

COMMITTEE ON SUBORDINATE LEGISLATION
(FIFTEENTH LOK SABHA)
(2011-2012)

TWENTY THIRD REPORT

(PRESENTED ON 21.3.2012)

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LOK SABHA SECRETARIAT

NEW DELHI

March, 2012/Phalguna, 1933 (Saka)

COSL No. 32

PRICE: Rs. 25/-

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fourteenth Edition) and printed by the Manager, Government of India Press, Minto Road, New Delhi.

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2011-2012)

1. **Shri P. Karunakaran** **Chairman**
2. Shri Ghanshyam Anuragi
3. Shri Praveen Singh Aron
4. Shri Kalyan Banerjee
5. Shri E.T. Mohammed Basheer
6. Shri Ramen Deka
7. Shri Mahesh Joshi
8. Shri Virender Kashyap
9. Shri Jitender Singh Malik
10. Dr. Thokchom Meinya
11. Ms. Mausam Noor
12. Shri Gajendra Singh Rajukhedi
13. Dr. Bholu Singh
14. Shri Vijay Bahadur Singh
15. Shri A.K.S. Vijayan

SECRETARIAT

1. Shri S.C. Chaudhary - Director
2. Shri Krishendra Kumar - Under Secretary

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 31.03.2011.

3. The Committee considered and adopted this Report at their sitting held on 16.01.2012.

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. Minutes of the Sixth sitting of the Committee (2010-11) held on 31.03.2011 and the extracts from Minutes of the second sitting of the Committee (2011-12) held on 16.01.2012 relevant to this Report are included in Appendix-II.

New Delhi;
16 January, 2012
26 Pausa, 1933 (Saka)

P. KARUNAKARAN
Chairman,
Committee on Subordinate Legislation

REPORT

I

DELAY IN FINAL PUBLICATION OF ORDERS PUBLISHED BY THE MINISTRY OF AGRICULTURE (DEPARTMENT OF AGRICULTURE & CO-OPERATION)

The Restriction on use of Dazomet Order, 2008 [SO 3006 (E) of 2008] and the Banning of Chlorofenvinphos Order, 2008 [SO 3007 (E) of 2008] were published in the Gazette of India, Extraordinary, Part-II, Section 3(ii) dated 31.12.2008. It was observed that the aforesaid draft Orders were made available to the public for inviting objections/suggestions on 26.10.2007 while final rules were published on 31.12.2008 i.e. after a delay of around 14 months. The relevant discrepancy was referred to the Ministry of Agriculture (Department of Agriculture & Co-operation) by emphasizing the Committee's recommendation made in Para 68 of 24th Report, Seventh Lok Sabha, that the final order should be notified within a period of three months and where a large number of objections/suggestions are received, the gap should not be more than six months.

1.2 The Ministry of Agriculture (Department of Agriculture & Co-operation) in their communication dated 17.11.09 stated as under :-

"The Department published the draft of the aforesaid orders vide notifications No. SO 1792 and 1793 on 23.10.2007 for inviting objections/suggestions from the public. One representation dated 30.11.2007 was received from M/s. Margo Bio-controls Pvt. Ltd. raising the objection in respect of the draft order that no person shall use Dazomet in tea. M/s. Margo Bi-controls Pvt. Ltd. had stated in their representation that they have not obtained the label claim on tea and also not selling this product in tea plantations now. Therefore, they had requested not to ban the use of Dazomet in tea. This representation was sent to the Sectt. of Central Insecticides Board and Registration Committee (CIB &RC) for seeking their comments so that the draft order could be finalised within the stipulated time. M/s. Margo Bio-controls vide their another letter dated 3 December, 2007 submitted the detailed representation which was also forwarded to Sectt. of CIB &RC for seeking their comments. The representations of M/s. Margo Bio-controls Pvt. Ltd. were considered by the Registration Committee in its

286th meeting held on 20.2.2008. The Committee deliberated on the issue in detail and in view of the fact that presently tea is not the label claim, the Registration Committee recommended to modify clause 2 (1) of the draft order as “use of Dazomet is not permitted on tea” instead of “No person shall use Dazomet in tea” and also to delete clauses 2 (2) and 2 (3) of the draft order which were as follows :-

“(2) All the holders of certificate of registration shall return the certificates of registration to the Registration Committee for incorporation of the warning in bold letters “BANNED FOR USE IN TEA” on labels and leaflets.

(3) If any person who holds the certificate of registration fails to return the certificate to the Registration Committee, referred to in clause (2), within a period of six months, the certificate of registration granted to them shall not be renewed or action shall be taken under Section 14 of the said Act”.

Further clarifications were required from Secretary, CIB&RC on implications of the proposed notification in view of the fact that the label claim approved for 9(3) registration of Dazomet does not include the use of Dazomet in tea. The inputs provided by Secretary, CIB&RC were thoroughly examined in the Department and it was decided to retain clauses 2(2) and 2(3) because their deletion would have kept the farmers in dark as on purchase of the chemical they would not have known that use of Dazomet is not permitted in tea. It was also felt more appropriate to use the phrase “not permitted for use in tea” instead of “Banned for use in tea”. No representation was received in respect of draft order of chlorofenvinphos. Thereafter the final orders were published vide notification SO 3006 and SO 3007 dated 31.12.2008.

*A perusal of sequence of events brings out that the delay that occurred in the matter was not intentional and that the detailed consultations had resulted in **availing of more time frame from that prescribed in the guidelines. However the concern expressed on the delay has been noted by this Department.***

In view of the above, it is requested that the matter may be placed before the Committee on Subordinate Legislation to condone the delay in publication of final orders”.

1.3 The Committee note that the Restriction on use of Dazomet Order, 2008 [SO 3006 (E) of 2008] and the Banning of Chlorofenvinphos Order, 2008 [SO 3007 (E) of 2008] were published in the Gazette of India, Extraordinary, Part-II, Section 3(ii) dated 31.12.2008. The draft Orders were made available to the public for inviting objections/suggestions

on 26.10.2007 while final rules were published on 31.12.2008 i.e. after a delay of about 14 months. The Committee are not convinced of the reply of the Ministry of Agriculture (Department of Agriculture & Cooperation) that consideration of one representation received from M/s Margo Bio-controls Pvt. Ltd. required detailed consultations resulting in the delay of publication of the orders under reference. The Committee have time and again recommended that in cases where no objections/suggestions on the draft rules were forthcoming, the final rules should be notified within a period of three months and in cases where a large number of objections/suggestions are received, the gap of period should not be more than six months. The Committee have also recommended that in case the Ministry/Department is not able to adhere to the time frame, they should seek specific extension of time from the Committee citing their difficulties. The Committee take a serious view that neither has the Department adhered to the time limit laid down by the Committee nor has the Department bothered to seek extension from the Committee when anticipated delay. The Committee, do not approve of such delays. The Committee would like the Secretary, Department of Agriculture and Cooperation to look into the matter personally and issue suitable instructions to ensure that there is no delay in future in publication of final rules by the Department.

(Recommendation No.1)

THE BORDER SECURITY FORCE, COMBATISED PARAMEDICS GROUP 'C' POSTS RECRUITMENT RULES, 2009 (GSR 123 OF 2009).

The Border Security Force, Combatised Paramedics Group 'C' Posts Recruitment Rules, 2009 (GSR 123 of 2009) were published in the Gazette of India Part-II of Section 3, sub-section (i) dated 29 August, 2009. On scrutiny of the above rules, it had been observed that in Column 8 (3) of the Schedule, against the entry 'Chest', the words 'Should be well developed' are undesirable especially when female candidates were to be considered for the post. The Ministry of Home Affairs were requested to furnish their comments in this regard.

2.1 The Ministry vide their OM No. 17/05/2006 – Pers/BSF(Pt.)/Pers – III dated 3 March, 2010 have given the following reply:-

“ the issue has been examined in this Ministry in consultation with Border Security Force and it has been decided to delete words 'Should be well developed' appearing in Column 8 (3) of aforesaid Recruitment Rules since there should be no minimum requirement for 'chest' for female candidates. It has also been decided to carry out a general review of the Recruitment Rules of all Central Para Military Forces and to replace the words 'Not Applicable' in case of female candidates.”

2.3 The words 'Should be well developed' used in Column 8(3) of the Schedule against the entry 'Chest' is not only undesirable but also derogatory in nature especially when it concerns women candidates. It is only when the Committee pointed out the said irrational usage of words, the Ministry have agreed to amend the rules to the effect that there will be no minimum requirement for 'Chest' for female candidates. Further, the Ministry have decided to carry out a general review of the Recruitment Rules of all Central Para Military Forces on this aspect.

2.4 **The Committee note with utmost displeasure that the aforesaid rules contained the words 'Should be well developed' against the sub-heading 'Chest' for female candidates which is not only unwarranted but also derogatory in nature. The Committee observe that it is only when it was pointed out that the Ministry of Home Affairs has**

taken notice of the infirmity. The Committee, however, note with satisfaction that the Ministry has agreed to amend the rules suitably to remove the offensive words and to conduct a general review of the Recruitment Rules of all Central Para Military Forces. The Committee, therefore, recommend that requisite amendments to the rules be carried out at the earliest as assured by the Ministry and the Committee be apprised of the action taken in this regard. The Committee also desire that the general review of the Recruitment Rules of all Central Para Military Forces should be undertaken without delay to remove infirmities including the usage of words which are derogatory in nature especially in relation to female candidates.

(Recommendation No.2)

III

THE HANDLING OF CARGO IN CUSTOMS AREAS REGULATIONS, 2009 (GSR 174-E).

The Handling of Cargo in Customs Areas Regulations, 2009 (GSR 174-E of 2009) were published in Gazette of India, Extraordinary, Part-II, Section 3(i) dated 17th March, 2009. The scrutiny of the rules revealed certain infirmities which were referred to the Ministry of Finance (Department of Revenue) for their comments. The infirmities pointed out and the corrective measures taken by the Ministry of Finance are brought out in the succeeding paragraphs:-

- (A) In Regulation 6 (1) (f), it has been stipulated that the Customs Cargo Service provider shall not permit goods to be removed from the customs area, or otherwise dealt with, except under and in accordance with the permission in writing of the **proper officer**.

In order to make the Regulation self-contained, it is felt that the terminology “proper officer” needs to be substituted by explicitly mentioning the level of officer who shall give the said permission. On the same analogy, Regulation 6(1)(g) & (h) also needs appropriate amendments.

3.2 On being pointed out, the Ministry vide their O.M. dated 5th February, 2010 furnished the following points in this regard:

Regulation 6 (1) (f) (g) & (h) have been aligned with the provisions of the Customs Act, 1962. For instance, in respect of export goods, Section 51 of the Act provides that where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation. Further, Section 2(34) “proper officer”, in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs. In cases, where proper officer has not been specifically mentioned in the various provisions of the Customs Act or Notifications, instructions issued by the Board, the same is done by Commissioners concerned keeping into mind local factors. In all these cases, the trade/stake holders are generally aware as to who is the proper officer for a specific situation and no difficulty has been reported to the Ministry in this connection so far.

3.3 The Committee feel that the terminology “proper officer” appearing in Regulation 6(1)(f) of the aforesaid Regulations needs to be substituted by explicitly mentioning the level of officer who might be authorised by the Board or Commissioner of Customs to give permission for clearance and loading of goods for exportation. The plea of the Ministry of Finance (Department of Revenue) in this regard that trade/stake holders are generally aware as to who is the “proper officer” for a specific situation is unsatisfactory. The Committee have time and again recommended that rules should be specific and unambiguous. Lack of clarity in the rules leaves scope for varied interpretation. Rules should, therefore, be precise and without any vague expression. The Committee, therefore, desire that the Ministry of Finance should take necessary action to amend the regulations by defining appropriately the term “proper officer” in the regulation itself to make it precise and self contained so as to obviate scope for any ambiguity.

(Recommendation No. 3)

(B) In Regulation 6(3), it has been stipulated that the Customs Cargo Service provider shall publish and display the schedule of charges for the various services provided by him in relation to the imported goods or export goods in the customs area.

Now that dissemination of information is invariably done through website/webpage, the said Regulation may be re-worded viz., “..... shall publish and display at prominent place(s) including website/webpage of the Customs Cargo Service provider....”.

3.4 On being pointed out, the Ministry vide their O.M. dated 5th February, 2010 furnished the following points in this regard:

“The Regulations as worded at present is wide enough to cover publication in any format. However, if the Committee so desires, the scope of publication can be elaborated by way of a Circular.”

3.5 The Committee note with satisfaction that on their suggestion, the Ministry of Finance have agreed to elaborate the scope of publication regarding schedule of charges for various services provided by customs cargo services provider so as to cover publication through website/webpage. The Committee desire that necessary action may be taken in this regard and the Committee be apprised of the action taken.

(Recommendation No.4)

(C) Regulation 7 appears to give blanket powers to the Commissioner of Customs to exempt any of the conditions of Regulation 5 which relates to **conditions to be fulfilled by an applicant for custody and handling of imported or export goods in a customs area.**

In this connection, it is felt that the conditions under Regulation 5 concerning overall safety and security of the premises may not be subjected to exemption by any authority.

3.6 On being pointed out, the Ministry vide their O.M. dated 5th February, 2010 furnished the following points in this regard:

“The scope of this provision has already been explained by CBEC’s Circular 13/2009-Cus dated 23 March, 2009. Vide this circular, it has been instructed that the power to exempt from the conditions require to be fulfilled by CCSP provided under Regulation 7 is required to be exercised by the Commissioner of Customs carefully. In order to ensure the overall safety and security of the premises, it has been specifically provided under Regulation 4 (iii) that the CCSP shall take insurance for an amount equal to the average value of goods likely to be stored in the customs area based on the projected capacity. Hence, the safety and security of the premises where the imported/exported goods are stored prior to Customs clearance, have not been diluted by the aforesaid provisions under Regulation 7.

However, since the Committee had observed that the overall safety and security of the premises shall not be subject to exemption by any authority, the Board will issue a circular clarifying the above issue.”

3.7 The Committee further note that Regulation 7 of the Handling of Cargo in Customs Areas Regulations, 2009 gives blanket powers to the Commissioner of Customs to exempt any of the condition of Regulation 5. Regulation 5 relates to conditions to be fulfilled by an applicant for the overall safety and security of the premises where the imported/export goods are stored prior to customs clearance. Such conditions must not be subjected to exemption by any authority. The Committee, note that on being pointed out, the Ministry of Finance have proposed to issue a circular to clarify the matter. The Committee feel that the Regulation 7 should be suitably amended to ensure that matters concerning safety and security of the premises are not compromised.

(Recommendation No. 5)

New Delhi;
16 January, 2012
26 Pausa, 1933 (Saka)

P. KARUNAKARAN
Chairman,
Committee on Subordinate Legislation

APPENDIX –I

(Vide Para 4 of the Introduction of the Report)

**SUMMARY OF RECOMMENDATIONS MADE IN THE TWENTY-FIRST REPORT OF THE
COMMITTEE ON SUBORDINATE LEGISLATION**

(FIFTEENTH LOK SABHA)

Sl. No.	Reference to Para No. in the Report	<u>Summary of Recommendations</u>
1	2	3
1.	1.3	<p><u>Delay in final publication of orders published by the Ministry of Agriculture (Department of Agriculture & Co-operation)</u></p> <p>The Committee note that the Restriction on use of Dazomet Order, 2008 [SO 3006 (E) of 2008] and the Banning of Chlorofenvinphos Order, 2008 [SO 3007 (E) of 2008] were published in the Gazette of India, Extraordinary, Part-II, Section 3(ii) dated 31.12.2008. The draft Orders were made available to the public for inviting objections/suggestions on 26.10.2007 while final rules were published on 31.12.2008 i.e. after a delay of about 14 months. The Committee are not convinced of the reply of the Ministry of Agriculture (Department of Agriculture & Cooperation) that consideration of one representation received from M/s Margo Bio-controls Pvt. Ltd. required detailed consultations resulting in the delay of publication of the orders under reference. The Committee have time and again recommended that in cases where no objections/suggestions on the draft rules were forthcoming, the final rules should be notified within a period of three months and in cases where a large number of objections/suggestions are received, the gap of period should not be more than six months. The Committee have also recommended that in case the Ministry/Department is not able to adhere to the time frame, they should seek specific extension of time from the Committee citing their difficulties. The Committee take a serious view that neither has the Department adhered to the time limit laid down by the Committee nor has the Department bothered to seek extension from the Committee when anticipated delay. The Committee, do not approve of such delays. The Committee would like the</p>

2.	2.4	<p>Secretary, Department of Agriculture and Cooperation to look into the matter personally and issue suitable instructions to ensure that there is no delay in future in publication of final rules by the Department.</p> <p><u>The Border Security Force, Combatised Paramedics Group 'C' Posts Recruitment Rules, 2009 (GSR 123 of 2009)</u></p> <p>The Committee note with utmost displeasure that the aforesaid rules contained the words 'Should be well developed' against the sub-heading 'Chest' for female candidates which is not only unwarranted but also derogatory in nature. The Committee observe that it is only when it was pointed out that the Ministry of Home Affairs has taken notice of the infirmity. The Committee, however, note with satisfaction that the Ministry have agreed to amend the rules suitably to remove the offensive words and to conduct a general review of the Recruitment Rules of all Central Para Military Forces. The Committee, therefore, recommend that requisite amendments to the rules be carried out at the earliest as assured by the Ministry and the Committee be apprised of the action taken in this regard. The Committee also desire that the general review of the Recruitment Rules of all Central Para Military Forces should be undertaken without delay to remove infirmities including the usage of words which are derogatory in nature especially in relation to female candidates.</p> <p><u>The Handling of Cargo in Customs Areas Regulations, 2009 (GSR 174-E)</u></p> <p>3.3 The Committee feel that the terminology "proper officer" appear in Regulation 6(1)(f) of the aforesaid Regulations needs to be substituted by explicitly mentioning the level of officer who may be authorised by the Board or Commissioner of Customs to grant permission for clearance and loading of goods for exportation. The plea of the Ministry of Finance (Department of Revenue) in this regard that trade/stake holders are generally aware as to who is "proper officer" for a specific situation is unsatisfactory. The Committee have time and again recommended that rules should be specific and unambiguous. Lack of clarity in the rules leaves scope for varied interpretation. Rules should, therefore, be precise and</p>
3.	3.3	<p><u>The Handling of Cargo in Customs Areas Regulations, 2009 (GSR 174-E)</u></p> <p>The Committee feel that the terminology "proper officer" appear in Regulation 6(1)(f) of the aforesaid Regulations needs to be substituted by explicitly mentioning the level of officer who may be authorised by the Board or Commissioner of Customs to grant permission for clearance and loading of goods for exportation. The plea of the Ministry of Finance (Department of Revenue) in this regard that trade/stake holders are generally aware as to who is "proper officer" for a specific situation is unsatisfactory. The Committee have time and again recommended that rules should be specific and unambiguous. Lack of clarity in the rules leaves scope for varied interpretation. Rules should, therefore, be precise and</p>

		<p>without any vague expression. The Committee, therefore, desires that the Ministry of Finance should take necessary action to amend the regulations by defining appropriately the term “proper office” in the regulation itself to make it precise and self contained so as to obviate scope for any ambiguity.</p> <p>3.5 The Committee note with satisfaction that on their suggestion, the Ministry of Finance have agreed to elaborate the scope of publication regarding schedule of charges for various services provided by customs cargo services provider so as to cover publication through website/webpage. The Committee desire that necessary action may be taken in this regard and the Committee be apprised of the action taken..</p> <p>3.7 The Committee further note that Regulation 7 of the Handling of Cargo in Customs Areas Regulations, 2009 gives blanket powers to the Commissioner of Customs to exempt any of the condition of Regulation 5. Regulation 5 relates to conditions to be fulfilled by an applicant for the overall safety and security of the premises where the imported/export goods are stored prior to customs clearance. Such conditions must not be subjected to exemption by any authority. The Committee, note that on being pointed out, the Ministry of Finance have proposed to issue a circular to clarify the matter. The Committee feel that the Regulation 7 should be suitably amended to ensure that matters concerning safety and security of the premises are not compromised.</p>
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APPENDIX –II

(Vide Para 5 of the Introduction of the Report)

MINUTES OF THE SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2010-2011)

The Committee sat on Thursday, the 31st March, 2011 from 1430 to 1530 hours in Committee Room No. 62, Parliament House, New Delhi.

PRESENT

1. Shri Pinaki Misra In the Chair

MEMBERS

LOK SABHA

2. Smt. Paramjit Kaur Gulshan
3. Dr. Sanjeev Ganesh Naik
4. Shri Rajaram Pal
5. Shri Hamdullah Sayeed
6. Dr. Rajan Sushant
7. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri Raj Shekhar Sharma - Joint Secretary
2. Shri J.S. Chauhan - Director
3. Shri S.C. Kaliraman - Additional Director

.....contd/-

2. At the outset, in the absence of Chairman, Members of the Committee chose Shri Pinaki Misra, MP, to act as Chairman for the sitting of the Committee under rule 258(3) of Rules of Procedure and Conduct of Business in Lok Sabha.

3. Thereafter, the Committee took up for consideration the following memoranda:
 - (i) **Memorandum No. 24** – Delay in Final Publication of Orders Published by the Ministry of Agriculture (Department of Agriculture and Cooperation).

 - (ii) **Memorandum No. 25** – The Border Security Force, Combatised Paramedics Group 'C' Posts Recruitment Rules, 2009.

 - (iii) **Memorandum No. 26** – The Handling of Cargo in Customs Areas Regulations, 2009.

4. After deliberations, the Committee decided to incorporate the points raised in memoranda Nos. 24 to 26 in their Report slated to be prepared in this regard.

The Committee then adjourned.

**EXTRACTS FROM MINUTES OF THE SECOND SITTING OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (2011-2012)**

The Committee sat on Monday, 16th January, 2012 from 1430 to 1525 hours in
Committee Room '62', Parliament House, New Delhi.

PRESENT

1. Shri P. Karunakaran Chairman

MEMBERS

2. Shri Ghanshyam Anuragi
3. Shri E.T. Mohammed Basheer
4. Shri Mahesh Joshi
5. Shri Virender Kashyap
6. Dr. Thokchom Meinya

SECRETARIAT

1. Shri A. Louis Martin - Joint Secretary
2. Shri S.C. Chaudhary - Director
3. Shri Sundar Prasad Das - Deputy Secretary
4. Shri Krishendra Kumar - Under Secretary

2. At the outset, the Chairman welcomed the members to the sitting of the Committee (2011-12).

3. The Committee, then, considered and adopted the draft 'Twenty Third Report' subject to minor modification of Para 1.3 of the Draft Report. The Committee also authorized the Chairman to present the same to the House.

4. XX XX XX XX

5. XX XX XX XX

6. XX XX XX XX

The Committee then adjourned.

XX Omitted portion of the Minutes are not relevant to this Report.