

COMMITTEE ON SUBORDINATE LEGISLATION
(2016-2017)

(SIXTEENTH LOK SABHA)

TWENTY-SECOND REPORT



LOK SABHA SECRETARIAT
NEW DELHI
August, 2017/Sravana, 1939 (Saka)

COMMITTEE ON SUBORDINATE LEGISLATION
(2016-2017)

(SIXTEENTH LOK SABHA)

TWENTY-SECOND REPORT

(PRESENTED TO LOK SABHA ON 10.08.2017)



LOK SABHA SECRETARIAT
NEW DELHI
August, 2017/Sravana, 1939 (Saka)

COSL No.

PRICE: Rs.

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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.

CONTENTS

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

REPORT

- | | |
|---|-----------|
| I. The Cardamom (Licensing and Marketing) (Amendment) Rules, 2014 (GSR 816-E of 2014). | 1.1 - 1.4 |
| II. The National Legal Services Authorities (Amendment) Rules, 2015 (GSR 75-E of 2015). | 2.1 - 2.5 |

APPENDICES

- I. Summary of main observations/recommendations made by the Committee
- II. Minutes of the Fifteenth Sitting of the Committee (2016-17) held on 30.6.2017 and the Minutes of the Nineteenth Sitting of the Committee (2016-17) held on 4.8.2017.

**COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION (16th LOK SABHA)
(2016-2017)**

Shri Dilipkumar Mansukhlal Gandhi Chairperson

Members

1. Shri Idris Ali
3. Shri Birendra Kumar Choudhary
4. Shri S. P. Muddahanumegowda
5. Shri Shyama Charan Gupta
6. Shri Jhina Hikaka
7. Shri Janardan Mishra
8. Shri Prem Das Rai
9. Shri Chandu Lal Sahu
10. Shri Alok Sanjar
11. Shri Ram Prasad Sarmah
12. Adv. Narendra Keshav Sawaikar
13. Shri V. Panneer Selvam
14. Shri Ram Kumar Sharma
15. Shri Nandi Yellaiah

SECRETARIAT

- | | | | |
|----|----------------------|---|----------------------|
| 1. | Smt. Sudesh Luthra | - | Additional Secretary |
| 2. | Shri Ajay Kumar Garg | - | Director |
| 3. | Shri Nabin Kumar Jha | - | Additional Director |
| 4. | Smt. Jagriti Tewatia | - | Deputy Secretary |

INTRODUCTION

I, the Chairperson, Committee on Subordinate Legislation having been authorised 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 30.6.2017.

3. The Committee considered and adopted this Report at their sitting held on 4.8.2017.

4. For facility of reference and convenience, observations/recommendations 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 Fifteenth sitting of the Committee (2016-17) held on 30.6.2017 and Minutes of the Nineteenth Sitting of the Committee (2016-17) held on 4.8.2017 relevant to this Report are included in Appendix-II of the Report.

**New Delhi;
4 August, 2017**

13 Sravana, 1939 (Saka)

DILIPKUMAR MANSUKHLAL GANDHI
Chairperson,
Committee on Subordinate Legislation

REPORT

PART-I

The Cardamom (Licensing and Marketing) (Amendment) Rules, 2014 (GSR 816-E of 2014).

The Cardamom (Licensing and Marketing) (Amendment) Rules, 2014 (GSR 816-E of 2014) were published in the Gazette of India, Extraordinary, Part II Section 3, Sub Section (i) dated 18.11.2014. On scrutiny of the rules it was observed that Rule 2(6) of the amendment rules prescribes licence fee for manual auction and e-auction as Rs 5000 and Rs 50,000 respectively. The rule reads as under:

“Every application for issue of fresh licence or renewal of licence shall be accompanied by fee as under:-

(a) The fee payable for auctioneer licence is –

(i) Manual auction – Rs 5000/-

(ii) e-auction – Rs 50,000/-

(b) The fee payable for dealer licence is Rs 5000/- “

The Ministry of Commerce and Industry (Department of Commerce) i.e. the concerned Ministry were requested to furnish their comments regarding the precise statutory authority under the parent Act i.e. The Spices Board Act, 1986 for prescribing licence fee for auction/ e-auction and how the quantum of fee has been fixed.

1.2 The Ministry of Commerce and Industry (Department of Commerce) *vide* their OM dated 18 November, 2015 submitted the following reply:-

“In exercise of the powers conferred by Section 38 of Spices Board Act 1986 (10 of 1986), Government of India has made the rule viz. Cardamom (Licensing & Marketing) Rules 1987 to control the trade of cardamom, authorizing Spices Board to issue license to the cardamom auctioneers and cardamom dealers as per the terms and conditions prescribed in the said rules.

Regarding the fixation of licensing fee, it may be noted that in the manual auction system, it is the responsibility of the licensed auctioneer to arrange necessary infrastructure for conducting auctions such as auction hall and other necessary

furniture, power etc. However, in the newly introduced e-auction system, Board has established two e-auction centers one each in Kerala and Tamil Nadu, the major production/trading centers of cardamom, for conducting e-auctions. In the e-auction centers, Board has installed computer servers, sufficient number of terminals connected to the server through network, software for conducting auction, power back up and other necessary furniture etc. Licensed auctioneers are allotted date and time to conduct e-auctions in these two centers under the supervision of the Board.

As the infrastructure for conducting e-auctions is established and maintained by the Board, an enhanced license fee of Rs.50,000/- is fixed for the licensing block year period of 3 years in respect of auctioneers who are conducting e-auctions at the two e-auction centers of the Board. However, in the case of manual auctioneers, the license fee is only Rs 5000/- for the 3 year block period. It may also be noted that the Auctioneers are paid 1 % of the total sale value of cardamom by the farmers as commission which is ranging from Rs 4 to Rs 5 lakh on an average per auction.”

1.3 The Committee note that the Cardamom (Licensing and Marketing) (Amendment) Rules, 2014 (GSR 816-E of 2014) prescribe for a licence fee of Rs 5000/- for manual auction and of Rs 50,000/- for e-auction by an auctioneer. On being asked about the precise statutory authority under the Spices Board Act, 1986 for prescribing such licence fee, the Ministry have stated that the said rules have been framed under section 38 of the Spices Board Act to control the trade of Cardamom and authorising Spices Board to issue licence to the Cardamom auctioneers and Cardamom dealers as per the terms and conditions prescribed in the said Rules. The Ministry have justified the licence fee on the ground that infrastructure for conducting e-auctions which include establishment of auction centres, installation of computer server/terminals etc. is established and maintained by the Board. Moreover, the auctioneers are paid 1% of the total sale value of the cardamom.

1.4 The Committee appreciate the efforts made by the Spices Board for introduction of the e-auction system for ensuring more transparency and competitiveness in the auction system. While finding it indisputable that the licence fee has been prescribed to meet the expenditure incurred on maintenance of infrastructure for conducting e-auction,

the Committee are of the considered opinion that for imposition of licence fee etc., there has to be an express authorization in the parent Act. The Committee have time and again emphasised that the substantive matters like imposition of fee, levy of taxes, penalties, etc, should have been provided for in the parent Act itself. The Committee, therefore, recommend that the Ministry in consultation with the Ministry of Law and Justice may bring out suitable amendment in the Spices Board Act, 1986 to incorporate the provision for prescribing licence fee under the Act.

PART-II

Non laying of National Legal Services Authorities (Amendment) Rules, 2015 (GSR 75-E of 2015).

The National Legal Services Authorities (Amendment) Rules, 2015 (GSR 75-E of 2015) were published in the Gazette of India, Part-II, Section 3(i), Extraordinary dated 5 February, 2015. While scrutinizing the above Rules, it was noticed that the Rules were not laid on the Table of the House.

2.2 Accordingly, the Ministry concerned i.e. the Ministry of Law & Justice were requested to furnish their comments in this regard.

2.3 In response the Ministry of Law & Justice vide their OM dated 5 August, 2016 stated as follows:-

".....the subject "Legal Aid to Poor" and matters related to the National Legal Services Authority (NALSA) was transferred from the Department of Legal Affairs to Department of Justice in November, 2014 without supporting staff. The Department had no staff to handle the above additional item of work. Therefore, the above Rules could not be laid before the Houses. The delay is regretted. All sincere efforts will be made to ensure that no such delay is repeated in future"

2.4 **The Committee note that the National Legal Services Authorities (Amendment) Rules, 2015 were not laid on the Table of the House although the same were mandated to be laid as per the provisions contained in Section 27 of the Legal Services Authorities Act, 1987 which require that every rule made by the Central Government under the Act should be laid before each House of the Parliament 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 'Order' 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 Session. However, in complete disregard to this important provision contained in the Act, the Committee take serious note of the casual reply of the Ministry of Law & Justice (Department of Justice) that the Rules could not be laid as the subject 'Legal Aid to Poor' and Matters related to**

the National Legal Services Authority (NALSA) was transferred from Department of Legal Affairs to Department of Justice in November, 2014 without supporting staff and Department of Justice had no staff to handle the additional work. Moreover, even after being pointed out, the Ministry have not bothered to initiate the procedure for laying the above Rules on the Table of the House. This speaks volumes about the functioning of a Ministry that too, the 'Ministry of Law & Justice' in complying with the statutory requirements which is an important tool in fulfilling the accountability of the Executive to the Legislature thereby defeating the very purpose of incorporation of laying provision in various Acts of the Parliament. The Committee strongly disapprove this complete lack of monitoring at the senior level in the Ministry.

2.5 The Committee while deprecating the state of affairs prevailing in the Ministry of Law & Justice (Department of Justice) recommend that urgent action may be taken to lay the National Legal Services Authorities (Amendment) Rules, 2015 in the House at the first available opportunity. Not only that, the entire issue may be looked into and accountability must be fixed on the delinquent officers responsible for the lapse. The Committee further recommend that a fool proof mechanism may be evolved so that such kind of lapses do not recur in the future. The Committee may be apprised of the action taken in this regard.

New Delhi;
4 August, 2017
13 Sravana, 1939 (Saka)

DILIPKUMAR MANSUKHLAL GANDHI
Chairperson,
Committee on Subordinate Legislation

APPENDIX I

(Vide Para 4 of the Introduction of the Report)

SUMMARY OF RECOMMENDATIONS MADE IN THE TWENTY SECOND REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(SIXTEENTH LOK SABHA)

Sl.No.	Reference to Para No. in the Report	Summary of Recommendations
1	1.3	<p>The Cardamom (Licensing and Marketing) (Amendment) Rules, 2014 (GSR 816-E of 2014).</p> <p>The Committee note that the Cardamom (Licensing and Marketing) (Amendment) Rules, 2014 (GSR 816-E of 2014) prescribe for a licence fee of Rs 5000/- for manual auction and of Rs 50,000/- for e-auction by an auctioneer. On being asked about the precise statutory authority under the Spices Board Act, 1986 for prescribing such licence fee, the Ministry have stated that the said rules have been framed under section 38 of the Spices Board Act to control the trade of Cardamom and authorising Spices Board to issue licence to the Cardamom auctioneers and Cardamom dealers as per the terms and conditions prescribed in the said Rules. The Ministry have justified the licence fee on the ground that infrastructure for conducting e-auctions which include establishment of auction centres, installation of computer server/terminals etc. is established and maintained by the Board. Moreover, the auctioneers are paid 1% of the total sale value of the cardamom.</p>
	1.4	<p>The Committee appreciate the efforts made by the Spices Board for introduction of the e-auction system for ensuring more transparency and competitiveness in the auction system. While finding it indisputable that the licence fee has been prescribed to meet the expenditure incurred on maintenance of infrastructure for conducting e-auction, the Committee are of the considered opinion that for imposition of licence fee etc., there has to be an express authorization in the parent Act. The Committee have time and again emphasised that the substantive</p>

		<p>matters like imposition of fee, levy of taxes, penalties, etc, should have been provided for in the parent Act itself. The Committee, therefore, recommend that the Ministry in consultation with the Ministry of Law and Justice may bring out suitable amendment in the Spices Board Act, 1986 to incorporate the provision for prescribing licence fee under the Act.</p>
2	2.4	<p>Non laying of National Legal Services Authorities Amendment) Rules, 2015 (GSR 75-E of 2015).</p> <p>The Committee note that the National Legal Services Authorities (Amendment) Rules, 2015 were not laid on the Table of the House although the same were mandated to be laid as per the provisions contained in Section 27 of the Legal Services Authorities Act, 1987 which require that every rule made by the Central Government under the Act should be laid before each House of the Parliament 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 'Order' 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 Session. However, in complete disregard to this important provision contained in the Act, the Committee take serious note of the casual reply of the Ministry of Law & Justice (Department of Justice) that the Rules could not be laid as the subject 'Legal Aid to Poor' and Matters related to the National Legal Services Authority (NALSA) was transferred from Department of Legal Affairs to Department of Justice in November, 2014 without supporting staff and Department of Justice had no staff to handle the additional work. Moreover, even after being pointed out, the Ministry have not bothered to initiate the procedure for laying the above Rules on the Table of the House. This speaks volumes about the functioning of a Ministry that too, the 'Ministry of Law & Justice' in complying with the statutory requirements which is an important tool in fulfilling the accountability of the Executive to the Legislature thereby defeating the very purpose of incorporation of laying provision in various Acts of the Parliament. The Committee strongly disapprove this</p>

	2.5	<p>complete lack of monitoring at the senior level in the Ministry.</p> <p>The Committee while deprecating the state of affairs prevailing in the Ministry of Law & Justice (Department of Justice) recommend that urgent action may be taken to lay the National Legal Services Authorities (Amendment) Rules, 2015 in the House at the first available opportunity. Not only that, the entire issue may be looked into and accountability must be fixed on the delinquent officers responsible for the lapse. The Committee further recommend that a fool proof mechanism may be evolved so that such kind of lapses do not recur in the future. The Committee may be apprised of the action taken in this regard.</p>
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(Vide Para 5 of the Introduction of the Report)

The Fifteenth sitting of the Committee (2016-2017) was held on Friday, the 30th June, 2017 from 1500 hours to 1600 hours in Chairperson's Chamber, Room No. 146, Third Floor, Parliament House, New Delhi.

1. Shri Shyama Charan Gupta In the Chair

2. Shri Idris Ali
3. Shri Birendra Kumar Chaudhary
4. Shri S.P. Muddahanume Gowda
5. Shri Jhina Hikaka
6. Shri Janardan Mishra
7. Shri Alok Sanjar
8. Adv. Narendra Keshav Sawaikar
9. Shri Ram Kumar Sharma
10. Shri Nandi Yellaiah

1.	Smt. Sudesh Luthra	-	Additional Secretary
2.	Shri Ajay Kumar Garg	-	Director
3.	Shri Nabin Kumar Jha	-	Additional Director
4.	Smt. Jagriti Tewatia	-	Deputy Secretary

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

3. The Committee then considered the following Memoranda:-

- (i) **Memorandum No. 30** – The Cardamom (Licensing and Marketing) (Amendment) Rules, 2014 (GSR 816-E).
- (ii) **Memorandum No. 31** – The National Legal Services Authorities (Amendment) Rules, 2015 (GSR 75-E).

4. After deliberations, the Committee decided to incorporate the points raised in the Memoranda Nos. 30 & 31 in their Report to be formulated in this regard.

The Committee then adjourned.

MINUTES OF THE NINETEENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2016-2017)

The Nineteenth sitting of the Committee (2016-2017) was held on Friday, the 4th August, 2017 from 1500 hours to 1600 hours in Chairperson's Chamber, Room No. 146, Third Floor, Parliament House, New Delhi.

PRESENT

Shri Dilipkumar Mansukhlal Gandhi Chairperson

MEMBERS

2. Shri Idris Ali
3. Shri Birendra Kumar Chaudhary
4. Shri Shyama Charan Gupta
5. Shri Jhina Hikaka
6. Shri Janardan Mishra
7. Shri Prem Das Rai
8. Shri Chandulal Sahu
9. Shri Alok Sanjar
10. Shri Ram Prasad Sarmah
11. Adv. Narendra Keshav Sawaikar

SECRETARIAT

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|----|----------------------|---|----------------------|
| 1. | Smt Sudesh Luthra | - | Additional Secretary |
| 2. | Shri Ajay Kumar Garg | - | Director |
| 3. | Shri Nabin Kumar Jha | - | Additional Director |
| 4. | Smt Jagriti Tewatia | - | Deputy Secretary |

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee. The Committee then considered the following draft Reports:-

- (i) Draft Twentieth Report on the RBI Pension Regulations, 1990.
- (ii) Draft Twenty-first Report on the Rules / Regulations framed under the Real Estate (Regulation and Development) Act, 2016.
- (iii) Draft Twenty-second Report on Memoranda Nos. 30 and 31.
- (iv) Draft Twenty-third Action Taken Report on the Observations / Recommendations contained in the 15th Report of the Committee on Subordinate Legislation (16th Lok Sabha) on E-Waste Management.

3. After deliberations, the Committee adopted the same without any modification. The Committee also authorized the Chairperson to present the same to the House.

The Committee then adjourned.
