C.B. II No. 370-VOL. II

# COMMITTEE ON SUBORDINATE LEGISLATION

(ELEVENTH LOK SABHA)

## SECOND REPORT

*(Presented on* 12 DEC 1996*)*

LOK SABHA SECRETARIAT
NEW DELHI

*Price. Rs.20.00*

## LOK SABHA SECRETARIAT

## CORRIGENDA
## TO
## THE SECOND REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(ELEVENTH LOK SABHA)

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# INTRODUCTION

I, the Chairman, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this Second Report.

2. The matters covered by this Report were considered by the Committee at their sittings held on 28 October, 1993, 7 September, 1994, 5 September, 1995 and 16 October, 1996.

3. The Committee took oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Legislative Department) and Ministry of Surface Transport. The Committee wish to express its thanks to the representatives of the Legislative Department and Ministry of Surface Transport for furnishing the desired information.

4. The Committee considered and adopted this Report at their sitting held on 16 October, 1996. The Minutes of the sittings relevant to this Report are appended to it.

5. For facility of reference and convenience, recommendations/observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in consolidated form in Appendix I to the Report.

NEW DELHI:
October, 1996

KRISHAN LAL SHARMA,
*Chairman,*
*Committee on Subordinate Legislation.*

## CHAPTER I

## NEW MANGALORE PORT TRUST EMPLOYEES (RECRUITMENT, SENIORITY AND PROMOTION) REGULATIONS, 1980

### (A)

### PROMOTION AVENUES FOR CLASS IV EMPLOYEES

As per the existing provisions in the New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 1980, 90% of the posts in class III like LDC, Cashier, Telephone Operator, Teleclerk are provided to be filled up by transfer or promotion from amongst the work Assistants and Workmates of the port with 3 years' service in the respective grade, failing which by direct recruitment and remaining 10% of the posts are provided to be filled up by departmental limited examination for class IV employees of the port. It was seen that no provision for promotion of the class IV employees were made in the regulations in respect of those employees who did not fulfill the qualification and experience prescribed for departmental examination or who would not pass that departmental examination. As a result many class IV employees who had rendered even 15 years of service got deprived of any promotion. With a view to clarify the matter, the Committee took oral evidence of the Ministry of Surface Transport on 5 September, 1995.

1.2 During oral evidence, Captain A.N.M. Kishore, Chairman of the New Mangalore Port Trust stated that promotional avenues are open in the New Mangalore Port Trust Employees Regulations for class IV employees for promotion to class III as 10% reservation has been made for class IV categories on the basis of departmental test. He stated that these 10% reserved posts for class IV employees are generally on clerical side.

1.3 On being asked whether there was any proposal made by Port Trust to the Government for automatic promotion to Class III from Class IV, after putting in a particular period of service, Shri C. S. Khairwal, Joint Secretary (Ports) informed that the proposal received from the NMP Trust for giving promotion to those class IV employees who have completed 15 years of service. The Ministry of Finance, who was consulted in the matter, has agreed that class IV employees who have put in 15 years of service may be given one promotion on personal basis as a one time exception. As a result, those class IV employees who have now completed 15 years of service would be promoted to class III posts.

1.4 The representative of the Ministry informed the Committee that giving of one time promotion meant that Ministry of Finance would have to be approached every time for giving such promotions to the class IV

employees who have completed more than 15 years of service, as there is no such express provision of automatic promotion in the entire NMPT regulations. Shri Khairwal the Joint Secretary (Ports) further stated that a general criteria is that a person should get atleast two promotions in a career of 32 years of service. Speaking about treating the promotion to class III categories after completion of 15 years service as one time promotion, Shri Khairwal stated that the Finance Ministry have been insisting that whenever any exception is made, it has to be referred to them because it is not only the port trust but other Public Undertakings and Governmental Departments also where they have to see the repercussions. That is why, last year they had agreed that whosoever has completed 15 years of service can be given the next promotion. Now they have again agreed to give one time promotion as an exception.

**1.5 The Committee feel that in the absence of any provision for automatic promotion of class IV employees in the Regulations of 1980, the fate of class IV staff who have completed 15 years of service in the post would entirely depend upon the Port Authority who may or may not send the proposal for promotion of class IV staff in time to the Ministry. The Committee also feel that the existing procedure followed by Ministry for promotion of class IV staff is an *ad hoc* arrangement and is not a solution to the problem of lack of promotional opportunities for these categories of employees. The Committee agree with the view of the representative of the Ministry that a class IV employee should get at least two promotions in a career of 32 years.**

**1.6 The Committee, therefore, recommend that the New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 1980 should be suitably amended so as to include an express provision for time bound promotion for those class IV employees who have put in 15 years of service in the port trust.**

**(B)**

1.7 Regulation 10 of the New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 1980 read as under:—

"10. Discharge or reversion of employees on Probation.— (1) An employee on probation who has no lien on any post shall be liable to be discharged from service at any time without notice if—

(a) on the basis of his performance or conduct during the period of probation, he is considered unfit for further retention in service; or

(b) if on the receipt of any information relating to his nationality, age, health, education and other qualifications or antecedents, the appointing authority is satisfied that he is ineligible or otherwise unfit for being continued in service.

(2) An employee on probation who holds a lien on a post may be reverted to such post at any time in any of the circumstances specified in sub-regulation (1).

(3) An employee on probation who is not considered suitable for confirmation at the end of the period of probation prescribed in regulation 8, shall be discharged or reverted in accordance with sub-regulation (1) or sub regulation (2), as the case may be.

1.8 It was noticed from the aforesaid regulation that the appointing authority has been vested with the power to discharge or revert an employee to the post held by him prior to appointment in the service in case he is not found fit for permanent appointment. However, there was no provision in the regulation for recording of reasons in writing by the appointing authority before taking such action against an employee. It was felt that lack of such safeguard may result in an arbitrary. use of discretionary power by the appointing authority. The matter was, therefore, taken up with the representative of the Ministry of Surface Transport who appeared before the Committee for oral evidence on 5 September, 1995.

1.9 During the evidence, on being asked whether any opportunity of being heard was given to a person in case he was not considered suitable for confirmation at the end of the probation period and whether such reasons were recorded in writing and conveyed to the affected person, the Joint Secretary (Ports) stated that there is a Departmental Committee of the Port Trust consisting of three to five persons which goes into the aspect of the performance of the probationers. For this purpose, the Committee considers the report given by different officials in respect of these probationers and if the Committee does not find a probationer to be suitable, the probation period is extended and the person concerned is informed in the matter. The probationer can represent his case to the appointing authority. He also informed that though there are no rules as such but there are the instructions issued by the Department of Personnel in this regard.

**1.10 The Committee note that the existing provisions in the New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 1980 dealing with probation of employees do not provide for recording of reasons by the appointing authority before discharging a probationer who has no lien on any post or reverting an employee to the post held by him prior to his appointment in the extant service, in case he is not found fit for permanent appointment. The Committee are not satisfied with the plea taken by the Ministry that such an affected probationer can represent his case to the appointing authority, as it has been accepted by the Ministry that such provision is not in the rules but only mentioned in the instructions issued by the Department of Personnel and Training.**

**1.11 The Committee are of the view that guidelines are no substitute for**

the statutory rules. Further, in the absence of a provision in the regulation, a probationer is unlikely to know the right given to him to represent his case before the appointing authority in case of adverse action against him. The Committee are further of the view that a person on probation, who is being discharged or reverted as the case may be or whose probation period is being extended has a right to know about the reasons for such an action against him. Further more, such reasons should also be recorded in writing by the appointing authority to avoid any arbitrary use of such discretionary power being exercised by the appointing authority.

1.12 The Committee, therefore, recommend that the New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 1980 should be amended to include a provision therein that where it is proposed to terminate the employment of a probationer whether during or at the end of the period of probation, for any specific fault or on account of his unsuitability for the service, the probationer shall be apprised of the grounds of such proposal and given an opportunity to show cause against it, before orders are passed by the competent authority. It must also be ensured that his explanation in reply thereto is given due consideration.

## CHAPTER II

## THE MINISTRY OF DEFENCE ARMED FORCES HEADQUARTERS AND INTER-SERVICE ORGANISATIONS (LIBRARY AND INFORMATION OFFICER, ASSISTANT LIBRARY AND INFORMATION OFFICER AND SENIOR LIBRARY AND INFORMATION ASSISTANT) RECRUITMENT RULES, 1994 (SRO 166 OF 1994)

The Ministry of Defence Armed Forces Headquarters and Inter-Service Organisation (Library and Information Officer, Assistant Library and Information Officer and Senior Library and Information Assistant) Recruitment Rules, 1994 were published in the Gazette of India, Part II, Section 4, dated 8 October, 1994. It was observed therefrom that as per scheme of column 10 of the schedule in case of library and information officer, the probation period for direct recruits was only one year whereas it was two years for promotees with equal qualification. The matter was referred to the concerned Ministry of Defence for ascertaining the rationale behind prescribing a longer probation period for promotees as compared with that of the direct recruits and for treating the candidates at two different footings in the matter of probation. In their reply dated 17 February, 1995, the Ministry stated as under:—

> "that as per instructions contained in Department of Personnel and Training O.M.No. AB 14017/12/87-Estt. (RR) dated 18 March, 1988 (Para 3.11.2, Part III of guidelines on framing/amendment/ relaxation of recruitment rules)—
>
> (a) when promotion is made from one Group to another, two years' probation period is to be prescribed; and
>
> (b) for direct recruits to posts carrying a pay scale the minimum of which is Rs. 5000/- or above or to posts for which the maximum age limit is 35 years or above and where no training is involved, period of probation to be prescribed one year."

2.2 In the case of Library and Information Officer, the Ministry of Defence stated as under:

> "...the age limit for direct recruits is forty years, no training is involved and promotion is from Group B (viz., Assistant Library and Information Officer) to Group A. The period of probation prescribed in the recruitment rules is, therefore, in accordance with the above mentioned guidelines of the DOPT. It may also be mentioned that the provisions made in the recruitment rules in regard to period of probation are in confirmity with the Model Recruitment Rules issued by DOPT, *vide* their

O.M. No. AB 14017/43/91-Estt. (RR) dated 22 February, 1993 for adoption by all the Ministries/Departments."

2.3 On 8 March, 1995, the attention of the Ministry of Personnel, P.G. & Pensions (Department of Personnel and Training) was drawn to the following recommendations contained in para 7 of their Twelfth Report (Tenth Lok Sabha) and were requested to suitably revise their guidelines:—

"The Committee note from the reply of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) that their instructions do not cover a situation where recruitment rules for any post simultaneously provide for direct recruitment as well as promotion in regard to prescribing the period of probation. However, the Ministry are of the view that ordinarily, the period of probation prescribed for appointees to a post should be same whether they are appointed by direct recruitment or promotion. In the light of the above clarifications, the Committee hope that there should be no difficulty for the Ministry of Health and Family Welfare to amending the recruitment rules to prescribe a uniform period of probation both for direct recruits as well as the promotees in all fairness. The Committee desire the Ministry to bringforth the requisite amendment at an early date. The Committee would also like the Ministry of Personnel to suitably revise their instructions to make them unambiguous for facility of the administrative Ministries/Departments."

2.4 On 17 May, 1995, the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) revised their guidelines for framing of Recruitment Rules *vide* O.M. dated 20 April, 1995 prescribing the uniform period of probation for both promotees and direct recruits.

2.5 On 19 May, 1995, the Ministry of Defence were again requested to amend the rules accordingly on the basis of the revised instructions issued by the Department of Personnel and Training regarding uniform period of probation where recruitment is made both by promotion and direct recruitment.

**2.6 The Committee note that on being pointed out the Ministry of Defence have issued an amendment *vide* SRO 227 published in the Gazette of India, Part II, Section 4, dated 25 November, 1995 prescribing a uniform period of probation to one year for both direct recruits and promotees in column**

**10 of the Schedule appended to the Ministry of Defence Armed Forces Headquarters and Inter-Service Organisations (Library and Information Officer, Assistant Library and Information Officer and Senior Library and Information Assistant) Recruitment Rules, 1994.**

## CHAPTER III

## RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS BILL, 1993. (BILL NO. 59 OF 1993)

The Recovery of Debts Due to Banks and Financial Institutions Bill, 1993 (Bill No. 59 of 1993) was introduced in Lok Sabha on 13 May, 1993. It was observed from the Memorandum of Delegated Legislation appended to the Bill that certain matters were to be regulated by issue of notifications and certain other matters were to be provided by issue of rules by the Central Government in accordance with the provisions of the Bill. Whereas the Bill contemplated to lay the rules before the Houses and to subject them to modification by the two Houses of Parliament as per provisions contained in Clause 36, no such provisions were made for laying and modification of the Notifications to be issued in exercise of the powers of delegated legislation under the Bill.

3.2 The matter was referred to the Ministry of Finance on 25 May, 1993 for seeking clarification as to what actions were contemplated to be taken for placing such notifications before the two Houses of Parliament for modification etc.

3.3 The Ministry of Finance in consultation with the Ministry of Law, Justice and Company Affairs furnished a reply on 14 September, 1993 clarifying the basis for adopting the laying formula as indicated in Clause 36 of the Bill as under:—

> "The Lok Sabha Secretariat have mentioned that whereas clause 36 of the said Bill makes a provision to lay the rules before the Houses of Parliament which will make such rules subject to modifications by both the Houses of Parliament, no similar provision has been made for laying the notifications to be issued under the various provisions of the said Bill. In this connection, it may be mentioned that according to model clauses approved by the Committee on Subordinate Legislation *vide* paragraphs 33-34 of the Second Report (Fifth Lok Sabha), only rules are required to be laid before both the Houses of Parliament. The said model clause is being incorporated generally in all the Bills which are introduced in Parliament. It may also be added that in order to give effect to the recommendations made by the Committee on Subordinate Legislation [Kindly refer paragraph 320 of the 18th Report (7th Lok Sabha)] approximately 200 Acts have been amended by the Delegated Legislation Provisions (Amendment) Act, 1983 (20 of 1983) and the Delegated Legislation Provisions Amendment Act, 1985 (4 of 1986) to bring the laying provisions in the said Acts in conformity with the said model clause.

Thus it will be observed that generally the laying formula only deals with laying of rules before both the Houses of Parliament. However, depending on the nature of the powers delegated to the executive to issue notifications of orders, various types of laying provisions are incorporated in Parliamentary Legislation. For example, Section 118 of the Industries (Development and Regulation) Act, 1951 provides that a copy of every order proposed to be notified shall be laid in draft before each House of Parliament, while it is in session for a total period of 30 days. The proposed order shall not be made or, as the case may be, shall be made only in such modified form as may be agreed upon by both the Houses. Under section 7 of the Customs Tariff Act, 1975 power has been conferred on the Central Government to increase or reduce the duty specified in the First Schedule of the said Act by notification. Under sub-section (3) of that section the said notification is required to be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and if it is not sitting, within 7 days of its re-assembly. Under the said sub-section the Central Government shall seek the approval to the said notification by a resolution moved within a period of 15 days begining with the day on which the notification is so laid before the House of the People and the notification will be subject to any modification made by the House. A similar provision is also contained in section 3 of the Central Excise Tariff Act, 1985 (5 of 1986). Similarly section 159 of the Customs Act, 1962, relating to laying of rules and certain notifications, provides that every notifcation issued under Section 11 (prohibiting importation or exportation of goods) section 118 (notifying goods for the purpose of checking illegal import, circulation or disposal of such goods) section 14 (fixation of tariff values for any class of imported goods or export goods), Section 25 (granting exemption from duty of customs) etc., shall be laid before each House of Parliament. Thus it will be observed that the requirement for laying certain notifications before each House of Parliament under the said Acts is because the nature of power delegated to the executive in these cases is legislative in character.

In the light of above, a scrutiny of provisions of the Recovery of Debts Due to Banks and Financial Institutions Bill, 1993 under which the notifications can be issued, indicates that such notifications only deal with the matters of administrative detail.

Under Clause 1(4), the Central Government has been empowered to specifiy the amount within the parameters laid down in that clause by Parliament and such amount cannot be less than Rs. 1 lakh. Under Clause 2(h), the Central Government can specify certain other financial institutions which upon such notification can file cases for recovery of loans under the provisions of the Bill. The said

notification can only be issued having regard to the guidelines indicated in the clause. Further, clauses 3 and 8 of the Bill enable the Central Government to establish Debts Recovery Tribunals and Debts Recovery Appellate Tribunals for the purpose of hearing and deciding cases which will be filed under the said Bill. Such notifications will also specify the territorial jurisdiction of the said Tribunals. Clauses 4 and 9 of the Bill empower the Central Government to appoint the Presiding Officers of the said Tribunals. As the notifications to be issued under the aforesaid provisions will be issued within the parameters or guidelines indicated in the relevant provisions or will deal purely with administrative matters, it may not be necessary to lay the said notification before Parliament.

It may, therefore, be seen that while incorporating the laying formula in Clause 36 of the Bill, the matter had been examined in the light of existing recommendations of the Committee on Subordinate Legislation. We are not aware of any recommendations made by the Committee on Subordinate Legislation whereunder all the notifications to be issued under an Act are required to be laid before Parliament."

3.4 The Committee considered the aforesaid reply of the Ministry at their sitting held on 28 October, 1993 and decided to hear oral evidence of the representatives of the Ministry of Law, Jusitce and Company Affairs for further elucidation of the facts;

3.5 On 7 September, 1994 the representatives of the Ministry of Law, Justice and Company Affairs (Legislative Department) appeared before the Committee for oral evidence. During the course of evidence, the Committee desired the Ministry to furnish a written clarificatory note regarding the critarion being followed by them to determine whether an 'order' is an "Administrative Order" or a "Legislative Order" and also obtain the opinion of the Attorney General of India in this regard.

3.6 In a communication dated 25 April, 1995, the Ministry Informed that the matter has already been referred to the Attorney General of India to obtain his opinion in the matter by the Department of Legal Affairs and the opinion is awaited. Pending receipt of the opinion of the Attorney-General of India, the Ministry enclosed a clarificatory note on the issue. (Please *see* Appendix III).

3.7 In a subsequent communication dated 23 may, 1995, the Ministry enclosed the opinion of the Attorney-General of India regarding the criteria under law to be followed to determine whether an order is administrative or legislative in nature and whether the notifications to be issued under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 are legislative or administrative in nature. (Please *see* Appendix IV).

**3.8 The Committee note that as per the opinion of Attorney-General of**

India Sections 1(4), 3 and 8 of the Act are legislative in nature whereas Section 2(h), the Attorney-General has opined that such notification would be an administrative in nature because it would involved issue of specific direction to bring a particular institution within the purview of the Act, having regard to the business activity and the area of operation of that particular institution.

3.9 The Committee, after going through the opinion of the Attorney-General of India, observed that it is functionally a composite phenomenon to distinguish between Administrative and Legislative Orders. If looked in microscopically, its spectrum shows varied shades of Legislative and Administrative Orders. But this type of examination is not possible in day to day working, because Administrative functions includes a bit of all the three, and is an admixture of Executive, Legislative and Judicial. The distinction between Legislative and Administrative is often not clear, the distinction between the Legistator and Administrator is much more obvious. Whether the order of Government falls within Legislative or Administrative, it depends on the type and quantum of Administrative discretion vested in the Administrative authority and also on the condition of procedural conformity. In the instant case, Attorney-General opined that notification issued under Section 2(h) would be an administrative order are not required to be laid on the Table of both the Houses.

3.10 The Committee, therefore, recommend that the notifications issued under Sections 1(4), 3 and 8 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 should be laid before the two Houses of the Parliament. The Committee desire the Ministry of Finance/Ministry of Law, Justice and Company affairs to take appropriate action to ensure the laying of the aforesaid notifications before the two Houses of Parliament.

NEW DELHI;
*October, 1996*

KRISHAN LAL SHARMA,
*Chairman,*
Committee on Subordinate Legislation.

# APPENDICES

## APPENDIX-I

(*Vide* para 5 of the Introduction)

*Summary of Recommendations made in the Report of the Committee on Subordinate Legislation (Eleventh Lok Sabha)*

| Sl. No. | Reference to para No. in the Report | Summary of Recommendations |
|---|---|---|
| 1 | 2 | 3 |
| | | **New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 1980.** |
| 1 | 1.5 | The Committee feel that in the absence of any provision for automatic promotion of class IV employees in the Regulations of 1980, the fate of class IV staff who have completed 15 years of service in the post would entirely depend upon the Port Authority who may or may not send the proposal for promotion of class IV staff in time to the Ministry. The Committee also feel that the existing procedure followed by Ministry for promotion of class IV staff is an adhoc arrangement and is not a solution to the problem of lack of promotional opportunities for these categorise of employees. The Committee agree with the view of the representative of the Ministry that a class IV employee should get at least two promotions in a career of 32 years. |
| 2 | 1.6 | The Committee therefore, recommend that the New Mangalore Port Turst Employees (Recruitment, Seniority and Promotion) Regulations, 1980 should be suitably amended so as to include an express provision for time bound promotion for those class IV employees who have put in 15 years of service in the port trust. |

| 1 | 2 | 3 |
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1.10 The Committee note that the existing provisions in the New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 1980 dealing with probation of employees do not provide for recording of reasons by the appointing authority before discharging a probationer who has no lien on any post or reverting an employee to the post held by him prior to his appointment in the extant service, in case he is not found fit for permanent appointment. The Committee are not satisfied with the plea taken by the Ministry that such an affected probationer can represent his case to the appointing authority, as it has been accepted by the Ministry that such provision is not in the rules but only mentioned in the instructions issued by the Department of Personnel and Training.

1.11 The Committee are of the view that guidelines are no substitute for the statutory rules. Further, in the absence of a provision in the regulation, a probationer is unlikely to know the right given to him to represent his case before the appointing authority in case of adverse action against him. The Committee are further of the view that a person on probation, who is being discharged or reverted as the case may be or whose probation period is being extended has a right to know about the reasons for such an action against him. Further more, such reasons should also be recorded in writing by the appointing authority to avoid any arbitrary use of such discretionary power being exercised by the appointing authority.

1.12 The Committee, therefore, recommend that the New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 1980 should be amended to include a provision therein that where it is proposed to terminate the employment of a probationer whether during or at the end of the period of probation, for any specific fault or on account of his unsuitability for the service, the

| 1 | 2 | 3 |
|---|---|---|
| | | probationer shall be apprised of the grounds of such proposal and given an opportunity to show cause against it, before orders are passed by the competent authority. It must also be ensured that his explanation in reply thereto is given due consideration. |
| | | **The Ministry of Defence Armed Forces Headquarters and Inter-service Organisations (Library and Information Officer, Assistant Library and Information officer and Senior Library and Information Assistant) Recruitment Rules, 1994.** |
| 2. | 2.6 | The Committee note that on being pointed out the Ministry of Defence have issued an amendment vide SRO 227 published in the Gazette of India, Part II, Section 4, dated 25 November, 1995 prescribing a uniform period of probation to one year for both direct recruits and promotees in column 10 of the Schedule appended to the Ministry of Defence Armed Forces Headquarters and Inter-Service Organisations (Library and Information Officer, Assistant Library and Information Officer and Senior Library and Information Assistant) Recruitment Rules, 1994. |
| | | **Recovery of Debts due to Banks and Financial Institutions, Bill, 1993** |
| | 3.8 | The Committee note that as per the opinion of Attorney-General of India Sections 1(4), 3 and 8 of the Act are legislative in nature whereas Section 2(h), the Attorney-General has opined that such notification would be an administrative in nature because it would involve issue of specific direction to bring a particular institution within the purview of the Act, having regard to the business activity and the area of operation of that particular institution. |
| | 3.9 | The Committee, after going through the opinion of the Attorney-General of India, observed that it is functionally a composite phenomenon to distinguish between Administrative and Legislative Orders. If |

| 2 | 3 |
|---|---|
| | looked in microscopically, its spectrum shows varied shades of Legislative and Administrative Orders. But this type of examination is not possible in day to day working, because Administrative functions includes a bit of all the three, and is an admixture of Executive, Legislative and Judicial. The distinction between legislative and Administrative is often not clear, the distinction between the legistator and Administrator is much more obvious. Whether the order of Government falls within Legislative or Administrative, it depends on the type and quantum of Administrative discretion vested in the Administrative authority and also on the condition of procedural conformity. In the instant case, Attorney-General opined that notification issued, Attorney-General opined that notification issued under Section 2(h) would be an administrative order, are not required to be laid on the Table of both the House. |
| 3.10 | The Committee, therefore, recommend that the notifications issued under Sections 1(4), 3 and 8 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 should be laid before the two Houses of the Parliament. The Committee desire the Ministry of Finance/Ministry of Law, Justice and Company affairs to take appropriate action to ensure the laying of the aforesaid notifications before the two Houses of Parliament. |

# MINUTES

## APPENDIX-II

[*Vide* para 4 of the Introduction]

## MINUTES OF THE TWENTY-EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1992-93)

The Committee met on Thursday, 28 October, 1993 from 15.30 to 16.15 hrs.

PRESENT

Shri Amal Datta — *Chairman*

MEMBERS

2. Shri R. Dhanuskodi Athithan
3. Shri Ram Niwas Mirdha
4. Shri Shravan Kumar Patel
5. Shri Mohan Singh
6. Kumari Frida Topno

SECRETARIAT

1. Shri S.C. Gupta — *Joint Secretary*
2. Shri R.K. Chatterjee — *Deputy Secretary*
3. Shri Ram Kumar — *Under Secretary*

2. The Committee considered Memoranda Nos. 72 to 77 as follows:—

*3—9 *** *** ***

(vi) THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS BILL, 1993 (BILL No. 59 of 1993) (MEMORANDUM No. 77)

10. The Committee noted from the Memorandum of Delegated Legislation appended to the Recovery of Debts due to Banks and Financial Institutions Bill that certain matters were to be regulated by issue of notifications and certain other matters were to be provided by issue of rules by the Central Government in accordance with the provisions of the Bill and whereas the Bill contemplated to lay the rules before the two Houses and to subject them to modification by delegated legislation under the Bill though the same were of

*Omitted portion of the minutes are not covered in the Report.

the two Houses of Parliament as per provisions contained in clause 36, no such provisions were made for laying and modification of the so called notifications to be issued in exercise of the powers of legislative character as per the memorandum of delegated legislation appended to the Bill. Since a legislative power was being exercised in issue of such notifications, the Committee saw no reason as to why the Parliament should be deprived of their legitimate right of supervision in the case of such notifications.

Since the matter was of far reaching consequences, the Committee decided to discuss it in rather some detail with the representatives of the Ministry of Law, Justice and Company Affairs (Legislative Department) to settle it once for all.

*The Committee then adjourned.*

## XLVIII

## MINUTES OF THE FORTY EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1993-94)

The Committee on Subordinate Legislation met on Wednesday, 7 September, 1994 from 1500 to 1600 hours.

### PRESENT

Shri Amal Datta — *Chairman*

MEMBERS

2. Shri M.V.V.S. Murthy
3. Shri Rajendra Kumar Sharma
4. Shri K.G. Shivappa
5. Shri Umrao Singh

SECRETARIAT

1. Shri P.D.T. Achary — *Director*
2. Shri Ram Autar Ram — *Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF LAW (LEGISLATIVE DEPARTMENT)

1. Shri K.L. Mohanpuria — *Secretary*
2. Shri K.N. Chaturvedi — *Additional Legislative Counsel*
3. Shri T.K. Vishwanathan — *Joint Secretary and Legislative Counsel*

2. The Committee took oral evidence of the representatives of the Ministry of Law (Legislative Department) with regard to the Recovery of Debts due to Banks and Financial Institutions Bill, 1993.

3. During evidence, the Committee pointed out that the Recovery of Debts due to Banks and Financial Institutions Bill contemplates laying the rules before Parliament and subject them to modification by the two Houses of Parliament as per the provisions contained in clause 36 of the said Bill. No such provisions were made in the Bill for laying and modification of the notifications to be issued in exercise of the powers of delegated legislation on the ground that such notifications were administrative in character. The Committee desired to know the criteria being followed to determine whether an 'Order' is an 'Administrative Order' or a 'Legislative Order' in so far as their being laid before the two Houses of Parliament for modification was concerned.

4. In response the Secretary, Legislative Department stated that Parliament is Supreme and can scrutinise every order whether it was an administrative order or a legislative order. Regarding the distinction between a 'legislative order' and an administrative order' the Secretary stated that making of rules, bye-laws etc. were all legislative functions. The notifications etc. are administrative orders under delegated legislation, for facilitating the executive.

5. The Committee, however, pointed out that it was not clear as to where to draw a line between a rule or a regulation or a simple exercise of power given by the legislature through notification and where it ceased to be legislative power and became purely an administrative power. The Committee desired the Law Ministry to make an indepth study of the matter and also to elicit the opinion of Attorney-General in that regard and furnish it to the Committee at the earliest. The suggestion was agreed to by the Secretary, Legislative Department of the Ministry of Law, Justice and Company Affairs.

[The witnesses then withdraw]

*The Committee then adjourned.*

# MINUTES OF THE SIXTY-SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1995-96)

The Committee met on Tuesday, 5 September, 1995 from 15.00 to 16.30 hours.

## PRESENT

Shri Amal Datta—*Chairman*

MEMBERS

2. Shri V. Dhananjaya Kumar
3. Shri D. Pandian
4. Shri Rajendra Kumar Sharma
5. Shri Pratap Singh

SECRETARIAT

1. Shri S.N. Mishra — *Additional Secretary*
2. Shri Ram Autar Ram — *Deputy Secretary*
3. Shri B.D. Swan — *Assistant Director*

REPRESENTATIVES OF THE MINISTRY OF SURFACE TRANSPORT (PORTS)

1. Shri C.S. Khairwal, Joint Secretary, (Ports)
2. Capt. A.N.M. Kishore, Chairman, New Mangalore Port Trust
3. Shri K. Kalyanasundram, Under Secretary (Ports)

2. The Committee took oral evidence of the representatives of the Ministry of Surface Transport (Ports) regarding some points arising out of the New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 1980.

3. During the evidence, Joint Secretary, Ministry of Surface Transport explained in brief about the New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations which came into being only in 1980 under Section 126 of the Major Port Trusts Act, 1963. It is a new Port. There have been certain changes even after 1980 depending upon the requirement of particular Port or whenever certain changes are required to be done then these are sent to the Government of India for their consideration. Only after approval, these are issued as regulations.

4. On being asked whether these changes were made from time to time

on the proposals made by the Port Trust and whether the similar changes were also made in all the major ports or they differ, Joint Secretary stated that it would differ from category to category. When there is one particular category having same qualifications and requirements of duty, the changes will be similar. But when the responsibilities and duties differ, the changes may differ. In respect of Class IV and Class III categories, there are not much of variations in different Port Trusts.

5. To a question as to what were the promotional avenues for Class III and Class IV employees in the Port, the representative stated that there are 10% reservation in promotion for Class IV to Class III category. In the case of office staff, typing test is held. Sometimes, even the educational standards are relaxed, and it is not necessary that they should possess higher standards. In certain technical areas, qualification upto X standard is required but their experience is considered for the purposes of promotion. He further stated that seniority is not alone the criteria but there is a small trade test. Normally, for a peon to become a clerk, he should have the minimum qualification of X standard and he would be given three years time to pass the typing test.

6. On being asked whether any opportunity, for learning typing was provided by the Port Authority, the Chairman of the Port informed that there is no such provision but for other categories there is a training institute in each of the Ports. Normally, technical skills are being imparted to them at these training institutes according to their skills and ability to perform.

7. On being enquired whether there was any proposal made by the Port Trust to the Government so as to include a provision to the effect that employee in Group C and Group D posts become eligible for promotion on personal basis after putting in 15 years of service, the representative stated that the proposal was received from various Port Trusts for giving promotion to employees who have completed 15 years of service. The Ministry of Finance have also agreed that as a one time personal promotion may be given to those who have put in 15 years of service.

8. With regard to the question of time scale promotion, the representative stated that normally everyone gets two promotions in a carrier of 32 years of service. The Finance Ministry have been insisting that whenever any exception is made, it has to be referred to them because it is not only the Port Trust but there are other public sector undertakings and other Government Departments where the Government have to see the repercussions. That is why, last year also they had agreed to give promotion to next category after completion of 15 years of service in one grade. Again they have agreed that they should be given promotion as one time exception.

9. On being asked whether there was such provision in any public sector undertakings, the representative stated that there is a provision for

promotion in the recruitment rules after putting five years of service, subject to the availability of vacancy. But there are cases where discrepancies are still there even after putting 15 years of service. As in the case of Mangalore Port Trust, there are 78 cases where the employees have not been promoted even after rendering 15 years of service.

10. Regarding consultation with the employees' associations with regard to service matters, the representative of the Ministry informed that the views of the representatives of the labour unions are considered by the Board. Regarding filling up of the posts, he informed that the reasons for keeping the post in abeyance are explained in the booklet form, which is reviewed every year and a copy of the same is also sent to the Government as per the provisions of the Act.

11. On the question of the procedure followed by the Port Trust employees for seeking redressal of their grievances, the representative informed the Committee that in each Port, one person is designated as Director of Grievances to look into the matter whenever any representation is made to him.

12. On being asked whether any opportunity of being heard was given to a probationer in case an employee on probation who was not considered suitable for confirmation at the end of the probation period and whether such reasons were recorded in writing and conveyed to the affected person, the representative stated that there is a committee consisting of three to five persons which goes into the work done by those persons who have been on probation and this committee considers the report which is given by different officials in respect of these persons and if the committee does not find him to be suitable, the probation period is extended and the person concerned is informed in the matter. The probationer can represent his case to the appointing authority. He informed that there is no rules as such but there are the instructions issued by the Departmenf of Personnel in this regard. The Committee suggested that these provisions should be incorporated in the rules/regulations to obviate any arbitrary use of given discretion.

[ Witnesses then withdrew ]

*The Committee then adjourned.*

## MINUTES OF THE FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (ELEVENTH LOK SABHA) (1996-97)

The Committee met on Wednesday, 16 October, 1996 from 11.00 hours to 12.00 hours.

### PRESENT

1. Shri Krishan Lal Sharma — *Chairman*

#### MEMBERS

2. Shri V. Alagirisamy
3. Shri Vijay Kumar Khandelwal
4. Shri Thota Gopala Krishna
5. Shri V. Dhananjaya Kumar
6. Shri K.H. Muniyappa
7. Shri M. Baga Reddy
8. Shri Balai Roy

#### SECRETARIAT

1. Shri P.D.T. Achary — *Director*
2. Shri Ram Autar Ram — *Deputy Secretary*
3. Shri B.D. Swan — *Assistant Director*

2. The Committee considered and adopted the draft First and Second Reports with slight modifications.

3. The Committee thereafter decided to postpone their study tour scheduled to be undertaken from 2 November, 1996.

4. The Committee also decided to hold their next sitting at 15.00 hours on 7 November, 1996.

The Committee then adjourned.

## APPENDIX III

(*Please see* para 3.6 of the Report)

## CLARIFICATORY NOTE FURNISHED BY THE MINISTRY OF LAW RE: CRITERION BEING FOLLOWED BY THEM TO DETERMINE WHETHER AN 'ORDER' IS AN 'ADMINISTRATIVE ORDER' OR THE 'LEGISLATIVE ORDER'

"Modern Statutes in addition to conferring powers on subordinate authorities for making rules (popularly known as 'delegated legislation') also confer power to make 'Orders'. As a learned author on Administrative Law has observed "There is no more characteristic administrative activity than legislation" (H.W.R. Wade "Administrative Law" Sixth Edn., p. 848). Broadly stated while a rule is general in scope, an order is specific in its application and its functions relate more particularly to the execution or enforcement of some rules previously made or of some provisions of the statute itself, to particular cases or classes of cases.

2. Since an order is specific in its application, further question arises as to whether a particular order is 'legislative' or merely 'executive' in nature. Generally speaking, it can be stated that if any order embodies the decision in an individual case, it is an executive order. On the other hand, if the order lays down a norm or standard according to which cases of the same nature are to be disposed of, it would partake of the character of a 'legislative' order.

3. The distinction between an executive order and a legislative order is thus one of degree and centers around the question whether the general or individual aspect is predominant in the applicability of the order, that is to say, whether the order seeks to determine the existing rights and liabilities of named parties or is directed at future situations rather than particular situations or persons.

4. The Chief characteristics of a legislative order are its generally and prospectivity. Unlike an executive order which is binding on specific persons only, a valid exercise of delegated legislation only, valid exercise of delegated legislation (legislative order) by the administration is addressed to, and sets standards of conduct for all to whom its terms apply. It operates in advance and does not impose sanctions upon any particular individual. A rule or regulation made by a delegated authority in exercise of its powers of delegated legislation is addressed to indicated but unnamed and unspecified persons or situations.

5. Power to give orders in specific cases is generally an executive power

and an administrative function. The distinction between legislative order and executive order may be briefly summed up as follows:—

(1) A legislative order formulates a general rule of conduct without reference to particular cases and usually operates in future.

(2) An executive order regulates the performing of particular acts or making of particular decisions involving the application of the statute or rules made under it in particular cases.

6. However, a note of caution may be added. Mere generality may not be the sole criterion for distinguishing a legislative order from an executive order. For example, executive directions/Administrative instructions issued by a superior authority to a subordinate authority for the guidance as to how power is to be exercised may be general, cut still such orders would be executive in nature. Section 119 of the Income-tax Act, 1961 for example, empowers the Central Board of Direct Taxes to issue such orders, instructions etc. to Income Tax Authorities Subordinate to it for the proper administration of the Income-tax Act.

7. Orders issued under section 3 of the Essential Commodities Act, 1955 have been held to be legislative orders. The Supreme Court in the Union of India Vs. Cyanamide India Limited (AIR 1987 SC 1802) has expressed the view that "price fixation" under the Essential Commodities Act which has been done by means of Orders is a "legislative activity." Hence, such Orders would be legislative. But an order issued under section 19(1) of the Motor Vehicles Act, 1988 revoking a driving licence would be considered to be an executive order.

8. In another case, the Supreme Court while dealing with section 3 of the Imports and Exports (Control) Act, 1947, Union of India Vs. Anglo Afghan Agencies (AIR 1968, SC P. 718) has held that the Import Trade Central Policy containing a 'Scheme' was executive in nature. The Supreme Court observed:—

> "that it is not the form of the order or the method of its publication or the source of its authority which determines its true character, out its substance."(p. 723)

9. As a former Parliamentary Counsel of the United Kingdom has observed, "The term 'Order' is used for instruments which have an executive flavour and express and obvious command. Very often their effect is limited to a particular moment in time, rather than being continuing" (Francis Bennion "Statutory Interpretation" 1984. (Page 150)

10. Thus, the distinction between legislative and executive orders does not turn on the use of terminology. The words "rules, orders, notifications and regulations" are used often times interchangeably.

## APPENDIX IV

(*Please see* para 3.7 of the Report)

## OPINION OF THE ATTORNEY-GENERAL OF INDIA RE: CRITERIA UNDER LAW TO BE FOLLOWED TO DETERMINE WHETHER AN ORDER IS ADMINISTRATIVE OR LEGISLATIVE IN NATURE

I have perused the Statement of Case dated 28.3.1995 prepared by Dr. Y.P.C. Dangay, Addl. Legal Adviser and also have had the benefit of valuable opinion of Shri K. Parasaran, one of my predecessors, which has been annexed to the Statement of Case.

The queries have arisen, as it appears from the opening paragraph of the Statement of case, because of the Significance of requirement of laying down the rules before the Parliament, whereas in some cases notifications issued are not required to be laid down before the Parliament. In this background I have been asked to identify the criteria to distinguish between legislative and administrative orders. The task is difficult for there is a only 'hazy borderline' between the said two kinds of orders, *vide* Administrative Law by Wade & Forsyth, 7th Ed. (1994, International Student Edition), page 859:

> "There is only a hazy borderline between legislation and administration, and the assumption that they are two fundamentally different forms of power is misleading."

Chinnappa Reddy, J In UOI Vs. Cyanamide India Ltd., (AIR 1987 SC 1802) has said:

> ".....It is true that, with the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity. Any attempt to draw a distinct line between legislative and administrative functions, it has been said, is difficult in theory and impossible in practice".

Wade says:

> "There are some obvious general differences, but the idea that a clear division can be made.... is a legacy from an older era of political theory. It is easy to see that legislative power is the power to lay down the law of people in general, whereas administrative power is the power to lay down the law for them, or apply the law to them,

in some particular situation." *(Vide* Administrative Law, referred to above).

Thus, the purpose, situation and application, general or specific, appear to be some of the factors helpful in drawing a distinction between the delegated powers, legislative or administrative. However, to quote Wade again:

"...there is an infinite series of gradations, with a large area of overlap, between what is mainly legislation and what is plainly administration."

Despite hazy borderline or overlapping between administrative and legislative orders, a distinction is to be attempted to some extent.

The legislature normally does not follow a particular policy in choosing forms of delegated legislation, they are known by different nomenclature 'rules', 'regulations', 'orders' etc. These statutory instruments, the subordinate legislation, very not only according to the nature of the authority vested with the power to make them but also according to the nature of the instrument so made. The Committee on Ministers' powers recommended that the expressions 'regulations', 'rule' and 'order' should not be used indiscriminately, but that 'rule' should be confined to provisions about procedure and 'order' should be used only for executive acts and legal decisions. But the nomenclature in practice honours these distinctions nearly as much in the breach as in the observance (Administrative Law by Wade, 7th Ed. p. 867). Confusion arises in regard to distinction between 'rules' and administrative orders since both are made by the same authority.

Dr. D.D. Basu in his book Administrative Law, 3rd Ed. at page 72, after having referred to various case laws, has summarised the distinction between the legislative orders and administrative orders in the following manner:

> "While an administrative order relates to a particular person or object, e.g., an order granting or refusing a licence, a rule lays down as much a general rule of conduct as the statute under which it is made. If a superior administrative authority issues an order as to how his subordinate should dispose of an individual case, it is an administrative direction. If, however, the order lays down the rule according to which cases of the same nature are to be disposed of, it becomes legislative in character and such order assumes the form of subordinate legislation, if it is issued in exercise of a power conferred by statute."

It would be apposite to refer to some further decisions on the subject. A Division Bench of the Gujarat High Court in the case of Vora Fiddali Vs. State, AIR 1961 Guj. 151 (para 21) has referred to a passage from the Treatise on Constitutional Law by Will is and has culled out some test:

(i) Although the classification of functions does not normally depend

upon the classification of the authority by which it is exercised, the nature of the function is sometimes determined by a consideration of the authority exercising the function.

(ii) Sometimes distinction between legislative and administrative acts is identified with the distinctions between acts which do and acts which do not affect the legal rights of members of the public.

(iii) Sometimes distinction between legislative and administrative acts is expressed as being a distinction between the general and the particular. It is said that a legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases, while an executive act is the making and issue of a specific direction, or the application of a general rule to a particular case in accordance with the requirement of policy.

In the Cyanamide case the distinction between the two has been pointed out in the following words:

> "Distinction between the two has usually been expressed as 'one between the general and the particular'. A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy. 'Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases.' It has also been said 'Rule making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class' while, 'an adjudication, on the other hand, applies to specific individuals or situation'. But, this is only a broad distinction, nor necessarily always true."

Bernard Schwartz in his book Administrative Law (3rd Ed. P. 164-165) has referred to two tests *viz.*, "Holmes time test" and "Applicability test".

*Homes time test:*

> A federal court points out that there is no "bright line" between rulemaking and adjudication. The most famous pre-APA attempt to explain the difference between legislative and judicial functions was made by Justice Holmes in Prentis V. Atlantic Coast Line Co. "A judicial inquiry", said he, "investigates, declares and enforces liabilities as they exist. That is its purpose and end. Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subjects to its power." The key factor in the Holmes analysis is

time: A rule prescribes future patterns of conduct; a decision determines liabilities upon the basis of present or past facts. As Justice Scalc has recently put it. "Adjudication deals with what the law was; rulemaking deals with what the law will be".

*Applicability test:*

"The element of applicability has been emphasized by others as the key in differentiating legislative from judicial functions. According to Chief Justice Burger, "Rulemaking is normally directed toward the formulation of requirement having a general application to all members of a broadly identifiable class". An adjudication, on the other hand, applies to specific individuals or situations. To determine whether an action is rulemaking or adjudication, courts should consider whether the action is generalized in nature (*i.e.*, whether it applies to specific individuals or to unnamed and unspecified persons); whether the agency considered general facts or adjudicated a particular set of disputed facts; and whether the action determines policy issues or resolves a specific dispute between parties."

The 'Holmes time test' has been quoted with approval by our Supreme Court in the Cyanamide Case.

The Cyanamide Case as well as the said two tests of Bernard Schwartz have referred to with approval by the Supreme Court in a later judgement in the case of Sitaram Sugar Co. Ltd. Vs. UOI, AIR 1990 SC 1276, 1293.

A practical difficulty arises in making distinction between a legislative, executive and judicial function of an administrative agency, for the functions performed by administrative agencies do not fall within water tight compartments. This difficulty is sometimes solved by applying the test of predominance, that is, whether the administrative agency performs a predominantly legislative or judicial or administrative function and determining its character accordingly, *vide* Express Newspapers (Pvt.) Ltd. Vs. UOI, 1959 SCR 12, 109.

This opinion would remain incomplete without a discussion on the requirement of laying of the rules framed under clause 36 of the Recovery of Debts due to Banks and Financial Institutions Bill, 1993 (now replaced by an Act), before the Houses of the Parliament, for, as pointed out at the beginning of this opinion, genesis of the queries raised seems to be the significance of laying of the rules before Parliament.

The requirement as to laying before Parliament is considered to be statutory safeguard against the dangers of delegated legislation. In England in earlier cases, this condition was held to be merely directory. However, after enactment of the Statutory Instruments Act, 1964 it seems that rules are required to be laid down before Parliament unless the requirement has been obviated. In India this depends upon the interpretation of the statute whether the requirement is directory or mandatory. (Narinder Vs. UOI, AIR 1960 SC 430; Jan Mohd Vs. State of Gujrat, AIR 1966 SC 365).

At least in two recent judgements of the Supreme Court *viz.* Sarojini Ramaswami Vs. UOI, (1992) 4 SCC 506 and S.R. Bommai Vs. UOI, (1994) 3 SCC 1 the affect of Parliamentary approval of an action or report *vis-a-vis* scope of judicial review has been examined. It has been held that merely because an administrative order or regulation is required by statute to be approved by Parliament would not protect the order or regulation from being struck down by Court on the doctrine of *ultra vires*.

Thus, the fact that the rules in the instant case are laid before the Parliament would not save them from judicial scrutiny and they do not stand on any higher footing in this respect.

In the light of the aforesaid discussion, the queries raised here are being answered with a warning that since the distinction between an executive order and a legislative order lies on a "hazy borderline", and it is also sometimes overlapping, another view is always possible.

My opinion with regard to the question posed is as follows:

Question(i): What are the criteria under law to be followed to determine whether an order is administrative or legislative in nature?

Answer: As discussed above.

Question(ii): Whether the notification that may be issued under Section 1 (4) of the Act would be of general character and partake of the characteristic of a notification of a legislative nature?

Answer: The purpose of a notification under S. 1 (4) is to give effect to applicability of the provisions of the Act with reference toamount of debt. A notification under this provision would be of general character and govern cases of a class of debtors with reference to the amount of debt due. Therefore, it would be legislative in character.

Question(iii) Whether the notification to be issued under Section 2(h) of the Act would be more of a non-legislative nature as it would envisage examination of each institution?

Answer: A notification under Section 2(h) would be an administrative act because it would involve issue of a specific direction tobring a particular financial institution within the purview of the Act, having regard to the business activity and the area of operation of that particular institution.

Question(iv): Whether notification issued under Section 3 of the Act establishing a Tribunal and Section 8 of the Act specifying the Territorial jurisdiction of the Tribunal(s) would partake of the characteristic of a notifiction of non-legislative nature?

Answer: No, it would be more legislative in nature, for the effect of such notification would be establishment of a Tribunal, the purpose for which the Act has been enacted.

Sd/-
(MILON K. BANERJI)
ATTORNEY GENERAL FOR INDIA
MAY 12, 1995.