

**COMMITTEE ON  
SUBORDINATE LEGISLATION**

(SIXTH LOK SABHA)

**TWENTY-FIRST REPORT**

*(PRESENTED ON THE 17TH MAY, 1979)*



**LOK SABHA SECRETARIAT  
NEW DELHI**

*May, 1979/Jaistha, 1907 (Saka)*

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CORRIGENDA TO THE TWENTY FIRST  
OF THE COMMITTEE ON SUBORDINATE LEGIS-  
LATION (SIXTH LOK SABHA) PRESENTED TO  
THE HOUSE ON THE 17TH MAY, 1979.

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<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
8	4-5	hap-pended	hap-pend
9(c)	3	<u>Add</u> the following after the words 'informing them of'	
		'the intention to lay the notification on the Table the'	
9(d)	Omit line 2		
11	15	vestted	vetted
52	last line	annual	annul
65	1	heva	have
97	last line	create a more	create more
98	3	forth or con- flicting	forth confi- cting
	7	pos itive	pos ition
9	last line	getting to same	getting the same
17	Heading	Laying Notifi-	Laying of Notifications

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LEGISLATION  
(1978-79)**

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**SECRETARIAT**

Shri Y. Sahai—*Chief Legislative Committee Officer*

# 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 Twenty-first Report.

2. The matters covered by this Report were considered by the Committee at their sittings held on the 27th February, 19th April and 9th May, 1979.

3. The Committee took evidence of the representatives of the Ministry of Finance (Department of Revenue) in regard to laying of 'sensitive notifications' issued under the Customs and Central Excises Acts at their sitting held on the 21st March, 1979. The Committee also took evidence of the representatives of the Ministry of Agriculture and Irrigation (Department of Food) in regard to the Sugarcane (Control) Amendment Order, 1975 at their sitting held on the 9th May, 1979.

4. The Committee considered and adopted this Report at their sitting held on the 16th May, 1979. The Minutes of the sittings which form part of the Report are appended to it.

5. A statement showing the summary of recommendations/observations of the Committee is appended to the Report (Appendix I)

## II

### LAYING OF NOTIFICATIONS ISSUED UNDER THE CUSTOMS AND CENTRAL EXCISES ACTS

6. On the 29th March, 1974, the Minister of State for Finance, laid on the Table a notification published in the Gazette of India on the 23rd March, 1974, under Section 159 of the Customs Act, 1962. The notification had the effect of raising the export duty on carpet backing and other hessian cloth and of re-imposing duty on sacking (cloth and bags).

7. A point was raised in the House whether it was proper on the part of Government to issue the notification without taking the House into confidence and also whether it was proper for the Ministry to lay the notification on the Table after a lapse of 6 days.

8. In regard to the time-lag of 6 days in laying the notification on the Table, the Minister of State for Finance stated that according to the procedure or conventions the Notifications of the Finance Ministry were laid on the Table on their question day which happened to be 29th March, 1974 after the issue of the notification.

9. The Deputy Speaker who was in the Chair withheld the ruling and stated that the matter would be examined. Subsequently, the Minister of State for Finance wrote to the Speaker giving following procedure for laying notifications issued under the Customs and Central Excises Acts on the Table:—

*When the Parliament is in Session*

- (a) A distinction will be made between sensitive notifications and others. In the former category will fall all notifications making changes in export duties, major changes in procedures, and changes in import and Central Excise duties involving revenue of more than Rs. 50 lakhs per annum, except cases where an existing concession is being continued.
- (b) All sensitive notifications should be published in Gazette extraordinary. If such a notification is sent to the press for issue before 6 p.m., it should be laid on the Table of Houses of Parliament on the same day just before they adjourn for the day. For this purpose, as soon as it is decided to lay the notification on any particular day, a request should be sent to the Speaker, Lok Sabha and Chairman, Rajya Sabha in writing, asking for time to lay the notification. If there is difficulty in getting the G.S.R. number the same day, the notification may be laid without the G.S.R. number and the G.S.R. number could be supplied later.
- (c) If a sensitive notification is sent to the Press for issue in a Gazette Extraordinary after 6 p.m. 550/250 copies should be sent the same night to the Lok Sabha Secretariat/Rajya Sabha Secretariat so that they could circulate it to the Members and such notification should be formally laid on the Table of the two Houses of Parliament within seven days of their publication after arranging, to obtain the G.S.R. number within that period. However, if in any particular case the issue of notification was not anticipated and for that reason advance arrangements for posting staff connected with the stencilling and cyclo-styling of the notification could not be made, the notification may be laid on the Table of both the Houses of Parlia-

ment the following morning. In such cases a letter should be sent to the Speaker and Chairman the same night sending a copy of the notification and informing them of following morning.

- (d) In regard to other than sensitive notifications, they should the intention to lay the notification on the Table be laid on the Table of both the Houses of Parliament within seven days of their publication after arranging to obtain their GSR number within that period.

*When the Parliament is not in Session*

- (e) All notifications including sensitive notifications issued during the inter-session period should be laid in both the Houses of Parliament within seven days of the commencement of the next session."

10. The Committee on Subordinate Legislation (Fifth Lok Sabha) which examined the aforesaid procedure approved the same *except* that if a sensitive notification is sent to the press for issue in the Gazette Extraordinary after 6. p.m. it should be formally laid on the Table of both Houses of Parliament at their next sitting *instead of within seven days* (*vide* para 8 of their Twelfth Report Fifth Lok Sabha).

11. In regard to this procedure, the Ministry of Finance (Department of Revenue), in their communication dated the 7th September, 1978, have represented as under --

"Prior to May, 1974, the Finance Ministry had been following a procedure for laying, in both the Houses of Parliament, copies of notifications involving changes in Customs and Central Excise duty rates in pursuance of the recommendations of the Committee on Subordinate Legislation. This meant that all notifications were to be laid on the Table of both the Houses of Parliament within 15 days of their publication in the Gazette when Parliament was in session, and within 15 days after re-assembly if the Parliament was not in session. One of the Members of Parliament had, however, expressed dissatisfaction with this arrangement at that point of time since, according to him, there was avoidable time lag between the issue of the notifications and the laying thereof on the Table of Lok Sabha. Thereafter, the matter was considered in detail by this Ministry and, in consultation with the Lok Sabha Secretariat and the Law Ministry, a procedure was evolved so that all 'sensitive notifications' were laid



on the Table of both the Houses of Parliament on the date of issue of such notifications itself and in case these notifications were issued after 6.00 P.M. copies of the notifications were sent the same night to the Lok Sabha Secretariat so that they could circulate them to the Members. Further, such notifications were to be formally laid on the Table of both the Houses of Parliament on the day of their next sitting....

In the actual working of this procedure, however, we have had considerable difficulties and inconvenience especially in emergent situations. Decisions are often taken in the matter of changes in duty particularly in regard to export duties, at short notice and these changes have to be notified with immediate effect. If the notifications, vested by the Law Ministry (with Hindi translations), are ready only late in the evening, it becomes a difficult exercise to lay them on the Table of the House the next morning. Similarly, if these are ready only late in the afternoon, it becomes quite difficult to lay the notifications on the Table of the House at the end of the same day. The other alternative available, viz., to send 550/250 copies of the notifications for both the Houses of Parliament on the same night, has also been found to be operationally difficult to follow.

In so far as the notifications involving changes in rates of customs and central excise duties are concerned, from the point of view of the Finance Ministry that matter does not end with the laying of the notifications in Parliament alone. Information about the changes in duty rates has to be reached to the field formations by telex or some other means and this work generally continues till a very late hour of the day, and sometimes till the next day. It is important that these changes are known to the field formations at the earliest so as to avoid assessments being made at pre-notification rates which might involve notices of demand or claim for refunds. At the same time, the Press is also to be informed about the changes so that the assesseees as well as the trade at large get to know the revised rates before clearing their consignments. It will thus be seen that all these exercises have to be carried out more or less simultaneously, and since notifications are issued generally towards the end of the working day, the work becomes too voluminous to be completed within the time constraints.

In view of the aforesaid difficulties that have been experienced in adhering to the revised procedure for laying of notifications, Lok Sabha Secretariat is requested to consider amendment of this procedure with a view to see if it is possible to grant a time limit of at least two days (from the date of their issue) for laying of the copies of 'sensitive' notifications on the Table of Lok Sabha. This would considerably ease the strain on the administrative arrangements in the Finance Ministry and help this Ministry to organise things properly."

12. At their sitting held on the 4th November, 1978, the Committee considered the matter from all aspects and decided to hear oral evidence of the representatives of the Ministry of Finance (Department of Revenue) in this regard.

13. The Committee heard oral evidence of the representatives of the Ministry of Finance (Department of Revenue) at their sitting held on the 21st March, 1979.

14. During the evidence explaining the difficulties faced by the Ministry in following the existing procedure of laying of 'sensitive' notifications on the Table of Houses of Parliament, the representative of the Ministry stated that the decision to change the rate of duty effecting a particular commodity is taken at the highest level. Even thereafter, secrecy is to be maintained regarding the nature of the decision. The number of people involved has to be kept as few as possible. A draft notification is drafted in the legal phraseology has to be vetted by the Ministry of Law before issue. After the basic decision is taken field formations are also informed immediately because they have to start applying the new rates as soon as the decision is taken. It is then translated into Hindi. The publication and laying of these Notifications on the Table of the House involve making out of certain copies as well as stencilling of the notifications. By the time they come to the stencilling stage it is practically handled by various hands. The representative of the Ministry further stated that during the Parliament's session periods in addition to the issuance of notifications they have to attend to other Parliamentary work also.

15. When asked how many such Notifications are published the representative of the Ministry stated that nearly 300 'Orders' are published. In addition to this work they have other Parliamentary work to attend to and they have a problem when the Notification work clashes with other Parliamentary work of the Ministry.

16. In reply to a question how many copies of the notifications are initially printed for informing the field formations and the press for publication, the representative of the Ministry informed that they make out 4 or 5 copies. One copy is given to Press Information Bureau. The Collectors in field formations are informed of the gist of the Notifications by telex and no copy is supplied to them.

17. In reply to a question whether the proposal for asking of two days time for laying the 'sensitive' notifications has the approval of the Minister, the representative of the Ministry stated that they have not taken orders of the Minister on this suggestion. Their effort was to find out the reactions of the Committee. If the Committee agreed to change the procedure, they would take the orders of the Minister. He further stated that when they appear before a Parliamentary Committee in connection with a proposal they do not take the approval of the Minister concerned before hand. Unless the Committee makes a very important recommendation they don't trouble the Minister. They accept most of the recommendations of the Committee and when they find difficulty in accepting any recommendation, they move for its re-consideration by the Committee after obtaining orders of the Minister. In the present case, if the Committee agree to change the procedure, the Ministry would accept it and Minister might not be troubled.

18. When asked whether it would be administratively possible to do stencilling of the Notifications straightaway instead of first typing out a few copies, the representative of the Ministry submitted that 200 Hindi and 550 English copies are to be done at a short notice and it may conflict with other Parliamentary work in the day time.

19. In reply to a tentative suggestion that one or two copies of the Notifications may be sent to the Lok Sabha Secretariat for laying purpose and then as soon as possible, after fixing the outer time-limit, rest of the copies may be sent later, the Secretary of the Ministry stated that it could be done. In case decision is taken at 5.30 or 6.00 P.M., they can send to the Lok Sabha Secretariat one or two copies of the Notification straightaway for laying purposes and then follow it up within 48 hours of the issue of the Notification with rest of the copies.

20. When further asked whether they can maintain the prevalent time-limit in regard to above suggestion, the Secretary of the Ministry replied in affirmative if it is after 6.00 P.M. before the working hours next day.

21. On the 6th April, 1979, the Ministry of Finance (Department of Revenue) were asked to state the number and particulars of 'sensitive' notifications issued after 6.00 P.M. during the last one year, as also whether requisite number of copies was made available to the Lok Sabha Secretariat for circulation to the Members.

22. In their reply dated the 16th April, 1979, the Ministry of Finance (Department of Revenue) have stated as under:—

"...only on one occasion the required number of copies of a 'sensitive' notification issued after 6.00 P.M. was sent to the Lok Sabha Secretariat for circulation to the Members of the Lok Sabha.

No separate record is maintained to show the number and particulars of the sensitive notifications issued by this Department. However, an attempt has been made to find out from the available record the number of sensitive notifications issued when the Lok Sabha was in session during the period 1st January, 1978 to 31st December, 1978. In all about 95 such notifications were issued during the said period, which were laid on the Table of the Lok Sabha as indicated below:—

- (i) 66 notifications were issued as part of the 1978-79 Budget proposals or giving effect to concessions announced on the floor of the House. These notifications were laid on the Table after a few days of their issue, as their financial implications had been mentioned in the House.
  - (ii) 26 notifications were laid on the Table the day on which they were issued.
  - (iii) 2 notifications issued on the 21st August, 1978 could not be laid before 23rd August, 1978 as the House was seized of the Constitution (45th) Amendment Bill, 1978.
  - (iv) There was a delay of one day in laying one notification.
- At present action is being taken to lay sensitive notifications on the same day they are issued."

23. Although the Committee appreciate the stress and strain which the Ministry of Finance (Department of Revenue) have to undergo in following the existing procedure for laying 'sensitive' notifications before Parliament more so when such notifications are sent to the Press for publication in the Gazette after 6.00 P.M. in

addition to other Parliamentary work as also maintaining of utmost secrecy in the matter yet the question is more of Parliamentary propriety than the administrative convenience of the Ministry.

24. The Committee find it difficult to accept the plea of the Ministry for two clear days' grace time for supply of cyclostyled copies of such notifications for circulation to Members. The Committee are of the opinion that keeping in view the time-honoured and well-established convention that when Parliament is in session all important announcements should be made before it rather than anywhere else, the only relaxation possible could be that the Ministry could send the requisite number of copies of such notifications by mid-night of the day on which they are sent for publication to the Press with prior intimation to the Lok Sabha/Rajya Sabha Secretariat to enable their circulation to Members the same night alongwith other Parliamentary Papers. In this arrangement the Ministry would get more time to furnish the requisite number of copies of the notifications. The Committee therefore, recommend that in the case of the 'sensitive' notifications sent to the Press for publication after 6 P.M. two copies of notification with a letter to the Speaker, Lok Sabha and Chairman, Rajya Sabha may be sent immediately informing them of the Minister's intention to lay the notifications on the Table the following day and the remaining 250 Hindi and 550 English copies may be sent to both the Secretariats by mid-night same day for circulation to the Members for their information before it is published in the Press for information of the general public and in other respects the procedure already approved by the Committee in paras 5 to 9 of their Twelfth Report (Fifth Lok Sabha) be followed.

### III

THE DELHI MILK SCHEME [FIRST PERSONAL ASSISTANT TO CHAIRMAN, DELHI MILK SCHEME, SENIOR STENOGRAPHERS (INCLUDING THE SECOND PERSONAL ASSISTANT TO CHAIRMAN) AND JUNIOR STENOGRAPHERS] RECRUITMENT RULES, 1976 (G.S.R. 1280 OF 1976)

25. Rule 8 regarding 'Repeal and Saving' of the Delhi Milk Scheme [First Personal Assistant to Chairman, Delhi Milk Scheme, Senior Stenographers (including the Second Personal Assistant to Chairman) and Junior Stenographers] Recruitment Rules, 1976 provides that any rules corresponding to above rules in respect of any of the posts specified in these rules and in force immediately before the commencement of these rules are repealed.

26. The expression 'any rules corresponding to these rules' appeared to be vague. It was felt that the precise name of the repealed rules should be mentioned in the Rules.

27. The Ministry of Agriculture and Irrigation (Department of Agriculture) to whom the matter was referred have omitted rule 8 which was vague (*vide* notification No. 3-7-77-LDI dated the 14th February, 1979).

28. The Committee note with satisfaction that, on being pointed out, the Ministry of Agriculture and Irrigation (Department of Agriculture) have omitted rule 8 of the Delhi Milk Scheme [First Personal Assistant to Chairman, Delhi Milk Scheme, Senior Stenographers (including the Second Personal Assistant to Chairman) and Junior Stenographers] Recruitment Rules, 1976 as it was vague.

#### IV

- (i) THE CENTRAL GOVERNMENT HEALTH SCHEME (BANGALORE) RULES, 1976 (S.O. 992 OF 1976).
- (ii) THE CENTRAL GOVERNMENT HEALTH SCHEME (HYDERABAD) RULES, 1976 (S.O. 994 OF 1976).

29. Rule 2 of the Central Government Health Scheme (Bangalore) Rules, 1976 and the Central Government Health Scheme (Hyderabad) Rules, 1976 reads as under:—

“Notwithstanding anything contained in the Secretary of State Services (Medical Attendance) Rules, 1938, the Central Services (Medical Attendance) Rules, 1944, or the All India Services (Medical Attendance) Rules, 1954, the instructions issued from time to time by the Central Government relating to the Central Government Health Scheme as in force in Delhi, shall apply *Mutatis mutandis* in respect of persons mentioned in sub-rule (4) of rule 1.”

30. It was felt that while a statutory rule subsequently issued by the Government might override an earlier rule, it did not appear to be appropriate that instructions issued by the executive should override the provisions of the statutory rules. If it becomes necessary for Government to issue instructions, these can be incorporated in the rules by way of amendment.

31. The Ministry of Health and Family Welfare (Department of Health) to whom the matter was referred, in their reply, dated the 1st September, 1978, stated as under:—

“The proposal has been discussed with the Ministry of Law and Justice. That Ministry have advised that model set of statutory rules defining the scope of the C.G.H. Scheme may be prepared and issued, making it applicable to all

stations where the Scheme is operating or where it may be extended in future. The draft rules for the Scheme have since been prepared and are expected to be issued shortly after getting these vetted by Law Ministry."

32. The Committee note that the Ministry of Health and Family Welfare (Department of Health) have since prepared the draft model set of statutory rules defining the scope of the Central Government Health Scheme. The Committee desire the Ministry to notify the model rules at an early date and delete rule 2 which provides for the issuing of instructions by the executive to over-ride the statutory rules, from both the Central Government Health Scheme (Bangalore) Rules, 1976 and the Central Government Health Scheme (Hyderabad) Rules, 1976.

## V

### CASES OF INCONSISTENCY OCCURRING IN RULE 5 AND IN ENTRIES UNDER COLUMN 13 OF THE SCHEDULE TO CERTAIN RECRUITMENT RULES.

33. During the course of examination of the following recruitment rules, it was found that according to the entries in column 13 of the schedules appended to these rules the Union Public Service Commission was to be consulted if an officer from a State Government was selected for appointment:

1. The Lal Bahadur Shastri National Academy of Administration, Research Assistant (Statistics/Mathematics) Recruitment Rules, 1975 (G.S.R. 2664 of 1975)—Department of Personnel and Administrative Reforms.
2. The All India Soil and Land Use Survey Organisation (Senior Technical Assistant) Recruitment Rules, 1975 (G.S.R. 2439 of 1975)—M/o Agriculture & Irrigation (Deptt. of Agriculture).
3. The Department of Company Affairs (Joint Director) Recruitment Rules, 1975 (G.S.R. 2638 of 1975)—M/o Law, Justice & Company Affairs (Deptt. of Company Affairs).
4. The Defence Services Staff College, Wellington, (Group 'A' Post) Senior Civilian Staff Officer (Coordination) Recruitment Rules, 1977 (S.R.O. 70 of 1977)—M/o Defence.
5. The Ministry of Works and Housing Accounts Officer (Lands) Recruitment Rules, 1977 (G.S.R. 860 of 1977)—M/o Works and Housing.

6. The Indian Grain Storage Institute (Superintendent) Recruitment Rules, 1977 (G.S.R. 931 of 1977)—M/o Agri. & Irrigation (Deptt. of Food).
7. The Department of Agriculture [Assistant Directors (Fertiliser Movement)] Recruitment Rules, 1977 (G.S.R. 490 of 1977)—M/o Agriculture & Irrigation (Deptt. of Agriculture).
8. The Director of Printing (Junior Analyst) Recruitment Rules, 1977 (G.S.R. 1096 of 1977)—M/o Works and Housing.
9. The National Institute of Social Defence, Department of Social Welfare, Head of Division (Training) Recruitment Rules, 1977 (G.S.R. 1085 of 1977)—M/o Education & S.W. (Deptt. of Social Welfare).

34. Rule 5 of each of the above Rules relating to the 'Power to relax' reads as under:—

*"Power to relax.*—Where the Central Government is of the opinion that it is necessary or expedient so to, it may, by order for reasons to be recorded in writing, relax any of the provisions of these rules in respect of any class or category of persons."

35. It was felt that since the Union Public Service Commission was to be consulted if an officer of a State Government was selected for appointment, the relaxation in the provisions of the rules should also be made in consultation with the Union Public Service Commission.

36. In their replies all the Ministries/Departments concerned with whom the matter was taken up agreed to amend the relevant rule to provide for consultation with Union Public Service Commission before relaxing any of the provisions of the above rules in respect of any class or category of persons.

**37. The Committee note with satisfaction that, on being pointed out, the Ministries/Departments concerned have agreed to amend rule 5 of the above Rules to provide for consultation with the Union Public Service Commission before relaxing any of the provisions of those Rules in respect of any class or category of persons. The Committee desire the Ministries/Departments concerned to notify the necessary amendments at an early date, if not already done.**



**THE KERALA SMALL INDUSTRIES AND DEVELOPMENT  
PROMOTION CORPORATION AMALGAMATION ORDER, 1977  
(S.O. 241-E OF 1977)**

(A)

38. Clause 7(ii) of the Kerala Small Industries Development Promotion Corporation Amalgamation Order, 1977, provides as under:—

“(ii) The Transferee company shall send by post to every person whose name is entered immediately before the appointed day in the Register of Shareholders in the Transferor companies a notice, giving particulars as to the allotment of new shares to him and an allotment letter for the new shares.”

39. In view of the importance of the notice for allotment of new shares and the allotment letter, the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) were requested to state whether they had any objection to amending clause 7(ii) of the Order so as to provide therein for sending of the papers by registered post acknowledgment due.

40. The Ministry in their reply dated the 2nd September, 1978 stated as under:—

“\*\*\*\*\*amendment of para 7(ii) of the Amalgamation Order is not considered necessary because the transferor companies and the transferee companies are wholly-owned companies of Kerala State Government. However, the suggestion of the Committee on Subordinate Legislation in this regard has been noted for compliance in future cases.”

41. The Committee note the assurance given by the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) regarding sending of a notice by a transferee company to every person whose name is entered immediately before the appointed day in the Register of shareholders in the transferor companies giving particulars as to the allotment of new shares and an allotment letter of new shares by registered post acknowledgment due. The Committee trust that the assurance would be duly complied with.

42. The Committee also re-iterate their earlier recommendation made in para 52 of their Thirteenth Report (Sixth Lok Sabha) that



Power Projects Pvt. Ltd., with M/s. Bharat Heavy Electricals under Section 396 of the Companies Act, 1956 referred to this Department *vide* Lok Sabha Office Memorandum No. 38|82|CII|76, dated 17-10-1976. After careful consideration of the matter, this Department has decided to frame rules under Section 396 of the Companies Act, 1956 and that an authority is proposed to be provided to deal with the representations received from the shareholders in regard to determination of the compensation."

46. The Committee are satisfied with the reply of the Ministry of Law, Justice and Company Affairs (Department of, Company Affairs) regarding the provision contained in para 11(b) of the Kerala Small Industries and Development Promotion Corporation Amalgamation Order, 1977 that it does not extinguish the right of shareholders for going to courts. The Committee, however, desire the Ministry to frame rules under section 396 of the Companies Act, 1956, as has been decided by them to provide for an authority to deal with the representations received from shareholders in regard to determination of the compensation.

## VII

### THE TERRITORIAL ARMY (AMENDMENT) RULES, 1977 (S.R.O. 304 of 1977)

47. The Territorial Army Act, 1948 under which the Territorial Army (Amendment) Rules, 1977 have been framed does not contain the usual provision for laying of rules before Parliament and for modification by Parliament.

48. In this connection attention of the Ministry of Defence was invited to the following recommendation of the Committee on Subordinate Legislation contained in para 11 of their Fourteenth Report (Fifth Lok Sabha) :

"The Committee earnestly desire all Ministries/Departments to undertake examination of all Acts with which they are administratively concerned in order to find out which of them do not contain a provision for laying of Rules before Parliament and to incorporate this provision in the Acts at their earliest."

49. On being asked to state whether in the light of the above recommendation they have taken any action to incorporate a provision in the Territorial Army Act requiring the rules framed

thereunder to be laid before Parliament, the Ministry of Defence in their reply dated 27th July, 1978 stated as follows :

✓ “ ... the question of making amendment to the Territorial Army Act, 1948 to incorporate a provision therein for laying the rules/amendments framed under the said Act, on the Table of the Houses of Parliament, had already been considered on more than one occasion and replies were sent to the Lok Sabha Secretariat under this Ministry Office Memorandum No. 28(1) 74-D(GS.II) dated the 28th September, 1974 and 20th March, 1975 stating that there had not been any occasion to bring forward any legislative measure to amend the Territorial Army Act, 1948 and hence it had not been possible to incorporate the said provision therein, as recommended by the Committee on Subordinate Legislation.)

✓ .....even though an amendment as recommended by the Committee on Subordinate Legislation has not been made to Territorial Army Act, 1948, Ministry of Defence have kept in view the need to lay on the Table of the House such Rules, Regulations, etc., framed under the said Act, as were considered of sufficient public importance.] Accordingly, during 1967 there were some important amendments to the Rules framed under this Act. Those were laid before the Parliament.

In the light of the position explained above, it has not been found necessary to incorporate a provision in the Territorial Army Act in regard to the laying of the rules framed thereunder on the Tables of the Houses of Parliament. The matter has again been examined and as the position remains unchanged and it is not proposed to bring forward any legislative measure to amend the Territorial Army Act, 1948, to incorporate the said provision therein at this stage. However, as and when any amendment to the Act is considered necessary in future, steps would also be taken to incorporate a provision therein for the laying of all rules framed thereunder ] before Parliament.”

50. The Ministry were further asked to state the difficulty in bringing an amendment to the Act for the only purpose of incorporating therein the laying provision, particularly when they had no other amendment under their consideration. Also, the Ministry were asked to state whether they had any objection to laying on

the Table *all* Rules, Regulations framed under the Act even in the absence of a laying provision therein till such time as the Act was amended.

51. In their communication dated the 28th August, 1978, the Ministry of Defence stated as under :

“ ... undertaking of legislation by way of even amendment to an existing Act of Parliament involves considerable administrative and procedural work both in Government and the Parliament. It is for this reason considered expedient that amendment to the Territorial Army Act, 1948 so as to incorporate a provision therein for laying of rules framed thereunder or amendments thereto before the Parliament may be considered as and when there are any other substantive amendments to be made in the Act. In the meantime, this Ministry agree to lay before Parliament the rules framed under the Territorial Army Act, 1948 and any amendments which may be made thereto hereafter, even in the absence of a laying requirement, till such time as the Act is amended next.

In this connection it may be mentioned that an updated compilation of the regulations of the Territorial Army Act, 1948 was brought out in 1976 incorporating the amendments/orders issued till December, 1975. Copies of this compilation and amendments to the Territorial Army Regulations/Rules issued thereafter could be considered for being laid before Parliament. It may not, however, be feasible to lay before Parliament individual amendments to the Territorial Army Regulations issued prior to 1976 at this state.”

52. The Committee are unhappy to note that the Ministry of Defence have failed to realise the importance of incorporating laying provision in the Territorial Army Act, 1948. The Committee find that instead of carrying out the direction of the Committee expeditiously, the Ministry have given a perfunctory reply that undertaking of legislation by way of an amendment to an existing Act of Parliament involves considerable administrative and procedural work both in Government and the Parliament. The Committee observe that here the question is more of propriety than of administrative convenience of the Ministry. The Committee further observe that the laying provision in the Acts confers on Parliament a right to amend, modify or even annual the Orders framed in pursuance of the

**powers delegated under those Acts. Non-incorporation of the laying provision in the Acts results in denial of such a right to Parliament.**

**53. The Committee, therefore, desire the Ministry to bring forward necessary amendment to the Territorial Army Act to incorporate therein the 'laying provision' at their earliest but in no case than the Autumn Session, 1979.**

### VIII

#### THE MAJOR PORT OF NEW TUTICORIN RULES, 1977 (G.S.R. 499 of 1977)

##### (A)

**54. Sub-rules (2) and (3) of rule 62 of the Major Port of New Tuticorin Rules, 1977 (G.S.R. 499 of 1977) read as under :**

“(2) The Conservator on the recommendation of the Traffic Manager may at any time cancel any licence issued under this rule or may suspend the same for such period as may be specified for breach of any of the terms of the licence or for breach of any of the provisions of rule 63 or 64.

(3) The licence may likewise be cancelled or suspended if, after the grant thereof, it is discovered that the application for the licence contained any misrepresentations or mis-statements of material facts or if the licensee has been adjudged insolvent or has gone into liquidation, as the case may be, or if the licensee or his workmen cause any obstruction to any work in the port:

Provided that no such licence shall be cancelled or suspended until the holder of the licence has been given a reasonable opportunity for showing cause why his licence should not be cancelled or suspended as the case may be:

Provided further that no such opportunity for showing cause shall be necessary when the licence is suspended pending an enquiry against the holder of the licence for contravention of any of the terms thereof or for contravention of any of these rules or for doing anything for which the licence is liable under this rule to be cancelled or suspended.”

**55. On the 6th December, 1977, the Ministry of Shipping and Transport (Transport Wing) were asked to state whether they had**

any objection to (i) providing for issue of a show cause notice before the licence was cancelled; and (ii) laying down a maximum time-limit for which a licence can be suspended.

56. In their reply dated the 22nd April, 1978, the Ministry have stated as follows :

- “(1) Ministry agrees to providing a claim for issue of show-cause notice before the licence is cancelled.
- (2) However, as regards laying down a maximum time-limit for which a licence can be suspended, it may be stated that such a limitation may not be desirable. For example, under 63(2) the stevedore is to ensure use of gears as conforms to the requirement of safety under the Indian Dock Labourers Act of 1934 (Act 19 of 1934). If the gear is defective, he shall not be allowed to function as a stevedore to ensure safety of all concerned. Prescribing a time-limit for suspension in such cases will defeat the purpose of the licence.”

57. The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to provide for issue of a show cause notice to the licensee before cancellation of a licence under sub-rules (2) and (3) of Rule 62 of the Major Port of New Tuticorin Rules, 1977.

58. The Committee have, however, accepted the Ministry's contention that laying down a maximum time-limit for suspension of a licence is not desirable.

(B)

59. Sub-rule (6) of rule 73 of the Major Port of New Tuticorin Rules, 1977 (G.S.R. 499 of 1977) reads as under:—

“(16) The port may exempt, any vessel or line of vessel from the provision of this rule for such period as the Conservator may think fit.”

60. The Ministry of Shipping and Transport (Transport Wing) were requested on the 6th December, 1977 to state whether they had any objection to providing for recording of reasons in writing before exemption was granted under the above sub-rule.

61. In their reply dated the 22nd April, 1978, the Ministry have stated as follows:—

“.....Ministry agrees to provide for recording the reasons in writing before any exemption is granted. It is proposed to amend Rule 73(6) as:—

'(6) The port may exempt, any vessel or line of vessel from the provision of this rule for such period as the Conservator may think fit for reasons to be recorded in writing.'

62. The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to amend rule 73(6) of the Major Port of New Tuticorin Rules, 1977 so as to provide therein for recording of reasons in writing before any exemption is granted. The Committee approve the proposed amendment and desire the Ministry to notify the same expeditiously.

## IX

### THE CIVILIANS IN DEFENCE SERVICES (REVISED) SIXTH AMENDMENT RULES, 1977 (S.R.O. 254 OF 1977)

63. During the course of examination of the Civilians in Defence Services (Revised) Sixth Amendment Rules, 1977 published in the Gazette of India, dated the 23rd July, 1977 it was noticed that the said rules had been given retrospective effect from 1st January, 1973. The Explanatory Memorandum appended to these rules did not affirm that nobody was likely to be adversely affected as a result of the retrospective effect given to the rules.

64. Attention of the Ministry of Defence (Department of Defence Production), with whom the matter was taken up, was drawn to the recommendation of the Committee contained in para 10 of their Second Report (Fourth Lok Sabha) wherein they had recommended that in the Explanatory Memorandum to be appended to Rules which had been given retrospective effect, the Ministries should certify that no one would be adversely affected by such retrospective effect. In one of their replies dated the 8th May, 1978 the Ministry stated as under:--

".....the matter has been reconsidered in the light of the recommendations of the Committee on Subordinate Legislation made in para 10 of their Second Report (Fourth Lok Sabha). It is now confirmed that nobody will be adversely affected as a result of retrospective effect of the amending rules."

65. In spite of several reminders, the Ministry have not so far intimated whether the necessary amendment to the Explanatory



Memorandum has since been issued in the Gazette or not. The strange part is that instead of taking the action as suggested, the Ministry have alongwith their letter dated the 9th March, 1979, forwarded a copy of the corrigendum correcting a patent printing error in the Rules which has nothing to do with the point raised by the Committee.

66. The Committee deprecate the failure on the part of the Ministry of Defence (Department of Defence Production) to send pertinent reply to the specific issue raised by them inspite of repeated reminders. The Committee have time and again stressed that failure to furnish replies to the points raised by the Committee not only hampers their work but also results in unnecessary prolongation of the infirmities in the rules. The Committee now, however, desire the Ministry to issue the necessary amendment to the Explanatory Memorandum appended to the Civilians in Defence Services (Revised) Sixth Amendment Rules, 1977 stating that nobody would be adversely affected as a result of retrospective effect given thereto, if not already done.

## X

### INDICATION OF INCORRECT ENTRY IN COLUMN 13 OF THE SCHEDULE APPENDED TO RECRUITMENT RULES, REGARDING CIRCUMSTANCES IN WHICH UNION PUBLIC SERVICE COMMISSION IS TO BE CONSULTED IN MAKING RECRUITMENT

67. Normally the Schedule appended to all Recruitment Rules contains a column regarding circumstances in which Union Public Service Commission is to be consulted in making recruitment. While examining various Recruitment Rules it was noticed that Ministries/Departments concerned were indicating the expression 'as required under the Union Public Service Commission (Exemption from consultation) Regulations, 1958' under this column. This entry did not appear to be appropriate as the Union Public Service Commission (Exemption from Consultation) Regulations enumerate only those matters in regard to which Government are exempted from consulting the Union Public Service Commission.

68. In this connection the Committee on Subordinate Legislation in para 13 of their Seventeenth Report (Fifth Lok Sabha) presented to Lok Sabha on the 7th January, 1976 recommended as under:—

“The Committee note that the Ministry of Law have seen the validity of the objection raised by the Committee that the

expression 'as required under the Union Public Service Commission (Exemption from Consultation) Regulations, 1958' in Column 13 of the Schedule is not an accurate one in that the said Regulation does not require consultation with the Commission. On the contrary, it provides for cases where consultation with the Commission is not necessary. Even so, the Ministry of Law have pleaded for the retention of this expression in Column 13 of the Schedule, as there is no other regulation which positively specifies the cases in which the Commission is to be consulted. The Committee can hardly accept this explanation. They feel that it should not be difficult for the Department of Personnel and Administrative Reforms to devise, in consultation with the Ministry of Law and the U.P.S.C., some formula to precisely indicate the cases in which the U.P.S.C. is to be consulted. The Committee will like the Department of Personnel and Administrative Reforms to take early action in the matter as the expression objected to in this case occur in a large number of Recruitment Rules."

69. After presentation of above Report the expression 'as required under the Union Public Service Commission (Exemption from Consultation) Regulations' which was objected to by the Committee continued to occur in a large number of Recruitment Rules. Some of those Rules are shown in Appendix II.

70. The Ministries|Departments concerned to whom the matter was referred, have amended|agreed to amend the above expression in the Schedule appened to the Rules to indicate the circumstances under which Union Public Service Commission will be consulted.

71. The Committee note with satisfaction that, on being pointed out, the Ministries|Departments concerned have either amended or have agreed to amend the entry under Column 13 of the recruitment rules indicating the circumstances under which U.P.S.C. will be consulted. The Committee desire the Ministries|Departments who have not issued the amendment so far to do so expeditiously. The Committee also desire the Department of Personnel and Administrative Reforms to issue necessary instructions to all Ministries|Departments in this connection so that this infirmity of the rules may not continue any more.

**IMPLEMENTATION OF RECOMMENDATION CONTAINED IN  
PARA 29 OF THE NINTH REPORT OF THE COMMITTEE ON  
SUBORDINATE LEGISLATION (SIXTH LOK SABHA) REGARD-  
ING THE TOBACCO BOARD RULES, 1976 (G.S.R. 1-E OF 1976)**

72. Sub-rule (2) of rule 24 of the Tobacco Board Rules, 1976 provides as under:—

“(2) The Board may write off losses or waive recoveries up to ten thousand rupees in any single case.”

73. The Committee noticed that the Tobacco Board Act did not empower the Tobacco Board to write off losses or waive recoveries.

74. The Ministry of Commerce were asked to state the authority under which the above power to write off losses or waive recoveries was conferred on the Board through the rules. The Ministry in their reply stated as under:—

“Rule 24(2): It is a usual practice consistent with the autonomous character of such institutions to give them some power for writing off losses or waiving recoveries. An identical provision exists in sub-rule (2) of rule 22 of the Marine Products Export Development Authority Rules, 1972.”

75. After considering the above reply of the Ministry and hearing oral evidence of the representatives of the Ministry at their sitting held on the 31st March, 1978, the Committee recommended as under in para 29 of their Ninth Report (Sixth Lok Sabha):—

“The Committee observe that, as in the previous case of Oil Industry (Development) Rules, 1975 (G.S.R. 160-E of 1975) dealt with in Chapter II of this Report, there is no express provision in the parent Act—the Tobacco Board Act, 1975—which empowers or authorises the empowering of the Tobacco Board to write off losses or waive recoveries. As, in the opinion of the Committee, the power of waiver of recoveries is a substantial power, there should be an express authorisation therefor from the parent Act. The power to write off may flow from the rules but even in the case of write off, there should be clear guidelines indicating the circumstances in which the power of write off shall be exercised. The Committee will like the Minis-

try of Commerce to take early steps for the amendment of the Act and the rules in question accordingly."

76. In their action taken note dated the 30th August, 1978, the Ministry have stated as under:—

".....this Ministry has set up an Expert Group on Tobacco on 15th July, 1978 to make a study of the problems and to recommend for consideration of the Government measures for regulating the production and effecting improvements in the marketing of tobacco. The terms of reference of the Expert Group have been en-larged *vide* Government's Resolution dated 16th August, 1978, *inter-alia* 'to examine the need for amending the Tobacco Board Act, 1975 and to recommend the amendments which in its opinion should be made in the Act so as to enable the Tobacco Board to play a decisive role in respect of production, research and development, marketing and export of all types of Tobacco produced in the country'.

The Expert Group has been asked to submit its report within a period of six months. After the receipt of the Report of the Expert Group, the Government will take some time to consider its recommendations and to take decisions thereon. Even after taking a decision on the recommendations of the Expert Group, relating to amendments to the Tobacco Board Act, 1975, some time will be required to complete the procedural formalities in consultation with the other concerned Ministries and taking approval of the Cabinet before a comprehensive Bill to amend the Tobacco Board Act, 1975 is brought forward in the Parliament. It thus appears that it will take a minimum period of 6 to 8 months when a comprehensive Bill for amending the Tobacco Board Act, also incorporating the amendment recommended by the Committee on Subordinate Legislation, could be introduced in the Parliament."

77. The Committee note that the Ministry of Commerce have set up an Expert Group on Tobacco on the 15th July, 1978 to examine *inter alia* the need for amending the Tobacco Board Act, 1975. The Committee also note that the Expert Group has been asked to submit their Report within a period of six months. The Committee further note that the Ministry want a period of 6 to 8 months for introducing a comprehensive Bill to amend the Tobacco Board Act

after receipt of the Report of the Expert Group, and that the amendment recommended by them would be incorporated in that Bill. From the reply of the Ministry, the Committee find that the Ministry may not be able to introduce the Bill to amend the Tobacco Board Act before July-August, 1979.

78. The Committee further note that in a similar case regarding the Oil Industry (Development) Rules, 1975, the Ministry of Petroleum and Chemicals had agreed to amend these rules by deleting the provision regarding waiving of recoveries and had also issued guidelines regarding writing off losses.

79. The Committee, therefore, desire the Ministry of Commerce either to amend the Tobacco Board Act, at the latest by the Monsoon Session, 1979, or in the alternative, the rules in question might be amended on the lines of the Oil Industry (Development) Rules, 1975, to implement the recommendation of the Committee. The Committee also desire the Ministry to take necessary action at their earliest so that the operation of the impugned rule may not continue any more.

## XII

### IMPLEMENTATION OF RECOMMENDATION CONTAINED IN PARA 57 OF THE NINTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) REGARDING THE SUGARCANE (CONTROL) AMENDMENT ORDER, 1975 (G.S.R. 492-E OF 1975)

80. Proviso to sub-clause (7) of clause 5A of the Sugarcane (Control) Order, 1966, as inserted by the Sugarcane (Control) Amendment Order, 1975, provided as under:—

“Provided that the additional price shall become payable to a sugarcane grower, even when he supplies less than 85 per cent of the sugarcane so agreed, if for the same supply he has not been subjected to any penalty by or under any Central or State Act or any rules or orders made thereunder for his failure to supply 85 per cent of sugarcane so agreed.”

81. Sub-clause (7) of Clause 5A *ibid* laid down as under:—

“Subject to the provision of sub-clause (4), the additional price shall become payable to a sugarcane grower if he, in performance of his agreement with a producer of sugar,

supplies not less than 85 per cent of the sugarcane so agreed."

82. It was felt that the words 'less than 85 per cent' appearing in the proviso as inserted by above amending rules introduced an element of uncertainty as it might mean any figure varying from 1 to 85 per cent.

83. The Ministry of Agriculture and Irrigation (Department of Food), with whom the matter was taken up, stated in reply as under:

".....the intention of clause 5A(7) of the Sugarcane Control Order is that the grower should normally supply at least 85 per cent of the contracted quantity of cane to qualify to receive the determined additional price of cane. Failure to do so can be condoned only in circumstances in the proviso to this clause to enable the grower to get the payment.

To clarify the matter further, the sugarcane grower will be eligible for payment of additional price for the supplies of not less than 85 per cent of the sugarcane as agreed to between him and the producer of sugar. In sugar of his best intentions, however, the grower may not be in a position to keep up his supplies of not less than 85 per cent of the cane agreed to be supplied by him for reasons beyond his control, such as, drought, floods, etc. To take care of such exigencies, it has been provided in the proviso that the additional price shall be payable, even though supplies fell short of 85 per cent of the agreed quantity, provided for the same supplies, the grower had not been subjected to any penalty under any Central/State Acts/Rules/Orders for his failure to supply the 85 per cent of the cane contracted for supply. The proviso is intended to prevent frivolous claims by growers and ensure only genuine claims."

84. In reply to a further query, the Ministry clarified the position as follows:—

"the intention is that a grower should normally supply at least 85 per cent of the cane he had agreed to supply and to deny him the benefit of additional cane price if he fails to do so. There may be occasions, when for reasons beyond his control he may not be able to do so, and the intention further is that he should not be deprived of the additional price for the cane he actually supplied, even if it is as low as 45 per cent or 50 per cent."

85. In pursuance of their above reply, the Ministry were requested to state whether they had any objection to incorporate their intention in the Order that the grower would not be deprived of the additional price for the sugarcane he actually supplied, even if it fell short of 85 per cent of the agreed quantity, if the short supply was occasioned by reasons beyond his control. . .

86. While not agreeing with the above suggestion the Ministry have urged as follows:—

“The main objective behind the provision to supply 85 per cent of the cane agreed to be supplied by the farmer for being eligible to receive additional cane price under Clause 5A of the Sugarcane (Control) Order, 1966 [as amended by the Sugarcane (Control) Amendment Order 1975] is that in the normal course every producer of sugarcane should supply at least 85 per cent of the contracted amount. It is only in exceptional circumstances beyond his control that he would be entitled to his share of the additional cane price even if he failed to supply 85 per cent. The test for this qualification is that he should not have been penalised by a competent authority for his failure to supply 85 per cent of the sugarcane so agreed. Incorporating this intention in the form suggested by the Lok Sabha Secretariat would lead to frivolous claim for additional cane price and laxity on the part of sugarcane grower to supply at least 85 per cent of the quantity of cane agreed.

In the circumstances, it is felt that no change in the existing Clause 5A(7) of the Sugarcane (Control) Order, 1966, is called for.”

87. After considering the reply of the Ministry, the Committee in para 57 of their Ninth Report observed as under:—

“The Committee are not satisfied with the above reply of the Ministry of Agriculture and Irrigation (Department of Food). According to the Ministry, the intention underlying the proviso to sub-clause (7) of clause 5A is that the cane grower should get the benefit of additional price even in cases where he supplies less than 85 per cent of the agreed quantity if the shortfall is occasioned by reason beyond his control. If so, the Ministry should have no objection to clearly spelling out their intention in the Order. The argument advanced by the Ministry for not incorporating the above intention in the Order is that it

would lead to frivolous claims for additional cane price. The Committee are unable to appreciate this argument, for, as they observe, natural calamities, such as floods, droughts, etc. which are generally the cause of shortfall in agricultural production are well-known phenomenon. Also, the additional payment will become admissible only when the grower shows that the shortfall in supply is ascribable to reasons beyond his control. On the other hand, as, under the existing proviso, the only condition for admissibility of additional price is that the supplier has not been subjected to any penalty under any Central/State Act/Rules/Order for the shortfall in supply, there could be cases where additional price is paid to a supplier even where such shortfall has not been occasioned by reasons beyond his control. Apparently, this would be against the underlying intention of the proviso. The Committee will, therefore, like the Ministry of Agriculture and Irrigation (Department of Food) to take early steps to amend the proviso in question so as to clearly spell out their intention."

88. In their action taken note dated the 19th July, 1978 on the above recommendation of the Committee, the Ministry of Agriculture and Irrigation (Department of Food) have stated as under:—

"... this Department has no objection to amend the disputed proviso below sub-clause (7) of clause 5A of the Sugarcane (Control) Order, 1966 as suggested. However, certain difficulties are anticipated by this Department in incorporating the exact intention behind the said proviso. Once some specific grounds like flood, drought and famine etc. are specified in the said proviso failing which the additional cane price shall not be payable, the competent authority which will decide the relevant cases, shall also have to be specified. Since the status of this authority shall have to be kept sufficiently higher, there is every possibility of additional cane price cases getting delayed on this account. Besides, this, on the basis of existing provision, there is a considerable amount of flexibility available both for cane growers and the State Government authority deciding the case. This type of flexibility will, obviously, vanish once the position is made more specific as suggested by the Lok Sabha Secretariat. In most cases the circumstances which necessitate action under this proviso are local or personal in nature. While their effect is to constrain the grower they are also equally impossible to be established by him



on the basis of the type of proof needed in a regular enquiry. This is more so as growers are mostly uneducated. The State Governments concerned have been deciding the cases right from the season of 1974-75 without any difficulty and not even a single complaint has come to the notice of this Department where a cane grower has been denied the benefit of additional cane price under clause 5A on account of his failure to supply cane less than 85 per cent of the agreed quantity.

The Lok Sabha Secretariat are accordingly requested to reconsider their decision in this regard. If they still feel that such action is needed than by amending the disputed clause necessary step will be initiated by this Department in consultation with the Ministry of Law."

89. At their sitting held on the 27th February, 1979, the Committee considered the matter from all aspects and decided to hear oral evidence of the representatives of the Ministry of Agriculture and Irrigation (Department of Food) in this regard.

90. The Committee heard oral evidence of the representatives of the Ministry of Agriculture and Irrigation (Department of Food) in regard to the Sugarcane (Control) Amendment Order, 1975 (G.S.R. 492-E of 1975) on the 9th May, 1979.

91. Explaining the difficulties which the Department of Food envisages in implementing the recommendation of the Committee contained in para 57 of their Ninth Report (Sixth Lok Sabha), the Secretary of the Department of Food stated that as a matter of policy there is no difference of opinion. Their opinion differs only with regard to the procedure. It has been provided in proviso to sub-clause (7) of Clause 5A of the Order that any sugarcane grower who supplies less than 85 per cent of the agreed quantity of sugarcane, shall be entitled to additional payment under the Bhargawa sharing formula provided that he has not been subjected to any penalty under the Central or State Acts for making lower supplies. Explaining the reason as to why they find it difficult to make the proviso explicit by indicating the facts for not supplying agreed quantity of sugarcane in the Order itself, the representative stated that indication of these facts would probably lead to more difficulties for the producer. When the producer supplies less than 85 per cent of the agreed quantity under the State Orders the competent authority, at the instance of the mill, would make an enquiry to find out why the supply has been less than 85 per cent and if it has not been due to reasons beyond the control of the grower then that authority has the right to impose penalty on hand.

92. The Secretary of the Department of Food further stated that acceptance of Committee's recommendation would necessitate second inquiry. As things stand, once the first inquiry is over or even if the inquiry is not made, if the mill does not complain, no penalty is levied and the cultivator automatically becomes entitled to additional payment. If proviso is made explicit, the mechanism for conducting second inquiry to find out whether the short supply was due to the reasons beyond the control of the producer may be necessary.

93. When it was pointed out that the words "may lead to second inquiry" are ambiguous, the Secretary of the Ministry of Law (Legislative Department) stated that these words have been used in view of several rules, orders and regulations of State Governments on the subject.

94. When asked whether all the State Governments have framed Orders/Rules empowering a competent authority to lay penalty on a grower if the short-fall in the supply of Sugarcane had not been due to reasons beyond his control, the Secretary of Department of Food promised to furnish the detailed information by the 14th May, 1979.

95. In reply to a question as to why they consider that inquiry must necessarily be made by the Central Government when the existing provision says that it can be by the State or the Centre, the Secretary, Ministry of Law (Legislative Department) stated that they could use the state mechanism for second inquiry. That authority will be making the inquiry at the earlier stage and second inquiry will come at a later stage. The enquiry at earlier stage being near to the point of event, would be more fruitful by the local authorities because it would be easier for them to verify drought and floods, etc. prevailing in the locality. Secondly, conditions vary from State to State and even from area to area and whatever mechanism has been provided in the local laws with reference to the locality would be better suited to find out whether the failure has been for valid reason having regard to the area in which the failure occurred.

96. When it was pointed out to the witnesses that the point now being emphasised by them for not implementing the recommendations of the Committee had not been properly submitted by the Ministry to the Committee and that on the basis of their conflicting replies the Committee had arrived at certain conclusions, the Secretary of the Department of Food replied that their earlier reply was not properly drafted to convey clearly and exactly what they wanted to convey.

97. The Committee considered the matter from all its aspects and note the view of the Ministry that by making the proviso to sub-clause (7) of Clause 5A of the Sugarcane (Control) Order, 1966 more explicit by spelling out the intention regarding reasons beyond the control of sugarcane grower would entail second inquiry. The Committee note that two inquiries in this matter would lead to more redtapism and create a more troubles for the cane growers.

98. The Committee are unhappy to note that the Ministry of Agriculture and Irrigation (Department of Food) have been bringing forth or conflicting view points at different times. They should have considered the matter in all seriousness and submitted their firm opinion to the Committee, at the earliest stage itself. It was only during the course of evidence of the Ministry that the position became clear. In view of the positive explained by the Ministry during their evidence the Committee are of the opinion that the existing position may continue and the Sugar Control Order need not be amended.

99. The Committee further note that majority of the sugarcane growing States have in their State Laws a provision for inquiry into the circumstances leading to failure on the part of the grower to supply the agreed quantity of sugarcane. The Committee desire that the remaining States which do not have such a provision should be asked to make suitable arrangements for this purpose.

NEW DELHI;  
The 16th May, 1979.

SOMNATH CHATTERJEE,  
Chairman,  
Committee on Subordinate Legislation.

## APPENDIX I

(Vide para 5 of the Report)

*Summary of the Main Recommendations/Observations made by the Committee.*

S. No.	Para	Summary
I	2	3
I(i)	23	Although the Committee appreciate the stress and strain which the Ministry of Finance (Department of Revenue) have to undergo in following the existing procedure for laying 'sensitive' notifications before Parliament more so when such notifications are sent to the Press for publication in the Gazette after 6.00 P.M. in addition to other Parliamentary work as also maintaining of utmost secrecy in the matter yet the question is more of Parliamentary propriety than the administrative convenience of the Ministry.
I(ii)	24	The Committee find it difficult to accept the plea of the Ministry for two clear days grace time for supply of cyclostyled copies of such notifications for circulation to Members. The Committee are of the opinion that keeping in view the time-honoured and well-established convention that when Parliament is in session all important announcements should be made before it rather than anywhere else, the only relaxation possible could be that the Ministry could send the requisite number of copies of such notifications by mid-night of the day on which they are sent for publication to the Press with prior intimation to the Lok Sabha/Rajya Sabha Secretariat to enable their circulation to Members the same night alongwith other Parliamentary Papers. In this arrangement the Ministry would get more time to furnish the requisite number of copies of the notifications. The Committee, therefore, recommend that in the case of the 'sensitive' notifications sent to the Press for publication after 6.00 P.M. two copies of the notification with a letter to the Speaker, Lok Sabha and Chairman, Rajya Sabha may be sent immediately informing them of the Minister's intention to lay the notifications on the Table the following

1

2

3

day and the remaining 250 Hindi and 550 English Copies may be sent to both the Secretariats by mid-night same day for circulation to the Members for their information before it is published in the Press for information of the general public and in other respects the procedure already approved by the Committee in paras 5 to 9 of their Twelfth Report (Fifth Lok Sabha) be followed.

- 2 28 The Committee note with satisfaction that, on being pointed out, the Ministry of Agriculture and Irrigation (Department of Agriculture) have omitted rule 8 of the Delhi Milk Scheme [First Personal Assistant to Chairman, Delhi Milk Scheme, Senior Stenographer (including the Second Personal Assistant to Chairman) and Junior Steongraphers] Recruitment Rules, 1976 as it was vague.
- 3 32 The Committee note that the Ministry of Health and Family Welfare (Department of Health) have since prepared the draft model set of statutory rules defining the scope of the Central Government Health Scheme. The Committee desires the Ministry to notify the model rules at an early date and delete rule 2 which provides for the issuing of instructions by the executive to over-ride the statutory rules., from both the Central Government Health Scheme (Bangalore) Rules, 1976 and the Central Government Health Scheme (Hyderabad) Rules, 1976.
- 4 37 The Committee note with satisfaction that on being pointed out, the Ministries/Departments concerned have agreed to amend rule 5 of the above Rules to provide for consultation with the Union Public Service Commission before relaxing any of the provisions of those Rules in respect of any class or category of persons. The Committee desire the Ministries/Departments concerned to notify the necessary amendments at an early date, if not already done.
- 5(i) 41 The Committee note the assurance given by the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) regarding sending of a notice by a transferee company to every person whose name is entered immediately before the appointed day in the Register of shareholders in the transferor companies giving partiulars as to the allotment of new shares and an allotment letter of new shares by registered post acknowledgement due. The Committee trust that the assurance would be duly complied with.

1	2	3.
5(ii)	42	The Committee also re-iterate their earlier recommendation made in para 52 of their Thirteenth Report (Sixth Lok Sabha) that the fact or despatch of papers to the shareholders of the dissolved company regarding allotment of shares in the new company should be published in all important Newspapers to enable a person not getting the same to contact the company and obtain them.
5(iii)	46	The Committee are satisfied with the reply of the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) regarding the provision contained in para 11(b) of the Kerala Small Industries and Development Promotion Corporation Amalgamation Order, 1977, that it does not extinguish the right of shareholders for going to courts. The Committee, however, desire the Ministry to frame rules under section 396 of the Companies Act, 1956, as has been decided by them to provide for an authority to deal with the representations received from shareholders in regard to determination of the compensation.
6(i)	52	The Committee are unhappy to note that the Ministry of Defence have failed to realise the importance of incorporating laying provision in the Territorial Army Act, 1948. The Committee find that instead of carrying out the direction of the Committee expeditiously, the Ministry have given a perfunctory reply that undertaking of legislation by way of an amendment to an existing Act of Parliament involves considerable administrative and procedural work both in Government and the Parliament. The Committee observe that here the question is more of propriety than of administrative convenience of the Ministry. The Committee further observe that the laying provision in the Acts confers on Parliament a right to amend, modify or even annul the Orders framed in pursuance of the powers delegated under those Acts. Non-incorporation of the laying provisions in the Acts results in denial of such a right to Parliament.
6(ii)	53	The Committee, therefore, desire the Ministry to bring forward necessary amendment to the Territorial Army Act to incorporate therein the 'laying provision' at their earliest but in no case later than the Autumn Session, 1979.
7(i)	57	The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport

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(Transport Wing) have agreed to provide for issue of a show cause notice to the licensee before cancellation of licence under sub-rules (2) and (3) of Rule 62 of the Major Port of New Tuticorin Rules, 1977.

- 7(ii) 58 The Committee have, however, accepted the Ministry's contention that laying down a maximum time-limit for suspension of a licence is not desirable.
- 7(iii) 62 The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to amend rule 73(6) of the Major Port of New Tuticorin Rules, 1977 so as to provide therein for recording of reasons in writing before any exemption is granted. The Committee approve the proposed amendment and desire the Ministry to notify the same expeditiously.
- 8 .66 The Committee deprecate the failure on the part of the Ministry of Defence (Department of Defence Production) to send pertinent reply to the specific issue raised by them in spite of repeated reminders. The Committee have time and again stressed that failure to furnish replies to the points raised by the Committee not only hampers their work but also results in unnecessary prolongation of the infirmities in the rules. The Committee now, however, desire the Ministry to issue the necessary amendment to the Explanatory Memorandum appended to the Civilians in Defence Services (Revised) Sixth Amendment Rules, 1977, stating that nobody would be adversely affected as a result of retrospective effect given thereto, if not already done.
- 9 71 The Committee note with satisfaction that on being pointed out, the Ministries/Departments concerned have either amended or have agreed to amend the entry under Column 13 of the recruitment rules (Appendix II) indicating the circumstances under which U.P.S.C. will be consulted. The Committee desire the Ministries/Departments who have not issued the amendment so far to do so expeditiously. The Committee also desire the Department of Personnel and Administrative Reforms to issue necessary instructions to all Ministries/Departments in this connection so that this infirmity of the rules may not continue any more.

1	2	3
10(i)	77	The Committee note that the Ministry of Commerce have set up an Expert Group on Tobacco on the 15th July, 1978 to examine <i>inter alia</i> the need for amending the Tobacco Board Act, 1975. The Committee also note that the Expert Group has been asked to submit their Report within a period of six months. The Committee further note that the Ministry wants a period of 6 to 8 months for introducing a comprehensive Bill to amend the Tobacco Board Act after the receipt of the Report of the Expert Group, and that the amendment recommended by them would be incorporated in that Bill. From the reply of the Ministry the Committee find that the Ministry may not be able to introduce the Bill to amend the Tobacco Board Act before July-August, 1979.
10(ii)	78	The Committee further note that in a similar case regarding the Oil Industry (Development) Rules, 1975, the Ministry of Petroleum and Chemicals had agreed to amend these rules by deleting the provision regarding waiving of recoveries and had also issued guidelines regarding writing off losses.
10(iii)	79	The Committee, therefore, desire the Ministry of Commerce either to amend the Tobacco Board Act, at the latest by the Monsoon Session, 1979, or in the alternative, the rules in question might be amended on the lines of the Oil Industry (Development) Rules, 1975, to implement the recommendation of the Committee. The Committee also desire the Ministry to take necessary action at their earliest so that the operation of the impugned rule may not continue any more.
11(i)	97	The Committee considered the matter from all its aspects and note the view of the Ministry that by making the proviso to sub-clause (7) of Clause 5A of the Sugarcane (Control) Order, 1966 more explicit by spelling out the intention regarding reasons beyond the control of sugarcane grower would entail second inquiry. The Committee note that two inquiries in this matter would lead to more red-tapism and create more troubles for the cane growers.
11(ii)	98	The Committee are unhappy to note that the Ministry of Agriculture and Irrigation (Department of Food) have been bringing forth conflicting view points at different



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times. They should have considered the matter in all seriousness and submitted their firm opinion to the Committee, at the earliest stage itself. It was only during the course of evidence of the Ministry that the position became clear. In view of the position explained by the Ministry during their evidence, the Committee are of the opinion that the existing position may continue and the Sugar Control Order need not be amended.

- II(iii) 99 The Committee further note that majority of the sugarcane growing States have in their State Laws a provision for inquiry into the circumstances leading to failure on the part of the grower to supply the agreed quantity of sugarcane. The Committee desire that the remaining States which do not have such a provision should be asked to make suitable arrangements for this purpose.
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## APPENDIX II

(Vide para 69 of the Report)

*List of Rules which do not contain proper expression in the schedule under Column 13 regarding circumstances in which Union Public Service Commission is to be consulted in making recruitment.*

S. No.	Name of Rules	Ministry/Department	Remarks
(1)	(2)	(3)	(4)
1	The Lakshadweep Administration (Fisheries Instructor) Recruitment Rules, 1975 (G.S.R. 26 of 1976).	Ministry of Education and Social Welfare, (Department of Education)	The Ministry have amended Schedule of the Rules.
2	The Office of the Controller General of Patents, Designs and Trade Marks [Class I and II (Gazetted) Posts] Recruitment (Second Amendment) Rules, 1976 (G.S.R. 130 of 1976).	Ministry of Industry, (Deptt. of Industrial Development)	The Ministry have no objection to amending Schedule of the Rules.
3	The Bureau of Industrial Costs and Prices (Technical Officer and Technical Assistant) Recruitment Rules, 1975 (G.S.R. 207 of 1976).	Ministry of Industry and Civil Supplies, (Deptt. of Industrial Development)	The Ministry have amended Schedule of the Rules.
4	The All India Handicrafts Board [Class I and Class II (Gazetted) Posts] Recruitment (Amendment) Rules, 1976 (G.S.R. 276 of 1976).	Ministry of Commerce.	The Ministry have agreed to amend Schedule of the Rules.
5	The Mica Mines Labour Welfare Fund Organisation (Class I and II Posts) Recruitment (Amendment) Rules, 1976 (G.S.R. 657 of 1976).	Ministry of Labour.	The Ministry have no objection to amending Schedule of the Rules.
6	The Indian Bureau of Mines (Class I and II posts) Recruitment (Second Amendment) Rules, 1976 (G.S.R. 1728 of 1976).	Ministry of Steel and Mines, (Deptt. of Mines)	The Ministry have no objection to amending Schedule of the Rules.

(1)

(2)

(3)

(4)

- 7 (i) The Central Poultry Breeding Farms (Group 'A' Posts) Recruitment Rules, 1976 (G.S.R. 1702 of 1976).  
 (ii) The Integrated Fisheries Project (Mate Grade II) Recruitment Rules, 1976 (G.S.R. 1729 of 1976).  
 8 The Department of Rehabilitation (Group 'A' Posts) Recruitment Rules, 1976 (G.S.R. 1761 of 1976).  
 9 The Union Public Service Commission (Ex-cadre posts) Recruitment (Amendment) Rules, 1976 (G.S.R. 1764 of 1976).  
 10 The Indian Meteorological Department (Class I and Class II posts) Recruitment (Amendment) Rules, 1976 (G.S.R. 1786 of 1976).  
 11 The Andaman Forest Department (Class I and Class II Gazetted posts) Recruitment (Amendment) Rules, 1976 (G.S.R. 84 of 1976).  
 12 The Indo-Tibetan Border Police (Section Officer) Recruitment Rules, 1977 (G.S.R. 101 of 1977).  
 13 The Department of Agriculture [Deputy Director of Accounts (Fertilizer) and Accounts Officer (budget)] Recruitment Rules, 1976 (G.S.R. 191 of 1977).  
 14 The Directorate of Plant Protection, Quarantine and Storage (Deputy Director, Entomology) Recruitment Rules, 1977 (G.S.R. 193 of 1977).  
 15 The Post of New Tuticorin (Financial Adviser & Chief Accounts Officer, Accounts Officer and Subordinate Accounts Service Accountant) Recruitment Rules, 1977 (G.S.R. 387 of 1977).
- Ministry of Agriculture and Irrigation.  
 (Deptt. of Agriculture)  
 Ministry of Agriculture and Irrigation.  
 (Deptt. of Agriculture)  
 Ministry of Supply and Rehabilitation.  
 (Deptt. of Rehabilitation)  
 Department of Personnel & Administrative Reforms.  
 Ministry of Tourism and Civil Aviation.  
 Ministry of Agriculture and Irrigation.  
 (Deptt. of Agriculture)  
 Ministry of Home Affairs.  
 Ministry of Agriculture and Irrigation.  
 (Deptt. of Agriculture)  
 Ministry of Agriculture and Irrigation.  
 (Deptt. of Agriculture)  
 Ministry of Shipping and Transport.  
 (Transport Wing)
- The Ministry have no objection to amending Schedule of the Rules.  
 The Ministry have amended Schedule of the Rules.  
 The Department have no objection to amending Schedule of the Rules.  
 The Ministry have agreed to amend Schedule of the Rules.  
 The Ministry have amended Schedule of the Rules.  
 The Ministry have amended Schedule of the Rules.  
 The Ministry have amended Schedule of the Rules.  
 The Ministry have amended Schedule of the Rules.

- 16 The Bureau of Industrial Costs and Prices (Group 'A' and Group 'B' posts) Recruitment Rules, 1977 (G.S.R. 416 of 1977). Ministry of Industry. (Deptt. of Industrial Development).
- 17 The Ministry of Chemicals and Fertilizers Junior Technical Officer (Drugs) Recruitment Rules, 1976 (G.S.R. 454 of 1977). Ministry of Chemicals and Fertilizers.
- 18 The Delhi Milk Scheme (Class I and Class II Posts) Recruitment (Amendment) Rules, 1977 (G.S.R. 494 of 1977). Ministry of Agriculture, and Irrigation. (Department of Agriculture)
- 19 The National Test House, Calcutta, Director Recruitment Rules, 1977 (G.S.R. 570 of 1977). Ministry of Works and Housing.
- 20 The Office of the Registrar General and ex-officio Census Commissioner (Map Officer) Class I Recruitment (Amendment) Rules, 1977 (G.S.R. 661 of 1977). Ministry of Home Affairs.
- 21 The Department of Agriculture, Deputy Commissioner (Fertilizer) Recruitment Rules, 1977 (G.S.R. 805 of 1977). Ministry of Agriculture and Irrigation (Deptt. of Agriculture)
- 22 The Films Division (Class I and Class II posts) Recruitment (Second Amendment) Rules, 1977 (G.S.R. 932 of 1977). Ministry of Information and Broadcasting.
- 23 The Department of Lighthouses and Lightships (Recruitment to Group 'A' and Group 'B' Casetted Technical posts) Rules, 1977 (G.S.R. 996 of 1977). (Transport Wing) Ministry of Shipping and Transport.
- 24 (i) The Civilian Casetted Officer (Equipment) Recruitment (Amendment) Rules, 1977 (S.R.O. 50 of 1977). Ministry of Defence.  
(ii) The Civilian Staff Officer (Equipment) Recruitment (Amendment) Rules, 1977 (S.R.O. 51 of 1977). Ministry of Defence.
- 25 The Ministry of Defence (Officer on Special Duty) Recruitment Rules, 1977 (S.R.O. 168 of 1977). Ministry of Defence.

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(1)	(2)	(3)	(4)
26	The Corps of Signals (Group 'A' and Group 'B' Posts of Instructors) Recruitment Rules, 1977 (S.R.O. 179 of 1977).	Ministry of Defence.	The Ministry have no objection to amending Schedule of the Rules.
27	The National Sugar Institute (Class I and Class II Posts) Recruitment (Amendment) Rules, 1976 (G.S.R. 79 of 1977).	Ministry of Agriculture and Irrigation (Deptt. of Food).	The Ministry have agreed to amend Schedule of the Rules.
28	The Department of Official Language (Assistant Director (Hindi Typewriting and Hindi Stenography) Recruitment Rules, 1975 (G.S.R. 2789 of 1975).	Ministry of Home Affairs. (Deptt. of Official Language).	The Ministry have amended Schedule of the Rules.
29	The Delhi Milk Scheme (Financial Adviser and Chief Accounts Officer) Recruitment Rules, 1977 (G.S.R. 619 of 1977).	Ministry of Agriculture and Irrigation. (Deptt. of Agriculture)	Do.

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**MINUTES**

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## APPENDIX III

### XXXIII

#### MINUTES OF THE THIRTY-THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) (1978-79)

The Committee met on Tuesday, the 27th February, 1979 from 15.30 to 16.00 hours.

#### PRESENT

Shri Somnath Chatterjee—*Chairman*

#### MEMBERS

2. Kumari Maniben Vallabhbbhai Patel
3. Shri G. S. Reddi
4. Shri P. A. Sangma
5. Shri Sachindralal Singha

#### SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

\* \* \* \* \*

4. The Committee then considered Memoranda Nos. 201 to 210 on the following subjects:—

No.	Memorandum No.	Subject
(viii)	208	Implementation of recommendation contained in para 57 of the Ninth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the Sugarcane (Control) Amendment Order, 1975 (G.S.R. 492-E of 1975).

\*Omitted portions of the Minutes are not covered by the Report.

\* \* \* \* \*

(viii) Implementation of recommendation contained in para 57 of Ninth Report of the Committee on Subordinate Legislation, (Sixth Lok Sabha) regarding the Sugarcane (Control) Amendment Order, 1975 (G.S.R. 492-F of 1975) (Memorandum No. 208).

15. The Committee considered the above Memorandum at some length and decided to hear the oral evidence of the representatives of the Ministry of Agriculture and Irrigation (Department of Food) in the matter.

\* \* \* \* \*

*The Committee then adjourned*



MINUTES OF THE THIRTY-SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION  
(SIXTH LOK SABHA) (1978-79)

The Committee met on Thursday, the 19th April, 1979 from 15.30 to 16.00 hours.

## PRESENT

Shri Somnath Chatterjee—*Chairman*

## MEMBERS

2. Chaudhary Hari Ram Makkasar Godara
3. Kumari Maniben Vallabhbhai Patel
4. Shri P. A. Sangma
5. Shri Sachindralal Singha
6. Shri Krishnarao Thakur

## SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer*

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5. The Committee then considered Memoranda Nos. 226 to 230 on the following subjects:—

S. No.	Memorandum No.	Subject
1.	226	The Delhi Milk Scheme [First Personal Assistant to Chairman, Delhi Milk Scheme, Senior Stenographers (including the Second Personal Assistant to Chairman) and Junior Stenographers] Recruitment Rules, 1976 (G.S.R. 1280 of 1976).
2.	227	(i) The Central Government Health Scheme (Bangalore) Rules, 1976 (S.O. 992 of 1976).

\*Omitted portions of the Minutes are not covered by the Report.

S.No.	Memorandum	Subject
		(ii) The Central Government Health Scheme (Hyderabad) Rules, 1976 (S.O. 994 of 1976).
3.	228	Cases of inconsistency occurring in rule 5 and in entries of column 13 of the schedule of certain recruitment rules.
4.	229	The Kerala Small Industries and Development Promotion Corporation Amalgamation Order, 1977 (S.O. 241-E of 1977).
5.	230	Laying of Notifications issued under the Customs and Central Excises Acts.

- (i) *The Delhi Milk Scheme [First Personal Assistant to Chairman, Delhi Milk Scheme, Senior Stenographers (including the Second Personal Assistant to Chairman) and Junior Stenographers] Recruitment Rules, 1976 (G.S.R. 1280 of 1976)—(Memorandum No. 226).*

6. The Committee considered above Memorandum and noted that on being pointed out, the Ministry of Agriculture and Irrigation (Department of Agriculture) had omitted rule 8 of the Delhi Milk Scheme, [First Personal Assistant to Chairman, Delhi Milk Scheme, Senior Stenographers (including the Second Personal Assistant to Chairman) and Junior Stenographers] Recruitment Rules, 1976 which was vague.

- (ii) (a) *The Central Government Health Scheme (Bangalore) Rules, 1976 (S.O. 994 of 1976);*

- (b) *The Central Government Health Scheme (Hyderabad) Rules, 1976 (S.O. 994 of 1976)—(Memorandum No. 227).*

7. The Committee considered above Memorandum and noted that draft model set of statutory rules defining the scope of the Central Government Health Scheme had since been prepared by the Ministry. The Committee desired the Ministry of Health and Family Welfare (Department of Health) to notify the model rules at an early date and delete rule 2 from the Central Government Health Scheme (Bangalore) Rules, 1976 and the Central Government Health

Scheme (Hyderabad) Rules, 1976 which provided for the issuing of instructions by the executive to override the statutory rules,

- (iii) *Cases of inconsistency occurring in rule 5 and in entries of column 13 of the schedule of certain recruitment rules.*  
—(Memorandum No. 228).

8. The Committee considered above Memorandum and noted that on being pointed out, the Ministries/Departments concerned had agreed to amend rule 5 of the rules given in Annexure I to provide for consultation with Union Public Service Commission before relaxing any of the provisions of the rules in respect of any class or category of persons. The Committee desired the Ministries/Departments concerned to notify the necessary amendments at an early date, if not already done.

- (iv) *The Kerala Small Industries and Development Promotion Corporation Amalgamation Order, 1977 (S.O. 241-E of 1977)*—(Memorandum No. 229).

(A)

9. The Committee considered the above Memorandum and noted the assurance given by the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) regarding sending by a transferee company to every person whose name is entered immediately before the appointed day in the Register of shareholders in the transferor companies a notice, giving particulars as to the allotment of new shares and an allotment letter of new shares by registered post acknowledgement due. The Committee trust that the assurance would be duly complied with. The Committee also desired the Ministry that the fact of despatch of papers to the shareholders of the dissolved company regarding allotment of shares in the new company should be published in all important Newspapers to enable a person not getting to same to contact the company to obtain the papers.

10. The Committee were satisfied with the reply of the Ministry of Law (Department of Company Affairs) regarding provision contained in para 11(b) of the order that it did not extinguish the rights of shareholders for going to courts. However, the Committee desired the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) to frame rules under Section 396 of the Companies Act, 1956, as had been decided by them, to provide for an authority to deal with representations received from shareholders in regard to determination of compensation.

(v) *Laying Notifications issued under the Customs and Central Excise Acts.—(Memorandum No. 230).*

11. The Committee considered the above Memorandum and appreciated the stress and strain which the Ministry of Finance (Department of Revenue had to undergo while following the existing procedure for laying 'sensitive' notifications before Parliament more so when such notifications were sent to the Press for publication in the Gazette after 6 p.m. in addition to other Parliamentary work as also maintaining of utmost secrecy in the matter.

12. The Committee found it difficult to accede to the request of the Ministry for two clear days grace time for supply of cyclostyled copies of the notifications issued after 6 p.m. for circulation to Members. The Committee felt that the question was more of Parliamentary propriety than of the administrative convenience of the Ministry. Keeping in view the time honoured and well established convention that when Parliament was in session all important announcements should be made before it rather than anywhere else, the only relaxation possible could be that the Ministry should send the requisite number of copies of such notifications by mid-night of the day on which they were sent for publication to the Press with prior intimation to the Lok Sabha Secretariat/Rajya Sabha Secretariat to enable their circulation to Members the same night along with Parliamentary Papers. In this arrangement the Ministry would get more time to furnish the requisite number of copies of the notifications.

13. The Committee therefore, decided that in the case of the 'sensitive' notifications sent to the Press for publication after 6 p.m., two copies of notifications with a letter to the Speaker of Lok Sabha and Chairman of Rajya Sabha might be sent immediately informing them of the Minister's intention to lay the notification on the Table the following day and the remaining 250 Hindi and 550 English copies may be sent to Lok Sabha Secretariat/Rajya Sabha Secretariat by mid night—same day for circulation to the Members for their information before it was published in the Press for information of the general public and in other respects the procedure approved by the Committee in paras 5 to 9 of their Twelfth Report (Fifth Lok Sabha) be followed.

*The Committee then adjourned.*

**ANNEXURE I**

**(Vide para 8 of the Minutes)**

**(dated 19th April, 1979)**

- 1. The Lal Bahadur Shastri National Academy of Administration, Research Assistant (Statistics/Mathematics) Recruitment Rules, 1975 (G.S.R. 2664 of 1975).**
- 2. The All India Soil and Land Use Survey Organisation (Senior Technical Assistant) Recruitment Rules, 1975 (G.S.R. 2439 of 1975).**
- 3. The Department of Company Affairs (Joint Director) Recruitment Rules, 1975 ((G.S.R. 2638 of 1975).**
- 4. The Defence Services Staff College, Wellington, (Group 'A' Post) Senior Civilian Staff Officer (Coordination) Recruitment Rules, 1977 (S.R.O. of 1977).**
- 5. The Ministry of Works and Housing Accounts Officer (Lands) Recruitment Rules, 1977 (G.S.R. 860 of 1977).**
- 6. The Indian Grain Storage Institute (Superintendent) Recruitment Rules, 1977 (G.S.R. 931 of 1977).**
- 7. The Department of Agriculture [Assistant Directors (Fertiliser Movement)] Recruitment Rules, 1977 (G.S.R. 490 of 1977).**
- 8. The Director of Printing (Junior Analyst) Recruitment Rules, 1977 (G.S.R. 1096 of 1977).**
- 9. The National Institute of Social Defence, Department of Social Welfare, Head of Division (Trading) Recruitment Rules, 1977 (G.S.R. 1085 of 1977).**

## XXXVII

### MINUTES OF THE THIRTY-SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) (1978-79).

The Committee met on Wednesday, the 9th May, 1979 from 15.30 to 16.00 hours.

#### PRESENT

Shri Somnath Chatterjee—*Chairman*

#### MEMBERS

2. Shri T. S. Negi
3. Kumari Maniben Vallabhbai Patel
4. Shri G. S. Reddi
5. Shri P. A. Sangma
6. Shri Sachindralal Singha

#### WITNESSES

I. Representatives of the Ministry of Agriculture and Irrigation (Department of Food)

1. Shri R. Balasubramanian, Secretary
2. Shri C. N. Raghavan, Joint Secretary (Sugar)
3. Shri A. Bharat, Deputy Secretary (Sugar)

II. Representative of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs)

1. Shri P. B. Venkatasubramanian, Secretary.

III. Representative of the Ministry of Law, Justice and Company Affairs (Legislative Department)

1. Shri R. V. S. Peri Sastri, Secretary.

#### SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee heard oral evidence of the representatives of the Ministry of Agriculture and Irrigation (Department of Food) in

regard to the Sugarcane (Control) Amendment Order, 1975 (G.S.R. 492-E of 1975).

3. Explaining the difficulties which the Department of Food envisages in implementing the recommendation of the Committee contained in para 57 of their Ninth Report (Sixth Lok Sabha) the Secretary of the Department of Food stated that as a matter of policy there is no difference of opinion. Their opinion differs only with regard to the procedure. It has been provided in proviso to sub-clause (7) of Clause 5A of the Order that any sugarcane grower who supplies less than 85 per cent of the agreed quantity of sugarcane, shall be entitled to additional payment under the Bhargawa sharing formula provided that he has not been subjected to any penalty under the Central or State Acts for making lower supplies. Explaining the reason as to why they find it difficult to make the proviso explicit by indicating the facts for not supplying agreed quantity of sugarcane in the Order itself, the representative stated that indication of these facts would probably lead to more difficulties for the producer. When the producer supplies less than 85 per cent of the agreed quantity, under the State Orders the competent authority, at the instance of the mill, would make an enquiry to find out why the supply has been less than 85 per cent and if it has not been due to reasons beyond the control of the grower, then that authority has the right to impose penalty on him.

4. The Secretary of the Department of Food further stated that acceptance of the Committee's recommendation would necessitate second inquiry. As things stand, once the first inquiry is over or even if the inquiry is not made, if the mill does not complain, no penalty is levied and the cultivator automatically becomes entitled to additional payment. If proviso is made explicit, the mechanism for conducting second inquiry to find out whether the short supply was due to the reasons beyond the control of the producer may be necessary.

5. When it was pointed out that the words "may lead to second inquiry" are ambiguous, the Secretary of the Ministry of Law (Legislative Department) stated that these words have been used in view of several rules, orders and regulations of State Governments on the subject.

6. When asked whether all the State Governments have framed Orders/Rules empowering a competent authority to levy penalty on a grower if the shortfall in the supply of sugarcane had been due to reasons beyond his control, the Secretary of Department of Food promised to furnish the detailed information by 14th May, 1979.

7. In reply to a question as to why they consider that inquiry must necessarily be made by the Central Government when the existing provision says that it can be by the State or the Centre, the Secretary, Ministry of Law (Legislative Department) stated that they could not use the State mechanism for second inquiry. That authority will be making the inquiry at the earlier stage and second inquiry will come at a later stage. The enquiry at earlier stage being near to the point of event, it would be more fruitful if it is held by the local authorities because it would be easier for them to verify drought and floods, etc. prevailing in the locality. Secondly, conditions vary from State to State and even from area to area and whatever mechanism has been provided in the local laws with reference to the locality would be better suited to find out whether the failure has been for valid reasons having regard to the area in which the failure occurred.

8. When it was pointed out to the witnesses that the point now being emphasised by them for not implementing the recommendation of the Committee had not been properly submitted by the Ministry to the Committee and that on the basis of their conflicting replies at different times the Committee had arrived at certain conclusions, the Secretary of the Department of Food replied that their earlier reply was not properly drafted to convey clearly and exactly what they wanted to convey.

9. When it was pointed out that the intention of the Committee is that the provision of additional inquiry should be made specific in the Order, the Secretary of the Department of Food stated that they would do that.

*(The witnesses then withdrew)*

10. The Committee then considered Memoranda Nos. 231 to 235 on the following subjects:—

S. No.	Memo. No.	Subject
1.	231	The Territorial Army (Amendment) Rules, 1977 (S.R.O. 304 of 1977).
2.	232	The Major Port of New Tuticorin Rules, 1977 (G.S.R. 499 of 1977).



1	2	3
3.	233	The Civilians in Defence Services (Revised) Sixth Amendment Rules, 1977 (S.R.O. 254 of 1977).
4.	234	Indication of incorrect entry in Column 13 of the schedule appended to Recruitment Rules regarding circumstances in which Union Public Service Commission is to be consulted in making recruitment.
5.	235	Implementation of recommendation contained in para 29 of the Ninth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the Tobacco Board Rules, 1976 (G.S.R. 1-E of 1976).

(i) *The Territorial Army (Amendment) Rules, 1977* (S.R.O. 304 of 1977)—(Memorandum No. 231).

11. The Committee considered the above Memorandum and were unhappy to note that the Ministry of Defence had failed to realise the importance of incorporating laying provision in the Territorial Army Act. Instead of carrying out the direction of the Committee expeditiously, the Ministry had given a perfunctory reply of administrative difficulties. The question here is more of propriety than of administrative convenience of the Ministry. The laying provision in the Acts confers on Parliament a right to amend, modify or even annul the Orders framed in pursuance of the powers delegated under those Acts. Non-incorporation of the laying provision in the Acts resulted in denial of such a right to Parliament.

12. The Committee, therefore, desired the Ministry to bring forward necessary amendment to the Territorial Army Act to incorporate therein the 'laying provision' at their earliest but in no case later than the Autumn Session, 1979.

(ii) *The Major Port of New Tuticorin Rules, 1977* (G.S.R. 499 of 1977)—(Memorandum No. 232).

(A)

13. The Committee considered the above Memorandum and noted with satisfaction that on being pointed out, the Ministry of Shipping and Transport (Transport Wing) had agreed to provide

for issue of a show cause notice before cancellation of licence under sub-rules (2) and (3) of Rule 62 of the Major Port of New Tuticorin Rules, 1977.

14. The Committee accepted Ministry's contention that laying down a maximum time-limit for suspension of a licence was not desirable.

(B)

15. The Committee considered the above Memorandum and noted that the Ministry of Shipping and Transport (Transport Wing) had agreed to amend rule 73(6) so as to provide for recording of reasons in writing before any exemption was granted. The Committee approved the proposed amendment and desire the Ministry to notify the same expeditiously.

(iii) *The Civilians in Defence Services (Revised) Sixth Amendment Rules, 1977 —(S.R.O. 254 of 1977)—(Memorandum No. 233)*

16. The Committee considered the above Memorandum and deprecated the failure on the part of the Ministry of Defence (Department of Defence Production) to send pertinent reply to the specific issue raised by the Committee in spite of repeated reminders. Failure to furnish replies to the points raised by the Committee not only hampers the work of the Committee but also result in unnecessary prolongation of the infirmities on the Rules. The Committee desired the Ministry to issue the necessary amendment to the Explanatory Memorandum appended to the Civilians in Defence Services (Revised) Sixth Amendment Rules, 1977 stating that nobody would be adversely affected as a result of retrospective effect given thereto, if not already done.

(iv) *Indication of incorrect entry in Column 13 of the Schedule appended to Recruitment Rules regarding circumstances in which Union Public Service Commission is to be consulted in making recruitment— (Memorandum No. 234).*

17. The Committee considered the above Memorandum and desired the Ministries/Departments concerned to issue the necessary amendment to entry in Column 13 of the Schedule to their respective rules to incorporate therein the circumstances in which Union Public Service Commission was to be consulted. The Committee also desired the Department of Personnel and Administrative Reforms to issue necessary instructions to all Ministries/ Departments in this connection so that this infirmity of the rules might not continue any further.

(v) *Implementation of recommendation contained in para 29 of the Ninth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the Tobacco Board Rules, 1976 (G.S.R. 1-E of 1976)—(Memorandum No. 235).*

18. The Committee considered the above Memorandum and noted that the Ministry of Commerce had set up an Expert Group on Tobacco on the 15th July, 1978 to examine the need for amending the Tobacco Board Act, 1975. The Expert Group was asked to submit their Report within a period of Sixth months. After the receipt of the Report of Expert Group, the Ministry wanted a further period of 6 to 8 months for introducing a comprehensive Bill to amend the Tobacco Board Act. The Ministry further intimated that the amendment recommended by the Committee would be incorporated in that Bill. From the reply of the Ministry, the Committee found that the Ministry might not be able to introduce the Bill to amend the Tobacco Board Act before July-August, 1979. The Committee further noted that in a similar case regarding the Oil Industry (Development) Rules, 1975, the Ministry of Petroleum and Chemicals had agreed to amend the rules by deleting the provision regarding waiving of recoveries and had also issued guidelines regarding writing off losses.

19. The Committee desired the Ministry of Commerce either to amend the Tobacco Board Act, at the latest by the Monsoon session, 1979, or in the alternative the rules in question might be amended on the lines of the Oil Industry (Development) Rules, 1975, to implement the recommendation of the Committee. The Committee also desired the Ministry to take necessary action at their earliest so that the operation of the impugned rule might not continue any further.

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*The Committee then adjourned.*

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\*\*\*Omitted portions of the Minutes are not covered by the Report.

## XXXVIII

### MINUTES OF THE THIRTY-EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) (1978-79)

The Committee met on Wednesday, the 16th May, 1979 from 15.30 to 16 00 hours.

#### PRESENT

Shri Somnath Chatterjee—*Chairman*

#### MEMBERS

2. Shri Durga Chand
3. Shri Ram Sewak Hazari
4. Shri B. K. Nair
5. Shri T. S. Negi
6. Kumari Maniben Vallabhbhai Patel
7. Shri G. S. Reddi
8. Shri P. A. Sangma
9. Shri Madan Lal Shukla
10. Shri Sachindralal Singha

#### SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee considered their draft Twenty-first Report and adopted it.

3. The Committee authorised the Chairman and, in his absence, Kumari Maniben Vallabhbhai Patel to present the Twenty-first Report to the House on their behalf on the 17th May, 1979.

4. The Chairman apprised Members of the quantum of work done by the Committee during their tenure. He also mentioned that due to keen interest shown by the Members and with their cooperation, the Committee could wipe out almost all the arrears of work for the period 1970—75.

5. The Chairman also expressed his appreciation of the hard work done by the Officers and Staff of the Secretariat of the Committee and stated that but for their dedicated work and unstinted cooperation, it would not have been possible for the Committee to discharge its functions.

6. Members of the Committee expressed their thanks to the Chairman for his able guidance and stewardship of the Committee without which it could not have been able to do so much work.

The Committee then adjourned.