

COMMITTEE ON SUBORDINATE LEGISLATION

TWELFTH REPORT (SECOND LOK SABHA)

(Presented on the 4th September, 1961)



**LOK SABHA SECRETARIAT
NEW DELHI**

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**COMPOSITION OF COMMITTEE ON SUBORDINATE
LEGISLATION (1961-62)**

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13. Shri Ajit Singh Sarhadi
14. Shri H. Siddananjappa
15. Shri Jhulan Sinha.

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary*.

I INTRODUCTION

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

2. Subsequent to the presentation of the Eleventh Report, the Committee have held two sittings and considered 321 new 'Orders'. The Committee also considered the 'Orders' that were pending for final disposal at the time of presentation of their Eleventh Report. At the sitting held on the 1st September, 1961, the Committee considered and adopted this Report.

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

II AMENDMENTS TO THE INDIAN TELEGRAPH RULES, 1951 (S.O. 627 OF 1960)

4. Rule 416 of the Indian Telegraph Rules, 1951 as inserted by S.O. 627 of 1960 which was issued under section 7 of the Indian Telegraphs Act, 1885, confers a general power on the Telegraph Authority i.e. the Director General of Posts and Telegraphs, to withdraw either totally or partially any telephone or similar service provided under the Telegraph Rules if he considers it necessary to do so. The rule does not require the said authority to give notice to the subscriber prior to withdrawal of telephone and to communicate in writing the reasons for such withdrawal. Nor does the rule contain any specific condition the breach of which might lead to the exercise of the power thereunder. The rule also does not provide for any appeal by the aggrieved party against the action of the Telegraph Authority. In the absence of these safeguards the power under the said rule 416 could be abused or exercised arbitrarily.

5. On a reference being made the concerned Ministry of Transport and Communications (Department of Posts and Telegraphs) have stated that before the 1st April, 1960 telephone connections were governed by individual contracts and provision existed in all such contracts that the telephones could be disconnected by the Divisional Engineer, Telegraphs, without assigning any reason after giving

seven days notice. These conditions have now been re-stated in rules 420 to 422 of the Indian Telegraph Rules.

6. The Ministry have further stated that the said rule 416 does not say that telephones would be disconnected without intimation or notice. That would normally be done after due notice, but the reasons for such a disconnection need not be specified in the notice. The Telegraph Authority in considering the desirability of disconnecting an existing telephone, would definitely consider all aspects of the case and an order on such a disconnection would be issued with due care. The Director General is the Telegraph Authority and the Executive Officer for disconnecting or recommending disconnection of a telephone is the Divisional Engineer, Telegraphs. The recommendation of the Divisional Engineer would further be scrutinised by the head of the Circle to see whether the recommended action is reasonable or necessary in the interest of the Government. If he also comes to the conclusion that the recommended action is essential, then a recommendation would be made to the Telegraph Authority to issue sanction to disconnect the telephone in exercise of the power under the rule in question. Every such recommendation would receive due consideration by the Telegraph Authority and it is most unlikely that this power could be misused at any stage. The clause "if it considers necessary to do so" clearly imposes a restriction on the Telegraph Authority to consider in detail the necessity of applying this rule and to record findings of the detailed consideration.

7. The Committee having considered the reply of the Ministry are of the opinion that withdrawal of a telephone or a similar service in exercise of power under the said rule 416 should be effected after giving due notice to the subscriber. The reasons for withdrawal should also be recorded in writing and communicated to the subscriber preferably before, if practicable, otherwise within a period of seven days after the withdrawal has been effected. The Committee therefore recommend that these requirements be incorporated in the existing rule 416 itself.

III

NUMBERING OF STATUTORY RULES AND ORDERS

(a)

8. Certain 'Orders' issued by the Ministry of Defence as published in the Gazette of India, Part II, Section 4, dated the 7th January, 1961, were assigned S.R.O. numbers in continuation of those assigned to the 'Orders' published in the year 1960. This was not in accordance with

the practice followed in respect of numbering of 'Orders' issued by other Ministries, i.e., numbering of 'Orders' according to the date of their publication and not according to the date of issue.

9. On a reference being made the Ministry of Defence stated that at the time of numbering the notifications in question it was thought that it would be wrong to allot the first few numbers of 1961 to notifications bearing issue dates of December, 1960, and that an expression like "S.R.O. 1, dated the 29th December, 1960" in the Gazette published on the 7th January, 1961 might be confusing.

10. The Committee do not consider it necessary that an 'Order' number should be followed by the date of its issue. The date of issue could be given at the top of each 'Order' as is being done in the case of 'Orders' published by other Ministries. The Committee recommend that the 'Orders' published in the Gazette each calendar year should be assigned fresh serial numbers and not be in continuation of the serial numbers of the previous year.

(b)

11. Sixth and Ninth Amendments to the Civil Service Regulations made by the Ministry of Finance in 1961 were published in the Gazette dated the 18th March, 1961, and numbered consecutively as S.Os. 545 and 546. In such a case the person concerned would not be able to know whether the intervening amendments, viz., seventh and eighth amendments were at all published and, if so, whether the same were published before or after the publication of the present amendments.

12. On a reference being made the concerned Ministry of Finance have stated that the numbering of the amendments to the Civil Service Regulations is being done by a Branch of the Ministry which co-ordinates that work. Since the amendments are received in the Press, which assigns numbers to the 'Orders' published in the Gazette, from various Branches of the Ministry at different intervals the serial numbers of the S.Os. are not in the same order as the serial numbers of the amendments. The Ministry have also intimated that the seventh amendment to the rules in question was published as S.O. 419 of 1961, i.e. before the publication of the sixth amendment and the eighth amendment was published as S.O. 645 of 1961, i.e. after the publication of the ninth amendment.

13. The Committee have noted that the arrangement, as it exists in the Ministry, for numbering and sending of amending rules to the Press for publication in the Gazette is defective. The Committee would like the Ministry to ensure that the amendments to the same rules are published in the Gazette bearing the 'Order' numbers in the same sequence as assigned to the amendments by the Ministry.

IV

**THE COMPANIES (BRANCH AUDIT EXEMPTION) RULES, 1961
(G.S.R. 72 OF 1961)**

14. Rule 5(1) of the Companies (Branch Audit Exemption) Rules, 1961, made under section 228(4) of the Companies Act, 1956, provides that every application for grant of exemption under rule 4 shall be made by a company in the form set out in the Annexure to the rules and shall be accompanied by a treasury challan in token of payment of the fee prescribed therefor under section 637A of the Act. This section lays down only the maximum limit of the fees leviable thereunder i.e. not exceeding one hundred rupees, and empowers the Central Government to fix the actual amount to be paid in each case.

15. From the rules it could not be ascertained whether any fees had been prescribed under the said section 637A as there was no mention of the notification in which such fees were prescribed.

16. The Ministry of Commerce and Industry to whom the matter was referred stated that a reference to the rules made under section 637A prescribing the scale of fees to be levied on applications made by the companies—[called the companies (Fees on Applications) Rules, 1961] could not be made because they were published a little later i.e. after 18 days of the publication of the exemption rules. The Ministry further stated that the delay in publication of fee rules was due to the fact that the rules involved levy of fee and thus had to be considered carefully. On the other hand, the exemption rules had to be published most expeditiously, soon after the Companies (Amendment) Act came into force on the 28th December, 1960, because numerous companies, particularly banking companies whose financial accounts are ordinarily required to be submitted to the Reserve Bank of India within three months of the close of the financial year, were anxious to secure exemption from the compulsory requirement as to the audit of their branch office accounts contained in the Companies (Amendment) Act, 1960.

17. The Committee feel that it would have been better if the rules under section 637A had been issued earlier or alongwith the Companies (Branch Audit Exemption) Rules, 1961 because in the absence of such rules the concerned companies could not have properly applied for the grant of exemption.

V
DEFECTS IN 'ORDERS'

(a)

Bye-laws for the control and proper regulation of Flour, Condiment, Oil and Rice Mills in the St. Thomas Mount-cum-Pallavaram Cantonment (S.R.O. 87 of 1960)

18. Bye-laws 4 and 7 of the above bye-laws which contained the expressions "reasonable distance", "adequate space" and "adequate height" in regard to the construction of a building or premises of the flour, condiment, oil and rice mills were liable to be interpreted differently by different officers.

19. The Committee note that on being pointed out the concerned Ministry of Defence have issued fresh bye-laws under S.R.O. 127 of 1961 omitting the said expressions and laying down the specific distances etc. to be maintained in constructing the building or premises of the Mills.

(b)

Amendment to the Bye-laws of St. Thomas Mount-cum-Pallavaram Cantonment for regulation or prohibition of the use or occupation of any street or public place by itinerant vendors or by other persons (S.R.O. 115 of 1961)

20. S.R.O. 115 of 1961 containing the amendments noted above was issued under section 282(13) of the Cantonments Act, 1924. Under section 284 of that Act all the bye-laws are subject to the condition of previous publication. Though this 'Order' was finally published in the Gazette dated the 1st April, 1961 the preamble thereto was ambiguous because while referring to the amendment as 'draft amendment' it stated that the amendment 'having been previously published and approved by the Central Government' was being published for general information.

21. The Committee note the reply given by the Ministry of Defence that the word "draft" referred to above would be deleted by issuing a corrigendum.

(c)

The Delhi Development Authority (Preparation of Budget) Rules, 1960 (G.S.R. 19 of 1961)

22. The Delhi Development Authority (Preparation of Budget) Rules, 1960, as published under G.S.R. 19 of 1961 were incomplete because the "Appendix" referred to in the rules was not printed alongwith the rules.

23. The Committee note that on being pointed out the concerned Ministry of Health have, in consultation with the Ministry of Law, published the rules afresh alongwith the "Appendix" (vide G.S.R. 892 of 1961).

(d)

The Central Public Works Department (Subordinate Offices) Lower Division Clerks Recruitment Rules, 1960 (G.S.R. 64 of 1961)

24. G.S.R. 64 of 1961 issued under proviso to Article 309 of the Constitution provided that the recruitment to the posts of Lower Division Clerks in the subordinate offices of the Central Public Works Department would be made in accordance with the provisions contained in the Schedule, but no Schedule was appended to the said "Order" as mentioned therein.

25. The Committee note that the Ministry of Works, Housing and Supply whose attention was drawn towards the omission have republished the rules alongwith the Schedule under G.S.R. 657 of 1961.

(e)

The Tax Research Unit (Class I Post) Recruitment Rules, 1961 (G.S.R. 422 of 1961)

26. The above mentioned recruitment rules, which were made under proviso to Article 309 of the Constitution, provided that the recruitment to the Class I Post mentioned in the Schedule annexed thereto would be made in accordance with the provisions contained in that Schedule; but no Schedule was annexed to the rules. Consequently the rules were incomplete.

27. The Committee note that on being brought to the notice of the concerned Ministry of Finance (Department of Economic Affairs) the Schedule referred to above has now been published in the Gazette (vide Gazette of India, Part II, Section 3(i), dated the 13th May, 1961, p. 770).

VI

IMPLEMENTATION OF RECOMMENDATION OF COMMITTEE ON SUBORDINATE LEGISLATION RE: RULE 20 OF THE COFFEE RULES, 1955

28. In para 12 of their Eighth Report, Second Lok Sabha, the Committee on Subordinate Legislation had noted that the condition for holding an adjourned meeting of a Committee appointed by the Coffee Board on a date not later than 3 days from the date of the meeting adjourned due to lack of quorum under rule 20 of the

Coffee Rules, 1955, did not allow enough time for a fresh notice of the meeting to reach the members and to enable them to attend that meeting.

29. The Committee, therefore, had recommended that a provision for seven days notice for holding an adjourned meeting would be more reasonable and also afford an opportunity to the absentee members to attend the meeting.

30. Expressing their practical difficulties in implementing the above suggestion of the Committee the Ministry of Commerce and Industry have now stated that half the membership of a Committee is necessary to constitute a quorum for its meetings. Some of the Committees have as many as 11 members. In case a meeting is adjourned for want of quorum the members who have come for the meeting have either to stay on for next 7 days in Bangalore for the adjourned meeting or go and come back again. In the latter case their travelling and daily allowances will have to be paid twice. The extended notice period suggested by the Committee on Subordinate Legislation will, therefore, make the holding of Board or Committee meetings more expensive. Besides it will penalise more active and conscientious members of a Committee, who make it a point to attend its meetings. Most members of the Committee are non-officials and have to attend its meetings at the sacrifice of the more gainful vocations in which they are engaged. It would, therefore, be unfair to the more conscientious members of the Committee to make them come and go back twice for transacting the same business.

31. The Ministry have also informed that during the years 1959 and 1960 there had been only one instance in which a meeting of one of the six standing Committees of the Board had to be adjourned for want of quorum. In that case the original date fixed for the meeting was the 6th June, 1960, but due to lack of quorum the meeting was adjourned to be held in the afternoon of the 7th June, 1960, on which date the full Board had been called to meet. The members of the Committee present at the meeting of the Board were informed in the forenoon and the meeting was accordingly held in the afternoon when 5 out of 8 members were present.

32. From the reply of the Ministry it is clear that adjournment of meetings of the standing committees of the Board for want of quorum is a rare occurrence and therefore a provision that the business intended to be transacted at the original meeting could be transacted within three days thereafter does not appear necessary. However in view of the difficulties expressed by the Ministry the Committee have decided not to pursue their recommendation in

this case. The Committee desire that the provisions contained in the existing rule 20 of the Coffee Rules, 1955 should not serve as a model for making a corresponding provision in the rules of other similar bodies.

VII

ACTION TAKEN OR PROPOSED TO BE TAKEN BY GOVERNMENT ON RECOMMENDATIONS OF THE COMMITTEE ON SUBORDINATE LEGISLATION

33. The Committee have considered the replies sent by the Government in respect of the action taken or proposed to be taken by the Government on two recommendations of the Committee contained in their First and Eleventh Reports, Second Lok Sabha.

34. The recommendation which has been implemented by the Government is given in Appendix I and the recommendation in respect of which Government have given their own views and the same has been dropped by the Committee is given in Appendix II alongwith a gist of Government's reply.

HUKAM SINGH,

NEW DELHI;

Chairman,

The 1st September, 1961.

Committee on Subordinate Legislation.

Bhadra 10, 1883 (Saka).

SUMMARY OF RECOMMENDATIONS

Serial No.	Ref. to para no. in the Report	Summary of Recommendations
1	7	Withdrawal of a telephone or a similar service in exercise of power under rule 416 of the Indian Telegraph Rules, 1951, should be effected after giving due notice to the subscriber. The reasons for withdrawal should also be recorded in writing and communicated to the subscriber preferably before, if practicable, otherwise within a period of seven days after the withdrawal has been effected. These requirements should, therefore, be incorporated in the existing rule 416 itself.
2	10	The Ministry of Defence should follow the same procedure in numbering the 'Orders' as followed by other Ministries. The date of issue of an 'Order' may be given at the top of each 'Order' instead of putting it in juxtaposition to the 'Order' numbers. The 'Orders' published in the Gazette each calendar year should be assigned fresh serial numbers and not be in continuation of the serial numbers of the previous year.
3	13	The Ministry of Finance should ensure that the amendments to the same rules are published in the Gazette bearing the 'Order' numbers in the same sequence as assigned to the amendments by the Ministry.

APPENDIX I

(See para 34)

Recommendation which has been implemented by the Government

S. No.	Ref. to para No. of the Report	Summary of Recommendation	Gist of Government's reply
1	(FIRST REPORT) (Second Lok Sabha) 35—62	Government should not provide by rules imposition of penalty beyond the statutory provisions contained in Section 283 of the Cantonments Act, 1924. Accordingly Bye-law 34A(2) of the Ambala Cantonment Bye-laws for the regulation of collection and recovery of Octroi (without refund) should be suitably amended.	This has since been done (<i>Vide</i> S.R.O. 153 of 1961).

APPENDIX II

(See para 34)

Recommendations dropped in view of the assurance given by the Government

Sl. No.	Ref. to para No. of the Report	Summary of Recommendation	Gist of Government's reply
1	<p>ELEVENTH REPORT (Second Lok Sabha)</p> <p>8</p>	<p>Acquisition of power under rule 2 of the All India Services (Conditions of Service—Residuary Matters) Rules, 1960 (G.S.R. 925 of 1960) to issue regulations which would also circumvent the statutory provisions of laying the rules before Parliament is unjustified. The conditions of service of the personnel of All India Services (I.A.S. and I.P.S.) should be regulated by rules as provided in the parent Act.</p>	<p>The general power has been taken in the Residuary Matters Rules to frame regulations on minor matters having origin in the existing rules in which provision to frame regulations for those matters has not been made. The Central Government have no intention whatsoever to frame any further rules or regulations on the subjects which are already being governed by the rules and regulations made under the All India Services Act. If it becomes absolutely necessary to frame regulations on minor matters like the "next below rule" for which no provision exists in the I.A.S. and I.P.S. (Pay) Rules, the same would be laid before Parliament as is being done in the case of rules made under the All India Services Act, 1951.</p>

[Ministry of Home Affairs O.M. No. 9/2/61-AIS (III),
dated the 15th July 1961]