

**COMMITTEE ON SUBORDINATE LEGISLATION**

**(FIFTEENTH LOK SABHA)**

**(2013-2014)**

**THIRTY SEVENTH REPORT**

**(PRESENTED ON 12.12.2013)**

**S**

**E**

**A**

**L**

**LOK SABHA SECRETARIAT**

**NEW DELHI**

**December, 2013 /Agrahayana, 1935 (Saka)**

**COSL No. 46**

**PRICE: Rs**

**(C) 2013 BY LOK SABHA SECRETARIAT**

Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fourteenth Edition) and printed by the General Manager, Government of India Press, Minto Road, New Delhi-110002.

## CONTENTS

|                                   | Para No. | Page No. |
|-----------------------------------|----------|----------|
| COMPOSITION OF THE COMMITTEE..... |          | (iii)    |
| INTRODUCTION.....                 |          | (v)      |

### REPORT

|  |         |   |
|--|---------|---|
| I. Publication of non-statutory instrument as General Statutory Rules (GSR 573-E of 2010 and GSR 574-E of 2010).               | 1.1-1.5 | 1 |
| II. The Petroleum and Natural Gas Regulatory Board (Petroleum and Natural Gas Register) Regulations, 2010 (GSR 481-E of 2010). | 2.1-2.4 | 4 |
| III Delay in Publication and Printing of the Gas Cylinders (Amendment) Rules, 2010 (GSR 740-E of 2010).                        | 3.1-3.4 | 6 |

### APPENDIX

|  |   |
|--|---|
| I. The Minutes of the Tenth Sitting of the Committee (2012-13) held on 11.7.2013 and Minutes of the First Sitting of the Committee (2013-14) held on 25.11.2013. | 9 |
|--|---|

## **COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION**

**(2013-2014)**

1. Shri P. Karunakaran Chairman
2. Shri Anandrao Adsul
3. Shri Praveen Singh Aron
4. Dr. Baliram
5. Shri Kalyan Banerjee
6. Shri Sansuma Khunggur Bwiswmuthiary
7. Shri Ramen Deka
8. Shri K. Jayaprakash Hegde
9. Dr. Mahesh Joshi
10. Shri Virender Kashyap
11. Dr. Thokchom Meinya
12. Shri Gajendra Singh Rajukhedi
13. Dr. Bhola Singh
14. Shri Yashvir Singh
15. Vacant

### **SECRETARIAT**

1. Shri R.S. Kambo - Joint Secretary
2. Shri S.C. Chaudhary - Director

## INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 11.7.2013.

3. The Committee considered and adopted this Report at their sitting held on 25.11.2013.

4. For facility of reference and convenience, recommendations/observations of the Committee have been printed in thick type in the body of the Report.

5. Minutes of the Tenth Sitting of the Committee (2012-13) held on 11.7.2013 and First Sitting of the Committee (2013-14) held on 25.11.2013, relevant to this Report are included in Appendix.

**New Delhi;**  
**25 November, 2013**  
**4 Agrahayana, 1935 (Saka)**

**P. KARUNAKARAN**  
**Chairman,**  
***Committee on Subordinate Legislation***

## REPORT

### I

#### **Publication of non-statutory instrument as General Statutory Rules (GSR 573-E of 2010 and GSR 574-E of 2010).**

The Ministry of Youth Affairs and Sports notified the National Dope Testing Laboratory (Service, Administrative and Financial) Bye-Laws, 2009 (GSR 573- E of 2010) and the National Dope Testing Laboratory (Scientific and Administrative Staff) Bye-Laws, 2009 (GSR 574-E of 2010) as General Statutory Rules and published the same in the Gazette of India, Part-II, Section 3(i) on 1 July, 2010. On scrutiny of these Bye-Laws, it was observed that there was delay in printing of the Bye-Laws and the Bye-Laws were also not laid on the Table of the House. The Bye-Laws also did not contain any explanatory note regarding retrospective effect given to the Bye-Laws. The matter was, therefore, taken up with the Ministry.

1.2 In response, the Ministry of Youth Affairs and Sports vide their OM No. 4-2/2009-ID dated 18.2.2011 stated as follows :-

“National Dope Testing Laboratory (NDTL) is a registered Society and not a statutory body. In other words, it has not been established under an Act of Parliament. Hence, the rules have not been framed in pursuance of any of the sections of an Act but have been framed and notified as per the directions of the Governing Body of NDTL. As such, these rules do not fall within the ambit of subordinate legislation. As regards the discrepancies pointed out in the O.M. cited above, it is stated that the gap of 10 days between the date of the notification and the date of publication was due to Hindi translation and further it is confirmed that no one was adversely affected because of the retrospective effect given to these rules”.

1.3 It may be seen from the reply of the Ministry of Youth Affairs and Sports that the Bye-Laws under reference published in the Gazette of India, Extraordinary, Part-II, Section 3(i) vide GSR 573-E and 574-E of 2010 pertain to the National Dope Testing Laboratory, which is a Society registered under the Societies Registration Act, 1860. A society registered under the Societies Registration Act, 1860 is not a statutory body established under an Act of Parliament and as such, rules/bye-laws framed by the Society are not statutory in nature. Only the rules framed under the delegated authority of a statute need to be notified in the Gazette of India as General Statutory Rules and laid in Parliament for scrutiny. A society cannot be treated as 'State' within the meaning of Article 12 of the Constitution and in terms of Supreme Court Judgments. It is not clear whether the Legislative Department of the Ministry of Law and Justice have vetted these Bye-Laws and if so, how they have allowed publication of these Bye-Laws framed by a non-statutory body as General Statutory Rules in the Gazette of India.

**1.4 The scrutiny of GSR 573-E of 2010 regarding National Dope Testing Laboratory (Service, Administrative and Financial) Bye-Laws, 2009 and GSR 574-E of 2010 regarding National Dope Testing Laboratory (Scientific and Administrative Staff) Bye-Laws, 2009 has revealed that Ministry of Youth Affairs and Sports have published non-statutory instrument as General Statutory Rules. The National Dope Testing Laboratory is a Society registered under the Societies Registration Act, 1860 and as such the Bye-Laws framed by the Society are not statutory in nature. The Committee note that only the rules framed under the delegated authority of a statute need to be notified in the Gazette as General Statutory Rules and laid in Parliament for scrutiny. The Committee, therefore, observe that the notification of the Bye-Laws of a Society as Statutory Rules in the Gazette of India not only displays lack of understanding of the Ministry of Youth Affairs and Sports about the nature and importance of statutory instruments but can also be misleading the public. The Committee, therefore, exhort the Ministry of Youth Affairs and Sports to take necessary corrective steps at the earliest to rectify the error.**

**1.5 It is not clear whether the Legislative Department of the Ministry of Law and Justice have vetted the Bye-Laws under reference and if so, how they allowed non-statutory instruments to be published as statutory rules. The Ministry of Law and Justice (Legislative Department) owe an explanation in this regard.**



## II

### **The Petroleum and Natural Gas Regulatory Board (Petroleum and Natural Gas Register) Regulations, 2010 (GSR 481-E of 2010).**

-----

The Petroleum and Natural Gas Regulatory Board (Petroleum & Natural Gas Register) Regulations, 2010 (GSR 481-E of 2010) were published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 7 June, 2010. On scrutiny of the above regulations, it was found that Regulation 6 provides that

“If any dispute arises with regard to the interpretation of any of the provisions of these Regulations, the decisions of the Board shall be final and binding”.

2.2 The Committee have been emphasising in their various Reports that the language used in the Rules should not give an impression that the jurisdiction of courts of law is being ousted. As Regulation 6 of the aforesaid Regulations gives an impression that the jurisdiction of the courts of law is being ousted, the matter was taken up with the Ministry of Petroleum and Natural Gas.

2.3 The Ministry of Petroleum and Natural Gas vide their OM dated 28 March, 2011 responded as follows:-

“Section 61 of the Petroleum and Natural Gas Regulatory Board Act, 2006, empowers the Petroleum and Natural Gas Regulatory Board (PNGRB) to make Regulations to carry out the provisions of the PNGRB Act, 2006. Accordingly, the above-mentioned Regulation has been framed and notified by the PNGRB.

The matter has been examined in consultation with PNGRB. With regard to the observations of the Committee on Subordinate Legislation in respect of Rule 6 which provides that “if any dispute arises with regard to the interpretation of any of the

provisions of these regulations the decision of the Board shall be final and binding” gives an impression that the jurisdiction of courts of law is being ousted, it is stated that nowhere the regulation says that the decision of the Board cannot be questioned in a Court of law. There is no prohibition on appeal against the decision of the Board. Thus, all the remedies/legal remedies under ordinary law of land are available to the person/persons not agreeing to the decision of the Board.”

**2.4 The Committee have time and again reiterated in their reports that usage of phrases like “whose decision shall be final”, “its decision shall be final” and “whose decision thereon shall be final” should be avoided as these phrases give an impression in the minds of the general public that the jurisdiction of the courts of law is being ousted. The Regulation 6 of the Petroleum and Natural Gas Regulatory Board (Petroleum & Natural Gas Register) Regulations, 2010 uses words “the decision of the Board shall be final and binding”. The Ministry of Petroleum and Natural Gas have contended that nowhere the regulation says that decision of the Board cannot be questioned in a court of law and that there is no prohibition on appeal against the decision of the Board. The response of the Ministry of Petroleum and Natural Gas is untenable. The Ministry is silent as to why they disregarded the oft-repeated recommendation of the Committee regarding choice of phrases in rules and regulations. The Committee, therefore, stress that the Ministry of Petroleum and Natural Gas should suitably amend the regulation in such a way that the phrase does not convey that the jurisdiction of the courts of law is being ousted.**

### III

#### **Delay in Publication and Printing of the Gas Cylinders (Amendment) Rules, 2010 (GSR 740-E of 2010).**

Draft rules to amend the Gas Cylinders Rules, 2004 were published vide the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) notification No. GSR 857 (E) dated 3<sup>rd</sup> December, 2009 inviting objections and suggestions from all persons likely to be affected thereby, before the expiry of a period of forty five days. The final rules viz. Gas Cylinders (Amendment) Rules, 2010 were, however, notified by the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) on 31 August, 2010 and published in the extraordinary gazette on 9 September, 2010, nine months after publication of draft rules. No objections/suggestions were received from the public. The stipulated time limit for publication of final rules when publication of draft rules did not elicit any response from the public is three months after expiry of the time given for the public to respond. In the instant case, there is delay of over four months in publication of the final rules. The Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) were, therefore, requested to furnish their comments in the matter.

3.2 The Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide their OM dated 28 June, 2011 furnished the following reply:-

*“Point No. (i): Petroleum and Explosives Safety Organization, a subordinate office under this Department and responsible for administering the Gas Cylinder Rules, 2004 was requested to give wide publicity of the draft to amend the definition of “CNG” in Rule No. 2(viii) of Gas Cylinders Rules 2004 by displaying*

*it on PESO's website and circulating it to various stakeholders/associations. Considering the importance of proposed amendment, a considerable time was given to the stakeholders/associations and public to provide their suggestions/objections, if any. When no suggestions/objections were received from any quarter, PESO communicated to this Department on 26.5.2010 that no objections/suggestions have been received from associations/stake holders. Thereafter, with the approval of Hon'ble CIM the final notification (draft) was prepared, got vetted from M/o Law and Justice and thereafter, Government of India Press, Mayapuri, New Delhi was asked for publishing the final notification in the Gazette of India.*

*Point No. (ii): The final notification was signed by the competent authority on 31.8.2010. The 2<sup>nd</sup> September, 2010 was Gazetted holiday for Janmashtmi and 4<sup>th</sup> and 5<sup>th</sup> September, 2010 were Saturday and Sunday. The next day i.e. on 6<sup>th</sup> September, 2010, letter was dispatched to Mayapuri Press for publication of final notification. The notification was published on 9.9.2010. Hence there was a gap of 8 days."*

3.3 The draft of the Gas Cylinders (Amendment) Rules, 2010 was published in Gazette of India and made available to the public on 3<sup>rd</sup> December, 2009 seeking objections and suggestions for a period of forty five days. The Rules should have been published within three months after the expiry of the period of forty five days stipulated to seek objections and suggestions from the public. However, the rules in final form were notified by the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) on 31 August, 2010 and published in the Gazette of India on 9 September, 2010 entailing a delay of more than four months even when no objection/suggestion was received after the draft rules were placed in the public domain. It may be seen from the reply of the Ministry that Petroleum and Explosives Safety Organisation, a subordinate office under this department, reportedly informed the Ministry only on 20.05.2010 that no objection/suggestion was received on the draft rules. Thereafter, the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) took more than three months for the final notification.

The delay in the final notification of rules was further compounded by the delay of eight days in printing of the rules in the extraordinary gazette. The rules sought to be published in

the extraordinary gazette due to their urgency and immediate nature of the contents ought to have been published on the same day. The Ministry have contended that due to holidays, there was delay in publishing the rules in the extraordinary gazette. The Committee have stressed in their reports that extraordinary gazette which is a time bound publication and is used to publish urgent material must be printed and made available on the appointed date.

**3.4 The Committee note that the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) took more than four months over and above the stipulated time limit of three months in publishing the Gas Cylinders (Amendment) Rules, 2010 in their final form even when no objection/suggestion was received on the draft rules. The Committee also note that Petroleum and Explosives Safety Organisation (PESO), a subordinate office of the Department took more than four months to communicate to the Department that no objections/suggestions had been received on the draft Rules. The Department of Industrial Policy and Promotion also did not seem to have co-ordinated with the Petroleum and Explosives Safety Organisation to ensure timely handling of the matter. Instead, it appears that it was entirely left to the Petroleum and Explosives Safety Organisation to process the matter without any time frame. The Committee would await the Department's explanation in this regard. Further, the Committee note that after issue of the notification of the rules, there was further delay of eight days in getting the rules published in the extraordinary gazette. The reason given by the Department in this regard is not convincing. It has been stated that there were scheduled holidays during the intervening period between the date of notification and the date of publication. The Department's reasoning is again not sound. The Department was aware of the scheduled holidays and should have accordingly taken up the matter with the Government of India press for timely publication of the notification. The Committee, therefore, urge that the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) should ensure that the time limits laid down by the**

**Committee on Subordinate Legislation are adhered to in letter and spirit in future and ensure that extraordinary gazette notification, if any, is published on the same day of notification.**

**New Delhi;  
25 November, 2013**

---

**4 Agrahayana, 1935 (Saka)**

**P. KARUNAKARAN**  
**Chairman,**  
***Committee on Subordinate Legislation***

## **APPENDIX**

**(Vide Para 5 of the Introduction of the Report)**

### **MINUTES OF THE TENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2012-2013)**

---

The Tenth sitting of the Committee was held on Thursday, the 11<sup>th</sup> July, 2013 from 1200 to 1230 hours in Chairman's Room No. 143, Parliament House, New Delhi.

#### **PRESENT**

1. Shri P. Karunakaran Chairman

#### **MEMBERS**

2. Shri Ramen Deka
3. Shri K. Jayaprakash Hegde
4. Dr. Mahesh Joshi
5. Shri Virender Kashyap
6. Dr. Thokchom Meinya
7. Shri Manohar Tirkey

#### **SECRETARIAT**

1. Shri A Louis Martin - Joint Secretary
2. Shri Krishendra Kumar - Under Secretary

2. At the outset, the Chairman welcomed the members to the sitting of the Committee (2012-13).

3. The Committee, thereafter, considered the following memoranda:

- (i) **Memorandum No. 52** – Publication of non-statutory instrument as General Statutory Rules (GSR 573-E of 2010 and GSR 574-E of 2010).
- (ii) **Memorandum No. 53** – The Petroleum and Natural Gas Regulatory Board (Petroleum and Natural Gas Register) Regulations, 2010 (GSR 481-E of 2010).
- (iii) **Memorandum No. 54** – The Gas Cylinders (Amendment) Rules, 2010 (GSR 740-E of 2010).

4. After deliberations, the Committee decided to incorporate the points raised in the Memoranda Nos. 52 to 54 in their Report slated to be prepared in this regard.

**The Committee then adjourned.**



## MINUTES OF THE FIRST SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2013-2014)

---

The First sitting of the Committee (2013-14) was held on Monday, the 25<sup>th</sup> November, 2013 from 1130 to 1200 hours in Committee Room No. 53, Parliament House, New Delhi.

### PRESENT

1. Shri P. Karunakaran Chairman

### MEMBERS

2. Shri Anandrao Adsul
3. Dr. Baliram
4. Shri Kalyan Banerjee
5. Shri Ramen Deka
6. Shri K. Jayaprakash Hegde
7. Shri Virender Kashyap
8. Dr. Thokchom Meinya
9. Shri Gajendra Singh Rajukhedi
10. Dr. Bholu Singh

### SECRETARIAT

1. Shri R.S. Kambo - Joint Secretary
2. Shri S.C. Chaudhary - Director

2. At the outset, the Chairman welcomed the Members to the first sitting of the Committee (2013-14) and apprised them of the scope, functions and working of the Committee.

3. The Committee then considered Memorandum No. 56 containing the work done and unfinished work of the previous Committee (2012-13) and the work proposed to be undertaken by the Committee (2013-14) and adopted the same.

4. The Committee, thereafter, considered the draft 'Thirty Seventh Report' and adopted the same without any modification. The Committee also authorized the Chairman to present the report to the House in the ensuing Winter Session of Parliament, 2013.

The Committee then adjourned.

