportunity to the concerned allottee of being heard before action is taken against him under S.R. 317-XXVI-W-22

of the I.M.D. (Allotment of Residences) Rules, 1969. Necessary action to amend the rules accordingly is being taken."

66. The Committee note with satisfaction that Ministry of Tourism and Civil Aviation have accepted the suggestion of affording a reasonable opportunity of being heard to the concerned allottee before action is taken against him under S.R. 317-XXVI-W-22 of the I.M.D. (Allotment of Residences) Rules, 1969. The Committee desire the Ministry to amend the Rules at an early date.

IX

THE DIRECTORATE GENERAL OF TECHNICAL DEVELOPMENT (CLASS I POSTS) RECRUITMENT (FIRST AMENDMENT) RULES, 1969 (G.S.R. 805 OF 1969)

67. In column 6 of the Schedule appended to the Directorate General of Technical Development (Class I Post) Recruitment (First Amendment) Rules, 1969 it was stated that in case of recruitment through competitive examination for the post of Assistant Development Officer (Engineering) the educational and other qualifications will be as laid down in the rules for combined Engineering Services Examination or Engineering Services (Electronics) Examination.

68. Attention of the Ministry of Industrial Development was invited to para 13 of the First Report of the Committee on Subordinate Legislation (Fourth Lok Sabha), wherein they had emphasised that the Rules should as far as possible be self-contained and 'Legislation by reference' avoided.

69. The Ministry of Industrial Development to whom the matter was referred have stated as follows:—

"The Ministry of Industrial Development have no objection to incorporating the requisite age limit and educational and other qualifications in the schedule to the Directorate General of Technical Development Class I Posts Recruitment Rules for direct recruits through competitive examinations in substitution of the existing entries under columns 5 and 6 of the schedule. The detailed amendments are being formulated separately in consultation with the Department of Personnel, Union Public Service Commission, and other concerned."

70. The Committee note with satisfaction that the Ministry of Industrial Development have agreed to incorporate the requisite

age limit and educational and other qualifications in the Schedule to the Directorate General of Technical Development (Class I Posts) Recruitment Rules for the existing entries under column (5) and (6), in order to make the Rules self-contained. The Committee desire the Ministry to take further necessary action in the matter at an early date.

X

BYE-LAWS FOR REGULATING THE REGISTRATION AND CLASSIFICATION OF CONTRACTORS IN THE MORAR CANTONMENT (S.R.O. 128 OF 1969)

(A)

71. Bye-law 4 of the Morar Cantonment Bye-laws reads as follows:

“Every contractor in Class A shall deposit a fee of Rs. 100.00 and in Class B a fee of Rs. 50/- before his name is included in the list of approved contractors. This fee shall be refunded only when the contractor's name is removed from the list at his own request. In the event of the death of contractor, such fee shall be payable to his heirs. The fee so deposited shall be liable to be forfeited at the discretion of the Board, if he has failed to tender for works for more than one year.”

72. Section 282(39) of the Cantonments Act under which above Bye-laws had been framed did not specifically authorise the Morar Cantonment Board to levy such a fee.

73. In this connection, attention of the Ministry of Defence was invited to the opinion of the Attorney General regarding the imposition of charges under rules 5(2) (i) and 5(3) (i) of Delhi (Control of Building Operations) Regulations, 1955, framed under the Delhi (Control of Building Operations) Act, 1955 that a rule providing for the levy of fee or financial burden could not be made without an express power vested in that behalf, in the Rule-making authority.

74. The Ministry of Defence have stated in their reply as under:

“Bye-law 4 levies a deposit fee of Rs. 100 and Rs. 50 on class A and B contractors respectively. This fee, however, is refunded upon the contractor's name being removed from the list of contractors. Thus the money deposited by the contractor is not in the nature of a fee but is only a deposit which is refundable. It is, however, agreed that

the bye-laws do not authorise the Board to levy any fee as such. However, the Cantonment Boards have been advised to amend the bye-laws to indicate that these are deposits and not fees and are refundable."

75. The Committee note that on being pointed out the Ministry of Defence have decided to amend bye-law 4 so as to indicate that the amount of Rs. 100/- and Rs. 50/- required to be deposited by Class A and Class B contractors respectively, with the Cantonment Board before their names are included in the list of approved contractors, are deposits, which are refundable and not fees as mentioned at present in the bye-law. The Committee desire the Ministry to take early steps to amend the bye-law suitably.

(B)

76. Bye-law 5 of the Morar Cantonment Bye-laws reads as under:

"Each contractor to whom a notice has been issued shall be required to deposit with the tender an earnest money equal to 2 per cent of the estimated cost of the work provided that no earnest money shall be required in respect of the works costing Rs. 1000/- or less."

77. There was no provision in the bye-laws for the refund of the earnest money if the contract was not awarded to the tenderer.

78. The Ministry of Defence who were referred in the matter have stated as under:—

"Bye-law 5 requires a contractor to deposit earnest money equal to 2 per cent of the estimated cost of the work. It is seen that no objection is taken by the Committee on Subordinate Legislation to such deposit being asked for. It is agreed that there should be a provision in the bye-laws for the refund of the earnest money and the Cantonment Board have accordingly been advised to make a provision in the bye-laws to the effect that the earnest money would be a deposit which would be refundable in the event of the contract not being awarded to the tenderer."

79. The Committee note that the Ministry of Defence have agreed to the suggestion of making a provision in bye-law 5 that the earnest money equal to 2 per cent of the estimated cost of the work, deposited with the Cantonment Board, would be refunded

in the event of the contract not being awarded to the tenderer. The Committee desire the Ministry to amend the bye-law at an early date.

XI

CENTRAL EXCISE (TENTH AMENDMENT) RULES, 1969 (G.S.R. 1723 OF 1969)

80. Sub-rule (2) of Rule 173E of the Central Excise Rules, 1944 as substituted by the above Amendment Rules provided for revision of the norm of production in an assessee's factory by the officer empowered in this behalf. There was no indication in the rules whether the officer concerned would communicate to the assessee the reasons for variation in the norm of production so as to enable the assessee to make a representation/appeal if it affected him adversely.

81. The Ministry of Finance (Department of Revenue and Insurance) with whom the matter was taken up amended the Rules by adding the following proviso to sub-rule (2) of Rule 173(E) *vide* G.S.R. 304 of 1972):—

“Provided that the norm as determined by the officer empowered as aforesaid shall not be revised to the disadvantage of the assessee unless such assessee has been given a reasonable opportunity of being heard.”

82. The Committee note with satisfaction that the Ministry of Finance (Department of Revenue and Insurance) on being pointed out to them, have added a proviso to sub-rule (2) of Rule 173-E to provide that the norm of production in an assessee's factory as determined by the officer empowered in this behalf would not be revised to the disadvantage of the assessee unless the assessee was given a reasonable opportunity of being heard (*vide* G.S.R. 304 of 1973, dated 11th March, 1972).

XII

BYE-LAWS FOR REGULATING THE COLLECTION AND RECOVERY OF TAX ON CYCLES AND TRICYCLES IN THE JULLUNDUR CANTONMENT (S.R.O. 319 of 1969)

83. Following points were taken up with the Ministry of Defence in regard to the Bye-laws for regulating the collection and recovery

of tax on cycles and tricycles in Jullundur Cantonments:

- (f) Bye-law 1 provided that the rate of tax would be as specified in another notification No. S.R.O. 229 dated the 10th June, 1964.

The Ministry were requested to specify the rate of tax in the bye-law itself.

- (ii) Bye-law 9 provided that a duplicate plate would be issued on payment of charges fixed by the Cantonment Board.

The Ministry were requested to specify the charges in the bye-law itself.

- (iii) Under bye-law 12, the Cantonment officer, Tax Superintendent, the Tax Collector or their Assistants or any person authorised in this behalf by the Cantonment Board were authorised to seize a cycle or tricycle.

The Ministry of Defence were requested to amend the bye-law so as to provide therein the minimum rank of the person to be authorised to seize a cycle or tricycle.

84. In their reply, the Ministry of Defence have stated as under:—

- “(i) Bye-law 1: The suggestion is acceptable to this Ministry and the local authorities have been advised to initiate suitable amendment to the bye-law.
- (ii) Bye-law 9. The Cantonment Board have been advised to suggest a specific fee for incorporation in the bye-law for issue of duplicate badges/number plates.
- (iii) Bye-law 12: The suggestion is acceptable. The designation of the official(s) authorised to seize the bicycles/tricycles will be incorporated in the bye-laws.”

85. The Committee note with satisfaction that the Ministry of Defence have accepted the suggestions of the Committee and have agreed to amend the Bye-laws so as to provide therein the rate of tax and the charges for issuing duplicate plate and also to specify the designations of official(s) to be authorised to seize the bicycles/tricycles. The Committee desire the Ministry to amend bye-laws at an early date. They further desire the Ministry to examine such bye-laws of other Cantonments and to make amendments in cases where provisions on the above lines do not exist.

XIII

EXPORT OF DRIED FISH (INSPECTION) RULES, 1970
(S.O. 2138 OF 1970)

A

86. Rule 4(4) of the Export of Dried Fish (Inspection) Rules, 1970 provided that if the Export Inspection Agency was satisfied that the consignment conformed to the recognised specification and had been packed and marked according to the Rules, it would issue a certificate declaring the consignment as export-worthy. There was, however, no indication in the Rules as to the time-limit within which such a certificate would be issued or the refusal to issue the same and the grounds therefor would be communicated to the Exporter.

87. The Ministry of Foreign Trade (now Commerce) were requested to state whether they had any objection to making such a provision in the Rules.

88. Attention of the Ministry was also invited to the recommendation of the Committee in para 28 of their Second Report (Fifth Lok Sabha) regarding inclusion of 2/3rd of non-official members in the appellate panels under the Export of Ceramic Products (Inspection) Rules, 1969 and the Export of Vinyl Products (Inspection) Rules, 1969. They were requested to state whether they had any objection to making amendments on the same lines in the above Rules also.

89. In their reply, the Ministry have stated as under:—

“...necessary notification seeking to amend Rule 4(4) of the Export of Dried Fish (Inspection) Rules, 1970 has been sent to the Ministry of Law and Justice for Hindi translation. On receipt, the notification will be issued and a copy sent to Lok Sabha Secretariat for information of the Committee.

A regards composition of the panel of experts consisting of 2/3rd non-officials, this Ministry have no objection to make amendments as suggested by the Committee. Necessary action is being initiated in this regard and the relevant notifications will be issued in due course.”

90. The Committee note with satisfaction that the Ministry of Commerce have accepted their suggestions and have agreed to issue amendments to the Rules so as to provide therein the time limit within which certificate of export worthiness would be issued or the

refusal to issue the same and the grounds therefor would be communicated to the exporter. The Committee further note with satisfaction that the Ministry have also agreed to amend the Rules to provide for 2/3rd non-officials in the panel of experts. The Committee desire the Ministry to issue necessary amendments to the Rules at an early date.

(B)

91. Lacunae similar to those pointed out in the export of Dried Fish (Inspection) Rules, 1970 were brought to the notice of the Ministry in the case of following Rules:

- (i) Export of Steel Tubes and Tubulars (Quality Control and Inspection) Rules, 1970 (S.O. 2743 of 1970);
- (ii) Export of Pesticides and their formulations (Inspection) Rules, 1970 (S.O. 3311 of 1970);
- (iii) Export of Jute Products (Quality Control and Inspection) Rules, 1970 (S.O. 3396 of 1970).

92. The Committee note with satisfaction that the Ministry of Commerce have accepted the suggestions and agreed to amend the Rules suitably. They desire the Ministry to examine other Quality Control and Inspection Rules framed in respect of several other commodities and to make amendments in cases where provisions on the above lines do not exist.

XIV

THE ALUMINIUM (CONTROL) ORDER, 1970 (S.O. 1103 OF 1970)

93. Clause 9 of the Aluminium (Control) Order, 1970 provided for the Controller or such officer of the Central Government or the State Government as might be authorised by the Central Government in that behalf:

- (a) to inspect or authorise any person to inspect books of accounts etc; and
- (b) to enter or search or authorise any person to enter or search any premises.

94. Attention of the Ministry of Steel and Mines (Department of Mines) was invited to the following recommendation of the Committee on Subordinate Legislation made in paras 21-22 of their First Report (Fifth Lok Sabha):—

"The Committee on Subordinate Legislation have repeatedly stressed the need for indication of the minimum rank of

the persons to be authorised by the Government to conduct searches/seizures. The underlying idea is that each and every Government Officer may not be authorised to exercise the power of searches/seizures.....

.....The Committee are of the view that the provision for such further authorisation is as much against the spirit of the aforesaid recommendation of the Committee as non-indication of the minimum ranks of the persons intially authorised to exercise these powers. The Committee, therefore, desire that not only the minimum ranks of officers to be authorised by Central/State Governments to conduct searches/seizures should be specifically given in the rules but the provision for further authorisation omitted therefrom."

95. In their reply, the Ministry of Steel and Mines (Department of Mines) have stated as under:—

"This Ministry have no objection to the proposed amendments to sub-clauses (a) and (b) of Clause 9 of the Aluminium (Control) Order, 1970 (S.O. 1103 of 1970) in accordance with the recommendation of the Committee on Subordinate Legislation *vide* paras 21 and 22 of their First Report."

96. The Committee note with satisfaction that the Ministry of Steel and Mines have accepted the suggestion and agreed to indicate in clause 9 of the Order the minimum rank of persons to be authorised by the Government to inspect books of account and to conduct search of the premises where aluminium is produced, manufactured or sold. The Committee desire the Ministry to amend the Order suitably at an early date. They also desire to impress upon all other Ministries/Departments the need for amending their Rules to indicate the minimum rank of persons where the power of inspection, search and seizure has been given.

XV

PAYMENT OF WAGES (MINES) AMENDMENT RULES, 1970 (S.O. 3844 OF 1970).

97. Rule 22 of the Payment of Wages (Mines) Rules, 1956 which has been framed under Section 26 of the Payment of Wages Act, 1936 and substituted by the above-said amendment Rules provides as under:—

"Penalties: Whoever, being required under these rules, to maintain any register or records or to furnish any infor-

mation or return fails to maintain such register or record or to furnish such information or return or fails to observe provisions of any of these rules shall, for each such offence, be punishable with fine which may extend to five hundred rupees:

Provided that an employer who maintains the required register or record or furnishes the required return without making up-to-date entries therein, or fails to display notices shall be punishable with fine which may extend to two hundred rupees."

98. The Ministry of Labour and Rehabilitation (Department of Labour and Employment) were asked to state whether they had any objection to amending the rule so as to provide for giving a reasonable opportunity of being heard before a penalty was imposed thereunder.

99. In their reply, the Ministry of Labour and Rehabilitation (Department of Labour and Employment) stated as follows:—

"Attention is invited to Section 21(3) of the Payment of Wages Act which states that no court shall take cognizance of a contravention of section 4 or of section 6 or of a contravention of any Rule made under Section 26 except on a complaint made by or with the sanction of an Inspector under this Act. The procedure is for the Inspector under the Payment of Wages Act (or with his sanction) to file a complaint against the person who has violated the rules in a Court of Law. It is the Court which decides whether the violation has taken place and if so, what penalty should be imposed. The person affected, therefore, gets an opportunity to show-cause against the penalty proposed in the Court of Law. In view of this the question of making an amendment in the Rule does not appear to arise. It may also be stated that generally the position is the same in respect of penalties for violation of Rules made under other labour laws. It may also be added that executive instructions exist that before a prosecution is launched against any person for violation of any labour laws or rules a show-cause notice should be issued to the persons concerned. Prosecution is launched only after taking into account the replies received from the affected persons."

100. Attention of the Ministry was then invited to the following recommendations made by the Committee on Subordinate Legislation in para 25 of their First Report (Fifth Lok Sabha) in connec-

tion with a similar lacuna in the Central Excise (Ninth Amendment) Rules, 1969 :

“One of the basic requirements of natural justice is that before the penal provisions of a law are invoked against a person, he should be given a reasonable opportunity of being heard. In their reply, the Ministry of Finance have conceded this, but have averred that even though there is no provision in the Rules for affording such an opportunity, the purpose is served by departmental instructions. The Committee are not satisfied with the explanation. They would like to point out that departmental instructions can hardly be a proper substitute for a built-in legal safeguard.”

101. In their further reply the Ministry of Labour and Rehabilitation (Department of Labour and Employment) stated as under:—

“...This Ministry have no objection to take action as suggested...Steps are being taken to amend the rule accordingly.”

102. The Committee are glad to note that the Ministry of Labour and Rehabilitation (Department of Labour and Employment) have accepted the suggestion of the Committee to provide for the opportunity of being heard to the aggrieved party before action is taken against him under Rule 22. The Committee desire the Ministry to amend the Rules at an early date.

XVI

THE KHUDA BAKHSH ORIENTAL PUBLIC LIBRARY RULES, 1970 (G.S. Rs. 1256 AND 1695 OF 1970)

103. The Khuda Bakhsh Oriental Public Library Rules, 1970 were published twice under G.S.Rs. 1256 and 1695 in the Gazette of India, Extraordinary, Part II, Section 3(i), dated the 29th August and 26th September, 1970, respectively.

104. The matter was taken up with the erstwhile Ministry of Education and Youth Services and they were asked to state the reasons for publication of the above Rules twice in the Gazette. The Department of Culture have now cancelled the Gazette notification bearing G.S.R. No. 1695 of 1970 (*vide* G.S.R. 1347 of 1972) and have *inter alia* stated as follows:—

“As regards the reasons for publication of the Khuda Bakhsh Oriental Public Library Rules, 1970 twice in the Gazette of India,....the original notification containing the said

Rules for publication in the Gazette of India was sent on 12th August, 1970 to the Government of India Press, New Delhi. On 21st August, 1970 in response to a reminder issued by this Ministry, the Government of India Press asked for another copy of the notification containing the rules, without checking up that the original notification has already been received by it. In reply to the Government of India Press's said request of 21st August, 1970 an attested copy of the original notification was sent to the Government of India Press, Minto Road, New Delhi, on 31st August, 1970, making it clear that the original had been sent earlier. The Government of India Press, New Delhi published in the Gazette of India dated 29th August, 1970 the original notification sent to it by this Ministry on 12th August, 1970. The Government of India Press, Minto Road, New Delhi, again published the same notification in the Gazette of India dated the 26th September, 1970, on the basis of the attested copy of the notification received by it in response to its letter of 21st August, 1970. The Ministry of Works and Housing and the Chief Controller, Printing and Stationery have been requested to issue suitable instructions in the matter to the Press. The lapse on the part of Government is regretted."

105. The Committee note that the Department of Culture on being pointed out to them have cancelled G.S.R. 1695 of 1970 which was duplicate of G.S.R. 1256 of 1970.

106. The Committee desire the Department of Culture to be more vigilant in future in such matters. They also desire the Ministry of Works and Housing and the Chief Controller, Printing and Stationery to issue suitable instructions in the matter to Press.

XVII

THE PEPSU ROAD TRANSPORT CORPORATION (RE-ORGANISATION) ORDER, 1972 [S.O. 328(E) OF 1972].

107. Paragraph 17 of the PEPSU Road Transport Corporation (Re-organisation) Order, 1972 issued in exercise of the power conferred by Section 47A of the Road Transport Corporations Act, 1950 and sub-section (2) of Section 38 of the State of Himachal Pradesh Act, 1970 read as follows:—

"In case of any disagreement in the implementation of this Order, it shall be referred to the Central Government for

adjudication and the decision of that Government shall be final and binding on all the beneficiaries."

108. The Ministry of Shipping and Transport (Transport Wing), who were requested to give their comments on the above point, have stated as follows:—

"...in accordance with Section 47A of the Road Transport Corporations Act, 1950, the Government of Punjab forwarded a draft scheme for re-organisation of the Pepsu Road Transport Corporation. This draft included a provision exactly in the same terms as in para 17 of the Pepsu Road Transport Corporation (Re-organisation) Order, 1972. The other State, who were consulted in regard to the draft scheme, did not suggest any modification therein.

Paragraph 17 of the said Order is not relateable only to clause (g) of sub-section (3) of Section 47A of the Road Transport Corporation Act. In fact, all matters covered by clauses (a) to (f) of sub-section (3) of Section 47A are within the ambit of that paragraph. Under the concluding portion of sub-section (2) of Section 47A of the Road Transport Corporations Act, the Central Government have wide powers to make from time to time orders for the purpose of giving effect to an improved scheme. Moreover, since the parties involved in this case are State Governments and State Transport Undertakings, there is hardly any possibility of the matter being taken to a court of law. Further, paragraph 17 of the Order does not oust the jurisdiction of the Courts. Even if it is construed that it has the effect of ousting the jurisdiction of the courts, the matter is still within writ jurisdiction of courts under Article 226 of the Constitution."

109. The Committee considered the above reply at their sitting held on the 11th January, 1973 and desired the opinion of the Law Ministry might be obtained on the following points:

- (1) Interpretation of the word 'final' and 'binding' used in paragraph 17 of the Pepsu Road Transport Corporation (Re-organisation) Order, 1972 and whether the paragraph as worded at present excludes the jurisdiction of Courts; and

- (2) whether the Executive, under its rule-making power can oust the jurisdiction of courts.

110. The Ministry of Shipping and Transport in their reply dated the 4th April, 1978 stated as under :—

“...the Ministry of Law has stated that paragraph 17 of the Pepsu Road Transport Corporation (Re-organisation) Order, 1972, does not oust the jurisdiction of courts. Even if it is construed that it will oust the jurisdiction of the courts, it shall not take away the writ jurisdiction under Article 226 of the Constitution. However, this Ministry has been advised that the said para 17 may be amended as follows so that the validity of its provisions is placed beyond doubt :

'17. Disagreement in Implementation:

In case of any disagreement in the implementation of this Order, it shall be referred to the Central Government for adjudication and that Government shall decide the same.'

Action to amend the Order on the above lines is being taken.”

111. The Committee note with satisfaction that the Ministry of Shipping and Transport (Transport Wing) have accepted their suggestion and agreed to amend paragraph 17 of the Order so that it may not convey the impression that jurisdiction of courts is being ousted. They desire the Ministry to amend the Rules at an early date.

XVIII

DRUGS (PRICES CONTROL) ORDER, 1970 (S.O. 1752 OF 1970)

112. Under para 23 of the Drugs (Prices Control) Order, 1970, 'any officer of the Central Government or State Government' authorised by that Government in this behalf may, with a view to securing compliance with the Order conduct search|seizure. The Order did not specifically provide the minimum rank of the officer who would be authorised to conduct searches|seizure.

113. In this connection, attention of the Ministry of Petroleum and Chemicals was invited to the following recommendation of the

Committee on Subordinate Legislation made in para 15 of their Fifth Report: (Third Lok Sabha):—

“The Committee after having considered the matter at some length, are of the view that it should specifically be stated in the Order that a Government servant not below a specific rank or equivalent officer might be authorised to conduct searches and seizures etc. under the aforesaid order. It should not be left worded in a manner which would give the Executive the power to authorise any and every Government servant to exercise the power of conducting searches and seizures under the aforesaid Order.”

114. In their reply, the Ministry of Petroleum and Chemicals stated as under:—

“Soon after the issue of Order referred to this Ministry addressed the Chief Secretaries of all State Governments vide* letter No. 17(48)/70-Ch. III dated the 14th August, 1970 requesting them to authorise the suitable officers of the Civil Supplies Department and of the Revenue Department to exercise the powers conferred to in paras 22 and 23 of the Drugs (Prices Control) Order, 1970. Accordingly, the State Governments have authorised only such of those officers specified to exercise the functions and powers under the said Order. The Central Government have also authorised only the officers of Central Drug Control Organisations at Bombay, Calcutta, Ghaziabad and Madras. A copy of the Order** dated the 3rd December, 1970 is enclosed for information.

However, taking into account the views of the Lok Sabha Secretariat, the State Governments are being addressed that powers under paras 22 and 23 should not be entrusted to officers equivalent to or below the rank of Drug Inspectors.”

115. The Committee note with satisfaction the action taken by the Ministry of Petroleum and Chemicals. They desire the Ministry to amend paragraph 23 of the Drugs (Prices Control) Order, 1970, so as to provide therein specifically the minimum rank of the officers to be authorised to conduct searches and seizures under the Order.

*Appendix II.

**Appendix III.

DELAY IN SENDING THE REPLIES BY MINISTRIES TO REFERENCES MADE BY THE COMMITTEE ON SUBORDINATE LEGISLATION

116. The following Rules were referred to the Ministries on the dates shown against them for some clarification:—

1) Exports (Control) Order, 1968 (S.O. 927 of 1968)	Commerce	14-5-71
(2) Indian Railways Traffic Service Recruitment Rules, 1968 (G.S.R. 2204 of 1968).	Railways (Railway Board).	7-5-71
(3) Rookie Canteen (Control) and Supervision of Mills) Bye-laws, 1970 (S.R.O. 206 of 1970).	Defence	4-12-71
(4) The Coir Board Services (Classification, Control and Appeal) Bye-laws, 1969 (S.O. 200 of 1969).	Industrial Development.	28-6-72
(5) The Aircraft (Second Amendment) Rules, 1972 (G.S.R. 324 of 1972).	Tourism and Civil Aviation.	26-9-72

117. Since final replies had not been received from the concerned Ministries for over 6 months to over two years, the Committee at their sitting held on the 3rd May, 1973 took serious note of the inordinate delay in sending final replies and desired it to be conveyed to the concerned Ministries.

118. In the case of Exports (Control) Order, 1968, where the delay was more than two years, the Committee decided to hear the representatives of the Ministry. During the evidence held on the 23rd May, 1973 the representative of the Ministry regretted the delay in sending their final reply.

119. As regards other Rules the Committee note that while the Ministry of Tourism and Civil Aviation and Railways have since sent their final reply and regretted the delay in sending the same, the Ministries of Industrial Development, and Defence have yet to send their final replies.

120. The Committee take a serious note of the lapse on the part of these Ministries. They stress upon all the Ministries/Departments of Government to be more vigilant in future in sending replies to the communications and observations of the Committee.

NEW DELHI;

VIKRAM MAHAJAN,

The 27th August, 1973.

Chairman,

Committee on Subordinate
Legislation.

APPENDIX I

(vide para 4 of the Report)

Summary of Recommendations/Observations made by the Committee

S. N.	Para No.	Summary
(1)	(2)	(3)
1.	8	The Committee note the reply of the Ministry of Commerce that administrative instructions have been already issued to the licensing authorities to communicate to the applicants reasons for refusal to grant licences unless such reasons cannot be divulged in public interest. The Committee desire the Ministry of Commerce to give statutory shape to the same by including them in the Exports (Control) Order, 1968 at an early date.
16		The Committee note that in cases where licences are either refused under sub-clauses (d) and (e) of Clause 6 or cancelled under the proviso to Clause 9 of the Export (Control) Order, 1968, reasons for refusal or of cancellation as the case may be, are recorded in writing by the competent authority. Disclosure of reasons is normally a safeguard against arbitrary use of powers. In this case the Committee appreciate that disclosure of reason for refusal or cancellation would depend upon public interest. The Committee, therefore, desire that suitable guidelines should be prescribed for exercise of powers under these Clauses so that they are not misused against innocent persons.
20		The Committee note the reply of the Ministry of Commerce and desire them to amend the Exports (Control) Order, 1968 at an early date so as to provide statutory right of appeal

(1)	(2)	(3)
		against decisions of the Licensing Authorities in cases where it does not exist at present.
2.	24	<p>The Committee are not convinced with the reply of the Ministry of Home Affairs that the proviso to clause 14 of the Punjab State Agricultural Marketing Board and Market Committees (Reconstitution and Reorganisation) Order, 1969, and clause 10 of the Punjab Zila Parishads Panchayat Samitis and Gram Sabhas (Reconstitution and Reorganisation) Order, 1969, under which the condition of service of an employee can be varied to his disadvantage with the approval of the successor Government are within the provisions of Section 4(2) (f) of the Inter-State Corporations Act, 1957.</p> <p>Section 4(2) (f) of the Inter-State Corporations Act, 1957 as worded does not empower the successor Market Committee to vary the conditions of service of employees allotted to it. The Committee, are, therefore, of the view that the existing conditions of service of an employee should not be varied to his disadvantage and desire the Ministry of Home Affairs to amend the Order suitably.</p>
3	25—28	<p>Bye-laws relating to the Secunderabad and Jullundur Cantonments did not bear the short titles. The Ministry of Defence, in their reply, stated that the recommendations of the Committee on Subordinate Legislation about giving of short titles had not been brought to their notice at the time the bye-laws were published.</p> <p>The Committee first made recommendation about giving short title to all rules and amendments to all rules in para 44 of their Third Report (Fifth Lok Sabha) presented to the House on 3rd May, 1955. This recommendation was reiterated in their subsequent Reports. The Department of Parliamentary Affairs had also [vide their O.M. No. S.R. 1/CB-57 dt. 14-2-58, No. S.R. III (58-59) CB/58 dt. 27-5-58 and No. S.R. II</p>

(1)

(2)

(3)

(20-21) LS-68 dt. 7-3-69] brought the above recommendation to the notice of all Ministries/ Departments of the Government of India. This was well before the above bye-laws were published in the gazette. It is obvious that the Ministry of Defence had failed to follow the above recommendation/instructions. The Committee desire the Ministry to be careful in future about such matters. They also desire the Ministry to give short titles to the above bye-laws as these are principal bye-laws and absence of short titles would cause inconvenience to all concerned in tracing out the bye-law.

33

The Committee are not satisfied with the reasons given by the Ministry of Defence for not publishing bye-laws for inviting objections and suggestions from the members of the public. They are of the view that although the public at large is not concerned with the bye-laws of a particular Cantonment Board but if the particulars of previous publication of the draft bye-laws are indicated in the preamble to the final bye-laws it would make the position more clear and all concerned will know from the first glance the details of previous publication. The Committee desire the Ministry of Defence to give particulars of pre-publication of draft bye-laws in the preamble to all the final bye-laws in future as is being done in the case of Rules, which are required to be pre-published.

4.

36

The Committee regret to note that Schedule to the Directorate of Extension (Horticulture Officer) Recruitment Rules, 1969 reference of which had been made in the Rules was not appended at the time of their publication. The Committee desire the Ministry of Agriculture to take necessary steps for avoiding such a lapse in future. The Committee also desire the Ministry to republish the above Rules alongwith the Schedule thereto at an early date.

(1)	(2)	(3)
5	40	<p>The Committee are glad to note that the Ministry of Finance have issued Notification Nos. 22(1)-E.V. (A) 71-I and 22(2)-EV (A) 71-II dated the 4th January, 1972 containing corrigenda. They, however, desire the Ministries to be more vigilant in future in such matters as the wrong amendment number causes inconvenience to all concerned in tracing and referencing of the Regulations. The Committee also desire that necessary instructions in this regard should be issued to all Ministries Departments of the Government.</p>
6.	44	<p>The Committee note with satisfaction that the Ministry of Defence have agreed to provide seven days' time limit within which the person concerned would be bound to comply with the notice issued to him under bye-law 7(d) of the bye-laws regulating supply and use of water in Nasirabad Cantonment. The Committee desire the Ministry to amend the bye-laws at an early date.</p>
48		<p>The Committee note with satisfaction that Ministry of Defence have agreed to provide seven days' time limit within which the party concerned would be required to pay the cost of repairs alterations to the water connection to be carried out under bye-law 24 of the bye-laws regulating supply and use of water in Nasirabad Cantonment. The Committee desire the Ministry to amend bye-laws at an early date.</p>
52		<p>The Committee not with satisfaction that the Ministry of Defence have accepted the suggestion of giving a reasonable opportunity of being heard to the person concerned before the water supply is disconnected due to infringement of bye-law 30 of the bye-laws regulating the supply and use of water in Nasirabad Cantonment. The Committee desire the Ministry to amend the bye-law at an early date.</p>

(1)

(2)

(3)

58-59

The Committee are not fully satisfied with the proposed amendment to bye-law 37 of the bye-laws regulating the supply and use of water in Nasirabad Cantonment as it is not in conformity with the provision contained in Section 222(2) and 223 of the Cantonments Act, 1924, which empowers the Board to withdraw and curtail the water supply and not withdraw and curtail as proposed in the amendment. In this connection, it is pointed out that the amendment suggested in respect of bye-laws of Belgaum Cantonment referred to in para 56 has been accepted by the Ministry of Defence.

The Committee, therefore, desire the Ministry of Defence to further amend Bye-law 37 of the Nasirabad Cantonment to bring it in conformity with the provisions of the Cantonments Act.

62

The Committee note with satisfaction that Ministry of Defence have decided to amend bye-law 43 of the bye-laws regulating the supply and use of water in Nasirabad Cantonment by deleting the words "... decision of the Cantonment Board shall be final." They desire the Ministry to take early action in the matter.

7.

66

The Committee note with satisfaction that Ministry of Tourism and Civil Aviation have accepted the suggestion of affording a reasonable opportunity of being heard to the concerned allottee before action is taken against him under S.R. 317-XXVI-W-22 of the India Meteorological Department (Allotment of Residences) Rules, 1969. The Committee desire the Ministry to amend the Rules at an early date.

8.

70

The Committee note with satisfaction that the Ministry of Industrial Development have agreed to incorporate the requisite age limit and educational and other qualifications in the Schedule to the Directorate General of Technical Development (Class I Posts) Recruitment Rules

(1)	(2)	(3)
-----	-----	-----

for the existing entries under column (5) and (6), in order to make the Rules self-contained. The Committee desire the Ministry to take further necessary action in the matter at an early date.

9. 75

The Committee note that on being pointed out the Ministry of Defence have decided to amend bye-law 4 of the Morar Cantonment Bye laws so as to indicate that the amount of Rs. 100/- and Rs. 50/- required to be deposited by Class A and Class B contractors respectively, with the Cantonment Board before their names are included in the list of approval contractors are deposits, which are refundable and not fees as mentioned at present in the bye-law. The Committee desire the Ministry to take early steps to amend the bye-law suitable.

79

The Committee note that the Ministry of Defence have agreed to the suggestion of making a provision in bye-law 5 of the Morar Cantonment Bye-laws that the earnest money equal to 2 per cent of the estimated cost of the work, deposited with the Cantonment Board, would be refunded in the event of the contract not being awarded to the tenderer. The Committee desire the Ministry to amend the bye-law at an early date.

10. 82

The Committee note with satisfaction that the Ministry of Finance (Department of Revenue and Insurance) on being pointed out to them, have added a proviso to sub-rule (2) of Rule 173-E of the Central Excise Rules, 1944 to provide that the norm of production in an assessee's factory as determined by the officer empowered in this behalf would not be revised to the disadvantage of the assessee unless the assessee was given a reasonable opportunity of being heard [vide (G.S.R. 304 of 1973) dated 11-3-72].

11. 85

The Committee note with satisfaction that the Ministry of Defence have accepted the suggestions of the Committee and have agreed to

(1)

(2)

(3)

amend the Bye-laws for regulating the collection and recovery of tax on cycles tricycles in the Jullundur Cantonment so as to provide there in the rate of tax and the charges for issuing duplicate plate and also to specify the designations of official(s) to be authorised to seize the bicycles| tricycles. The Committee desire the Ministry to amend bye-laws at an early date. They further desire the Ministry to examine such bye-laws of other Cantonments and to make amendments in cases where provisions on the above lines do not exist.

12.

90

The Committee note with satisfaction that the Ministry of Commerce have accepted their suggestions and have agreed to issue amendments to the Export of Dried Fish (Inspection) Rules, 1970 so as to provide therein the time limit within which certificate of export worthiness would be issued or the refusal to issue the same and the grounds therefor would be communicated to the exporter. The Committee further note with satisfaction that the Ministry have also agreed to amend the Rules to provide for 2|3rd non-officials in the panel of experts. The Committee desire the Ministry to issue necessary amendments to the Rule at an early date.

92

The Committee note with satisfaction that the Ministry of Commerce have accepted their suggestions and agreed to amend the (i) Export of Steel Tubes and Tubulars (Quality Control and Inspection) Rules, 1970 (S.O. 2743 of 1970); (ii) Export of Pesticides and their formulations (Inspection) Rules, 1970 (S.O. 3311 of 1970); and (iii) Export of Jute Products (Quality Control and Inspection) Rules, 1970 (S.Q. 3396 of 1970) suitably. They desire the Ministry to examine other Quality Control and Inspection Rules framed in respect of several other commodities and to make amendments in cases where provisions on the above lines do not exist.

- | (1) | (2) | (3) |
|-----|-----|---|
| 13. | 96 | <p>The Committee note with satisfaction that the Ministry of Steel and Mines have accepted the suggestion and agreed to indicate in clause 9 of the Aluminium (Control) Order, 1970 the minimum rank of persons to be authorised by the Government to inspect books of account and to conduct search of the premises where aluminium is produced, manufactured or sold. The Committee desire the Ministry to amend the Order suitably at an early date. They also desire to impress upon all other Ministries/Departments the need for amending their Rules to indicate the minimum rank of persons where the power of inspection, search and seizure has been given.</p> |
| 14. | 102 | <p>The Committee are glad to note that the Ministry of Labour and Rehabilitation (Department of Labour and Employment) have accepted the suggestion of the Committee to provide for the opportunity of being heard to the aggrieved party before action is taken against him under Rule 22 of the Payment of Wages (Mines) Rules, 1956. The Committee desire the Ministry to amend the Rules at an early date.</p> |
| 15. | 105 | <p>The Committee note that Department of Culture on being pointed out to them, have cancelled G.S.R. 1696 of 1970 which was duplicate of G.S.R. 1256 of 1970.</p> |
| | 106 | <p>The Committees desire the Department of Culture to be more vigilant in future in the matter of publication of Orders. They also desire the Ministry of Works and Housing and the Chief Controller, Printing and Stationery to issue suitable instructions in the matter to Press to avoid duplication in printing of Orders as had occurred in the case of Khuda Bakhsh Oriental Public Library Rules, 1970.</p> |
| 16 | 111 | <p>The Committee note with satisfaction that the Ministry of Shipping and Transport (Transport Wing) have accepted their suggestion and agreed to amend paragraph 17 of the PEPSU Road Transport Corporation (Re-organisation)</p> |

- | (1) | (2) | (3) |
|-----|---------|--|
| | | Order, 1972 so that it may not convey the impression that jurisdiction of courts is being ousted. They desire the Ministry to amend the Rules at an early date. |
| 17. | 115 | The Committee desire the Ministry of Petroleum and Chemicals to amend paragraph 23 of the Drugs (Prices Control) Order, 1970, so as to provide therein specifically the minimum rank of the officers to be authorised to conduct searches and seizures under the Order. |
| 18. | 119-120 | As regards (i) Indian Railways Traffic Service Recruitment Rules, 1968 (G.S.R. 2204 of 1968); (ii) Roorkee Cantonment (Control and Supervision of Mills) Bye-laws, 1970 (S.R.O. 206 of 1970); (iii) the Coir Board Services (Classification, Control and Appeal) Bye-laws, 1969 (S.O. 200 of 1969); and (iv) the Aircraft (Second Amendment) Rules, 1972 (G.S.R. 324 of 1972) the Committee note that while the Ministry of Tourism and Civil Aviation and Railways have since sent their final reply and regretted the delay in sending the same, the Ministries of Industrial Development, and Defence have yet to send their final replies. |

The Committee take a serious note of the delay on the part of the Ministries of Industrial Development and Defence in sending replies to some clarifications sought from them with regard to "The Coir Board Services (Classification, Control and Appeal) Bye-laws, 1969 and the Roorkee Cantonment (Control and Supervision of Mills) Bye-laws, 1970, respectively. They stress upon all the Ministries/Departments of Government to be more vigilant in future in sending replies to the communications and observations of the Committee.

APPENDIX II**(Vide para 114 of the Report)****No. 17(48) | 70-Ch. III****GOVERNMENT OF INDIA****Ministry of Petroleum and Chemicals and Mines & Metals****(Department of Pet. & Chem.)**

New Delhi, the 14th August, 1970.**To****The Chief Secretaries of all States.****SUBJECT: Drugs (Prices Control) Order, 1970—Setting up of machinery for the enforcement of the—****Sir,**

I am directed to refer to this Ministry's letter No. 17(7) | 70-Ch. III dated the 16th May, 1970, on the subject mentioned above and to say that the question of authorising officers of the Central and/or State Governments under paragraphs 22 and 23 of the Drugs (Prices Control) Order, 1970 has been considered in this Ministry. The Government of India are of the view that officers of the Central Drugs Control Organisation as well as officers of the State Drugs Control Organisation and of the Civil Supplies Department and Tehsildars should be authorised to exercise the powers and functions specified in paras 22 and 23 of the aforesaid Order. There are about 74,000 dealers of drugs in the country, a significant percentage thereof being located in rural areas. It is felt that the officers of the Drugs Control Organisation in view of their other duties will not be able to exercise effectively the powers in the interior of the country. Accordingly, it is suggested that suitable officers of the Civil Supplies Department and of the Revenue Department may be empowered to exercise the necessary powers. It is requested that necessary authorisation may be issued by the State Government under intimation to this Ministry, the Ministry of Health, Family Planning, W.H. & U.D., (Department of Health and Family Planning).

A copy of the authorisation issued by this Ministry in respect of the officers of the Central Drugs Control Organisation is enclosed for information.

Yours faithfully,

Sd|- R. J. Bhojwani

Under Secretary to the Govt. of India

Copy with a copy of the enclosure forwarded to the:

1. Directorate General of Technical Development.
2. D.G.H.S. (with spare copies for communication to the Officers of the Central Drugs Control Organisation).
3. Drugs Controllers of all States.

Sd|- R. J. Bhojwani

Under Secretary to the Govt. of India

GOVERNMENT OF INDIA**Ministry of Petroleum and Chemicals and Mines & Metals****(Dept. of Pet. & Chem).***New Delhi, the 14th Aug., 1970***ORDER**

In pursuance of paragraphs 22 and 23 of the Drugs (Prices Control) Order, 1970, the Central Government hereby authorises the following officers to exercise the functions and powers specified in the said paragraphs within their respective jurisdiction, namely:—

- (i) The Deputy Drugs Controller, West Zone, Bombay.
- (ii) The Deputy Drugs Controller, East Zone, Calcutta.
- (iii) The Deputy Drugs Controller, North Zone, Ghaziabad.
- (iv) The Deputy Drugs Controller, South Zone, Madras.
- (v) The Drugs Inspectors, Bombay, Calcutta, Ghaziabad and Madras.

Sd|- R. J. Bhojwani

Under Secretary to the Govt. of India

No. 17(48) | CH. III

APPENDIX III

(Vide para 114 of the Report)

GOVERNMENT OF INDIA

Ministry of Petroleum and Chemicals and Mines & Metals

(Department of Pet. & Chem.)

New Delhi, the 14th Aug., 1970

ORDER

S.O.....In pursuance of paragraphs 22 and 23 of the Drugs (Prices Control) Order, 1970, the Central Government hereby makes the following amendments in the Order of the Government of India, in the Ministry of Petroleum & Chemicals and Mines and Metals (Department of Petroleum & Chemicals) No. S.O. 2857 dated the 14th August, 1970, published on pages 3819 of the Gazette of India, Part II—Section 3, Sub-section (ii) namely:—

In the said Order, for the entries:

- “(i) The Deputy Drugs Controller, West Zone, Bombay.
- (ii) The Deputy Drugs Controller, East Zone, Calcutta.
- (iii) The Deputy Drugs Controller, North Zone, Ghaziabad.
- (iv) The Deputy Drugs Controller, South Zone, Madras.
- (v) The Drugs Inspector, Bombay, Calcutta, Ghaziabad and Madras.”

The following entries shall be substituted. namely:—

- “(i) The Deputy Drugs Controllers, India, at Bombay and Calcutta.
- (ii) The Assistant Drugs Controllers India, at Ghaziabad and Madras.
- (iii) The Drugs Inspectors at Bombay, Calcutta, Ghaziabad and Madras.”

Sd/- R. J. Bhojwani

Under Secretary to the Govt. of India

No. 17(48) | CH. III

MINUTES

1724 L.S.—4

APPENDIX IV

(Vide para 3 of the Report)

XCKK

MINUTES OF THE THIRTY-SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1972-73).

The Committee met on Tuesday, the 22nd May, 1973 from 10.30 to 12.30 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri Dharnidhar Das
3. Shri T. H. Gavit
4. Shri S. A. Kader
5. Shri P. Narasimha Reddy
6. Shri K. Narayana Rao

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee considered Memoranda Nos. 98 to 128 on the following subjects and 'Orders':—

S.No.	Memo. No.	Subject
(1)	(2)	(3)
(i) to (xv)	98 to 112	• • • • •
(xvi)	113	The India Meteorological Department (Allotment of Residences) Rules, 1969 (G.S.R. 543 of 1969).
(xvii)	114	The Directorate General of Technical Development (Class I Posts) Recruitment (First Amendment) Rules, 1969 (G.S.R. 805 of 1969).
(xviii)	115	The Directorate of Extension (Horticulture Officer) Recruitment Rules, 1969 (G.S.R. 2781 of 1969).

*Omitted portions of the minutes are not included in the Eighth Report.

(1)	(2)	(3)
(xix)	116	The Bye-laws for regulation, conservation and protection from injury, contamination or trespass of sources and means of public water supply, construction and maintenance of connections with water works and the regulation of all matters relating to the supply and use of water in the Nasirabad Cantonment (S.R.O. 150 of 1969).
(xx)	117	The Bye-laws for regulating the registration and classification of contractors in the Morar Cantonment (S.R.O. 128 of 1969).
(xxi)	118	The Central Excise (Tenth Amendment) Rules, 1969 (G.S.R. 1723 of 1969).
(xxii)	119	(a) The Punjab State Agricultural Marketing Board and Market Committees (Reconstitution and Reorganisation) Order 1969 (S. O. 3021 of 1969) ; and (b) The Punjab Zila Parishads, Panchayats Samitis and Gram Sabhas (Reconstitution and Re-organisation) Order 1969 (S.O. 2933 of 1969).
(xxiii)	120	.
(xxiv)	121	The Bye-laws for regulating the collection and recovery of tax on cycles and tricycles in the Jullundur Cantonment (S.R.O. 319 of 1969).
(xxv)	122	(a) Bye-laws regulating the conditions to be imposed by licences granted to barbers and keepers of shaving saloons in the Secunderabad Cantonment (S.R.O. 39 of 1969). (b) Bye-laws for regulating the Collection and recovery of tax on cycles and tricycles in Jullunder Cantonment (S.R.O. 319 of 1969).
(xxvi)	123	.
(xxvii)	124	Export of Dried Fish (Inspection) Rules, 1970 (S. O. 2138 of 1970).
(xxviii)	125	The Aluminium (Control) Order, 1970 (S. O. 1103 of 1970).
(xxix)	126	Payment of Wages (Mines) Amendment Rules, 1970 (S. O. 3844 of 1970).
(xxx)	127	The Khuda Baksh Oriental Public Library Rules, 1970 (G. S. Rs 1256 and 1695 of 1970).
(xxxi)	128	The PEPSU Road Transport Corporation (Re-organisation) Order 1972 (S. O. 328-E of 1972).
	3 to 26	.
(xvi)		The India Meteorological Department (Allotment of Residences) Rules, 1969 (G.S.R. 543 of 1969) (Memorandum No. 113).

27. The Committee considered the above Memorandum and noted that the Ministry of Tourism and Civil Aviation had agreed to incorporate a clause regarding affording of reasonable opportunity of being heard to the concerned allottee before action was taken against him under S. R. 317—XXVI-W-22, *ibid.* They desired the Ministry to take early action in the matter.

(xvii) *The Directorate General of Technical Development (Class I Posts) Recruitment (First Amendment) Rules, 1969 (G.S.R. 805 of 1969)—(Memorandum No. 114).*

28. The Committee considered the above Memorandum and noted that the Ministry of Industrial Development had no objection to incorporating the requisite age limit and educational and other qualifications in the Schedule to the above Rules for the existing entries under columns (5) and (6), for making the Rules self-contained, as suggested by them. The Committee desired the Ministry to take early action in the matter.

(xviii) *The Directorate of Extension (Horticulture Officer) Recruitment Rules, 1969 (G.S.R. 2781 of 1969)—(Memorandum No. 115).*

29. The Committee considered the above Memorandum and noted that the Ministry of Agriculture (Department of Agriculture) had agreed to the re-publication of the said Rules, along with the Schedule thereto, which was not published earlier in their notification bearing G.S.R. No. 2781 of 1969. The Committee desired the Ministry to be careful in future and also take early action in the matter.

(xix) *Bye-laws for supply and use of water in Nasirabad Cantonment (S.R.O. 150 of 1969)—(Memorandum No. 116).*

I

30. The Committee considered the above Memorandum and noted that the Ministry of Defence had agreed to provide seven days time-limit within which the person concerned would be bound to comply with the notice issued under bye-law 7(d) and to pay the entire cost of repairs|alterations to the water connection to be carried out under bye-law 24, *ibid.* The Committee desired the Ministry to take early steps to amend the bye-laws accordingly.

II

31. The Committee also noted that the Ministry had accepted the suggestion of giving a reasonable opportunity of being heard to the person concerned before the water supply was disconnected due to an infringement of bye-law 30, *ibid*. They desired the Ministry to amend the bye-law suitably.

III

32. Bye-law 37, *ibid*, was not in conformity with the provisions contained in section 222(2) and 223 of the Cantonments Act, 1924, which empowered the Board to withdraw or curtail the supply of water when it appeared necessary to do so far the purpose of maintaining sufficient supply of water for domestic use by the inhabitants of the Cantonment or when it was due to accident, drought or other unavoidable cause. The Ministry of Defence had proposed to amend the bye-law on the above lines. The Committee, however, noted that in the proposed amendment, the Ministry had used the words "withdraw and curtail" instead of "withdraw or curtail". In this connection, the Ministry of Defence had accepted an earlier recommendation of the Committee made in paras 31—33 of Fourth Report (Third Lok Sabha) and amended the Belgaum Cantonment Board Bye-laws to read as "withdraw or curtail".

33. The Committee decided to stress upon the Ministry of Defence to amend bye-law 37 of the Nasirabad Cantonment Board bye-laws to include the words "withdraw or curtail". They desired the Ministry to take early steps to amend the bye-law in question.

IV

34. Bye-law 43, *ibid*, *inter alia*, provided that "..... a decision of the Cantonment Board shall be final". It gave an impression that the jurisdiction of Courts was being ousted. The Committee noted that the Ministry of Defence, on being pointed out, had decided to delete these words. The Committee desired that the Ministry should take early action in the matter.

(xx) *Bye-laws for regulating the registration and classification of Contractors in the Morar Cantonment (S.R.O. 128 of 1969) — (Memorandum No. 117).*

I

35. The Committee considered the above Memorandum and noted that on being pointed out, the Ministry of Defence had decided to amend bye-law 4, *ibid*, so as to indicate that the amount of Rs. 100|-

and Rs. 50/- required to be deposited by Class A and Class B Contractors, respectively, with the Board before their names were included in the list of approved Contractors, were deposits, which were refundable and not fees, as mentioned in the bye-law in question. The Committee desired the Ministry to take early steps to do the needful.

II

36. The Committee further noted that the Ministry of Defence had agreed to the provision being made in bye-law 5, *ibid*, that the earnest money equal to 2 per cent of the estimated cost of the work deposited with the Cantonment Board would be refunded in the event of the contract not being awarded to the tenderer. The Committee desired the Ministry to take early action in the matter.

(xxi) *The Central Excise (Tenth Amendment) Rules, 1969* (G.S.R. 1723 of 1969)—(Memorandum No. 118).

37. The Committee considered the above Memorandum and noted with satisfaction that the Ministry of Finance (Department of Revenue and Insurance), on being pointed out to them, had added a proviso to sub-rule (2) of rule 173-E, *ibid*, to provide that the norm of production in an assessee's factory as determined by the officer empowered in this behalf would not be revised to the disadvantage of the assessee unless such assessee had been given a reasonable opportunity of being heard (*vide* G.S.R. 304 of 1972, dated 11th March 1972).

(xxii) (a) *The Punjab State Agricultural Marketing Board and Market Committees (Reconstitution and Reorganisation) Order, 1969* (S.O. 3021 of 1969); and

(b) *The Punjab Zila Parishads, Panchayat Samitis and Gram Sabhas (Reconstitution and Reorganisation) Order, 1969* (S.O. 2933 of 1969)—(Memorandum No. 119).

38. Clause 14 of the Punjab State Agricultural Marketing Board and Market Committee (Reconstitution and Reorganisation) Order, 1969 and Clause 10 of the Punjab Zila Parishads, Panchayat Samitis and Gram Sabhas (Reconstitution and Reorganisation) Order, 1969, *inter alia* provided that the conditions of service applicable to the employees who were allotted to the successor Market Committees shall not be varied to his disadvantage except with the previous approval of the successor Government concerned.

39. The Inter-State Corporations Act, 1957 under which the above orders were issued did not empower the Government to vary the conditions of service of the employees to their disadvantage. After, considering the reply of the Ministry of Home Affairs, the

Committee were of the view that the existing conditions of service of an employee might not be varied to his disadvantage. The Committee, therefore, desired the Ministry of Home Affairs to amend the Orders suitably.

40 to 44.

(xxiv) *Bye-laws for regulating the collection and recovery of tax on cycles and tricycles in the Jullundur Cantonment (S.R.O. 319 of 1969)—(Memorandum No. 121).*

45. The Committee considered the above Bye-laws and noted with satisfaction that Ministry of Defence had agreed to amend the Bye-laws in the following manner:

- (a) Bye-law 1: The rate of tax to be provided for in the bye-law.
- (b) Bye-law 9: The fee for issuing duplicate plate to be provided in the bye-law.
- (c) Bye-law 12: The designation of official(s) authorised to seize the bicycles|tricycles to be incorporated in the bye-laws.

46. The Committee desired that the bye-laws be amended at an early date.

- (xxv) (a) *Bye-laws regulating the conditions to be imposed by licences granted to barbers and keepers of shaving saloons in the Secunderabad Cantonment (S.R.O. 39 of 1969).*
- (b) *Bye-laws for regulating the collection and recovery of tax on cycles and tricycles in Jullundur Cantonment (S.R.O. 319 of 1969)—(Memorandum No. 122).*

47. Above Bye-laws did not bear short titles. The Committee not being satisfied with the reply of the Ministry of Defence had desired that bye-laws may be amended suitably to provide for short titles.

48.

(xxvii) *The Export of Dried Fish (Inspection) Rules, 1970 (S.O. 2138 of 1970)—(Memorandum No. 124).*

49. There was no provision in the above Rules for the time-limit within which certificate of export worthiness would be issued or the refusal to issue the same and the grounds therefor would be com-

municated to the exporter. There was also no provision regarding appellate panel consisting of 2/3rd non-officials.

50. The Committee noted with satisfaction that the Ministry of Commerce had agreed to make necessary amendments to the above Rules. They further desired that other Quality Control and Inspection Rules framed in respect of several other commodities intended for export might also be amended suitably.

(xxviii) *The Aluminium (Control) Order, 1970 (S.O. 1103 of 1970)—(Memorandum No. 125).*

51. Above Order did not indicate the minimum rank of the persons authorised by Government to inspect books of account and to conduct search of the premises where aluminium is produced, manufactured or sold. The Committee noted with satisfaction that Ministry of Steel and Mines had agreed to amend the Rules suitably. They also desired to impress upon all other Ministries/Departments the need for amending their Rules where such lacuna existed.

(xxix) *The Payment of Wages (Mines) Amendment Rules, 1970 (S.O. 3844 of 1970)—(Memorandum No. 126).*

52. The Committee considered the above Memorandum and noted with satisfaction that Ministry of Labour and Rehabilitation (Department of Labour and Employment) had agreed to amend the above Rules to provide for the opportunity of being heard to the aggrieved party before action was taken against him under Rule 22. They desired that Rules should be amended at an early date.

(xxx) *The Khuda Bakhsh Oriental Public Library Rules, 1970 (G.S.R. 1256 and 1695 of 1970)—(Memorandum No. 127).*

53. The Committee considered the above Memorandum and noted with satisfaction that the Ministry of Education had cancelled G.S.R. 1695 of 1970 which was duplicate of G.S.R. 1256 of 1970.

(xxxi) *The PEPSU Road Transport Corporation (Re-organisation) Order, 1972 (S.O. 328-E of 1972)—(Memorandum No. 128).*

54. The Committee considered the above Memorandum and noted with satisfaction that the Ministry of Shipping and Transport (Transport Wing) had agreed to amend paragraph 17 of the above Order so that it might not convey the impression that jurisdiction of courts was being ousted. They desired that Rules should be amended at an early date.

The Committee then adjourned to meet again on Wednesday, the 23rd May, 1973.

XXXX

**MINUTES OF THE THIRTY-THIRD SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(FIFTH LOK SABHA) (1972-73)**

The Committee met on Wednesday, the 23rd May, 1973 from 10.30 to 13.00 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri M. C. Daga
3. Shri Dharnidhar Das
4. Shri T. H. Gavit
5. Shri Samar Guha
6. Shri P. Narasimha Reddy
7. Shri S. A. Kader
8. Shri K. Narayana Rao
9. Shri Hulmohan Ram

REPRESENTATIVES OF THE MINISTRY OF COMMERCE

1. Shri R. Tirumalai, *Additional Secretary.*
2. Shri S. G. Bose Mullick, *Chief Controller of Imports and Exports.*
3. Shri Thakat Ram, *Deputy Chief Controller of Imports and Exports.*

REPRESENTATIVE OF THE MINISTRY OF RAILWAY (RAILWAY BOARD)

Shri K. S. A. Padamanabhan, *Additional Member (Staff).*

REPRESENTATIVES OF THE DEPARTMENT OF PERSONNEL (CABINET SECRETARIAT)

1. Shri B. P. Bagchi, *Secretary.*
2. Shri R. N. Haldipur, *Joint Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

(1) *Exports (Control) Order, 1968 (S.O. 921 of 1968)*

During his evidence, the representative of the Ministry of Commerce regretted for delay in sending reply to the reference made

to the above 'Order'. He explained that the reference was made to the Ministry on the 14th May, 1971 and they referred it to the Chief Controller of Imports and Exports on the 21st May, 1971. The file was unfortunately misplaced in the office of the Chief Controller of Imports and Exports. He further stated that an enquiry would be made regarding the misplacement of the file and the result communicated to the Committee on Subordinate Legislation.

2. As regards the first objection raised on the Exports (Control) Order, 1968, viz., absence of any provision in the Order for communicating to the applicant the reasons for refusal to grant licence, he stated that they had no objection to a provision being made in the 'Order' in this regard except when it might not be desirable to do so in public interest. Administrative instructions in this regard had already been issued to the Licensing Authorities *vide* Office Order No. 25/66 dated 13-10-1966.

3. As regards the second objection viz. (a) minimum level for exercise of powers under clause 6(d) and (e) not being laid down; and (b) reasons not being recorded in writing for refusing the licence, he stated that two types of cases fell within the purview of sub-clauses (d) and (e) of clause 6. The first type related to those cases in which specific directions have been issued from Government or the Chief Controller of Imports and Exports banning the export of certain items. In such cases there was no question of any discretion being used by the Licensing authorities. They simply implemented the decision of the Government in pursuance of the provisions of clause 6(d) and (e). In second type of cases, there were no specific directions from the Government or the Chief Controller of Imports and Exports and the Licensing Authorities were required to use certain amount of discretion in deciding whether the case fell within clause 6(d) and (e). In such cases, he said that instructions would be issued that an officer not below the rank of the Joint Chief Controller of Imports and Exports should exercise these powers.

4. The representative of the Ministry further stated that reasons for refusal of licences under Clause 6(d) and (e) were recorded on the file but were not divulged to the applicants in public interest.

5. In reply to a query from a Member, the representative of the Ministry stated that one category of matters falling within the term 'public interest' would be during war time. Public interest could also be due to security reasons or commercial reasons and also when there was a state of emergency. He further said that they had a secret list containing the names of countries and such commodities that would not be exported to these countries, as also the

names of parties who were not allowed to deal with these countries. Secret orders were issued to the Licence Issuing Authorities. Whenever these parties approached for licences, they were refused.

6. Explaining the difference between the term 'prejudicial to the interest of the state' and 'in the interest of the country' mentioned in sub-clauses (d) and (e) of Clause 6, the representative of the Ministry stated that under clause (d), the Licensing Authority considered that the grant of a licence would not be in the interest of the country. That referred to a particular item of export. Under sub-clause (e) the licence was refused because the activities of the applicant were prejudicial to the interest of the State.

7. When asked as to the source of information regarding the activities of the applicant, he stated that the administrative machinery under the Chief Controller of Imports and Exports made inquiries in this regard. They also got information from the Security Police and Intelligence Bureau. Reasons for refusal of licences under such cases were recorded on the file but the communication of the same to the applicant depended upon whether they could be divulged in public interest or not.

8. In reply to a query, the representative of the Ministry stated that there had been no occasion to invoke the powers under clause 6(e) under the 1968 order but in 1962-63, there had been one or two cases under the Order then in force. A secret list was prepared of those who were black listed and considered under clause 6(e) for rejection. This list was supplied to them by the Home Ministry and was modified from time to time by addition or deletion.

9. When a member enquired whether the power provided for in clause 6(d) and (e) could be used arbitrarily by the licensing authority, the representative of the Ministry stated that the powers under these clauses were exercised by an officer not below the rank of Chief Controller, Joint Chief Controller or the Deputy Chief Controller. As to the safeguards for an innocent party being victimised he said that he had the right of appeal under the Policy Administration Procedure.

10. When asked why the reasons were not disclosed before a licence was cancelled or suspended under Clause 9, he stated that the Central Government or the Chief Controller of Imports and Exports exercised this power at the time of emergency. The question of providing guidelines for exercise of this power would, however, be considered.

11. As regards the absence, of provision of appeal against decision taken under the Exports (Control) Order under Clause 10 he said that appeals were already being entertained under the inherent administrative powers of the Chief Controller of Imports and Exports. They had no objection to making a specific provision for right of appeal to the next higher authority.

12. The Committee desired the Ministry of Commerce to supply information on the following points arising out of the evidence:

1. No. of applications for export licences refused so far under clause 6(d) and (e) of the Export (Control), Order, 1968, separately.
2. No. of cases in which reasons for refusal were intimated to the applicants and the number in which reasons were not intimated.
3. No. of licences so far cancelled or rendered ineffective under the proviso to clause 9.
4. Categories of matters which come within the term 'public interest' because of which the reasons for refusal of licences or cancellation of licences are not intimated to applicants.
5. Please elucidate the 'inherent administrative powers of the Chief Controller of Imports and Exports, as used in reply to the point regarding clause 10(8) and the reasons for vesting these powers in the Chief Controller of Imports and Exports.
6. What are the safeguards against misuse of powers against innocent persons, for refusal of licences under clause 6(d) and (e) or cancellation of licences under the proviso to clause 9.

(The witnesses then withdrew)

13 to 26

The meeting then adjourned.

*Omitted portions of the minutes are not included in the Eighth Report.

XXXIV

MINUTES OF THE THIRTY-FOURTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(FIFTH LOK SABHA) (1973-74)

The Committee met on Saturday, the 30th June, 1973 from 15.00 to 16.45 hours.

PRESENT

Shri Vikram Mahajan—*Chairman.*

MEMBERS

2. Shri M. C. Daga
3. Shri T. H. Gavit
4. Shri Samar Guha
5. Shri K. Lakkappa
6. Shri S. N. Misra
7. Shri D. K. Panda
8. Shri Tulmohan Ram

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Chairman welcomed the members of the Committee and explained to them broadly the scope and functions of the Committee (Annexure).

3. The Committee then considered Memoranda Nos. 129 to 135 on the following subjects and 'Orders':—

Sl. No.	Memo No.	Subject
(1)	129
(2)	130	(a) By-laws regulating the conditions to be imposed by licences granted to barbers and keepers of shaving saloons in the Secunderabad Cantonment, 1969 (S. R.O. 39 of 1969) ; (b) The Secor Cantonment Imposition of tax on advertisement order, 1970.

*Omitted portions of the minutes are not included in the Eighth Report.

S. No.	Memo No.	Subject
(iii)	131
(iv)	132	Amendments to Civil Service Regulations, 1970 (S. O. 399 and 400 of 1970).
(v)	133
(vi)	134
(vii)	135	The Drugs (Prices Control) Order, 1970 (S. O. 1752 of 1970).

4 to 6

(ii) (a) *Bye-laws regulating the conditions to be imposed by licences granted to barbers and keepers of shaving saloons in the Secunderabad Cantonment Order, 1969 (S.R.O. 36 of 1969).*

(b) *The Saugor Cantonment Imposition of Tax on Advertisement Order, 1970 (S.R.O. 449 of 1970)—(Memorandum No. 130)*

7. The preamble to the above 'Orders' when finally published in the Gazette, did not contain the particulars about their previous publication in the draft form. The Committee were not satisfied with the reply furnished by the Ministry of Defence that the bye-laws were framed by the Cantonment Board and were not published by the Government of India for inviting objections and suggestions from the members of the public, but were locally published in accordance with the provisions of the Cantonments Act, 1924. The Committee desired the Ministry of Defence to give particulars of pre-publication of draft bye-laws in the preamble to the final Bye-laws as was done in the case of Rules.

8.

(iv) *Amendments to the Civil Service Regulations, 1970 (S.Os. 399 and 400 of 1970)—(Memorandum No. 132)*

9. The Committee considered the above Memorandum and noted with satisfaction that the Ministry of Finance (Department of Expenditure), on being pointed out to them, had issued corrigenda to the above Regulations, correcting the Amendment numbers in the short titles, so as to bring the G.S.R. numbers in the same sequence as assigned to the amendments [vide Notification Nos. 22(2)-E.V. (A) 71-I and 22(2) EV (A) 71-II, dt. 4-1-1972].

10 to 11.

(vii) *The Drugs (Prices Control) Order, 1970 (S.O. 1752 of 1970)—*
(Memorandum No. 135)

12. The Committee considered the above Memorandum and noted that the Ministry of Petroleum and Chemicals had asked the State Governments to entrust the powers of searches|seizures to officers not below the rank of Drug Inspectors or equivalent rank. They had also authorised only officers of the Central Drug Control Organisations for the purpose. In view of the above directions issued by Government, the Committee were of the opinion that Government should amend paragraph 23 of the aforesaid Order so as to provide therein specifically the minimum rank of the officers to be authorised to conduct searches|seizures under the Order.

*The Committee then adjourned to meet again on Monday,
the 2nd July, 1973.*

ANNEXURE

(vide para 2 of the Minutes Dt. 30.6.1973)

ADDRESS BY THE CHAIRMAN TO MEMBERS OF THE COMMITTEE ON SUBORDINATE LEGISLATION (1973-74)

(30-6-1973)

Friends,

It gives me great pleasure to welcome you to this first meeting of the Committee on Subordinate Legislation.

2. Most of you have been members of this Committee during the preceding year also and are well aware about its working. For those who are new, I may state that this Committee has very important functions to perform. In a welfare state like ours, legislation undertaken by Parliament is so vast and varied that it is practically impossible for Parliament to lay down all the details. Apart from the pressure on parliamentary time, the technicality of the subject-matter, the need to meet unforeseen contingencies, the requirement of flexibility etc. compel the legislature of a modern welfare State to leave details to be worked out by the Government. The object of subordinate legislation is to carry out the purposes of the Act and not to lay down any policy.

3. While subordinate legislation is unavoidable, there is a risk inherent in it that the Executive might assume powers and exercise jurisdiction which might not have even been conferred on it. Therefore the need for Parliament to provide safeguards against this

risk. Parliament keeps a watch over such legislation through the Committee on Subordinate Legislation which reports to the House whether the powers to make subordinate laws are being properly exercised.

4. We shall have to see whether the authority delegated by Parliament in the statutes has been properly exercised to the extent permissible and in the manner envisaged. We shall be making our Reports to Lok Sabha from time to time.

5. The broad principles which are to govern the work of the Committee are enshrined in Rule 320. In addition, the Committee have over the years evolved some further guiding principles. To mention some of these:—

- (i) Subordinate Legislation, while not transgressing the limits laid down in the parent law, should also conform to the principles of natural justice;
- (ii) In cases where wide discretionary powers have to be vested in the Executive, built-in legal safeguards should be provided in the Rules to guard against what Sir Cecil Car termed as the 'germ' of arbitrary administration;
- (iii) levy of fee under the Rules should be expressly authorised by the parent Act; and
- (iv) there should be an express authorisation in the parent law for sub-delegation of legislative power.

As we come across new problems, new solutions are to be found and new guide-lines evolved; and this is a continuous process.

6. The volume of subordinate legislation which the Committee have to examine is quite vast. On an average about 1500 Rules, Regulations, bye-laws, etc. are issued by Government every year. Despite the effort of the Committee to keep up-to-date, examination of such large number of 'Orders' had fallen in arrears in the past. But I am glad to tell you that as a result of special efforts made during the last two years, we now hope to be able to undertake concurrent examination of 'Orders' very soon.

7. The procedure followed for examination of 'Orders' is laid down in Directions by the Speaker—Nos. 105 to 108. Briefly, after an 'Order' is published in the Gazette it is examined by the Lok Sabha Secretariat. If in the course of examination it is considered necessary to seek clarification, it is referred to the Ministry concerned. After the comments of the Ministry are received, a Memorandum is prepared and circulated to Members for consideration. Generally the written reply of the Ministry enables the Committee

to arrive at a decision. But in cases where the reply of the Ministry to the points raised is not found to be satisfactory, the Committee may call the representatives of the Ministry/Department concerned for giving oral evidence. During the last year the Committee heard oral evidence of the representatives of Ministries/Departments in eight cases.

8. The Ministries furnish from time to time to the Lok Sabha Secretariat statements of action taken or proposed to be taken by them on the recommendations made by the Committee in their Reports. The information so received is placed before the Committee in the form of a Memorandum and included in the Reports presented to the House.

9. Recently a special study was undertaken to find out whether there were any old recommendations of the Committee on which the Government had not taken any action. As a result 47 cases were taken up with the Ministries/Departments concerned, out of which 20 are still being pursued with them.

10. Although as per Directions given by the Speaker, Lok Sabha Secretariat is to examine all 'Orders' and prepare Memoranda for consideration by the Committee it does not preclude the Members from examining the 'Orders' and giving suggestions. In fact in the past on several occasions the Members or a Sub-Committee have examined the 'Orders' and thereupon clarifications have been sought from the Ministry concerned. As desired by the Committee on Subordinate Legislation (1971-72), copies of all 'Orders' laid on the Table were supplied to the Members of the Committee as soon as possible after they were laid so that they could also independently examine them in addition to the examination done by the Secretariat. It is proposed to continue the supply of copies of 'Orders' laid on the Table to the Members of the present Committee also. You may independently go through them and bring any points arising therefrom to the notice of the Committee.

11. Before I conclude, I may mention here some of the important recommendations of the Committee made during the last two years:—

- (1) The Committee have stressed that when the Acts give a right to the public to send their comments on draft Rules, it is only reasonable that sufficient time is given to them to study the draft and send their comments thereon. To this end, the Committee have suggested that not less than thirty clear days should be given to the public to send their comments on such drafts.

- (ii) The Committee have taken a serious view of delays by Ministries/Departments in laying Orders on the Table and have pointed out that such delays are against the spirit of the relevant provisions in the Act which require that 'Orders' should be laid before Parliament as soon as possible after they are published. The Committee have also urged that in case it is not possible, due to any unavoidable reason, for a Ministry or Department to lay an 'Order' on the Table within the prescribed time-limit of 15 days after its publication, a statement showing reasons for delay should also be laid along with the 'Order'.
- (iii) Rule 56(J) of the Fundamental Rules empowers the appropriate authority to retire a government servant 8 years before his normal age of retirement if it is of the opinion that it is in the public interest to do so. The Committee have recommended that there should be suitable safeguards to ensure that such a wide power is not used arbitrarily. The Committee have also urged upon the Government to examine the feasibility of providing for the system of prior warning indicating the need for improvement in performance before action is taken under the Rules.
- (iv) On a number of occasions, the Committee have stressed that an opportunity of being heard must be given to a person before penal provisions of a law are invoked against him. It is not enough if there are only departmental instructions in this regard. The Committee have observed that departmental instructions can hardly be a proper substitute of a built-in legal safeguard and have always insisted upon amendment of Rules to provide for giving an opportunity of being heard.

12. In discharging our duties we would not be acting in hostility to the Executive. Our objective is implementation of the will of Parliament and our efforts would be complementary.

13. It is the tradition of the Committee that all its decisions are arrived at unanimously and party considerations never affect our deliberations. I hope this tradition would be continued by us too.

Thank you.

XXXVII

MINUTES OF THE THIRTY-SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1973-74)

The Committee met on Monday, the 27th August, 1973 from 15.00 to 15.30 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri T. H. Gavit
3. Shri Y. S. Mahajan
4. Shri S. N. Misra
5. Shri Mohan Swarup

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

2. The Committee considered their draft Eighth Report and adopted it.

3. The Committee authorised the Chairman and in his absence, Shri S. N. Misra, M.P. to present the Report to the House on their behalf on the 30th August, 1973.

4. The Committee considered Memorandum No. 149 regarding retrospective effect to the Rules framed under the proviso to Article 309 of the Constitution and decided to reiterate their earlier recommendation made in para 10 of their Second Report (Fourth Lok Sabha).

5. The Committee considered the statement* of implementation cases relating to First Report (Fifth Lok Sabha) presented on 10th August 1971, in respect of which final replies were still awaited from the Ministries/Departments. The Committee took a serious note of the delay on the part of the Ministries/Departments concerned in sending their final replies. The Committee decided to hear oral evidence of the representatives of the Ministry of Agriculture (Department of Food) and Railways (Railway Board) in respect of serial number 1 and 2 of the statement.

*Annexure.

6. The Committee noted that large number of 'Orders' published in the Gazette during the years 1971, 1972 and 1973 (upto February) which were required to be placed before Parliament under the provisions of the Acts under which they were framed had not been laid so far. They decided that the comments of the Ministries| Departments concerned might be obtained and placed before the Committee at their next sitting.

The Committee then adjourned.

(Vide para 5 of the Minutes dt. 27-8-73)

Statement of implementation cases re'ating to first reports (Panch Loh Sabha) presented on 10-8-1971 in respect of which final replies are still awaited from Ministries/Departments

S.No.	Para No.	Subject	Ministry/Department	Remarks
1	31-32	The Northern Rice Zone (Movement Control) Order, 1968.	Agriculture (Deptt. of Food)	Interim reply received on 6-6-73.
2	53	Publication and laying of Rules and Regulations framed under the Indian Railways Act, 1950.	Railways (Railway Board)	No. interim reply received in this case, Third D.O. reminder sent on 26-6-73.
3	38	The Central Reserve Police Force (Fourth Amendment) Rules, 1968.	Home Affairs.	Earlier Government had decided to omit Rule 36(a), (d), (f), (g), (h), (i) and (j) from the CRPF Rules. Now a consolidated Bill has been prepared to amend the CRPF Act, which is under active examination of D. G. CRPF and would be processed by the Ministry when received. (D.O. dt. 13-7-73).
4	42.	The Indian Forest Service (Recruitment) Amendment Rules, 1969.	Department of Personnel Cabinet Secretariat).	Interim reply received on 7-7-73.
5	45	The Border Security Force Rules, 1969.	Home Affairs.	Earlier the recommendation was accepted by Government. Now certain difficulties were anticipated by them in the operation of the Rules as proposed to be amended. These were being sorted out and it would take a little time for the BSF Rules to be amended. (D.O. dt. 13-7-73).

- NOTE:—1. Total No. of Recommendations in the First Report—8.
 2. No. of Recommendations to which final replies received—3.
 3. No. of Recommendations to which final replies not received—5.