

COMMITTEE ON SUBORDINATE LEGISLATION
(FIFTEENTH LOK SABHA)
(2009-2010)

FOURTH REPORT

(PRESENTED ON 16.3.2010)

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LOK SABHA SECRETARIAT

NEW DELHI

March, 2010/Phalguna, 1931

COSL BRANCH No.-13

PRICE: Rs.

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

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- II. Extracts from the Minutes of the fourth sitting of the Committee (2009-10) held on 3.2.2010 and extracts from Minutes of the fifth sitting of the Committee (2009-10) held on 3.3.2010.

COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2009-2010)

1. **Shri P. Karunakaran** **Chairman**
2. Shri Paban Singh Ghatowar
3. Shri Rajen Gohain
4. Shri D.B. Chandre Gowda
5. Shrimati Paramjit Kaur Gulshan
6. Shri Jitender Singh Malik
7. Shri Mangani Lal Mandal
8. Shri Pinaki Misra
9. Dr. Sanjeev Ganesh Naik
10. Shri Rajaram Pal
11. Shri Anantha Venkatarami Reddy
12. Shri Hamdullah Sayeed
13. Shri Adhalrao Patil Shivaji
14. Dr. Rajan Sushant
15. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri P.K. Misra - Joint Secretary
2. Shri Raju Srivastava - Deputy Secretary

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 3.2.2010.

3. The Committee considered and adopted this Report at their sitting held on 3.3.2010.

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 fourth sitting of the Committee (2009-10) held on 3.2.2010 and the extracts from Minutes of the fifth sitting of the Committee (2009-10) held on 3.3.2010 relevant to this Report are included in Appendix-II.

**New Delhi;
March, 2010/Phalguna,1931**

**P. KARUNAKARAN,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION**

INFIRMITIES IN THE LAW OFFICERS (CONDITIONS OF SERVICE) AMENDMENT RULES, 2008 (GSR 568-E OF 2008).

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The Law Officers (Conditions of Service) Amendment Rules, 2008 (GSR 568-E of 2008) were published in the Gazette of India, Extraordinary, Part-II, Section(i) dated 1 August, 2008. On scrutiny of the aforesaid Rules, the following infirmities were observed :-

- (i) The aforesaid Rules were sent for publication on 18 July, 2008 but were actually published on 1 August, 2008 amounting to a delay of 13 days in printing of Rules in the Gazette of India. The Extraordinary Gazette being a time bound publication used for publication of urgent material, must be printed and made available on the appointed day.
- (ii) The aforesaid Rules were published in the Gazette on 1 August, 2008 and given retrospective effect from 1 May, 2008. As per the Committee's recommendations, if in any particular case the 'Order' has to be given retrospective effect in view of any unavoidable circumstances, the retrospection having other legal validity a clarification is required to be given, either by way of an explanation in the 'Order' or in the terms of a foot-note in the relevant 'Order' to the effect that no one will be adversely affected as a result of 'retrospective effect' being given to such 'Orders'.

These points were referred to the Ministry of Law & Justice (Department of Legal Affairs) for their comments in the matter.

1.2 The Ministry of Law & Justice (Department of Legal Affairs) in their response dated 17 July, 2009 furnished their comments on the aforesaid points as under :-

- “(i) The original Notification dated 18 July, 2008 was dispatched to the GOI press on 25 July, 2008 inadvertently, that is after a delay of 7 days. The remaining delay was on the part of GOI press. However, it is assured that in future, it will be taken care to have such Extraordinary Notifications, notified in the Gazette on the same date.

- (ii) When the approval of the then Minister of Law & Justice was obtained for revised rates, it was explicitly got approved that the revised fee structure of the Law Officers will come into force from 1.5.2008. However, subsequent thereto, the process of getting it vetted by Legislative Department and translation by O.L. Wing of this Ministry has taken considerable time and the Rules were finally published in August, 2008. As such this Department has no objection to amend the Law Officers (Conditions of Service) Amendment Rules, 2008 (GSR 568-E of 2008) by inserting in the footnote that, 'no one will be adversely affected as a result of 'retrospective effect' being given in the amendment'. This Department is accordingly, taking necessary steps to issue the amendment."

DELAY IN PRINTING OF RULES

1.3 The Notification dated 18 July, 2008 with regard to the Rules were actually published on 1 August, 2008 amounting to a delay of 13 days in printing of the rules in the Gazette of India. The Committee have often reiterated that the Extraordinary Gazette, which is a time bound publication used for publication of urgent material, must be printed and made available on the appointed day. The Ministry have put forth the clarification that the Rules was dispatched to the GOI press on 25 July, 2008 inadvertently, that is after a delay of 7 days. The remaining delay was on the part of GOI press.

1.4 **The Committee note that the Extraordinary Gazette contains important notification which should be published the day they are sent for publication. The Committee hope that the Ministry, as assured in their reply, would take care in future to have such Extraordinary Notifications notified in the Gazette on the same date keeping in view their importance and urgency. The Committee however emphasize that Ministry should evolve measures for in-built checks and improve co-ordination to eliminate such delays.**

(Recommendation No. 1)

RETROSPECTIVE EFFECT

1.5 The Rules were published in the Gazette on 1 August, 2008 but were given retrospective effect from 1 May, 2008. As per the Committee's recommendations, if in any particular case, the 'Order' has to be given retrospective effect in view of any unavoidable circumstances, the retrospection having other legal validity, a clarification is required to be given, either by way of an explanation in the 'Order' or in the terms of a foot-note in the relevant 'Order' to the effect that no one will be adversely affected as a result of 'retrospective effect' being given to such 'Orders'. However, such a note was not appended to the said Rules. On being pointed out, the Ministry of Law & Justice (Department of Legal Affairs) stated that they have no objection to amend the Law Officers (Conditions of Service) Amendment Rules, 2008 (GSR 568- E of 2008) by inserting in the footnote that "no one will be adversely affected as a result of 'retrospective effect' being given in the amendment".

1.6 The Committee note that the Ministry of Law & Justice (Department of Legal Affairs) have stated to have no objection to amend the Law Officers (Conditions of Service) Amendment Rules, 2008 (GSR 568- E of 2008) by inserting in the footnote that "no one will be adversely affected as a result of 'retrospective effect' being given in the amendment" and they are taking necessary steps in this direction. The Committee, however, failed to understand as to what prohibited the Department to take this step earlier despite the Committee's repeated recommendations to this effect. This clearly shows the Ministry's lackadaisical attitude in implementing the recommendations of the Committee. The Committee, therefore, urge the Ministry of Law and Justice (Department of Legal Affairs) to scrupulously follow the recommendation of the Committee on Subordinate Legislation while framing such rules in future.

(Recommendation No. 2)

DELAY IN FINAL PUBLICATION AND VAGUENESS IN THE DRUG AND COSMETICS (FIRST AMENDMENT) RULES, 2008 (GSR 512-E OF 2008).

The Drug and Cosmetics (First Amendment) Rules, 2008 (GSR 512-E of 2008) were published in Gazette of India, Extraordinary, Part-II, Section 3(i) dated 9.7.2008. On scrutiny of the rules, it was observed that the final rules were published after a delay of more than one year beyond the maximum time-limit of six months recommended by the Committee and further, there was lack of clarity in Rule 157A of the aforesaid Rules. In Rule 157A, the words “each licensed manufacturing unit” was vague as it gave an impression that the manufacturing unit was required to keep a record of raw material used by each licensed unit which are manufacturing Ayurveda or Siddha or Unani drugs. However, the intent of the Rule appeared to be maintaining a record of raw material used by that particular manufacturing unit only during the preceding financial year.

A. DELAY IN PUBLICATION OF RULES IN FINAL FORM

2.2 The draft Drug and Cosmetics (First Amendment) Rules, 2008 were published in the Gazette of India, Extraordinary, dated the 18 October, 2006, vide GSR 651-E inviting objections and suggestions from persons likely to be affected and a period of forty-five days were given for the same. However, the Ministry published the final rules on 9 July, 2008. Thus, the final rules were published after a delay of more than one year beyond the maximum time-limit of six months recommended by the Committee. The Committee has time and again recommended that the final notification should be published within 3 months when no objections/suggestions are received and within six months when a number of objections/suggestions are received. The Ministry were requested to furnish their comments on delay in final publication of Rules *ibid*.

2.3 The Ministry of Health & Family Welfare (Department of AYUSH) vide their OM dated 7 July, 2009 furnished the following reply regarding delay in final publication:

“The draft notification was published on 18.10.2006 and was placed in Department’s website for comments, but no comments were received. It was felt that this amendment to the Act needed to be placed before ASUDTAB for consideration as per Section 33 N of the Drugs and Cosmetics Act, 1940. There was no meeting of ASUDTAB between 18.10.2006 to 6.12.2007, during which the amendment was ratified. This was the main reason for delay in issuing the final notification.”

2.4 The Committee seriously note that the Ministry of Health and Family Welfare had published the Drugs and Cosmetics (First Amendment) Rules, 2008 in final form after a delay of more than one year in utter disregard to the oft-repeated recommendation of the Committees that the rules, in final form, should be published within six months when large number of objections and suggestions are received on the draft rules and within three months when no objection/suggestion is received on the same. The Committee observe that Ministry could have easily adhered to the time limit recommended by the Committee for final notification of the abovesaid Rules had they streamlined their functioning and made serious efforts in this direction.

(Recommendation No. 3)

B. LACK OF CLARITY IN RULE 157A

2.5 The Rule 157A of the aforesaid rules is given below:

‘Each licensed manufacturing unit of Ayurveda or Siddha or Unani drugs shall keep a record of raw material used by each licensed manufacturing unit of Ayurveda or Siddha or Unani Drugs the case may be in the proforma given in the Schedule TA in respect of all raw material utilized by that unit in the manufacture of Ayurveda or Siddha or Unani drugs in the preceding financial year, and shall submit the same by the 30th day of June of the succeeding financial year to the State Drug Licensing Authority of Ayurveda, Siddha and Unani drugs and to the National Medicinal Plants Board or any agency nominated by the National Medicinal Plant Board for this Purpose.’

In rule 157A, the words 'each licensed manufacturing unit' gave an impression that the manufacturing unit was required to keep a record of raw material used by each licensed unit which are manufacturing Ayurveda or Siddha or Unani drugs. However, it appeared that the intention of the amendment was relating to maintaining of record of raw material used by that particular manufacturing unit only, during the preceding year. Accordingly, the ambiguity in Rule 157 A of the Rules *ibid* was referred to the Ministry for their comments.

2.6 The Ministry vide their OM dated 7 July, 2009 agreed to amend the rules in order to remove the ambiguity. The proposed amendment in rule 157 A as suggested by the Ministry is given below:

'Each manufacturing unit of Ayurveda, Siddha, Unani drugs shall keep a record of raw material used by it, *as the case may be*, in the proforma given in Schedule TA, in respect of all raw material utilized by that unit in the manufacture of Ayurveda or Siddha or Unani drugs in the preceding financial year, and shall submit the same by the 30th day of June of the succeeding financial year to the State Drug Licensing Authority of Ayurveda, Siddha and Unani drugs and to the National Medicinal Plants Board or any agency nominated by the National Medicinal Plants Board for this purpose.'

2.7 **The Committee note that rule 157 A lacked clarity as to whether each manufacturing unit of Ayurveda or Siddha or Unani drugs is required to keep record of raw material used by each licensed unit which are manufacturing Ayurveda or Siddha or Unani drugs. At the same time, they would like the Ministry to be well aware that the lack of clarity in rules vitiates the purpose of delegated legislation and harms the interest of the general public at large. The Committee note with satisfaction that the Ministry have agreed to amend the rules in order to remove the ambiguity and also other minor typographical errors pointed out by the Committee. The Committee recommend that the Ministry of Health and Family Welfare should bring about the related amendments as soon as possible. The Ministry should be cautious while bringing out amendments and framing of rules under delegated legislation and make efforts to avoid ambiguity.**

(Recommendation No. 4)

III

THE COMPETITION COMMISSION OF INDIA (RETURN ON MEASURES FOR THE PROMOTION OF COMPETITION ADVOCACY, AWARENESS AND TRAINING ON COMPETITION ISSUES) RULES, 2008 (GSR 727-E OF 2008).

The Competition Commission of India (Return on Measures for the promotion of competition Advocacy, Awareness and Training on Competition issues) Rules, 2008 (GSR 727-E of 2008) were published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 10.10.2008. On scrutiny, it was observed therefrom that Rule 3 provides that the Commission has to furnish return and statements in regard to any proposed or existing measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues to the Central Government and the decision of the Central Government thereon shall be binding on the Commission .

3.2 The Ministry of Corporate Affairs, when pointed out that as per the recommendation of the Committee, the language used in the Rules should not give impression that jurisdiction of Courts of Law was ousted, vide their reply dated 11.8.2009 stated as under:-

“The sub-rule(5) of rule 3 of the said rules relates to matters concerning form and time of preparation of return, with respect to which no express provision has been made in these rules. The rule provides for unforeseen aspects on which the return may be required by the Central Government. On a reference made to it, the Central Government will decide the matter and the decision of the Central Government thereon shall be binding on the Commission. These matters are between the Commission and the Government and that too relating to submission of returns. However, rules do not oust the jurisdiction of the Court in anyway.

If the Committee still feels that rules need amendment, they have no objection for the amendment of the rules on the lines suggested by the Committee and in consultation with the Ministry of Law.”

3.3 The Committee note that the Rule 3 of the Competition Commission of India (Return on Measures for the promotion of competition Advocacy, Awareness and Training on Competition issues) Rules, 2008 (GSR 727-E of 2008) provides that the Commission has to furnish on completion of every year the return and statements in regard to any proposed or existing measures for the promotion of competition advocacy, creating awareness and

imparting training about competition issues to the Central Government. The decision of the Central Government thereon shall be binding on the Commission. The Committee are of the strong opinion that the phrase “the decision of the Central Government shall be binding on the Commission” leaves an impression that the jurisdiction of the Courts of Law is being ousted. As informed, the Committee understand that the Rule provides for unforeseen aspects on which the return may be required by the Central Government and on a reference made to it, the Central Government decides the matter. However, the phrase, in question, is not acceptable to the Committee. They, therefore, emphasise that as assured, the wordings ‘the decision of the Central Government thereon shall be binding on the Commission’ found mention in Rule 3(5) should be deleted forthwith or amended suitably.

(Recommendation No. 5)

New Delhi;
March, 2010/Phalguna, 1931

P. KARUNAKARAN,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION

		<p>imparting training about competition issues to the Central Government. The decision of the Central Government thereon shall be binding on the Commission. The Committee are of the strong opinion that the phrase “the decision of the Central Government shall be binding on the Commission” leaves an impression that the jurisdiction of the Courts of Law is being ousted. As informed, the Committee understand that the Rule provides for unforeseen aspects on which the return may be required by the Central Government and on a reference made to it, the Central Government decides the matter. However, the phrase, in question, is not acceptable to the Committee. They, therefore, emphasise that as assured, the wordings ‘the decision of the Central Government thereon shall be binding on the Commission’ found mention in Rule 3(5) should be deleted forthwith or amended suitably.</p>
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APPENDIX –II

(Vide Para 5 of the Introduction of the Report)

EXTRACTS FROM THE MINUTES OF THE FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2009-2010)

The Committee sat on Wednesday, 3rd February from 1400 to 1445 hours in
Chairman's Room No.143, Parliament House , New Delhi.

PRESENT

1. Shri P. Karunakaran Chairman

MEMBERS

LOK SABHA

2. Shri Mangani Lal Mandal
3. Shri Pinaki Misra
4. Shri Sanjeev Ganesh Naik
5. Shri Anantha Venkata Rami Reddy
6. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri P.K. Misra - Joint Secretary
2. Shri Raju Srivastava - Deputy Secretary

.....contd/-

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

3. XX XX XX

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

(1) XX XX XX

(2) **Memorandum No. 5** – Infirmities in the Law Officers (Conditions of Service) Amendment Rules, 2008 (GSR 568-E of 2008).

(3) **Memorandum No. 6** – Delay in final publication and vagueness in the Drugs and Cosmetics (First Amendment) Rules, 2008 (GSR 512-E of 2008).

(4) XX XX XX

(5) **Memorandum No. 8** – The Competition of India (Return on Measures for the promotion of Competition Advocacy Awareness & Training of Competition issues) Rules, 2008 (GSR 727-E of 2008).

(6) XX XX XX

4. After considering the Memorandum No. 7, the Committee desired that modifications suggested by the members be suitably incorporated in the memorandum. As regards delay in laying of order or delay in final publication of Rules, Regulations etc. inspite of earlier recommendations made by the Committee on Subordinate Legislation, the Committee desired that the matter may be taken up with the Nodal Ministries concerned of the Government of India to work out a mechanism to overcome such delays in future.

5. After deliberations, the Committee decided to incorporate the points raised in Memoranda Nos. (4) to (9) in their Reports to be presented to the House.

The Committee then adjourned.

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

**EXTRACTS FROM THE MINUTES OF THE FIFTH SITTING OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (2009-2010)**

The Committee sat on Wednesday, 3rd March from 1500 to 1545 hours in Chairman's Room No.143, Parliament House , New Delhi.

PRESENT

1. Shri P. Karunakaran Chairman

MEMBERS

LOK SABHA

2. Smt. Paramjit Kaur Gulshan
3. Shri Sanjeev Ganesh Naik
4. Shri Anantha Venkata Rami Reddy
5. Shri Hamdulla Sayeed

SECRETARIAT

1. Shri P.K. Misra - Joint Secretary
2. Shri J.S. Chauhan - Director
3. Shri Raju Srivastava - Deputy 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 Third & Fourth Reports and adopted the same without any modifications. The Committee also authorized the Chairman to present the same to the House.

4. XX XX XX

5. XX XX XX

The Committee then adjourned.

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