

COMMITTEE ON SUBORDINATE LEGISLATION

(SIXTH LOK SABHA)

THIRTEENTH REPORT

(Presented on the 29th November, 1978)



**LOK SABHA SECRETARIAT
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Corrigenda to the Thirteenth Report
of the Committee on Subordinate
Legislation (Sixth Lok Sabha)
(Presented to the House on the
29th November, 1978).

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION**

(1978-79)

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14. Shri Krishnarao Thakur
15. Shri C. N. Visvanathan

SECRETARIAT

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

REPORT

I

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee at their sittings held on the 17th May, 1976 and 23rd September and 4th October, 1978.

3. The Committee considered and adopted this Report at their sitting held on the 18th November, 1978. The Minutes of the sittings, which form part of the Report, are appended to it.

4. A statement showing the summary of recommendations/observations of the Committee is also appended to the Report.

II

(i) *The Shipping Development Fund Committee (General) Amendment Rules, 1977 (G.S.R. 389 of 1977); and*

(ii) *The Shipping Development Fund Committee (General) Amendment Rules, 1977 (G.S.R. 562 of 1977).*

5. The Shipping Development Fund Committee (General) Amendment Rules, 1977 (G.S.R. 389 of 1977) and the Shipping Development Fund Committee (General) Amendment Rules, 1977 (G.S.R. 562 of 1977) were published in the Gazette of India dated the 19th March, 1977 and the 30th April, 1977 respectively. No serial number of the amendment had been given in the short titles of the two rules which were issued in the year 1977.

6. Attention of the Ministry of Shipping and Transport (Transport Wing) was invited to the recommendation of the Committee on Subordinate Legislation contained in para 44 of their Third Report (First Lok Sabha) and reiterated in subsequent Reports that sets of amendments to any 'order' or 'rule' issued from time to time in a year should be serially numbered and the short title to each amendment 'order' or 'rule' should clearly show the relevant serial number. They were requested to state the reasons for not giving serial number of the amendment in the above two rules.

7. The Ministry of Shipping and Transport (Transport Wing), in their reply dated the 13th/14th July, 1978 have stated as under:—

“.....the points raised in O.M. of even number dated 7th February, 1978 have been examined in consultation with the Ministry of Law. As G.S.R. 389 was the first amendment published in 1977, this Ministry have been advised that it need not be indicated as first amendment. However, in respect of G.S.R. 562 dated 30th April, 1977 we have since issued a corrigendum to amend its title to read as Shipping Development Fund Committee (General) (Second Amendment) Rules, 1977.....”

8. The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have since issued a corrigendum amending the short title of the latter notification published under G.S.R. 562 to read as the Shipping Development Fund Committee (General) (Second Amendment) Rules, 1977. The Committee, however, note with concern that whereas the Ministry have rectified the error by inserting the relevant serial number of the amendment in its short title, they have not cared to explain to the Committee the reasons for the lapse in not complying with the recommendation of the Committee that sets of amendments to any 'Order' or 'Rule' issued from time to time in a year should be serially numbered and that relevant number should be shown in its short title for purposes of convenient reference and easy location by the public. The Committee had made this recommendation as far back as in their Third Report (First Lok Sabha) and reiterated in their several subsequent Reports. The Committee desire the Ministry to take due notice of the Committee's recommendations and comply with them. The Committee also desire the Ministry to devise suitable procedure to avoid recurrence of such lapses in future.

III

Provision for Laying of Schemes framed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

9. The Labour Provident Fund Laws (Amendment) Bill*, 1976 (as introduced in Lok Sabha on the 25th August, 1976) *inter alia* sought to make certain amendments in the Coal Mines Provident Fund, Family Pension and Bonus Schemes Act, 1948 and the Em-

*The Bill was passed by Lok Sabha on 26-8-76 and by Rajya Sabha on 30-8-76 and assented to by the President on 7-9-1976.

ployees' Provident Funds and Family Pension Fund Act, 1952. On scrutiny of the Bill, it was revealed that there was no provision in the Employees Provident Funds and Family Pension Fund Act, 1952 for laying of the Schemes framed thereunder by the Central Government before Parliament whereas section 7A of the Coal Mines Provident Fund, Family Pension and Bonus Schemes Act, 1948 did provide for laying of the schemes framed thereunder by the Central Government before Parliament. Sub-section (1) of section 7 of the 1952 Act empowers the Central Government to add to, amend or vary the scheme or the Family Pension Schemes, as the case may be. Sub-section (2) of section 7 thereof provides for laying of all such notifications before Parliament, as soon as may be, after they are issued. Even in this case, the provision did not require to lay the notifications for a period of 30 days, as is being normally done in cases where power of sub-delegation is conferred on the Central Government.

10. The matter was referred to the Ministries of Labour and Law, Justice and Company Affairs (Legislative Department) on the 2nd September, 1976 and their attention in particular was invited to the recommendation of the Committee on Subordinate Legislation made in para 37 of their Third Report (First Lok Sabha) that in all future Bills which may seek to amend earlier Acts giving power to make rules, regulations, etc., suitable provisions to lay them on the Table should be included. The recommendation was reiterated in paras 46—50 of their Ninth Report (Fifth Lok Sabha) and the Ministry of Law, Justice and Company Affairs (Legislative Department), in particular, were asked to ensure that the laying provision, as approved by the Committee in paras 33-34 of their Second Report (Fifth Lok Sabha), was included in future in all original as well as amending Bills. Even though the Employees' Provident Fund Act, 1952 had been amended several times after the above Reports were presented to the House, the requisite provision had not been included in the Act. The Ministries were asked to state the reasons for not complying with the aforesaid recommendations of the Committee in the present case and whether they had any objection to making an amendment to the said Bill on the lines suggested.

11. In their reply dated the 26th October, 1976, the Ministry of Law, Justice and Company Affairs (Legislative Department) have *inter alia* stated that they have advised the Ministry of Labour to take steps to include provision for the laying of the Schemes framed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 when the Act is amended next.

12. Subsequently, the Ministry of Labour, in their reply dated the 9th November, 1976, stated as under:—

“...the recommendations of the Committee on Subordinate Legislation in the 3rd and 9th Reports related to the laying of Rules, Regulations, Bye-Laws, etc., and that there was no mention therein of any Scheme. The Report also did not make any specific recommendations regarding the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, or the Schemes framed thereunder. Apart from this, a number of amendments to the Scheme have been made during these years and were placed on the Table of the two Houses of Parliament. The fact that no objections have been raised till now, would appear to indicate that presumably the Committee on Subordinate Legislation did not intend to cover the Schemes made under the Act. Since, however, the point has now been raised, we would like to state that the Labour Ministry has no objection to incorporate a provision in the Act requiring the laying of Schemes/framed thereunder before the Houses of Parliament. But by the time the O.M. dated 2-9-1976 was received by us, the Bill as passed by the Lok Sabha had been passed also by the Rajya Sabha on 30-8-1976 and hence it was not possible to amend the Bill as suggested in the O.M. Suitable provision will, therefore, be made for this purpose when the Act is amended next.”

13. The Committee note that, on being pointed out, the Ministry of Labour have agreed to make suitable provision in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for laying of Schemes framed thereunder, before Parliament when the Act is next amended. The Committee, however, feel that the matter should not be kept pending indefinitely and desire the Ministry to bring the amending legislation to the necessary effect before Parliament at an early date but not later than three months after the date of presentation of this Report to the House.

IV

The Department of Family Welfare (Proof Reader) Recruitment (Amendment) Rules, 1976 (G.S.R. 925 of 1977).

14. The Department of Family Welfare (Proof Reader) Recruitment (Amendment) Rules, 1976 were published in the Gazette of India dated the 25th June, 1977 but in the short title, the year of the rules has been shown as 1976.

15. The Ministry of Health and Family Welfare (Department of Health) who were asked to state the reasons for giving wrong year in the short title and whether they had since issued any corrigendum in this regard, have stated as follows:—

“x x x the use of the letters ‘1976’ instead of ‘1977’ in the short title was due to oversight. The patent error is being corrected by issue of a corrigendum, a copy of which will be sent to the Lok Sabha Secretariat as soon as it is issued.”

16. The Committee note with satisfaction that, on being pointed out, the Ministry of Health and Family Welfare (Department of Health) have since amended the Department of Family Welfare (Proof Reader) Recruitment (Amendment) Rules, 1976 (G.S.R. 925 of 1977) so as to substitute ‘1977’ for ‘1976’ in its short title vide G.S.R. 291 published in the Gazette of India dated the 25th February, 1978.

17. The Committee, however, cannot help expressing their surprise that the Department of Health were not aware of the printing error in the rules till it was brought to their notice by the Committee. The Committee have repeatedly emphasised that as soon as the rules are published in the Gazette, the Ministries/Departments concerned should take immediate steps to examine them whether they have been correctly printed and if necessary, to issue corrigendum thereto suo moto without waiting for the Committee to point it out.

18. The Committee desire the Ministry to be careful in future in this regard and devise suitable procedure to ensure that such mistakes are not repeated.

V

The Department of Family Welfare (Deputy Nursing Adviser) Recruitment (Amendment) Rules, 1977—(G.S.R. 924 of 1977).

19. The Department of Family Welfare (Deputy Nursing Adviser) Recruitment (Amendment) Rules, 1977 were published in the Gazette dated 16th July, 1977 but were given retrospective effect from 1st January, 1973. Explanatory Note stating the circumstances in which these rules had to be given retrospective effect has not been published alongwith the above rules as required by the recommendation of the Committee on Subordinate Legislation made in para 10 of their Second Report (Fourth Lok Sabha).

20. The Ministry of Health and Family Welfare (Department of Family Welfare) who were asked to state the reasons for not publishing the requisite Explanatory Note alongwith the aforesaid rules, have, in their reply dated 6-1-78 stated as under:—

“x x x x the required Explanatory Memorandum was prepared at the time the amendment rules were processed. It was also shown to the Ministry of Law. However, at the final stage of notifying the rules, the Memorandum was not appended due to an oversight. The Memorandum is now being notified and a copy of the Notification will be sent to the Lok Sabha Secretariat at the earliest.”

21. The Committee are not convinced with the explanation given by the Ministry of Health and Family Welfare (Department of Health) for not appending the explanatory note in regard to retrospective effect given to the Department of Family Welfare (Deputy Nursing Adviser) Recruitment (Amendment) Rules, 1977. This reflects utter carelessness on the part of the Ministry in acting upon the recommendations of the Committee in this regard. The Committee feel that even if the explanatory note had not been appended at the final stage due to oversight as stated by the Ministry, the omission could have been rectified immediately after it came to their notice. The Committee take a serious view of the lapse on the part of the Ministry and desire them to be careful in future.

22. The Committee further observe that in many cases the usual plea taken by the Ministries/Departments concerned in such matters is ‘oversight’ or ‘inadvertent omission’ etc. The Committee note with surprise that inspite of repeated recommendations of the Committee which were brought to the notice of all Ministries/Departments from time to time by the Department of Parliamentary Affairs or the co-ordinating Ministries, the Ministries/Departments concerned do not care to take adequate steps to ensure against recurrence of such lapses. The Committee desire the Department of Parliamentary Affairs to bring the observations of the Committee to the notice of all Ministries/Departments of Government impressing upon them once again the need of taking adequate steps so that such lapses do not recur.

VI

The Central Health Service (Amendment) Rules, 1977 (G.S.R. 1294 of 1977)

23. The Central Health Service (Amendment) Rules, 1977 which were published in the Gazette of India on 1-10-77 were given retros-

pective effect from 9-9-1966. The Explanatory Note in regard to retrospective effect was published along with the Rules.

24. The Ministry of Health and Family Welfare were asked to state the reasons for a time lag of over 11 years between the date of publication of the rules and the date from which they were given retrospective effect as mentioned in the Explanatory Note. In particular, the Ministry were asked to state the date when they received representations from the senior officers and the date when necessary action to amend the above rules was initiated by the Ministry.

25. In their reply dated 7th July, 1978, the Ministry have stated as under:—

“... a representation dated 30th January, 1971 from one of the Senior Officers was received in this Ministry on the 3rd February, 1971. The issue raised therein was applicable to other senior officers similarly placed. The whole matter bore wide legal implications including the desirability or otherwise of the amendment of the C.H.S. Rules and it had to be considered for a long time till 1974 in consultation with the then Department of Personnel in the Cabinet Secretariat, Ministry of Law and the Union Public Service Commission. The proposal to amend the C.H.S. Rules was initiated on the 4th March, 1973. The U.P.S.C. ultimately agreed on 31st December, 1974 to the proposal for amendment to C.H.S. Rules retrospectively from 9th September, 1966 in order to provide full relief to the affected officers. Further action to process the notification of the proposed amendment retrospectively got linked with the general proposals for the re-structuring of the Central Health Service which was then taken up on the basis of the recommendations of the Third Pay Commission and the question of incorporation of the proposed amendment in revised C.H.S. Rules after restructuring. It was, however, decided in 1977 to delink the matter from the case of restructuring of the Central Health Service and to notify the proposed amendments in the C.H.S. Rules retrospectively without waiting for the restructuring of the C.H.S. as it might take sufficient time for finalisation of the new C.H.S. after restructuring.”

26. The Committee are not convinced with the explanation given by the Ministry of Health and Family Welfare (Department of Health) for delay in the issue of amendment to the Central Health

Service Rules as a result of which there was a time lag of over 11 years between the date of publication of the amendment and the date from which the rules so amended have been given retrospective effect. The Committee are deeply distressed to note that an unduly long time of four years was taken by the Ministry in finalising the amendment in consultation with the Union Public Service Commission, Ministry of Law and the Department of Personnel. The Committee note that even after finalisation, the issue of amendment was further linked by the Ministry with the proposal for restructuring of the Central Health Service on the basis of recommendations of the Third Pay Commission causing more delay in notifying the amendment. The amendment was subsequently delinked in 1977 from the reorganisation of the Central Health Service and issued in October, 1977. This reflects a casual approach to the issue on the part of the Ministry particularly in view of the Committee's earlier recommendations made in paras 58 and 59 of their Seventh Report (Sixth Lok Sabha) in which attention of the Ministries/Departments of the Government of India had been drawn to the procedure laid down by the Ministry of Home Affairs in their Circular letter No. 20/3/67-Estt.(D) dated the 11th August, 1967 to avoid delays in finalising the Recruitment Rules. The Committee desire that the aforesaid recommendations be brought to the notice of all Ministries/Departments once again by the Department of Parliamentary Affairs.

27. The Committee feel that there was no reason for withholding the issue of Notification pending restructuring of the Central Health Service which had resulted in an avoidable delay of 3 years without any adequate grounds. The Committee stress that once a set of amendments to any rules are finalised, they should immediately be notified and not held over on the ground that some other impending amendments are under consideration at that time.

VII

The Bonded Labour System (Abolition) Rules, 1976 (G.S.R. 99-E of 1976).

28. Rules 3(2)(a) and 4(2)(a) of the Bonded Labour System (Abolition) Rules, 1976 provide that every member of a District Vigilance Committee or a Sub-Divisional Vigilance Committee may, by giving notice in writing to the authority which nominated him, resign his office and, on such resignation being accepted, shall be deemed to have vacated his Office.

29. The Committee on Subordinate Legislation (1975-76) at their sitting held on the 17th May, 1976 examined these rules and desired that the resignation of the members of District and Sub-Divisional Vigilance Committees might be made effective either from the date of its submission or from the date from which the member wants it to be effective or the resignation should be deemed to have been accepted on the expiry of certain notice period from the date of submission of resignation.

30. The Ministry of Labour to whom the matter was referred have proposed to amend the relevant rules as under:—

“Every member referred to in Sub-rule(1)—(a) may, be giving notice in writing of not less than 30 days to the authority which nominated him, resign his office and, on such resignation being accepted or on the expiry of the notice period of 30 days, whichever is earlier, shall be deemed to have vacated his office.”

31. The Committee note with satisfaction that, on being pointed out, the Ministry of Labour have agreed to amend Rules 3(2)(a) and 4(2)(a) of the Bonded Labour System (Abolition) Rules, 1976 to provide that a member of District or Sub-Divisional Vigilance Committee may resign his office by giving notice in writing of not less than 30 days to the authority which nominated him and he shall be deemed to have vacated his office either on the date of acceptance of his resignation or on the expiry of the period of notice whichever is earlier.

32. The Committee desire the Ministry to issue the proposed amendment to the rules at an early date.

VIII

The Indian Telegraph (Tenth Amendment) Rules, 1974 (G.S.R. 665-E of 1974)

33. Rule 416 of the Indian Telegraph Rules, 1951, as substituted by the Indian Telegraph (Tenth Amendment) Rules, 1974, reads as under:—

“416. *Powers of Telegraph Authority:* The Telegraph Authority may, if it considers it necessary to do so, refuse to comply with any application for a telephone or similar service or for alterations of any such existing service and may, after

giving the subscriber a notice in writing, stating the reasons for the withdrawal, withdraw either totally or partially any telephone or similar service provided under these rules; provided that in emergent cases such notice may be given to the subscriber within a period of seven days after the withdrawal has been effected."

34. In terms of the above rule, notice to the subscriber was to be given by the Telegraph Authority *after* withdrawal of the facility in emergent cases. It was felt that notice should always be given before a facility was withdrawn.

35. The Ministry of Communications (P&T Board) were requested to state the considerations for inserting the above proviso in Rule 416 *ibid* and also whether they had any objection to specifying in the rules, the nature of 'emergent cases' in which such a course could be resorted to.

36. In their reply dated the 4th June, 1976, the Ministry of Communications (D.G., P&T) have stated as under:—

"...the question of revision of ITR 416 has been examined in detail in consultation with the Ministry of Law. A copy of the revised draft Notification was furnished to the Rajya Sabha Secretariat, *vide* their O.M. No. RS-4/1/75-COM. I dated 10-1-76. This revised draft of ITR 416 has been seen by the Committee on Subordinate Legislation and the same is included in their 19th Report (pp. 48—50) presented to the Rajya Sabha on the 4th February, 1976. Further action is being taken by this Ministry to issue a Gazette Notification...."

37. Sub-rule (4) of revised Rule 416 dealing with refusal or withdrawal of telephone or similar service, as published under G.S.R. 933 in Gazette of India dated the 26th June, 1976, reads as under:—

"(4) Notwithstanding anything contained in sub-rule (3), where the Telegraph Authority is satisfied that any person is engaged in any smuggling activity or is acting in violation of any law relating to the conservation of the foreign exchange resources of the country or is acting prejudicial to the public safety and interest or the defence of India, Civil defence or internal security, the Telegraph Authority shall—

- (a) where such person is an applicant, refuse to grant any telephone connection or any similar service or to provide any alteration of any existing service; and
- (b) where such person is a subscriber, withdraw, either totally or partially, any telephone or similar service provided under these rules:

Provided that the Telegraph Authority shall, within seven days of taking action under this sub-rule, inform in writing the person concerned of the action taken, together with the reasons therefor."

38. In regard to the above sub-rule (4) of revised Rule 416, a reference was made to the Ministry on the 3rd October, 1977 enquiring whether they had any objection to provide in the Rules for affording an opportunity of making a representation by a subscriber who had been deprived of a telephone or similar service under this Rule after he had been intimated the reasons for the action taken against him. The Ministry were subsequently reminded to send their reply on the 2nd May and 3rd August, 1978. Nothing has been heard from them so far in regard thereto.

39. The Committee note that in terms of sub-rule (4) of the revised rule 416 of the Indian Telegraph Rules, 1951, the Telegraph Authority is empowered to refuse an application for or withdraw an existing telephone or similar service, without notice, from persons engaged in smuggling activity or acting in violation of any law relating to conservation of foreign exchange resources or acting prejudicially to public safety and interest etc. In such cases, the persons concerned are informed in writing within seven days of the action taken together with reasons therefor. In this connection the Committee also note the judgement of the Supreme Court in *Hukam Chand Versus Union of India* (AIR 1976 SC 789) wherein dealing with rule 422 of the Indian Telegraph Rules which also empowers the Divisional Engineer to disconnect the telephone connections of any subscriber in the event of emergency with or without notice, the Supreme Court had inter alia observed that minimal safeguard against arbitrary exercise of this drastic power under the rule is that the Divisional Engineer should be required to record reasons in writing in regard to his satisfaction for taking action which requirement is implicit in the rule.

40. On the analogy of the above ruling the Ministry of Communications were asked to amend Rule 416 of the Indian Telegraph Rules, 1951 so as to provide for recording of reasons in writing by the

Telegraph Authority before taking any action under sub-rule (4) thereof. As a further safeguard against arbitrary use of power under this rule, the Ministry were also asked to make a suitable provision in the rules for affording an opportunity of making a representation by a subscriber who had been deprived of a telephone or similar service after he had been intimated the reasons for the action taken against him. The Ministry, however, have not sent any reply so far to this point.

.. 41. The Committee take serious note of the fact that the Ministry of Communications had not furnished any reply to the communication sent to them by the Committee for eliciting further information in spite of reminders sent to them on 2nd May and 3rd August, 1978. The Committee impress upon the Ministry to be prompt in furnishing information sought by the Committee. In case the Ministry was not able to furnish the information asked for by the stipulated date, they should have asked for extension of time from the Committee giving the reasons for doing so.

42. The Committee now desire that the Ministry should issue amendments to the Order without any delay on the lines suggested by them in paras 39-40 above.

IX

- (i) *The Balmer Lawrie and Company Limited and Industrial Containers Limited Amalgamation Orders, 1976 (S.O.542 of 1976); and*
- (ii) *The Balmer Lawrie and Company Limited and Steel Containers Limited Amalgamation Orders, 1976 (S.O. 643-E of 1976).*

(A)

43. Paragraph 6 of the Balmer Lawrie and Company Limited and Industrial Containers Limited Amalgamation Order, 1976 provides as under:—

- “6. *Saving of legal proceedings*:—If, on the appointed day, there is pending any suit, arbitration appeal or other legal proceedings of whatever nature by or against Industrial Containers, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer to Balmer Lawrie of the undertaking of Industrial Containers or of anything contained in this Order, but the suit, arbitration, appeal or other proceedings may be

continued, prosecuted and enforced by or against Balmer Lawrie in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against Industrial Containers if this Order had not been made.”

Similar provision exists in paragraph 6 of the Balmer Lawrie and Company Limited and Steel Containers Limited Amalgamation Order, 1976.

44. It was felt that the provisions contained in the above para were substantive in nature for which express authority should flow from the parent Act *viz.*, the Companies Act, 1956.

45. The Ministry of Law, Justice and Company Affairs (Department of Company Affairs) with whom the matter was taken up on the 19th November, 1976, sent the following reply on the 7th December, 1976:—

“...Kind attention is invited to Clause (iii) of sub-section (1) of Section 394 of Companies Act, 1956, whereunder the High Court while approving a scheme of amalgamation of two or more companies is empowered to make suitable provision regarding legal proceedings already filed and pending against the transferor co. to be continued against the transferee co. after the scheme of amalgamation is approved. The powers of Court u/s 394 and the power of Central Government under Section 396 are analogous and the Central Government follows the same procedure as followed by Courts in approving the scheme of amalgamation. Besides it stands to reason that the right of those persons who have claims against the transferor co. should not be destroyed because the co. has been amalgamated with another co.”

46. The Committee are not satisfied with the reply of the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) that the powers of a High Court under Section 394 of the Companies Act and the power of the Central Government under Section 396 thereof are analogous and the Central Government follows the same procedure as followed by Courts in approving the Scheme of amalgamation. Section 394 relates to the power of the High Court to approve amalgamation schemes and Section 396 empowers the Central Government to issue amalgamation Orders. Whereas Clause (iii) of sub-section (1) of Section 394 empowers the High Court to make suitable provisions in the amalgamation scheme regarding legal proceedings pending against transferor

company to be continued against the transferee company after the Scheme of amalgamation is approved, there is no such provision in Section 396. As the provision regarding saving of legal proceedings is of a substantial nature, the Committee desire it necessary that there must be specific authority available in the Act empowering the Government to make such provisions in the Amalgamation Orders. The Committee, therefore, desire the Ministry to bring suitable legislation for amending the Companies Act in this regard at an early date.

47. Paragraph 14(b) of the Balmer Lawrie and Company Limited and Industrial Containers Limited Amalgamation Order, 1976 reads as under:—

“14. *Dissolution of Industrial Containers.*—subject to the other provisions of this Order, as from the appointed day:

* * * * *

(b) the right of every shareholder to or in respect of any share in Industrial Containers shall be extinguished and thereafter no such shareholder shall make, assert or take any claims or demands or proceedings in respect of any such share.”

Similar provision is made in paragraph 14(b) of the Balmer Lawrie and Company Limited and Steel Containers Limited Amalgamation Order, 1976.

48. It was felt that the above provisions being of a substantive nature, there should have been an express authority in the Companies Act, 1956 for making the same. The Ministry of Law, Justice and Company Affairs (Department of Company Affairs) with whom the matter was taken up, have replied as under:—

“...It is to be remembered that in a scheme of amalgamation, one company is amalgamated or merged with another co. and the legal effect of such a merger is that its corporate existence disappears. Its shareholders (members) are allotted certain number of shares in the new company in lieu of their shareholdings in the merged company *vide* Clause (ii) of sub-section 1 of Section 394. Clause (iv) of sub-section 1 of Section 394 Companies Act, 1956 specifically provides for the dissolution of the merged company and consequently its shareholders cannot have any right against the company which is going out of legal existence. This is a legal consequence that results in any

amalgamation otherwise it would be in-consistent with a scheme of amalgamation."

49. The Committee note that a provision similar to the provision in paragraph 14(b) of the Balmer Lawrie and Company Ltd. and Industrial Containers Limited Amalgamation Order, 1976 exists in the Indian Consortium for Power Projects Private Limited and the Bharat Heavy Electricals Limited Amalgamation Order, 1974. On the lines of the recommendations made in paras 42 and 43 of their Ninth Report (Sixth Lok Sabha) in regard to the latter Order, the Committee desire the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) to amend paragraph 14(b) of the Balmer Lawrie and Company Limited and Industrial Containers Limited as also the Balmer Lawrie and Company Ltd. and Steel Containers Limited Amalgamation Orders, 1976 last it gives an Steel Containers Limited impression of taking away the right of a shareholder to go to a Court of Law. The Committee further desire that apart from courts, there should be some sort of revisional or appellate authority for redressal of any grievance of a person who might feel aggrieved by any action taken under the Amalgamation Order. The Committee also desire that it should be examined whether this purpose can be achieved under the provisions of the existing law or an amendment of the parent law is necessary to provide for the same.

50. Sub-paragraph (4) of paragraph 7 of the Balmer Lawrie and Company Limited and Industrial Containers Limited Amalgamation Order, 1976 provides as under:

"(4) Balmer Lawrie shall cause a notice to be published in the Gazette of India and send by post to every holder of ordinary shares in Industrial Containers whose name is entered on the register of members of Industrial Containers on the date fixed by the Board of Directors of Balmer Lawrie under sub-clause (1), a notice giving particulars of the allotment of new shares and the disposal of fractional shares in the manner laid down in sub-clause (3) and an allotment letter for the new shares allotted as aforesaid."

Similar provision is made in sub-paragraph (4) of paragraph 7 of the Balmer Lawrie and Company Limited and Steel Containers Limited Amalgamation Order, 1976.

51. It was felt that the notice, being a vital importance to the shareholders of the dissolved companies, should be sent by Register-

ed post. The Ministry of Law, Justice and Company Affairs (Department of Company Affairs) were asked on the 19th November, 1976 to send their comments in the matter. Their reply dated the 7th December, 1976 reads as under:—

“...Kind attention is invited to Section 53, Companies Act, 1956 which provides for a specific method of serving of a document by the company on its members. U/s 2(15), Companies Act, ‘document’ includes an order also. U/s 53(2)(a) Companies Act, if any member desires that any communication should be sent to him under registered post, he has himself to give advance intimation to the Company that he desires such communication by Registered Post and also deposit a sum sufficient to defray the expenses of registered post. Moreover, if the number of shareholders is large it would be difficult to insist that Order should be sent by Registered Post. Under the Companies Act posting of the Order in the normal course is sufficient.”

52. The Committee note that under the provision of Section 53(2) (a) of the Companies Act, 1956, it is sufficient to send documents (including Orders) by Ordinary post. For getting his papers by Registered Post a member has to intimate the Company in advance and also deposit money with them to defray the expenses of doing so. The Committee, however, feel that it is necessary to ensure that the papers relating to allotment of shares in the new company reach the shareholders of the dissolved company. With this end in view the Committee desire that a provision should be made in the Amalgamation Orders for publication of a notice in all important newspapers about the fact of despatch of those papers to the shareholders so that a person not getting the same could contact the company and obtain the papers.

X

Implementation of Recommendations contained in Paras 41, 44 and 47 of the Second Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the Border Security Force (Subordinate Officers and under Officers) Promotion and Seniority Rules, 1957 (G.S.R. 419-E of 1975).

(A)

53. Rule 5(1) of the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 framed under the Border Security Force Act, 1968 (47 of 1968), provides as under:

"Pre-promotion Course: (1) Subject to the provisions of rule 21, every such member of the Force shall, before any promotion, be required to pass a pre-promotion Course referred to in sub-rule (3) or such other examinations as may be specified by the Director General, from time to time.

Provided that if the competent authority is satisfied that due to exigencies of service or other reasons, any such member is not able to pass the pre-promotion course, he may with the prior approval of the next superior authority, be promoted but he shall be required to pass the next available pre-promotion course failing which he may be reverted."

54. The Committee on Subordinate Legislation (1975-76), at their sitting held on the 14th November, 1975 examined the above rules and noticed, that sub-rule (1) of rule 5, *ibid*, empowers the Director General to specify from time to time 'such other examinations', in lieu of those laid down in sub-rule (3) of rule 5. They felt that in exercise of the powers conferred under sub-rule (1), the Director General could nullify the provisions of sub-rule (3). They were, therefore, of the opinion that any changes in examination should be prescribed through the rules.

55. The Ministry of Home Affairs to whom the matter was referred had stated that the intention in using the phrase "such other examinations" in rule 5(1) was to avoid wasteful expenditure and effort by not sending for lower training courses those members of the Border Security Force, who had already cleared advanced courses from some other particular schools or institutions.

56. After considering the reply of the Ministry, the Committee in para 41 of their Second Report (Sixth Lok Sabha) observed as under:

"The Committee note that the intention of the Ministry of Home Affairs in using the phrase 'such other examinations' in rule 5(1) is to avoid wasteful expenditure and effort by not sending for lower training courses those members of the Border Security Force, who have already cleared advanced courses from some other particular schools or institutions. The Committee feel that the above intention of the Ministry should be clearly spelt out in the rules and not left vague as to give an impression that the Director General could specify any examinations other than those laid down in sub-rule (3) of rule 5. The Committee desire the Ministry of Home Affairs to amend the rule in question suitably at an early date."

57. In their action taken note dated 21-3-1978 on the above observation of the Committee, the Ministry of Home Affairs have proposed to amend rule 5 (1) as under:—

“Subject to the provisions of rule-21, every such members of the force shall, before any promotion, be required to pass the pre-promotion course referred to in sub-rule (3) or such trade tests/courses examinations equivalent to the standard prescribed by the Army/Directorate of Co-ordination of Police Wireless for promotion of their personnel of equivalent rank.

Provided that if the competent authority is satisfied that due to exigencies of service or other reasons, any such member is not able to pass the pre-promotion Course or such trade tests/Courses/examination sprescribed by Army/Directorate of Coordination of Police Wireless for promotion of their personnel of equivalent rank, he may, with the prior approval of the next superior authority, be promoted but he shall be required to pass the next available Course or trade test/qualifying examination failing which he may be reverted.”

58. The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have agreed to amend Rule 5(1) of the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975.

59. The Committee approve the proposed amendment and desire the Ministry to issue it at an early date.

(B)

60. Rule 10(a) of the Border Security Force (Subordinate and Under Officers) Promotion and Seniority Rules, 1975, provides as under:

“Promotion to short-term vacancies.—

(a) Promotions to short-term vacancies may be made on an officiating basis if the exigencies of service so require.”

61. During the course of examination of above rules, the Committee felt that the period of short-term vacancies should be indicated in the rules, so that these are not continued for indefinite period.

62. The Ministry of Home Affairs to whom the matter was referred, agreed to the above suggestion. The Committee in para 44 of

their Second Report (Sixth Lok Sabha) desired the Ministry to issue necessary amendment to the rules at an early date.

63. In their action taken note dated 21-3-1978 the Ministry of Home Affairs have intimated that they propose to amend rule 10(a) as under:—

“Promotion to short-term vacancies which shall not ordinarily be for a period of *more than four months* may be made on an officiating basis if the exigencies of service so require.”

64. The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have agreed to amend Rule 10(a) of the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975.

65. The Committee approve the proposed amendment and desire the Ministry to issue the same at an early date.

(C)

66. Rule 14(2) of the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975, provides as under:

“All such nominees shall have—

- (i) completed not less than two years' service as Constables;
- (ii) attained such educational standards as may be specified by the Director General.”

Similar provision as in (ii) above, has been made in rules 15(2) (ii), 16(2) (ii), 17(1) (b) (ii) and 18(2) (ii), *ibid*.

67. During the course of examination of the above rules, the Committee felt that educational standards to be attained by the nominees for next higher post should be specified in the rules and not left to the discretion of the Director General of Border Security Force.

68. Not satisfied with the reply of the Ministry of Home Affairs for not specifying in the rules the minimum educational standards to be attained by the nominees for the next higher post, the Committee in para 47 of their Second Report (Sixth Lok Sabha) recommended as under:

“The Committee are not satisfied with the explanation of the Ministry of Home Affairs for not specifying in the rules the minimum educational standards to be attained by the

nominees for the next higher post. The Committee feel that if, as stated by the Ministry, only matriculates are being recruited as constables, there should be no difficulty in specifying in the rules the minimum educational standards to be attained by the nominees for the next higher post. The Committee, therefore, recommend that the minimum educational standards should be specified in the rules and not left to the discretion of the Director General of the Border Security Force. The Committee desire the Ministry to take early action to amend the rules to the necessary effect."

69. In their action taken note dated 21-3-1978, the Ministry of Home Affairs have proposed to amend rules 14(2) (ii), 15(2) (ii), 16(2) (ii), 17(1) (b) (ii) and 18(2) (ii) by specifying therein the minimum educational standards to be attained by the nominees for next higher post. The amendments proposed to be made are given in the Appendix. III.

70. In addition to above, the Ministry propose to insert a fresh Rule-22 in the Border Security Force (Subordinate and Under Officers) Promotion and Seniority Rules, 1975. The same reads as under:—

Rule 22

Exception to the educational qualifications laid down in the aforesaid rules may, however, be made by the Director General, Border Security Force in case of Nagas, Hill Tribes, Scheduled Castes/Scheduled Tribes etc. or any other such category prescribed by him in this behalf.

In this regard, the Ministry have stated as under:—

"The above rule has been proposed to be inserted because it has been experienced that the personnel like Nagas, Sikkimes or other State Police Battalions does not possess such standards of education etc. as have been prescribed in the Border Security Force. In the absence of the aforesaid rule it would not be possible to promote such personnel who would be lacking in education as per standards prescribed in the aforesaid rules. The holding up of promotion of such categories will create the problem of discontentment among them which may have adverse reaction in a tribal area. In view of the peculiar administrative problems of the Border Security Force which have already

been experienced at the time of taking over Nagas (Ex-RGN) as well as other State Armed Battalions in the Border Security Force, it is strongly recommended that the aforesaid proposed Rule 22 may be agreed to for inclusion in the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975."

71. The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have agreed to amend Rules 14(2)(ii), 15(2)(ii), 16(2)(ii), 17(1)(b)(ii) and 18(2)(ii) of the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 so as to specify therein the minimum educational standards to be attained by the nominees for next higher post.

72. The Committee desire the Ministry to issue the proposed amendments at an early date.

73. The Committee also note that the Ministry of Home Affairs have proposed to insert a new Rule 22 in the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975. In view of the explanation given by the Ministry in regard to the insertion of this new rule, the Committee while approving the same desire the Ministry to amend it so as to provide therein for recording of reasons in writing by the Director General, Border Security Force, before making exceptions to educational qualifications.

XI

Implementation of Recommendation contained in para 53 of the Twentieth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the packaged Commodities (Regulation) Order, 1975 (S.O. 443-E of 1975).

74. Paragraph 12 of the Packaged Commodities (Regulation) Order, 1975 provided as under:—

"Power to exempt.—The Central Government may, if it is of opinion that it is necessary or expedient so to do, exempt any manufacturer, packer or class of manufacturers or packers from all or any of the provisions of this Order."

75. It was felt that the power to grant exemption should be available in respect of only a class of manufacturers or packers and not

an individual manufacturer or packer in order to avoid any possibility of discrimination being made between persons similarly placed.

76. The Ministry of Civil Supplies and Cooperation (Directorate of Weights & Measures) with whom the matter was taken up had stated that no exemption has been granted to any individual manufacturer/packer or a class of manufacturers so far. They had further stated that the order was of temporary duration and on the cessation of operation of Defence of India Rules, 1971, the order would cease to be in operation.

77. The Committee on Subordinate Legislation was not convinced by the above reply of the Ministry and observed as under in para 53 of the Twentieth Report (Fifth Lok Sabha):—

“The Committee are not convinced by the argument advanced by the Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation) that as no exemption has been granted to any individual manufacturer/packer so far, and the ‘Order’ is of a temporary duration, there is no need of its amendment on the lines suggested by the Committee. In the opinion of the Committee, the fact that no exemption has so far been granted to an individual manufacturer/packer is no guarantee that such an exemption will not be given in future also. The Committee will like to make it clear that they are not against the principle of exemption as such. They only want that the benefits of exemption should be available to all manufacturers/packers similarly placed. With this end in view, they desire that paragraph 12 of the above Order should be amended so as to omit therefrom the power to grant exemption to individual manufacturers/packers, as contradistinguished from classes of manufacturers/packers.”

78. In their action taken note dated 6-8-1977 on the above recommendation, the Ministry of Civil Supplies and Cooperation (Directorate of Weights & Measures) have stated as under:—

“The question of amending the Packaged Commodities (Regulation) Order, 1975 which was issued under the Defence and Internal Security of India Rules, 1971 could not be undertaken immediately because of some administrative reasons. Meanwhile, with the revocation of the Emergency in March, 1977, the Order aforesaid would also cease to remain operative after September, 1977. Now as

the life of the Order is very short, it is not considered necessary to have para 12 of the Order amended at this stage so as to make its provision in accordance with the observation of the Committee on Subordinate Legislation.

It may, however, be noted that so far this Ministry have not granted exemption to any manufacturer or packer."

79. The Committee are not satisfied with the reply of the Ministry of Civil Supplies and Cooperation for not implementing the recommendation of the Committee made in para 53 of their Twentieth Report (Fifth Lok Sabha) which was presented to the House on the 3rd November, 1976, that the question of amending the Packaged Commodities (Regulation) Order, 1975 could not be undertaken in time because of some administrative reasons. In this connection, the Committee note that a copy of their Twentieth Report was sent to the Ministry on the 5th November, 1976 asking them to furnish the requisite action taken note on the recommendations contained therein for their consideration. The plea of administrative reasons now advanced by the Ministry after a lapse of more than 11 months is not at all convincing. The Committee feel that in case the Ministry had experienced any genuine difficulty, they should have brought it to their notice at the earliest opportunity without any delay. The Committee deprecate the inaction on the part of the Ministry in not caring to implement the recommendation of the Committee.

80. While the Committee note that after the revocation of emergency, the Order was no longer in force and as such there was no necessity to amend it in accordance with their recommendation, they recommend that in case such an 'Order' was issued in future, it should be in accordance with the recommendation of the Committee contained in para 53 of their Twentieth Report (Fifth Lok Sabha).

SOMNATH CHATTERJEE,

Chairman,

Committee on Subordinate Legislation.

NEW DELHI;

November 18, 1978.

APPENDIX I

(Vide Para 4 of the Report)

Summary of main Recommendations/Observations made by the Committee

S. No.	Para	Summary
(1)	(2)	(3)
1	8	<p>The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have since issued a corrigendum amending the short title of the latter notification published under G.S.R. 562 to read as the Shipping Development Fund Committee (General) (Second Amendment) Rules, 1977. The Committee, however, note with concern that whereas the Ministry have rectified the error by inserting the relevant serial number of the amendment in its short title, they have not cared to explain to the Committee the reasons for the lapse in not complying with the recommendation of the Committee that sets of amendments to any 'Order' or 'Rule' issued from time to time in a year should be serially numbered and that relevant number should be shown in its short title for purposes of convenient reference and easy location by the public. The Committee had made this recommendation as far back as in their Third Report (First Lok Sabha) and reiterated in their several subsequent Reports. The Committee desire the Ministry to take due notice of the Committee's recommendations and comply with them. The Committee also desire the Ministry to devise suitable procedure to avoid recurrence of such lapses in future.</p>

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- | (1) | (2) | (3) |
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| 2 | 13 | <p>The Committee note that, on being pointed out, the Ministry of Labour have agreed to make suitable provision in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for laying of Schemes framed thereunder, before Parliament when the Act is next amended. The Committee, however, feel that the matter should not be kept pending indefinitely and desire the Ministry to bring the amending legislation to the necessary effect before Parliament at an early date but not later than three months after the date of presentation of this Report to the House.</p> |
| 3(i) | 16 | <p>The Committee note with satisfaction that, on being pointed out, the Ministry of Health and Family Welfare (Department of Health) have since amended the Department of Family Welfare (Proof Reader) Recruitment (Amendment) Rules, 1976 (G.S.R. 925 of 1977) so as to substitute '1977' for '1976' in its short title <i>vide</i> G.S.R. 291 published in the Gazette of India dated the 25th February, 1978.</p> |
| 3(ii) | 17 | <p>The Committee, however, cannot help expressing their surprise that the Department of Health were not aware of the printing error in the rules till it was brought to their notice by the Committee. The Committee have repeatedly emphasised that as soon as the rules are published in the Gazette, the Ministries/Departments concerned should take immediate steps to examine them whether they have been correctly printed and if necessary, to issue corrigendum thereto <i>suo moto</i> without waiting for the Committee to point it out.</p> |
| 3(iii) | 18 | <p>The Committee desire the Ministry to be careful in future in this regard and devise suitable procedure to ensure that such mistakes are not repeated.</p> |
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- | (1) | (2) | (3) |
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| 4 (i) | 21 | <p>The Committee are not convinced with the explanation given by the Ministry of Health and Family Welfare (Department of Health) for not appending the explanatory note in regard to retrospective effect given to the Department of Family Welfare (Deputy Nursing Adviser) Recruitment (Amendment) Rules, 1977. This reflects utter carelessness on the part of the Ministry in acting upon the recommendations of the Committee in this regard. The Committee feel that even if the explanatory note had not been appended at the final stage due to oversight as stated by the Ministry, the omission could have been rectified immediately after it came to their notice. The Committee take a serious view of the lapse on the part of the Ministry and desire them to be careful in future.</p> |
| 4 (ii) | 22 | <p>The Committee further observe that in many cases the usual plea taken by the Ministries/Departments concerned in such matters is 'oversight' or 'inadvertent omission' etc. The Committee note with surprise that in spite of repeated recommendations of the Committee which were brought to the notice of all Ministries/Departments from time to time by the Department of Parliamentary Affairs or the coordinating Ministries, the Ministries/Departments concerned do not care to take adequate steps to ensure against recurrence of such lapses. The Committee desire the Department of Parliamentary Affairs to bring the observations of the Committee to the notice of all Ministries/Departments of Government impressing upon them once again the need of taking adequate steps so that such lapses do not recur.</p> |
| 5 (i) | 23 | <p>The Committee are not convinced with the explanation given by the Ministry of Health and</p> |
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Family Welfare (Department of Health) for delay in the issue of amendment to the Central Health Service Rules as a result of which there was a time lag of over 11 years between the date of publication of the amendment and the date from which the rules so amended have been given retrospective effect. The Committee are deeply distressed to note that an unduly long time of four years was taken by the Ministry in finalising the amendment in consultation with the Union Public Service Commission, Ministry of Law and the Department of Personnel. The Committee note that even after finalisation, the issue of amendment was further linked by the Ministry with the proposal for restructuring of the Central Health Service on the basis of recommendations of the Third Pay Commission causing more delay in notifying the amendment. The amendment was subsequently delinked in 1977 from the re-organisation of the Central Health Service and issued in October, 1977. This reflects a casual approach to the issue on the part of the Ministry particularly in view of the Committee's earlier recommendations made in paras 58 and 59 of their Seventh Report (Sixth Lok Sabha) in which attention of the Ministries/Departments of the Government of India had been drawn to the procedure laid down by the Ministry of Home Affairs in their Circular letter No. 20|3|67-Est.-(D) dated the 11th August, 1967 to avoid delays in finalising the Recruitment Rules. The Committee desire that the aforesaid recommendations be brought to the notice of all Ministries/Departments once again by the Department of Parliamentary Affairs.

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The Committee feel that there was no reason for withholding the issue of Notification pending restructuring of the Central Health Service which had resulted in an avoidable delay of 3

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		years without any adequate grounds. The Committee stress that once a set of amendments to any rules are finalised, they should immediately be notified and not held over on the ground that some other impending amendments are under consideration at that time.
6 (i)	31	The Committee note with satisfaction that, on being pointed out, the Ministry of Labour have agreed to amend Rules 3(2) (a) and 4(2) (a) of the Bonded Labour System (Abolition) Rules, 1976 to provide that a member of District or Sub-Divisional Vigilance Committee may resign his office by giving notice in writing of not less than 30 days to the authority which nominated him and he shall be deemed to have vacated his office either on the date of acceptance of his resignation or on the expiry of the period of notice whichever is earlier.
6 (ii)	32	The Committee desire the Ministry to issue the proposed amendment to the rules at an early date.
7	39	The Committee note that in terms of sub-rule (4) of the revised rule 416 of the Indian Telegraph Rules, 1951, the Telegraph Authority is empowered to refuse an application for or withdraw an existing telephone or similar service, without notice, from persons engaged in smuggling activity or acting in violation of any law relating to conservation of foreign exchange resources or acting prejudicially to public safety and interest etc. In such cases, the persons concerned are informed in writing within seven days of the action taken together with reasons therefor. In this connection the Committee also note the judgement of the Supreme Court in <i>Hukum Chand Versus Union of India</i> (AIR 1976 SC 789) wherein dealing with rule 422 of the Indian Telegraph

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Rules which also empowers the Divisional Engineer to disconnect the telephone connections of any subscriber in the event of emergency with or without notice, the Supreme Court had *inter alia* observed that minimal safeguard against arbitrary exercise of this drastic power under the rule is that the Divisional Engineer should be required to record reasons in writing in regard to his satisfaction for taking action which requirement is implicit in the rule.

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On the analogy of the above ruling the Ministry of Communications were asked to amend Rule 416 of the Indian Telegraph Rules, 1951 so as to provide for recording of reasons in writing by the Telegraph Authority before taking any action under sub-rule (4) thereof. As a further safeguard against arbitrary use of power under this rule, the Ministry were also asked to make a suitable provision in the rules for affording an opportunity of making a representation by a subscriber who had been deprived of a telephone or similar service after he had been intimated the reasons for the action taken against him. The Ministry, however, have not sent any reply so far to this point.

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The Committee take serious note of the fact that the Ministry of Communications had not furnished any reply to the communication sent to them by the Committee for eliciting further information in spite of reminders sent to them on 2nd May and 3rd August, 1978. The Committee impress upon the Ministry to be prompt in furnishing information sought by the Committee. In case the Ministry was not able to furnish the information asked for by the stipulated date, they should have asked for extension of time from the Committee giving the reasons for doing so.

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42	<p>The Committee now desire that the Ministry should issue amendments to the Order without any delay on the lines suggested by them in paras 39-40 above.</p>	
8 (i)	46	<p>The Committee are not satisfied with the reply of the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) that the powers of a High Court under section 394 of the Companies Act and the power of the Central Government under Section 396 thereof are analogous and the Central Government follows the same procedure as followed by Courts in approving the Scheme of amalgamation. Section 394 relates to the power of the High Court to approve amalgamation schemes and Section 396 empowers the Central Government to issue amalgamation Orders. Whereas Clause (iii) of sub-section (1) of Section 394 empowers the High Court to make suitable provisions in the amalgamation scheme regarding legal proceedings pending against the transfer company to be continued against the transferee company after the Scheme of amalgamation is approved, there is no such provision in Section 396. As the provision regarding saving of legal proceedings is of a substantial nature, the Committee desire it necessary that there must be specific authority available in the Act empowering the Government to make such provisions in the Amalgamation Orders. The Committee, therefore, desire the Ministry to bring suitable legislation for amending the Companies Act in this regard at an early date.</p>
8 (ii)	49	<p>The Committee note that a provision similar to the provision in paragraph 14(b) of the Balmer Lawrie and Company Ltd. and Industrial Containers Limited Amalgamation Order, 1976 exists in the Indian Consortium for Power Projects Private Limited and the Bharat Heavy Electricals Limited Amalgamation Order, 1974. On the lines</p>

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of the recommendations made in paras 42 and 43 of their Ninth Report (Sixth Lok Sabha) in regard to the later Order, the Committee desire the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) to amend paragraph 14(b) of the Balmer Lawrie and Company Limited and Industrial Containers Limited as also the Balmer Lawrie and Company Limited and Steel Containers Limited Amalgamation Orders, 1976 lest it gives an impression of taking away the right of a shareholder to go to a Court of Law. The Committee further desire that apart from courts, there should be some sort of revisional or appellate authority for redressal of any grievance of a person who might feel aggrieved by any action taken under the Amalgamation Order. The Committee also desire that it should be examined whether this purpose can be achieved under the provisions of the existing law or an amendment of the parent law is necessary to provide for the same.

8(iii) 52

The Committee note that under the provision of Section 53(2) (a) of the Companies Act, 1956, it is sufficient to send documents (including Orders) by Ordinary post. For getting his papers by Registered Post a member has to intimate the Company in advance and also deposit money with them to defray the expenses of doing so. The Committee, however, feel that it is necessary to ensure that the papers relating to allotment of share in the new company reach the shareholders of the dissolved company. With this end in view the Committee desire that a provision should be made in the Amalgamation Orders for publication of a notice in all important newspapers about the fact of despatch of those papers to the shareholders so that a person not getting the same could contact the company and obtain the papers.

9(i) 58

The Committee note with satisfaction that, on being pointed out, the Ministry of Home

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		Affairs have agreed to amend Rule 5(1) of the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975.
	59	The Committee approve the proposed amendment and desire the Ministry to issue it at an early date.
9 (ii)	64	The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have agreed to amend Rule 10(a) of the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975.
	65	The Committee approve the proposed amendment and desire the Ministry to issue the same at an early date.
9 (iii)	71	The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have agreed to amend Rules 14(2) (ii), 15(2) (ii), 16(2) (ii), 17(1) (b) (ii) and 18(2) (ii) of the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 so as to specify therein the minimum educational standards to be attained by the nominees for next higher post.
	72	The Committee desire the Ministry to issue the proposed amendment at an early date.
9 (iv)	73	The Committee also note that the Ministry of Home Affairs have proposed to insert a new Rule 22 in the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975. In view of the explanation given by the Ministry in regard to the insertion of this new rule, the Committee while approving the same desire the Ministry to amend it so as to provide therein for recording of reasons in

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writing by the Director General, Border Security Force, before making exceptions to educational qualifications.

10 (i)

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The Committee are not satisfied with the reply of the Ministry of Civil Supplies and Co-operation for not implementing the recommendation of the Committee made in para 53 of their Twentieth Report (Fifth Lok Sabha) which was presented to the House on the 3rd November, 1976, that the question of amending the Packaged Commodities (Regulation) Order, 1975 could not be undertaken in time because of some administrative reasons. In this connection, the Committee note that a copy of their Twentieth Report was sent to the Ministry on the 5th November, 1976 asking them to furnish the requisite action taken note on the recommendations contained therein for their consideration. The plea of administrative reasons now advanced by the Ministry after a lapse of more than 11 months is not at all convincing. The Committee feel that in case the Ministry had experienced any genuine difficulty, they should have brought it to their notice at the earliest opportunity without any delay. The Committee deprecate the inaction on the part of the Ministry in not caring to implement the recommendation of the Committee.

10 (ii)

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While the Committee note that after the revocation of emergency, the Order was no longer in force and as such there was no necessity to amend it in accordance with their recommendation, they recommend that in case such an 'Order' was issued in future, it should be in accordance with the recommendation of the Committee contained in para 53 of their Twentieth Report (Fifth Lok Sabha).

APPENDIX II

(Vide para 23 of the Report)

EXPLANATORY NOTE

Clause (b) of sub-rule (1) of rule 7A of the Central Health Service (Amendment) Rules, 1966, provides that a departmental candidate who was appointed immediately before the commencement of the Central Health Service (Amendment) Rules, 1966 viz. before the 9th September, 1966, to any post in any category (other than category 'A' or category 'B') or in any other post shall be appointed to appropriate category after selection made on the recommendation of the Selection Committee on the basis of the experience and conditions of eligibility specified therein. One of the conditions of eligibility for appointment to General Duty Officers, Grade I is that a candidate should have completed 5 years of regular service in a Class II post where the appointment to such post was made on the recommendations of the Union Public Service Commission or of a Departmental Promotion Committee or in accordance with the rules of recruitment applicable to the post. There is no provision in Rule 7A whereby the cases of officers who did not complete five years of regular service in Class II post on 9th September, 1966 and who were senior to officers who had completed five years and appointed as GDO Grade I from 9th September, 1966 can be considered. The non-existence of such a provision has given rise to representations from senior officers who have been denied consideration of appointment as G.D.O. Grade I from 9th September, 1966.

In order to review cases of such officers it is necessary to make a provision by amending suitably the Rule 7A of the Central Health Service Rules from 9-9-1966. By giving retrospective effect to this amendment the legitimate interest of no one will be adversely effected.

APPENDIX III

(Vide para 69 of the Report)

1. In Rule-14(2)(ii), for the entry, "attain such educational standards as may be specified by the Director General", the following entry has been proposed to be substituted:

"attain the following educational standards:

- (i) 8th Class/BSF class III or equivalent examination accepted by the D.G. Border Security Force.
- (ii) M.R. Standard—III.

2. In Rule 15(2)(ii) for the entry "attain such educational standards as may be specified by the Director General", the following entry has been proposed to be substituted:

"attain the following educational standards:

- (i) 8th Class/BSF class III or equivalent examination accepted by the DG, BSF.
- (ii) M.R. Standard-II.

3. In Rule-16(2)(ii) for the entry, "attain such educational standards as may be specified by the Director General", the following entry has been proposed to be substituted:

"attain the following educational standards:

- (i) 9th Cass/BSF Class II or equivalent examination accepted by the DG, BSF.
- (ii) M.R. Standard-II.

4. In Rule 17(1)(b)(ii) for the entry "attain such educational standards as may be specified by the Director General", the following entry has been proposed to be substituted:

"attain the following educational standards:

- (i) 10th Class passed from Government School/Matric or its equivalent/BSF I Class or its equivalent specified by the Director General, BSF.
- (ii) M.R. Standard-I.

5. In Rule 18(2) (ii) for the entry, "attain such educational standards as may be specified by the Director General," the following entry has been proposed to be substituted:—

"attain the following educational standards:

- (i) 10th Class passed from a Government School/Matric or its equivalent/BSF-I Class or its equivalent specified by the Director General, BSF.
- (ii) M.R. Standard-I.

MINUTES

MINUTES OF THE NINETY-THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1975-76).

The Committee met on Monday, the 17th May, 1976 from 10.30 to 11.00 hrs.

PRESENT

Dr. Kailas—*Chairman.*

MEMBERS

2. Shrimati Premalabai Dejisaheb Chavan
3. Shrimati Marjorie Godray
4. Shri Dinesh Joarder
5. Shri Ram Singh Bhai
6. Shri Shiv Shanker Prasad Yadav

SECRETARIAT

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

3. The Committee desired that comments of the Ministries/Departments concerned might be obtained in respect of the following 'Orders' on points shown against them:—

S. No.	Short title and No. of 'Order'	Points on which comments to be invited
(1)	(2)	(3)
	*	* * * * *
6.	The Bonded Labour System (Abolition) Rules, 1970 (G.S.R. 99-E of 1976)	<i>Rule 3(2) and Rule 4(2)</i> — In regard to acceptance of resignation, the Committee have recommended earlier that the resignation should be effective either from the date of submission or from the date from which the Member wants it to be effective or after the completion of certain notice period after the date of submission on the expiry of which the resignation should be deemed to have been accepted. Such a provision should be made in the present rules also.

The Committee then adjourned.

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

**MINUTES OF THE TWENTY-FIFTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(SIXTH LOK SABHA)**

(1978-79)

The Committee met on Saturday, the 23rd September, 1978 from 11.00 to 12.30 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*.

MEMBERS

2. Shri Durga Chand
3. Chaudhary Hari Ram Makkasar Godara
4. Shri Ram Sewak Hazari
5. Shri B. K. Nair
6. Shri T. S. Negi
7. Kumari Maniben Vallabhbhai Patel
8. Shri G. S. Reddi
9. Shri Saeed Murtaza
10. Shri P. A. Sangma
11. Shri Madan Lal Shukla
12. Shri Sachindralal Singha
13. Shri Krishnarao Thakur
14. Shri C. N. Viswanathan

SECRETARIAT

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

2 The Committee considered Memoranda Nos. 139 and 154 to 163 on the following subjects:

Sl. No.	Memo. No.	Subject
(1)	(2)	(3)
(iv)	156	(a) The Shipping Development Fund Committee (General) Amendment Rules, 1977 (G.S.R. 562 of 1977); and (b) The Shipping Development Fund Committee (General) Amendment Rules, 1977 (G.S.R. 562 of 1977).
(v)	157	Provision for laying of Schemes framed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
(vi)	158	The Department of Family Welfare (Proof Reader) Recruitment (Amendment) Rules, 1976 (G.S.R. 925 of 1977).
(vii)	159	The Department of Family Welfare (Deputy Nursing Adviser) Recruitment (Amendment) Rules, 1977 (G.S.R. 924 of 1977).
(viii)	160	The Central Health Service (Amendment) Rules, 1977 (G.S.R. 1294 of 1977).
(ix)	161	The Bonded Labour System (Abolition) Rules, 1976 (G.S.R. 99-E of 1976).
(x)	162	Implementation of recommendations contained in paras 41, 44 and 47 of the Second Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 (G.S.R. 419-E of 1975).
(xi)	163	Implementation of recommendation contained in para 53 of the Twentieth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Packaged Commodities (Regulation) Order, 1975 (S.O. 443-E of 1975).

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

* * * * *

(iv) (a) *The Shipping Development Fund Committee (General) Amendment Rules, 1977 (G.S.R. 389 of 1977); and*

(b) *The Shipping Development Fund Committee (General) Amendment Rules, 1977 (G.S.R. 562 of 1977)—(Memorandum No. 156).*

19. The Committee considered the above Memorandum and noted that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) had since issued a corrigendum amending the short title of G.S.R. No. 562 to read as the Shipping Development Fund Committee (General) (Second Amendment) Rules, 1977. The Committee, however, noted with concern that the Ministry, while rectifying the error had not indicated any reasons for the lapse on their part in not complying with the recommendation of the Committee that sets of amendments to any 'Order' or 'Rule' issued from time to time in a year should be serially numbered and that this number should be shown in the short title. This recommendation had been made as far back as in the Third Report of the Committee (First Lok Sabha) and reiterated in several subsequent Reports. The Committee decided to impress upon the Ministry to be more careful about these matters and devise a suitable procedure to avoid recurrence of such lapses in future.

(v) *Provision for laying of Schemes framed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952)—(Memorandum No. 159).*

20. The Committee considered the above Memorandum and noted that, on being pointed out, the Ministry of Labour had agreed to make suitable provision in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for laying of Schemes framed thereunder, before Parliament when the Act is next amended. The Committee, however, felt that the matter should not be postponed indefinitely and decided to ask the Ministry to bring the amending legislation to the necessary effect before Parliament at an early date preferably by the end of the current year.

(vi) *The Department of Family Welfare (Proof Reader) Recruitment (Amendment) Rules, 1976 (G.S.R. 925 of 1977)—(Memorandum No. 158).*

21. The Committee considered the above Memorandum and noted that, on being pointed out, the Ministry of Health and Family Welfare (Department of Health) had since issued a corrigendum

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

substituting the year 1977 for 1976 in the short title of the rules which had been published on the 25th June, 1977 *vide* Notification No. G.S.R. 291 published in Gazette of India dated the 25th February, 1978. The Committee desired the Ministry to be careful in future so that such mistakes are not repeated.

(vii) *The Department of Family Welfare (Deputy Nursing Adviser) Recruitment (Amendment) Rules, 1977 (G.S.R. 924 of 1977)—(Memorandum No. 159).*

22. The Committee considered the above Memorandum and were not convinced with the explanation given by the Ministry of Health and Family Welfare (Department of Health) for not appending the explanatory note in regard to retrospective effect given to the Department of Family Welfare (Deputy Nursing Adviser) Recruitment (Amendment) Rules, 1977. This reflected utter carelessness on the part of the Ministry in taking note of and acting upon the recommendations of the Committee in this regard. The Committee felt, that even if the explanatory note had not been appended at the final stage due to oversight as stated by the Ministry the omission could have been rectified immediately after it came to their notice. The Committee took a serious view of the lapse on the part of the Ministry and desired them to be careful in future.

23. The Committee further observed that in many cases the usual plea taken by the Ministries/Departments concerned in such matters was 'oversight' or 'inadvertent omission' etc. The Committee noted with surprise that inspite of repeated recommendations of the Committee which were brought to the notice of all Ministries/Departments from time to time by the Department of Parliamentary Affairs or the coordinating Ministries, the Ministries/Departments concerned did not care to take adequate steps to ensure against recurrence of such lapses. The Committee desired the Department of Parliamentary Affairs to bring the observations of the Committee to the notice of all Ministries/Departments of Government impressing upon them once again the need of taking adequate steps so that such lapses do not recur.

(viii) *The Central Health Service (Amendments) Rules, 1977 (G.S.R. 924 of 1977)—(Memorandum No. 160)*

24. The Committee considered the above Memorandum and were not convinced with the explanation given by the Ministry of Health and Family Welfare (Department of Health) for delay in the issue of amendment to the Central Health Service Rules as a result of

which there was a time lag of over 11 years between the date of publication of the amendment and the date from which it was given retrospective effect. The Committee were surprised to note that the Ministry took unduly long time of four years in finalising the amendment in consultation with U.P.S.C., Ministry of Law and the Department of Personnel. Even after finalisation, the issue of amendment was further linked with the general proposals for restructuring of the Central Health Service on the basis of recommendations of Third Pay Commission, causing further delay in the issue of notification. The Notification was subsequently delinked in 1977 and issued in October, 1977. The Committee decided to reiterate their recommendations already made in paras 58 and 59 of their Seventh Report (Sixth Lok Sabha) in which attention of Ministries/Departments had been drawn to the procedure laid down by the Ministry of Home Affairs to avoid delays in finalising the Recruitment Rules. The Committee also desired that the above recommendations might be brought to the notice of all Ministries/Departments of the Government of India once again.

25. The Committee observed that there was no reason for withholding issue of Notification pending restructuring of Central Health Service. This had resulted in further delay of 3 years without adequate grounds. The Committee decided to stress that once an amendment or a set of amendments to rules was finalised, it should be immediately sent for publication in the Gazette and not held over on account of any new amendments to those Rules that might be under consideration at that time.

(ix) *The Bonded Labour System (Abolition) Rules, 1976 (G.S.R. 99-E of 1976—(Memorandum No. 161).*

26. The Committee considered the above Memorandum and noted that, on being pointed out, the Ministry of Labour had proposed to amend Rules 3(2)(a) and 4(2)(a) of the Bonded Labour System (Abolition) Rules, 1976 to the effect that a member of District or Sub-Divisional Vigilance Committee may resign by giving notice in writing of not less than 30 days to the authority which nominated him and he shall be deemed to have vacated his office either on the date of acceptance of his resignation or on the expiry of the period of notice whichever is earlier.

The Committee desired the Ministry to issue the necessary amendment at an early date.

- (x) *Implementation of recommendations contained in paras 41, 44 and 47 of the Second Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 (G.S.R. 419-E of 1975) (Memorandum No. 162).*

(A)

27. The Committee considered the above Memorandum and approved the amendment proposed to be made by the Ministry of Home Affairs to Rule 5(1) of the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 on the lines suggested by the Committee in para 41 of their Second Report (Sixth Lok Sabha). The Committee desired the Ministry to issue the amendment at an early date.

(B)

28. The Committee considered and approved the following amendment proposed to be made by the Ministry of Home Affairs to Rule 10(a) of the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 as desired by the Committee in para 44 of their Second Report (Sixth Lok Sabha):—

“Promotion to short-term vacancies which shall not ordinarily be for a period of more than four months may be made on an officiating basis if the exigencies of service so require.”

The Committee desired the Ministry to issue the amendment at an early date.

(C)

29. The Committee considered and approved the amendments proposed by the Ministry of Home Affairs to Rules 14(2) (ii), 15(2) (ii), 16(2) (ii), (17(1) (b) (ii) and 18(2) (ii) of the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules 1975 in implementation of recommendations of the Committee on Subordinate Legislation made in para 47 of their Second Report (Sixth Lok Sabha).

The Committee desired the Ministry to issue the amendments at an early date.

30. The Committee considered Rule 22 proposed to be inserted by the Ministry in the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975. In view

of the explanation given by the Ministry in regard to the proposed rule, the Committee approved the same but desired the Ministry to amend it so as to provide therein for recording of reasons in writing by the Director General, Border Security Force before making exception in educational qualifications.

(xi) *Implementation of recommendation contained in para 53 of Twentieth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Packaged Commodities (Regulation) Order, 1975 (S.O. 443-E of 1975)—(Memorandum No. 163).*

31. The Committee considered the above Memorandum and were not satisfied with the reply of the Ministry of Civil Supplies and Co-operation for not implementing the recommendation of the Committee made in para 53 of their Twentieth Report (Fifth Lok Sabha) that the question of amending the Packaged Commodities (Regulation) Order, 1975 could not be undertaken in time because of some administrative reasons. In this connection, the Committee noted that their Twentieth Report was presented to the House on the 3rd November, 1976 and a copy thereof was sent to the Ministry on the 5th November, 1976 asking them to furnish the requisite action taken note on the recommendations contained therein for consideration of the Committee. The plea of administrative reasons advanced by the Ministry after a lapse of more than 11 months is not at all convincing. In case the Ministry had experienced any genuine difficulty, they could have brought it to the notice of the Committee at the earliest opportunity and without any delay. The Committee deprecated the inaction on the part of the Ministry in not implementing the recommendation of the Committee.

32. The Committee noted that after the revocation of emergency, the Order was no longer in force and as such there was no necessity to amend it in accordance with the recommendation of the Committee. The Committee, however, decided to recommend that in case such an 'Order' was issued in future, it should be in accordance with the observations of the Committee contained in para 53 of their Twentieth Report (Fifth Lok Sabha).

The Committee then adjourned.

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

The Committee met on Wednesday, the 4th October, 1978 from 10.30 hours to 11.00 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 Saeed Murtaza
9. Shri Madan Lal Shukla
10. Shri Sacnindralal Singha
11. Shri Ramji Lal Suman
12. Shri Krishnarao Thakur
13. Shri C. N. Visvanathan

SECRETARIAT

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

2. The Committee considered Memorandum Nos. 164 to 174 on the following subjects.

S. No.	Memo- randum No.	Subject
(1)	(2)	(3)
(i)	164	The Indian Telegraph (Tenth Amendment) Rules, 1974 (G.S.R. 665-E of 1974).
(ii)	165	(a) The Balmer Lawrie and Company Limited and Industrial Containers Limited Amalgamation Order, 1976 (S.O. 542-E of 1976); and (b) The Balmer Lawrie and Company Limited and Steel Containers Limited Amalgamation Order, 1976 (S.O. 543-E of 1976).

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

(i) The Indian Telegraph (Tenth Amendment) Rules, 1974 (G.S.R. 665-E of 1974)—

(Memorandum No. 164)

3. The Committee considered above Memorandum and noted that in terms of sub-rule (4) of the revised rule 416 of the Indian Telegraph Rules, 1951, the Telegraph Authority was empowered to refuse an application for or withdraw an existing telephone or similar service without notice, from persons engaged in smuggling activity or acting in violation of any law relating to Foreign Exchange or acting prejudicially to public safety and interest etc. In such cases, the persons concerned were informed in writing within seven days of the action taken together with reasons therefor. In this connection the Committee also noted the judgement of the Supreme Court in *Hukam Chand V. Union of India* (AIR 1976, S.C. 789) where dealing with rule 422 of the Indian Telegraph Rules which also empowered the Divisional Engineer to disconnect the telephone connection of any subscriber in the vent of emergency with or without notice, the Supreme Court had *inter alia* observed that minimal safeguard against arbitrary exercise of such drastic power under the rule is that the Divisional Engineer should be required to record reasons in writing in regard to his satisfaction for taking

action under the Rule. Such requirement was implicit in the Rule. On the analogy of the above ruling the Committee on Subordinate Legislation desired the Ministry of Communications to amend Rule 416 so as to provide for recording of reasons in writing by the Telegraph Authority before taking any action under sub-rule (4) thereof. As a further safeguard against arbitrary use of power under the Rule, the Committee also desired that a suitable provision should also be made in the rules for affording an opportunity of making a representation by a subscriber who had been deprived of a telephone or similar service after he had been intimated the reasons for the action taken against him.

4. The Committee took serious note of the fact that the Ministry of Communications had not furnished any reply to the communication sent to them by the Committee for eliciting further information inspite of reminders sent to them on 2nd May and 3rd August, 1973. The Committee impressed upon the Ministry to be prompt in furnishing information sought by the Committee. In case the Ministry was not able to furnish the information asked for by the stipulated date, they should ask for extension of time from the Committee giving the reasons for doing so.

(ii) (a) The Balmer Lawrie and Company Limited and Industrial Containers Limited Amalgamation Order, 1976 (S.O. 542-E of 1976); and

(b) The Balmer Lawrie and Company Limited and Steel Containers Limited Amalgamation Order, 1976 (S.O. 543-E of 1976)—

(Memorandum No. 165)

(A)

5. The Committee considered above Memorandum and were not satisfied with the reply of the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) that the powers of the High Court u/s 394 of the Companies Act and the power of the Central Government u/s 396 were analogous and the Central Government follows the same procedure as followed by Courts in approving the Scheme of amalgamation. Section 394 relates to the power of the High Court to approve amalgamation schemes and Section 39C empowers the Central Government to issue amalgamation Orders. Where Clause (iii) of sub-section (1) of Section 394 empowers the High Court to make suitable provision in the amalgamation scheme regarding legal proceedings pending against the transferer company to be continued against the transferee com-

pany after the Scheme of amalgamation is approved, there is no such provision in Section 396. As the provision regarding saving of legal proceedings is a substantive provision, the Committee desired that it was necessary that there must be specific authority available in the Act empowering to Government to make such provision in the amalgamation Order. The Committee, therefore, desired the Ministry of Law, Justice and Company Affairs to bring suitable legislation for amending the Companies Act in this regard at an early date.

(B)

6. The Committee noted that a provision similar to the provision in paragraph 14(b) of the Order existed in the Indian Consortium for power Projects Private Ltd. and the Bharat Heavy Electricals Ltd. Amalgamation Order, 1974. On the lines of recommendations made in paras 42 and 43 of their 9th Report (Sixth Lok Sabha) in regard to the later Order, the Committee desired the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) to amend paragraph 14(b) so that it did not give an impression that it sought to take away the right of a share holder to go to a Court of Law. The Committee further desired that apart from courts, there should be some sort of revisionary or appellate authority for the redressal of any action taken under the Amalgamation Order. It should be examined whether this purpose can be achieved under the provisions of the existing law or an amendment of the parent law was necessary to provide for this.

(C)

7. The Committee noted that under the provision of Section 53(2) (a) of the Companies Act, 1956, it was sufficient to send documents (including orders) by ordinary post. For getting his papers by registered post the member has to intimate the Company in advance and deposit money with them to defray the expenses of registration. The Committee, however, felt that it was necessary to ensure that the papers relating to allotment of shares in the new company reach the share-holders of the dissolved company. With this end in view the Committee desired that provision should be made in the order for publication of a notice in important newspapers about the fact of despatch of those papers to the shareholders so that a person not getting the same could contact the company and obtain the papers.

* * * * *

The Committee then adjourned.

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

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

The Committee met on Saturday, the 18th November, 1978 from 15.00 to 15.45 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Durga Chand
3. Chaudhary Hari Ram Makkasar Godara
4. Shri T. S. Negi
5. Kumari Maniben Vallabhbbhai Patel
6. Shri G. S. Reddi
7. Shri Saeed Murtaza
8. Shri Sachindralal Singha

SECRETARIAT

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

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

3. The Committee authorised the Chairman and, in his absence, Kumari Maniben Vallabhbbhai Patel to present the Thirteenth Report to the House on their behalf on the 29th November, 1978.

* * * * *

The Committee then adjourned.

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