

**COMMITTEE ON SUBORDINATE LEGISLATION**  
**(FOURTEENTH LOK SABHA)**

**(2008-2009)**

**TWENTY-SECOND REPORT**

**(PRESENTED ON 16.12.2008 )**

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**LOK SABHA SECRETARIAT**  
**NEW DELHI**

**December, 2008/Agrahayana, 1930 (Saka)**

## C O N T E N T S

	<u>Para No.</u>	<u>Page</u>
<b>COMPOSITION OF THE COMMITTEE</b>		<b>(iii)</b>
<b>INTRODUCTION</b>		<b>(v)</b>
<b>REPORT</b>		
I. Shortcomings in the National Sugar Institute, Kanpur [Research Assistant (Engineering)] Recruitment Rules, 2002 (GSR 583-E of 2003).	1.1-1.20	1-7
II. The Narcotic Drugs and Psychotropic Substances (National Fund for Control of Drug Abuse) Rules, 2006 (GSR 177-E of 2006).	2.1-2.3	8-9
III. The Mumbai Port Trust (Pension Fund) Regulations, 2004 (GSR 341-E of 2004).	3.1-3.5	10-12
IV. Infirmities in the National Institute of Pharmaceutical Education and Research (Degree of Masters' and Doctor of Philosophy) Ordinance, 2005 (GSR 406 of 2005).	4.1-4.21	13-21
<b>APPENDICES</b>		
I. Statement of recommendations/observations made by the Committee		22-27
II. Extracts from the Minutes of the First sitting of the Committee (2008-09) held on 14 <sup>th</sup> August, 2008.		28-29
III. Minutes of the Third sitting of the Committee (2008-09) held on 6 November, 2008.		30-31

**COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION**  
**(2008-2009)**

1. Shri N. N. Krishnadas - Chairman

**Members**

2. Shri Anandrao Vithoba Adsul
3. Shri Giridhar Gamang
4. Shri Loganathan Ganesan
5. Shri N. Y. Hanumanthappa
6. Shri Ram Singh Kaswan
7. Shri Faggan Singh Kulaste
8. Shri Dalpat Singh Paraste
9. Shri Jaysingrao Gaikwad Patil
10. Shri Lalmani Prasad
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12. Shri Bhupendrasinh Solanki
13. Shri Ramjilal Suman
14. Shri A.K.S. Vijayan
15. Shri Madhu Goud Yaskhi

**SECRETARIAT**

1. Shri A.K. Singh - Joint Secretary
2. Shri R.K. Bajaj - Director
3. Ms. Miranda Ingudam - Committee Officer

## INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 14<sup>th</sup> August, 2008.

3. The Committee considered and adopted this Report at their sitting held on 6 November, 2008.

4. 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 Appendix I of the Report.

5. Extracts from the Minutes of the First sitting of the Committee (2008-09) held on 14 August, 2008 and Minutes of the Third sitting of the Committee (2008-2009) held on 6 November, 2008 relevant to this Report are included in Appendices II & III.

**NEW DELHI;**  
**10, December, 2008**  
**19, Agrahayana, 1930 (SAKA)**

**N.N. KRISHNADAS,**  
**CHAIRMAN,**  
**COMMITTEE ON SUBORDINATE LEGISLATION**

## REPORT

### **I. Shortcomings in the National Sugar Institute, Kanpur [Research Assistant (Engineering)] Recruitment Rules, 2002 (GSR 583-E of 2003).**

The National Sugar Institute, Kanpur [Research Assistant (Engineering)] Recruitment Rules, 2002 (GSR 583-E of 2003) were published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 25 July, 2003. Scrutiny of these rules revealed certain shortcomings namely, delay in printing of rules, non-tally of year of short title to the Rules with the year of publication of the Gazette Notification, etc. These were referred to the Ministry of Consumer Affairs, Food and Public Distribution (Deptt. of Food & Public Distribution). The points raised and replies of the Ministry thereto are brought out below:-

#### **A. Delay in printing of the rules in the Extraordinary Gazette.**

1.2. The Committee observed that the date of notification of the aforesaid rules was mentioned as 30 May, 2003 whereas the same were published on 25 July, 2003. Since the rules were published in the Extraordinary Gazette, as such they should have been published on the same date. On being asked about the discrepancy, the Ministry vide their OM dated 4 November, 2004 submitted that necessary corrigendum in this regard was being issued. As soon as it is issued, a copy thereof would be made available to Lok Sabha Secretariat for their information.

1.3. The Committee noted that the reply of the Ministry of Consumer Affairs, Food and Public Distribution (Deptt. of Food & Public Distribution) was too casual and also silent on other points. The Ministry were, therefore, asked (O.M. dated 19 November, 2004) to furnish point-wise reply to this Secretariat.

1.4 In response to the aforesaid O.M., the Ministry vide their communication dated 29 April, 2005 stated as under: -

*“that the corrigendum could not be issued as the old file from which the notification in question was issued is not traceable, despite our best efforts. Besides, the then staff also is not available in the Ministry due to their allocation to different Departments. However, necessary corrigendum has since been issued.”*

1.5 Since the desired information was not furnished to Lok Sabha Secretariat for a long time, it was noted that even after lapse of more than a year, the Ministry did not appear to have taken any action in the matter except stating that the old file from which the notification had been issued was still not traceable which would facilitate the issue of necessary corrigendum to the rules.

1.6 On the matter being pursued further, the Ministry vide their communication dated 9 May, 2005 informed that::

*"it had inadvertently been mentioned in their OM that necessary corrigendum had been issued. However, the factual position was that the corrigendum was yet to be issued. Efforts were being made to issue necessary corrigendum before 16 May, 2005, as desired in the Lok Sabha Secretariat OM dated 4 May, 2005."*

1.7 In this connection, the Ministry vide their subsequent OM dated 17 May, 2005 further informed as under: -

*“that necessary corrigendum vetted by the Legislative Department has been collected and same has been forwarded to the Ministry of Law for its Hindi Translation. A copy of the draft vetted by the Legislative Department is enclosed herewith for information. As soon as the corrigendum is published in the Gazette of India, a copy of the same will be furnished to the Lok Sabha Secretariat.”*

1.8 The Ministry vide their O.M. dated 15 September, 2005 furnished a printed copy of the amended rules carrying the requisite amendments vide GSR 378-E dated 8 June, 2005.

1.9. It was further observed that there was again discrepancy in the preamble of the aforesaid notification in the dates i.e. the date of publication of rules was shown as 25 July, 2003 whereas the date of notification was mentioned as 30 May, 2003.

1.10. The matter was again taken up with the Ministry on 25 October, 2005 to explain the reasons for this discrepancy.

1.11. In response, the Ministry vide their OM dated 2 December, 2005 apprised the Committee as under: -

*“that the discrepancy in the dates occurred in the notification due to a typographical mistake. However, corrigendum has already been issued with the approval of Ministry of Law. In order to avoid such lapses in future, necessary instructions have been issued in this regard to all concerned in the Section. The error is deeply regretted.”*

**1.12. The Committee note that in the National Sugar Institute, Kanpur [Research Assistant (Engineering)] Recruitment Rules, 2002, the date of notification has been mentioned as ‘30 May, 2003’ whereas the same were published on 25 July, 2003. As per the oft-repeated recommendation of the Committee on Subordinate Legislation, the rules which are to be published in the Extraordinary Gazette should be published on the same date. On being enquired about the discrepancy, the Ministry submitted that necessary corrigendum in this regard was being issued. However, the requisite corrigendum could not be issued even after a lapse of more than one year, as the old file which would facilitate the issue of necessary corrigendum to the rules was not traceable. On the matter being pursued repeatedly, the Ministry issued the necessary corrigendum carrying out the requisite amendments vide GSR 378E dated 8.6.2005. However, the Committee observed that there was again discrepancy in the dates i.e. the date of publication of rules was shown in the preamble of the rules as 25 July, 2003 whereas the date of notification was mentioned**

as 30 May, 2003. On perusal of the matter again the Ministry simply responded that the discrepancy in the dates occurred in the notification due to a typographical mistake. The Committee express their serious view that the matter relating to printing of rules under the Act has been dealt with by the Ministry of Consumer Affairs, Food and Public Distribution (Department of Food & Public Distribution) in a very casual and lackadaisical manner and no serious attention is paid for expeditious printing/publication of the rules. In this regard, the Committee have time and again emphasized that the responsibility of a Ministry/Department is not ceased simply with the sending of a notification to the press. After the rules/regulations etc. have been published in the Gazette, the Ministries/Departments concerned should take immediate steps to examine whether the same have been correctly printed, and if necessary, to issue corrigendum thereto. The Committee desire the Ministry to be more careful in future and should evolve some procedural safeguards to ensure timely publication of their Notifications.

1.13 The Committee also observe with displeasure that the inability to trace the old file pertaining to the notification in question and furnishing wrong information to the Committee that corrigendum had been issued are matters of great concern that reflects the lack of seriousness of the Ministry. The Committee, therefore, desire that responsibility may be fixed up in this case and the action taken in this regard may be apprised to the Committee within three months from the presentation of this report.

(Recommendation Sl. No. 1)



**B. The year in the short title.**

1.14. The Committee further observed that the year mentioned in the short title to the Rules did not tally with the year of publication of the Gazette Notification. The short title to the rules denoted the year as 2002 whereas the rules were published in the year of 2003. Normally, for facilitating easy referencing, the year in the short title to the rules/regulations should conform to the year of their publication in the Gazette Notification. The Ministry were, therefore, asked to state the reasons for deviation from the normal practice in that regard and to state whether they have any objection to rectify the said error.

1.15. In response, the Ministry vide their O.M. dated 15 September, 2005 forwarded a printed copy of the amended rules wherein the aforesaid error in the short title has been rectified vide GSR 378-E dated 8 June, 2005.

**1.16. The Committee note that the Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) issued the necessary corrigendum to the aforesaid rules, by indicating the correct year, in the short title vide GSR 378-E dated 8 June, 2005 after being pointed out by them. The Committee urge the Ministry to evolve suitable procedural safeguards against recurrence of such lapses and be more vigilant in future in such procedure & routine matter.**

**(Recommendation Sl. No. 2)**

**C. Selection-cum-seniority.**

1.17. The Committee also observed that the heading under column 5 of the Schedule was not in conformity with the extant orders of DOPT guidelines dated 8 February, 2002. In column 5, the entry of heading has been made as “whether selection by merit or selection cum seniority” instead of “whether selection or non-selection post”.

1.18 In response, the Ministry vide their O.M. dated 15 September, 2005 forwarded a printed copy of the amended rules wherein the aforesaid error in the entries of Column 5 of the schedule has been rectified vide GSR 378-E dated 8 June, 2005.

**1.19. The Committee note that on being pointed out, the Ministry have amended the aforesaid rules as per extant orders of DOPT vide GSR 378-E dated 8 June, 2005. The Committee expect that in future the Ministry should be more careful to avoid recurrence of errors in such procedural and routine matter.**

**(Recommendation Sl. No. 3)**

**D. Note (i) under Col. 8 of the Schedule**

1.20. The Committee observed that Note (i) under Col. 8 of the Schedule regarding educational and other qualifications required for direct recruits did not indicate the class or category of persons to whom the relaxation was applicable. When the attention of the Ministry was drawn to this point, they realized their mistake and issued corrigendum incorporating Note-2 as under:-

“The qualification (s) regarding experience is/are relaxable at the discretion of the competent authority, in the case of candidates belonging to the Scheduled Castes or the Scheduled Tribes, if at any stage of selection, the Competent Authority is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them”.

**1.21. The Committee find that the Note (i) under col. 8 of the Schedule does not indicate the class or category of person to whom the relaxation was applicable. When this matter was taken up with the Ministry, the Ministry issued requisite corrigendum adding a new Note-2 vide GSR 378-E dated 8 June, 2005. The Committee, however, desire that the Ministry should be more vigilant in future so as to obviate minor errors in such procedural and routine matter.**

**(Recommendation Sl. No. 4)**

## **II. The Narcotic Drugs and Psychotropic Substances (National Fund for Control of Drug Abuse) Rules, 2006 (GSR 177-E of 2006).**

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The Narcotic Drugs and Psychotropic Substances (National Fund for Control of Drug Abuse) Rules, 2006 (GSR 177-E of 2006) were published in the Gazette of India, Part-II, Section 3(i), dated 24 March, 2006. It was observed therefrom that Rule 6(6) and Para 4(6)(b)(iv) of the accounting procedure appended to Annexure-I to the Rules provides that the Central Government may revoke the grant of money from the National Fund for Control of Drug Abuse to an applicant on satisfaction of the conditions as laid down in these provisions. However, no provision for giving an opportunity of being heard to such an applicant has been laid down in the rules.

2.2. In this connection, the Ministry of Finance (Department of Revenue) were requested to furnish their comments in the matter. The Ministry vide their OM No. 664/08/99-NC-I (Vol.III) dated 7 December, 2006 had stated that the provisions of the rules were examined in consultation with the Ministry of Law and Justice and it was felt that Rule 6(6) and Para 4(6)(b)(iv) of the accounting procedure implied that the principle of natural justice would have to be followed before an order of revoking the grant of money was made. The Ministry have further stated that if the Committee on Subordinate Legislation desire that this position should be made explicit in the rules, amendments to the rules would be made to provide for a show cause notice and for a short period to the grantee to show cause, before any action is taken to revoke the grant of money. The Ministry further stated that where the Central Government is of the opinion that the money that was granted is still with the grantee and that the grantee is likely to fritter away or

squander the money, another provision would also be made to give a post-decisional hearing to the grantee, in case of revocation of the grant.

**2.3. The Committee note that Rule 6(6) and Para 4(6)(b)(iv) of the accounting procedure appended to Annexure-I to the Rules provides for revocation of grant of money from the National Fund for Control of Drug Abuse to an applicant by the Central Government without giving him an opportunity of being heard. The Committee feel that the above provisions appears to be against the principle of natural justice. In this regard, the Committee have time and again emphasized that one of the basic requirements of natural justice is that before penal provisions of a law are invoked against a person, he should be given a reasonable opportunity of being heard. The Committee observe that the principles of natural justice, which are essential in imparting justice, appears to have been ignored by the Ministry in the extant rules. On being pointed out, the Ministry of Finance (Department of Revenue) clarified that the aforesaid provisions implied that the principle of natural justice would have to be followed before an order of revocation was made. The Committee do not agree with the reply of the Government and therefore, impress upon the Ministry to make suitable amendments to the rules, in consultation with the Ministry of Law and Justice, to incorporate provisions for giving a reasonable opportunity of being heard to an applicant whose grant has been revoked and a copy of the amended rule after it is published in the Gazette of India may also be sent to them.**

**(Recommendation Sl. No. 5.)**

### III. The Mumbai Port Trust (Pension Fund) Regulations, 2004 (GSR 341-E of 2004).

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The Mumbai Port Trust (Pension Fund) Regulations, 2004 (GSR 341-E of 2004) were published in the Gazette of India, Part –II, Section 3 (i) dated 21 May, 2004. It was observed that the above regulations had been made in exercise of powers conferred by Section 28 (b) of the Major Port Trusts Act, 1963 and as such any amendment to these regulations can be made only under these provisions and by following similar procedure as was followed while making the parent regulations. Paras 8 and 9 of the Trust deed annexed to the regulations appeared to sub delegate the amending power of the regulations which was not envisaged in the parent statute. Paras 8 and 9 of Annexure to these Regulations read as under :-

- “8. Power to amend the Fund by Trustees : The Trustees may at any time by a resolution in writing signed by not less than two of them and after obtaining the approval of the Board, the Ministry of Shipping, Government of India and the Commissioner of Income Tax, amend or modify the Fund.

Provided that no such alteration or variation shall be inconsistent with the main objects of the Fund nor shall such alteration or variation in any way prejudice the rights or interests of any employees or his nominee. Provided further that any such alteration or variation shall become effective only with the consent of the Commissioner of Income Tax.

9. Board’s rights in amending the rules of the Fund : The Board is entitled to bring in changes, amendments, or modifications in the Rules of the Fund with the consent of the Ministry of Shipping, Government of India and it shall be lawful for the Trust to give effect to the amendments with the approval of the Commissioner of Income Tax.

Provided that no notice is required to be given to the Trustees if the Commissioner of Income Tax requires as a condition for approval of the fund any amendment to be made taking effect from the date of commencement of the Fund.”

3.2 The matter was referred to the Ministry of Shipping, Road Transport and Highways (Department of Shipping) for their comments.

3.3. In this connection, the Ministry's reply dated on 1 December, 2005 stated as under :--

*“The matter has been examined in consultation with the Mumbai Port Trust. The Port Trust has stated that on re-examining the matter, it was observed that paras 8 and 9 of the Trust deed are superfluous and hence can be deleted. Action is being taken to revise the Trust deed excluding these paras. In view of the position explained, the Port is being requested to take formal action for deleting the paras 8 and 9 of the Trust deed from regulations”.*

3.4. The Ministry vide their subsequent communication dated 25 July, 2007 furnished a printed copy of the amendment to the rules notified vide GSR 17-E dated 11 January, 2007. Rule 5 of the amendment rules seeks to delete paragraphs 8 and 9 of the Trust Deed-Mumbai Port Trust Pension Fund which forms part of the annexure to the regulations, thereby removing the ambiguity in the rules.

**3.5. The Committee note that paragraphs 8 and 9 of the Trust Deed annexed to the Mumbai Port Trust (Pension Fund) Regulations, 2004 appeared to sub-delegate the amending power of the regulations which was not envisaged in the parent statute. For sub-delegation of legislative power, the Committee feel that there should be express authorization in the parent law. Even where sub-delegation is authorized, it should not be wide and general without proper safeguards. While scrutinizing the extant regulation, the Committee note that the executive have transgressed its jurisdiction by incorporating provisions for sub-delegation of the amending power of the regulations without any statutory backing. The Committee note with satisfaction that on being pointed out, the**

**Ministry of Shipping, Road Transport and Highways subsequently notified an amendment to the regulations deleting the paragraphs which contained provisions for sub-delegation of the amending power. While taking note of the fact that the Ministry have taken appropriate action to rectify the deficiency in the Regulations, the Committee desire that the Ministry should exercise necessary care while drafting regulations framed under an Act so as to obviate scope for such anomalies.**

**(Recommendation Sl.No. 6)**



**IV. Infirmities in the National Institute of Pharmaceutical Education and Research(Degree of Masters' and Doctor of Philosophy) Ordinance, 2005(GSR 406 of 2005).**

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The National Institute of Pharmaceutical Education and Research (Degree of Masters' and Doctor of Philosophy) Ordinance, 2005 (GSR 406 of 2005) was published in the Gazette of India, Part –II, Section 3 (i) dated 26 November, 2005. On scrutiny of the Ordinance, certain shortcomings were noticed and the same were referred to the Ministry of Chemicals and Fertilizers (Department of Chemicals & Petrochemicals) for seeking clarifications/comments. The point-wise reply of the Ministry have been summed up in the following paragraphs:-

**A. DELAY IN LAYING:**

4.2 The Committee have observed that although the Ordinance was published in the Gazette of India on 26 November, 2005, it was laid on the Table of the House only on 15 May, 2006 i.e. after a delay of more than 5 months. When the attention of the Ministry of Chemicals and Fertilizers (Department of Chemicals & Petrochemicals) was drawn to the specific recommendation of Committee on Subordinate Legislation contained in Para 66 of their 4<sup>th</sup> Report, 3<sup>rd</sup> Lok Sabha wherein the Committee had emphasized that all 'Rules' or 'Orders' required to be laid before the House within a period of 15 days after their publication in the Gazette if the House is in Session, and, if the House is not in Session, the 'Orders' should be laid on the Table of the House as soon as possible (but in any case within 15 days) after the commencement of the following Session, in response thereto, the Ministry vide their OM dated 19 October, 2006 stated that it has been noted for future compliance.

**4.3. The Committee find that the National Institute of Pharmaceutical Education and Research (Degree of Masters' and Doctor of Philosophy) Ordinance, 2005 was published in the Gazette of India on 26 November, 2005 and was laid on the Table of the House only on 15 May, 2006 i.e., after a delay of more than 5 months. On being pointed out, the Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals) have not given any explanation for the delay in laying the Ordinance on the Table of the House and merely stated that they have noted for future compliance of the recommendation of the Committee on Subordinate Legislation prescribing the time limit for laying of Orders. The Committee would expect the Ministry to exercise extreme care in laying of notifications within the stipulated time in future and should evolve procedural safeguards so as to avoid such type of omission on their part.**

**(Recommendation Sl.No. 7)**

**B. NON-SPECIFICATION OF THE QUANTUM OF SPONSORED CANDIDATES**

4.4 The Committee observed that Section 5 (1) of the Ordinance provides that a limited number of seats for admission into various academic programme shall be available for candidates sponsored by Public or Private Sector Undertakings, Government Departments, Research and Development Organisations. This section however, does not specify the percentage of such sponsored candidates to the total number of seats available for admission to various academic programmes or the number of seats available for such sponsored candidates.

4.5 On being referred, the Ministry vide their OM dated 19 October, 2006 apprised the Committee as under:

“The sponsored seats are over and above the total available seats. Only those employed and having 2 years of experience are eligible to apply. Initially the Institute was not sure about the response to the industry sponsored seats. Till now, no sponsored candidate could meet the qualifying criteria of admission. However, the intake shall be limited to a maximum of 5% of the available seats.”

4.6 On being further asked to state whether they have any objection in suitably incorporating the position as stated by them in the Ordinance itself to make it more specific, the Ministry vide their OM dated 8 March, 2007 stated as under:

“The Department is of the opinion that Section 5(1) of the National Institute of Pharmaceutical Education & Research (Degree of Masters’ and Doctor of Philosophy) Ordinance, 2005 may be modified making clear cut provision for sponsored candidates upto maximum 5% of the total available combined seats in the Masters/Doctoral programme. These 5% seats shall be over and above the total seats available for these programmes. Accordingly, necessary directions are being issued to NIPER for taking necessary action to modify/amend Section 5(1) of the Ordinance.”

4.7 The Ministry vide their subsequent OM dated 16 June, 2008 have reiterated as under :-

“Under section 5(1) “sponsoring of candidates, a ceiling of five percentages of available seats” has been approved by Senate of NIPER, S.A.S Nagar. Section 5(1) stands modified and shall read as follows:-

“5% of total number of seats in all programmes are available for candidates sponsored by Public/Private Sector Undertakings, Government Departments, Research and Development Organizations holding qualifying degree with a minimum of 60% marks in aggregate or CGPA of 6.75 on a 10 point scale wherever grades are awarded or equivalent as determined by the Board of Studies and Research (BSR) and taking into consideration the performance of the candidates in the test and interview held by the Institute to the various programmes.”

The Committee were further informed that necessary amendment in the Gazette of India would be made shortly.

4.8. The Committee note that Section 5(1) of the National Institute of Pharmaceutical Education and Research (Degree of Masters' and Doctor of Philosophy) Ordinance, 2005 provides for availability of a limited number of seats for sponsored candidates for admission to the various programmes. The Committee observe that the section, however, does not specify either the percentage or the total number of seats available for such sponsored candidates for admission to various academic programmes. This flaw in the rule may cause confusion and lead to avoidable litigation from the candidates aspiring for admission. On being pointed out by the Committee, the Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals) proposed to modify the section by making clear cut provision for sponsored candidates upto maximum of five percent of the total available combined seats in the Masters'/Doctoral programme and that these five percent seats should be over and above the total seats available for these programmes. Since the NIPER have agreed to modify Section 5(1) of the Ordinance, the Committee desire that the Ministry should notify the proposed amendments at the earliest so that there remains no scope for any ambiguity in future.

(Recommendation Sl.No. 8)

C. SHORT LISTING OF APPLICATIONS

4.9. Section 9 (3) of the National Institute of Pharmaceutical Education and Research (Degree of Masters' and Doctor of Philosophy) Ordinance, 2005 read as under :-

9. Short listing of Application-

(1)	xx	xx	xx
(2)	xx	xx	xx

(3) Special criteria higher than the minimum eligibility requirement for short-listing, if considered necessary, may be set by the Board of Studies and Research (BSR)

4.10 The Committee observed that the provision in section 9 (3) is silent as to under what circumstances, special criteria would be set for higher than the minimum eligibility requirement for short listing and whether the candidate fulfilling the minimum eligibility criteria would be informed of the special criteria set for such a short listing.

4.11 On being referred, the Ministry vide their OM dated 19 October, 2006 apprised the Committee as under:-

“All eligible applicants are allowed to sit for the written test. Hence necessary action will be taken to delete section 9(3) as per the rules of the Institute.”

4.12 The Ministry vide their OM dated 16 June, 2008 have reiterated that deletion of section 9(3) pertaining to “short listing of applications” have been approved by the Senate of NIPER and necessary amendment would be notified in the Gazette of India shortly.

**4.13 The Committee observe that all eligible applicants are, in practice, allowed to sit for the written test. So far the provision contained in Section 9 (3) of the Ordinance regarding fixing the criteria higher than the minimum eligibility requirement for short listing the applicants has not been invoked. The Committee further note that for this reason, the Ministry have decided to delete Section 9 (3) of the Ordinance altogether. While the Ministry are justified to take such a decision, the Committee may nevertheless emphasize that the necessity for setting up a special criteria higher than the minimum eligibility requirement for short listing of applications, was never in question. However, having made such a provision, it was felt that with a view to obviate any scope for abuse, the provisions should have incorporated the circumstances under which such special**

criteria are to be set and also the provisions regarding informing candidates fulfilling the minimum eligibility criteria after introduction of such special criteria. The Committee desire that they may be apprised of the action taken in this regard.

(Recommendation Sl. No. 9)

**D** **ABSENCE OF PROVISION FOR GIVING A REASONABLE OPPORTUNITY OF BEING HEARD BEFORE TERMINATION OF SCHOLARSHIP/CANCELLATION OF REGISTRATION**

4.14 Sections 13 (4) and 14 (12) (i), (iv) and (vi) of the Ordinance read as under :-

13. Scholarships –

xx xx xx

13 (4) – The scholarship will be liable to termination at any stage, if the progress of the work and the conduct of the awardee are not found satisfactory.

14. Registration of Student –

xx xx xx

14 (12) – The registration of the student will stand cancelled under any one of the following circumstances :-

(i) the student absents for a continuous period of four weeks without prior intimation or sanction of the leave;

(ii) xx xx xx xx

(iii) xx xx xx xx

(iv) the academic performance of the student is found unsatisfactory;

(v) xx xx xx xx

(vi) the student is found to be involved in an act of misconduct and/or indiscipline and termination is recommended by a competent authority.

4.15 The Committee observed that the aforementioned provisions need to conform to the principle of natural justice by providing for an opportunity of being heard before termination of scholarship/cancellation of registration.

4.16 On being referred, the Ministry vide their OM dated 19 October, 2006 apprised the Committee as under:-

“13(4)- An assessment committee is constituted as per rules to assess the performance of a scholar after a definite period of time. The assessment committee sees the quantum and the quality of work done by the scholar. Scholar is interviewed about his work. Based on his/her performance in the assessment committee meeting, scholar is allowed to continue/discontinue in the fellowship. The scholar is not only being heard but helped and encouraged to continue. 14(12)(i) - Registration of a student stands cancelled if the student absents for a continuous period of four weeks without prior intimation or sanction of leave. However, the student is required to explain reasons for his/her absence before canceling his/her registration. 14 (12)(iv) - The performance of the student is continuously evaluated and the student is given ample opportunities to improve his/her performance. 14(12)(vi) - Guidelines with regard to student discipline are being followed in the Institute and the student is given ample opportunities before a decision is taken.”

4.17 The Ministry were further requested to state whether they have any objection in suitably reflecting the position stated by them in the Ordinance itself. The Ministry vide their OM dated 8 March, 2007 have stated as under :-

“Candidates are given ample time and opportunity to improve their performance and good conduct, no such clarification need to be included in the Ordinance 13(4) and 14(12). During the process itself, proper opportunity is given to provide natural justice to the candidates”.

**4.18 The Committee note that the provision for termination of scholarship/cancellation of registration contained in Sections 13 (4), 14(12) (i), (iv) and (vi) of the Ordinance need to conform to the principle of natural justice by providing for an opportunity of being heard to the affected candidates. The Committee are not convince with the Ministry’s contention that since the candidates are given ample time and opportunity to improve their performance and good conduct and during the process itself, proper opportunity is given to provide natural justice to the candidates, there is no need for amendment in the provision made in Sections 13(4) and 14(12) of the Ordinance. In this connection, the Committee**

have time and again recommended that giving an opportunity for being heard before any adverse action is taken against a party is one of the basic tenets of natural justice. The Committee had also pointed out that departmental instructions can hardly be a proper substitute for built in legal safeguard. The Committee desire that Sections 13(4) and 14(12) (i),(iv) & (vi) of the Ordinance should be amended to incorporate provision for giving an opportunity of being heard to the affected student before any adverse action is initiated against him/her.

(Recommendation Sl.No. 10)

**E. DELAY IN NOTIFICATION OF THE ORDINANCE**

4.19 The Committee observed that the principal legislation was enacted in 1998 while the extant Ordinance was notified only in 2005 i.e. after a gap of about seven years. The Ministry were requested to furnish the reasons for the delay in notifying the Ordinance and also to state how the matters were administered in the absence of the Ordinance during the intervening period

4.20 In this connection, the Ministry vide their OM dated 19 October, 2006 stated as under:

“Academic programmes of the Institute were started only after the NIPERT act was passed in July 1998. Prior to this the Board had in its 17<sup>th</sup> meeting held in February, 1998 approved the commencement of the programmes on the recommendation of the Academic Committee which had already framed the draft rules and regulations. As this was a specialized Institute of its kind in the country, with the passage of time the rules and regulations were consistently modified. In the year 2004, the final draft of Ordinance and Regulations was approved by the Board of Governors of the Institute. The same was processed further for publication by the government in the official gazette.”



4.21 The Committee note that the Ordinance was notified after a delay of about seven years in deviation of the Committee's recommendations in this regard that ordinarily subordinate legislations should be notified as soon as possible after the enactment of the Act and in no case this period should exceed 6 months so that the benefits of such legislation are not denied to the public at large. The Committee desire that the Ministry should streamline their procedure so as to avoid recurrence of such enormous delays in the publication of final rules in future and whenever there is any delay in the finalization of the rules, the responsibility of such delay should be fixed. Where it is not possible to adhere to the time limit of six months, the Committee should be approached for extension of time.

(Recommendation Sl.No. 11)

NEW DELHI;  
10, December, 2008  
19, Agrahayana, 1930 (SAKA)

N.N. KRISHNADAS,  
*CHAIRMAN,*  
*COMMITTEE ON SUBORDINATE LEGISLATION*

## APPENDIX –I

(Vide Para 4 of the Introduction to the Report)

### STATEMENT OF RECOMMENDATIONS MADE IN THE TWENTY -SECOND REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FOURTEENTH LOK SABHA)

Sl. No.	Reference to Para No. in the Report	<u>Recommendations/observations</u>
1	2	3
1.	1.12	<p>I. Shortcomings in the National Sugar Institute, Kanpur [Research Assistant (Engineering)] Recruitment Rules, 2002 (GSR 583-E of 2003).</p> <p>The Committee note that in the National Sugar Institute, Kanpur [Research Assistant (Engineering)] Recruitment Rules, 2002, the date of notification has been mentioned as ‘30 May, 2003’ whereas the same were published on 25 July, 2003. As per the oft-repeated recommendation of the Committee on Subordinate Legislation, the rules which are to be published in the Extraordinary Gazette should be published on the same date. On being enquired about the discrepancy, the Ministry submitted that necessary corrigendum in this regard was being issued. However, the requisite corrigendum could not be issued even after a lapse of more than one year, as the old file which would facilitate the issue of necessary corrigendum to the rules was not traceable. On being pursued the matter repeatedly, the Ministry issued the necessary corrigendum carrying out the requisite amendments <u>vide</u> GSR 378E dated 8.6.2005. However, the Committee observed that there was again discrepancy in the dates <u>i.e.</u> the date of publication of rules was shown in the preamble of the rules as 25 July, 2003 whereas the date of notification was mentioned as 30 May, 2003. On perusal of the matter again the Ministry simply responded that the discrepancy in the dates occurred in the notification due to a typographical mistake. The Committee express their serious view that the matter relating to printing of rules under the Act has been dealt with by the Ministry of Consumer Affairs, Food and Public Distribution (Department of Food &amp; Public Distribution) in a very casual and lackadaisical manner and no serious attention is paid for expeditious printing/publication of the rules. In this regard, the Committee have time and again emphasized that the</p>

		<p>responsibility of a Ministry/Department is not ceased simply with the sending of a notification to the press. After the rules/regulations etc. have been published in the Gazette, the Ministries/Departments concerned should take immediate steps to examine whether the same have been correctly printed, and if necessary, to issue corrigendum thereto. The Committee desire the Ministry to be more careful in future and should evolve some procedural safeguards to ensure timely publication of their Notifications.</p> <p><b>1.13</b> The Committee also observe with displeasure that the inability to trace the old file pertaining to the notification in question and furnishing wrong information to the Committee that corrigendum had been issued are matters of great concern that reflects the lack of seriousness of the Ministry. The Committee, therefore, desire that responsibility may be fixed up in this case and the action taken in this regard may be apprised to the Committee within three months from the presentation of this report.</p> <p><b>1.16</b> The Committee note that the Ministry of Consumer Affairs, Food &amp; Public Distribution (Department of Food &amp; Public Distribution) issued the necessary corrigendum to the aforesaid rules, by indicating the correct year, in the short title vide GSR 378-E dated 8 June, 2005 after being pointed out by them. The Committee urge the Ministry to evolve suitable procedural safeguards against recurrence of such lapses and be more vigilant in future in such procedure &amp; routine matter.</p> <p><b>1.19</b> The Committee note that on being pointed out, the Ministry have amended the aforesaid rules as per extant orders of DOPT <u>vide</u> GSR 378-E dated 8 June, 2005. The Committee expect that in future the Ministry should be more careful to avoid recurrence of errors in such procedural and routine matter.</p> <p><b>1.21</b> The Committee find that the Note (i) under col. 8 of the Schedule does not indicate the class or category of person to whom the relaxation was applicable. When this matter was taken up with the Ministry, the Ministry issued requisite corrigendum adding a new Note-2 <u>vide</u> GSR 378-E dated 8 June, 2005. The Committee, however, desire that the Ministry should be more vigilant in future so as to obviate minor errors in such procedural and routine matter.</p>
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<p>2.</p> <p>2.3</p>		<p><b>II. The Narcotic Drugs and Psychotropic Substances (National Fund for Control of Drug Abuse) Rules, 2006 (GSR 177-E of 2006).</b></p> <p>The Committee note that Rule 6(6) and Para 4(6)(b)(iv) of the accounting procedure appended to Annexure-I to the Rules provides for revocation of grant of money from the National Fund for Control of Drug Abuse to an applicant by the Central Government without giving him an opportunity of being heard. The Committee feel that the above provisions appears to be against the principle of natural justice. In this regard, the Committee have time and again emphasized that one of the basic requirements of natural justice is that before penal provisions of a law are invoked against a person, he should be given a reasonable opportunity of being heard. The Committee observe that the principles of natural justice, which are essential in imparting justice, appears to have been ignored by the Ministry in the extant rules. On being pointed out, the Ministry of Finance (Department of Revenue) clarified that the aforesaid provisions implied that the principle of natural justice would have to be followed before an order of revocation was made. The Committee do not agree with the reply of the Government and therefore, impress upon the Ministry to make suitable amendments to the rules, in consultation with the Ministry of Law and Justice, to incorporate provisions for giving a reasonable opportunity of being heard to an applicant whose grant has been revoked and a copy of the amended rule after it is published in the Gazette of India may also be sent to them.</p>
<p>3.</p> <p>3.5</p>		<p><b>III. The Mumbai Port Trust (Pension Fund) Regulations, 2004 (GSR 341-E of 2004).</b></p> <p>The Committee note that paragraphs 8 and 9 of the Trust Deed annexed to the Mumbai Port Trust (Pension Fund) Regulations, 2004 appeared to sub-delegate the amending power of the regulations which was not envisaged in the parent statute. For sub-delegation of legislative power, the Committee feel that there should be express authorization in the parent law. Even where sub-delegation is authorized, it should not be wide and general without proper safeguards. While scrutinizing the extant regulation, the Committee note that the executive have transgressed its jurisdiction by incorporating provisions for sub-</p>

		<p>delegation of the amending power of the regulations without any statutory backing. The Committee note with satisfaction that on being pointed out, the Ministry of Shipping, Road Transport and Highways subsequently notified an amendment to the regulations deleting the paragraphs which contained provisions for sub-delegation of the amending power. While taking note of the fact that the Ministry have taken appropriate action to rectify the deficiency in the Regulations, the Committee desire that the Ministry should exercise necessary care while drafting regulations framed under an Act so as to obviate scope for such anomalies.</p>
4.	<p>4.3</p> <p>4.8</p>	<p><b>IV. Infirmities in the National Institute of Pharmaceutical Education Research(Degree of Masters' and Doctor of Philosophy) Ordinance. (GSR 406 of 2005).</b></p> <p>The Committee find that the National Institute of Pharmaceutical Education and Research (Degree of Masters' and Doctor of Philosophy) Ordinance, 2005 was published in the Gazette of India on 26 November, 2005 and was laid on the Table of the House only on 15 May, 2006 i.e., after a delay of more than 5 months. On being pointed out, the Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals) have not given any explanation for the delay in laying the Ordinance on the Table of the House and merely stated that they have noted for future compliance of the recommendation of the Committee on Subordinate Legislation prescribing the time limit for laying of Orders. The Committee would expect the Ministry to exercise extreme care in laying of notifications within the stipulated time in future and should evolve procedural safeguards so as to avoid such type of omission on their part.</p> <p>The Committee note that Section 5(1) of the National Institute of Pharmaceutical Education and Research (Degree of Masters' and Doctor of Philosophy) Ordinance, 2005 provides for availability of a limited number of seats for sponsored candidates for admission to the various programmes. The Committee observe that the section, however, does not specify either the percentage or the total number of seats available for such sponsored candidates for admission to various academic programmes. This flaw in the rule may cause confusion and lead to avoidable litigation from the candidates aspiring for admission. On being pointed out by the Committee, the Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals) proposed to modify the section by making clear cut provision for sponsored candidates upto maximum of five percent of the total available combined</p>

		<p>seats in the Masters'/Doctoral programme and that these five percent seats should be over and above the total seats available for these programmes. Since the NIPER have agreed to modify Section 5(1) of the Ordinance, the Committee desire that the Ministry should notify the proposed amendments at the earliest so that there remains no scope for any ambiguity in future.</p> <p><b>4.13</b></p> <p>The Committee observe that all eligible applicants are, in practice, allowed to sit for the written test. So far the provision contained in Section 9 (3) of the Ordinance regarding fixing the criteria higher than the minimum eligibility requirement for short listing the applicants has not been invoked. The Committee further note that for this reason, the Ministry have decided to delete Section 9 (3) of the Ordinance altogether. While the Ministry are justified to take such a decision, the Committee may nevertheless emphasize that the necessity for setting up a special criteria higher than the minimum eligibility requirement for short listing of applications, was never in question. However, having made such a provision, it was felt that with a view to obviate any scope for abuse, the provisions should have incorporated the circumstances under which such special criteria are to be set and also the provisions regarding informing candidates fulfilling the minimum eligibility criteria after introduction of such special criteria. The Committee desire that they may be apprised of the action taken in this regard.</p> <p><b>4.18</b></p> <p>The Committee note that the provision for termination of scholarship/cancellation of registration contained in Sections 13 (4), 14(12) (i), (iv) and (vi) of the Ordinance need to conform to the principle of natural justice by providing for an opportunity of being heard to the affected candidates. The Committee are not convince with the Ministry's contention that since the candidates are given ample time and opportunity to improve their performance and good conduct and during the process itself, proper opportunity is given to provide natural justice to the candidates, there is no need for amendment in the provision made in Sections 13(4) and 14(12) of the Ordinance. In this connection, the Committee have time and again recommended that giving an opportunity for being heard before any adverse action is taken against a party is one of the basic tenets of natural justice. The Committee had also pointed out that departmental instructions can hardly be a proper substitute for built in legal safeguard. The Committee desire that Sections 13(4) and 14(12) (i),(iv) &amp; (vi) of the Ordinance should be amended to incorporate provision for giving an opportunity of being heard to the affected student before any adverse action is initiated against him/her.</p>
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	<b>4.21</b>	<b>The Committee note that the Ordinance was notified after a delay of about seven years in deviation of the Committee’s recommendations in this regard that ordinarily subordinate legislations should be notified as soon as possible after the enactment of the Act and in no case this period should exceed 6 months so that the benefits of such legislation are not denied to the public at large. The Committee desire that the Ministry should streamline their procedure so as to avoid recurrence of such enormous delays in the publication of final rules in future and whenever there is any delay in the finalization of the rules, the responsibility of such delay should be fixed. Where it is not possible to adhere to the time limit of six months, the Committee should be approached for extension of time.</b>
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**APPENDIX II**  
(Vide Para 5 of the Introduction to the Report)

**EXTRACTS FROM THE MINUTES OF THE FIRST SITTING OF THE  
COMMITTEE ON SUBORDINATE LEGISLATION (2008-2009)**

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The Committee met on Thursday, 14<sup>th</sup> August, 2008 from 1500 to 1545 hours in  
Committee Room No. 139, Parliament House Annexe, New Delhi.

PRESENT

**Shri Giridhar Gamang** - **In the Chair**

MEMBERS

2. Shri Anandrao Vithoba Adsul
3. Shri Ram Singh Kaswan
4. Shri Jaysingrao Gaikwad Patil
5. Shri Lalmani Prasad
6. Shri Bhupendrasinh Solanki
7. Shri Ramji Lal Suman
8. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri R.K. Bajaj - Director
2. Shri R. D. Silawat - Deputy Secretary-II

.....contd/-



2. In the absence of Chairman, members of the Committee who were present chose amongst themselves Shri Giridhar Gamang to act as Chairman for the sitting in terms of Rule 258(3) of Rules of Procedure and Conduct of Business in Lok Sabha.

3. XX XX XX

4. xx xx xx

5. Thereafter, the Committee took up for consideration the following memoranda:-

- (i) **Memorandum No. 60** -- Matters for consideration of the Committee.
- (ii) **Memorandum No. 61** – Shortcomings in the National Sugar Institute, Kanpur Research Assistant (Engineering) Recruitment Rules, 2002 (GSR 583-E of 2003).
- (iii) **Memorandum No. 62** -- The Narcotics Drugs and Psychotropic Substances (National Fund for Control of Drug Abuse) Rules, 2006 (GSR 177-E of 2006).
- (iii) **Memorandum No. 63** -- The Mumbai Port Trust (Pension Fund) Regulations, 2004 (GSR 341 of 2004).
- (v) **Memorandum No. 64** – Infirmities in the National Institute of Pharmaceutical Education and Research (Degree of Masters' and Doctor of Philosophy) Ordinance, 2005 (GSR 406 of 2005).

6. After deliberations, the Committee decided to incorporate the points raised in Memoranda Nos. 61 to 64 in their Report to be presented to the House.

7. xx xx xx

The Committee then adjourned.

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**XX omitted portion of the Minutes are not relevant to this Report**

### **APPENDIX III**

(Vide Para 5 of the Introduction to the Report)

#### **MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2008-2009)**

The Committee met on Thursday, 6th November, 2008 from 1500 to 1545 hours in Committee Room 'C', Parliament House Annexe, New Delhi.

#### PRESENT

Shri N.N. Krishnadas - Chairman

#### MEMBERS

2. Shri Anandrao Vithoba Adsul
3. Shri Anantha Venkatarami Reddy
4. Shri Bhupendrasinh Solanki
5. Shri Ramji Lal Suman
6. Shri Ram Singh Kaswan
7. Shri Giridhar Gamang
8. Shri Jaysingrao Gaikwad Patil
9. Shri Madhu Goud Yaskhi

#### SECRETARIAT

1. Shri A.K. Singh - Joint Secretary
2. Shri R.K. Bajaj - Director
3. Shri Raj Kumar - Deputy Secretary-I
4. Shri R.D.Silawat - Deputy Secretary-II
5. Shri R.K. Bhatnagar - Under Secretary

.....contd/-

2. At the outset, the Chairman welcomed the members to the sitting of the Committee.

3 The Committee then took up for consideration the draft 22nd & 23rd Reports and adopted the same without any modifications/corrections. The Committee also authorized the Chairman to present the same to the House.

The Committee then adjourned.

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**COSL No. 6**

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