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SCRUTINY OF SUBORDINATE LEGISLATION

By

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1. INTRODUCTION:

It needs now no discussion that the growing responsibilities of a welfare state can not be discharged satisfactorily unless the legislature confines itself to policy matters and leaves implementation thereof to subordinate agencies exercising rule making powers. With this idea being put into practice citizens find their day-to-day activities increasingly regulated by subordinate legislation. There ought to be therefore a general provision of law requiring all rule making authorities to conform to certain norms of procedure and publication while making subordinate legislation in the areas entrusted to them. Whereas measure of this nature exist in the united Kingdom, U.S.A. and some other countries, India has lamentably legged behind in this respect. However it is gratifying to note that Lok Sabha and Rajya Sabha have appointed their respective Committees which examine the Sub Laws made under the power delegated by Parliament or under the authority of the constitution. These Committees have submitted reports from time to time.

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1. See the statutory Instruments Act 1946 (U.K.)
The Administrative Procedure Act, 1946 (U.S.A.)
The Rules Publication Act, 1950 (Canada), the
Acts Interpretation Act, 1901-50 (Australia).

It is proposed to consider in this paper the reports of Lok Sabha Committee on subordinate Legislation submitted during 1962-66.

Circumstances leading to the appointment of Lok Sabha Committee on subordinate legislation and its terms of reference are stated in the Indian Law Institutes publication "Delegated Legislation in India". The earlier reports of this Committee are also discussed there. However for a brief reference it may be noted here that on the lines of a similar committee of the English House of Commons, Lok Sabha Committee on sub-ordinate legislation was first set up in 1953, and since then it is nominated by the Speaker from year to year. This Committee examines all Bills delegating legislative power as well as all orders, regulations, rules etc. made under powers delegated by Parliament or under those conferred by the Constitution. Bills delegating legislative power are scrutinised to ensure that they are accompanied by memoranda drawing attention to the delegation of power and its scope. Orders are examined to ascertain that they do not violate certain stated principles or contain objectionable provisions. Offending Bills and 'orders' are first referred to the Departments concerned along with the objections of the Committee. After taking into consideration the replies received from the Departments, the Committee submits its recommendations to Lok Sabha.

During the period 1962-66 the Committee presented six reports, held 18 sittings and examined about 4500 'orders'. It made nearly 70 recommendations suggesting amendments to parent Acts and enabling Bills and pointing out in what particulars certain rules, regulations by laws etc. needed alteration.

2. ENABLING BILLS:

(a) Memorandum. Two Bills delegating legislative power were introduced in Lok Sabha in contravention of Rule 70 of the Rules of procedure and conduct of Business in Lok Sabha which requires that a Bill involving proposal for the delegation of legislative power shall be accompanied by a memorandum explaining such proposals and drawing attention of the House to their scope and stating also whether they are of normal or exceptional character. To one of these

Bills^{1a} no such memorandum was appended. The Ministry of Finance, to whom this matter was referred, replied that the proposed delegation of power authorised making of bye laws by financial corporations for their duty to day administration and convenience and that such delegation of legislative authority was different from the one which empowers the central Govt. to make rules that may be modified by the House of Parliament. In the opinion of the Ministry it was only the latter type of delegated legislation which necessiated the memorandum. The Committee did not agree with the distinction made out between rule making power and bye law making power and insisted that the memorandum drawing attention of the House to the proposed delegation of Legislative authorities was essential in either case. In respect of the other Bill² a memorandum was appended but it was not adequate for which the explanation of the ministry of Finance (The concerned Ministry) was similar to the one noted above. This time a distinction was drawn between power to authorise framing of schemes and power to make rules. The committee however pointed out that framing of a scheme was as much an exercise of delegated legislative powers as making of rules and recommended that proposal to authorise either from of delegated legislation should be brought to the notice of the house.

The Government agreed to give effect to the view expressed by the committee in the above cases.

(b) Laying clause

Pursuant to earlier recommendations of the committee the ministry of law had agreed in the past to provide in each bill delegating legislative powers, a laying clause requiring that all rules made there under shall be laid before each House of Parliament for a certain period subject to

1a. See Agricultural Refinance Corporation Bill, 1962 sec. Paras 15-18, 2nd Rep. (3rd. L.S.).

2. The emergency Risks (Factories) Insurance Bill 1962. Sec. paras 19-22, 2nd Rep. (3rd. L.S.).

modification or annulment directed by the Houses. The laying clause agreed upon was as under:

"Every rule made under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of 30 days which may be comprised in one session or in two successive sessions, and if before the expiring of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall there after have effect only in such modified form or be of no effect as the case may be; so however that any such modification or annulment shall be without to the validity of any thing previously done under that rule".

"This laying clause was regularly provided in the enabling Bills for some time. But the committee detected certain Bills in which the laying clause was altered to provide that the period of 30 days for which rules were to be laid before the House of Parliament, might be comprised in one session or two or more successive sessions instead of one or two successive sessions. The effect of this alteration, as pointed out by the committee, was that whereas under the unaltered laying clause the right of modification of statutory rules by the two Houses of Parliament extended to all those sessions during which the rules were laid for completing the period of 30-days plus one more session immediately following; under the altered laying clause such right of modification was restricted to the session in which 30 days period was comprised. The Ministry of Law, to whom this matter was referred, replied that the alteration "two or more successive sessions" was made in order

3. Para 45, 7th Rep. (2nd L.S.)
4. Ware Housing corporations Bill, 1962, The Petroleum Pipe Lines, 1962 and the Defence of India Bill, 1962 Sec, paras 10-14, 2nd Rep.)3rd. L.S.)

to avoid the administrative inconvenience of relying if the period of 30 days could not be completed in two sessions. As far as the right of the two Houses to modify rules was concerned, the ministry said that even under the unaltered laying clause such right extended only to those sessions in which the period of 30 days was comprised, and that the said clause was not susceptible of the interpretation (relied upon by the committee) that the right of the two Houses to modify rules extended to one more 'session' immediately following'. The Committee was, however, not satisfied with this reply and recommended to the house that the old laying clause should be restored and that if the alteration in question was considered by the government as necessary it should clearly be provided therein that the right of the Houses to modify the rules would extend to the session immediately following the session in which the said period of 30 days was completed.

Despite the above recommendation the government continued to provide the offending laying clause in Bills with the result that the committee again took up the matter and pressed for implementation of the said recommendation. The Ministry of Law conceded this time and assured that the old laying clause would be restored. But the committee did not, it is interesting to note, allow the matter to rest there. Two members of the committee moved amendments to certain bills pending before the House to bring their laying clauses in conformity with the recommendation of the committee. The government readily agreed to these amendments, which were consequently adopted by the House.

One more recommendation of the committee relating to laying clause may be noted here as indicating the desire of the committee to provide adequate time to the House to propose amendment to delegated legislation.

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5. The Drugs and Magic Remedies Amendment Bill, 1962. See, paras 61-62, 4th Rep. (3rd L.S.)
 6. The Industrial Disputes Bill, 1964, See, paras 63-64, 4th Rep. (3rd L.S.)

A bill authorising making of presidential Acts during President's Rule in Kerala, contained a laying clause giving seven days time to either House of Parliament to propose amendments to such Acts laid before the House. The Committee considered seven days time as insufficient for initiating and completing the process of passing a resolution for modification to be made in the Acts, and recommended that the usual old laying clause should be adopted in such cases also.

3. "ORDERS"

The largest number of 'orders'^{7a} to which the committee took objection were those which conferred discretionary power on administrative authorities without providing safeguards to ensure that the discretion vested in them is not arbitrarily exercised. There was not even a single report presented during the period of examination in which some such orders were not listed. A few illustrations of these orders are given below.

The Rubber Rules 1955 conferred powers on the Chairman of Rubber Board to punish his staff but did not safeguard the rights of the staff. However on being pointed out, this defect was rectified by the Government.

One bye law concerning flour mills authorised inspection of the mills "at any time," but was on a reference being made, amended to provide that inspection could take place only during "working hours".

The Art Textiles control order, 1962, conferred power of entry, search and seizure on certain officers

7. Paras 4-6, 5th Rep. (3rd L.S.)

7a. The term 'order' includes rules, regulations, bye laws or any form of sub-legislation.

8. Para 15, 1st Rep. (3rd L.S.)

9. Para 18, 1st Rep. (3rd L.S.)

and did not provide safeguards like presence of witnesses at the time of search of premises, preparation of inventory of the articles seized etc. On being pointed out, the order was suitably amended.¹⁰

A boat licence could be refused on certain specified grounds and for "any other reason". The committee desired that this wide power should be subjected to the requirement of recording reasons for refusal to grant a licence. The rules were accordingly amended.¹¹

A power was conferred on police officers to require a boat licence to ply a boat but conditions were not laid down, when ! On a reference, contingencies when this power could be exercised were laid down in the rules.¹²

Rules conferring discretion in U.P.S.C. also came in for examination before the committee. The Indian Inspection Service Rules authorised the U.P.S.C., to pick and choose candidates for personality test from amongst those who had already qualified in a written test. On the objection being taken, the Department concerned assured that standards in writing will be laid down for guiding the exercise of U.P.S.C.'s discretion.¹³

Another set of rules conferred power on the U.P.S.C. to deduct marks according to its discretion from those obtained by a candidate in each subject. On a reference, the ministry informed that the deduction of marks was intended to ensure that no credit was given for merely superficial knowledge. The Committee considered this provision to be excessive and desired it to be deleted. But the U.P.S.C. which was unhappy with the suggestion claimed that the

10. Para 24, 2nd Rep. (3rd L.S.)

11. Para 7, 3rd Rep. (3rd L.S.)

12. Para 12, 3rd Rep. (3rd L.S.)

13. Para 26, 3rd Rep. (3rd L.S.)

frames of the Constitution to be decided by the commission who are responsible for selecting the best human material for appointment to the service of the union. The commission therefore pleaded that the provision in question be retained in the Public interest. But the committee was not convinced of the justification advanced by the U.P.S.C. and recommended that the provision to deduct marks should be omitted.¹⁴

Certain regulations provided that the U.P.S.C. shall recommend names for appointment of persons found suitable "in their discretion", "on the results of the examination. The Committee felt that the power conferred by the words "in their discretion" could be arbitrarily exercised by the commission, and despite the view of the ministry of Law that the U.P.S.C. will always have discretion in such matters, recommended that the said words should be dropped from the regulations.¹⁵

In one case the committee took objection to the procedure for appointment and to the inclusion of many nominees of the ministry concerned in the selection Board for appointment. For the purpose of recruitment of members of Income Tax Appealable Tribunal, the relevant rules provided that the list of candidates would be finalised by inviting applications, receiving recommendations of appropriate authorities or making personal contact. The selection Board was to consist of three nominees of the minister for law and two other persons. The Committee desired to know from the Ministry if instead of "appropriate authorities", certain bodies could be specified such as, High Courts, Board of Revenue, Bar Association and if the number of nominees of the minister could

14. Para 12, 4th Rep. (3rd L.S.).

15. Para 11, 5th (3rd L.S.).

be reduced. It was felt by the committee that the word "appropriate authority" and "personal contact" might cast doubt in fairness of selection and the existing constitution of the selection Board might not inspire public confidence. In their reply the ministry of law assured that the words "personal contact" would be dropped from the rules, the Chairman of the selection Board would be of the status of a Supreme Court judge and that other nominees would be appointed by the minister in consultation with the Chairman of the selection Board.¹⁶

The textile committee rules 1965 provided that resignation of the Chairman or a member would come in to effect from the date it was accepted by the central government. The committee on subordinate legislation desired that some time limit should be placed after which the resignation should come into effect. Accordingly the ministry amended the Rules by adding the words "or on the expiry of 30 days from the date of receipt of intimation of re-signation which ever is earlier."¹⁷

(C) Absence of provisions regarding appeals; notice and hearing.

It is an established principle of good administration that whenever a penal action is to be taken due notice should be given to the persons against whom the action is proposed to be taken and whenever possible an opportunity of hearing should also be provided to him. Further a provision of appeal in such a case ensures a better disposal of the matter. The committee on sub-ordinate legislation, applied these principles in their scrutiny of 'orders'. At the instance of the committee, several sets of rules regulations bye laws etc. were amended to bring them in conformity with the said principles. Thus, the executive officers was empowered to refuse to grant a licence for stabling or harding of animals in the cantonment, or to suspend or cancel it for breach of any provision of bye laws or conditions of licence. On being pointed out that the bye laws in

16. Paras 16-19, 5th Rep. (3rd L.S.).

17. Paras 22, 6th Rep. (3rd L.S.).

question ought to provide a right of appeal in such case, the ministry amended the bye laws to provide the same on the recommendation of the committee in a similar case not only the right of appeal was provided by amendment but right of hearing was also allowed to before cancellation or suspension of licences.¹⁸⁻¹⁹

But in one case it was not without a feeling of annoyance that ministry concerned agreed to provide a right of appeal. The Port of Bombay Passenger Boat Rules 1962 conferred power on certain officer who in his discretion could refuse to grant a licence and no right of appeal was provided. On a reference being made the ministry stated that it was inadvisable to grant this right as it might encourage resisting an order by appeal and may land to indiscipline among the launch operators. The Ministry also pleaded that the legislature should be presumed to have sufficient confidence in the discretion of the authority on whom statutory powers were conferred. But the committee was not satisfied with the reply and recommended that in the interest of justice and fair play the right of appeal should be provided. The view of the committee was ultimately given effect to.²⁰

In another case where rules provided for cancellation of a licence without making provision for safeguards, the committee desired that opportunity of being heard before the penal action and right of appeal after such action, should be provided in the rules. The department concerned amended the rules to provide the same.²¹

(D) Provisions of substantive nature found in rules

The committee had only two "orders" to report the House as containing substantive provisions which ought have been provided in the parent Act and not in the rules.

18-19. Para 21, 4th Rep. (3rd L.S.).

20. Para 11, 3rd Rep. (3rd L.S.).

21. Para 33-34, 6th Rep. (3rd L.S.)

Rule 6 of the Delhi Development Rules 1956 vested²² arbitrators appointed for settlement of betterment charges, with the powers of a civil court under the Code of the Civil Procedure and authorised them (when holding an enquiry) to summon and enforce attendance of a person and examine him on oath etc. The parent Act merely empowered the Government to make rules to lay down the procedure to be followed by the Arbitrators. Similarly the certified Auditors Rules 1961 empowered²³ the disciplinary committee of the council of Institute of Chartered Accountants of India to examine witnesses during the course of an enquiry, on oath and receive affidavits.

The committee felt that it was wrong in principle to confer by rules the above mentioned powers without authority from the parent Act. The Govt. agreed in both the cases to amend the parent Act suitably.

(E) Unauthorised Levy of fees by rules

Earlier reports of the committee disclose that Government had agreed not to impose financial levies by rules unless these was an express provision in the parent Act authorising them to do so. Accordingly many "orders" were amended in the past deleting provisions which unauthorisedly levied fees. Despite this, the committee detected five "orders" levying financial burden without parliamentary authority. Three such orders imposed fees in connection with supply of water connection, one for granting a marriage certificate and one for granting a certificate for completion of work. On reference being made, the Government in all these cases either dropped the offending provisions or otherwise suitably amended the rules.

22. Para 8, 1st Rep. (3rd L.S.)

23. Para 8, 4th Rep. (3rd L.S.)

24. Para 28-30, 3rd Rep. Para 23 and 28, 4th Rep.
Para 30, 6th Rep. (3rd L.S.).

(F) Interpretation Clause:

It is not unusual to find in rules a provisions regarding their interpretation laying down that in case of a dispute the rules shall be interpreted by a specified authority. The committee came across such a provision in the service Rules for Flying Crew, Rules 5 of which read as under:

"The Corporation reserves to themselves the right to interpreting finally the meaning of these rules in cases of dispute".

It appeared to the committee that the rule would have the effect of barring indirectly the jurisdiction of the courts unless the rule itself was declared by the courts as not binding on them. On a reference, the Ministry of Law pointed out that such a provision does not oust the jurisdiction of the courts to interpret the rules and that as a general rule the courts are not bound by the interpretation given by the administration. But in the case of service rules, the ministry pointed out, a different consideration arises because the rules interpreted by the administration may be relied upon by the government servants as laying down their conditions of service, and therefore the courts may themselves, in appropriate cases, consider it proper to give effect to the interpretation of the administration as a matter of agreement between the parties. A Calcutta High Court case, Basant Kumar v. Chief Electrical Engineer and others (A.I.R.) (1958 Cal. 657). and a Supreme Court decision Srinivasan v. Union of India (A.I.R. 1958 S.C. 419) were quoted by the ministry in support of their contention.

The committee however expressed the view²⁵ that the interpretation clause should not be so worded as to give an impression on the mind of the persons concerned that the jurisdiction of the courts was being ousted. For this purpose the committee approved the following clause (which, it may be noted, does not say that the interpretation of the administration shall be final);

25. Para 29, 2nd Rep. Para 18, 4th Rep. (3rd L.S.)

"If any question arises as to the interpretation of these regulations the same shall be decided by the Board."

The Government agreed to adopt this clause and amended certain "orders" accordingly.²⁶

(G) Rules having retrospective effect:

Two orders²⁷ were found as giving to themselves retrospective effect without authority from the parent Act in this behalf. One such order provided that civil Engineers employed since a certain date in the past would have to serve Defence Services for 4 years. The other order increased a certain fee with effect from the date prior to publication of the order. On reference being made, the Government informed that the former order did not affect any Civil Engineer retrospectively as none was recruited during the period between commencement into effect of the order and the date of its publication. As regards the latter order, the Government stated that the affected persons had been informed in advance about the increment of the fee and in fact they had already started paying it accordingly. The Ministries concerned however noted the intention of the Committee behind the reference.

(H) Delay in laying rules before the House:

The committee was disturbed on account of the fact that as many as 302 orders were laid before the House after inordinate delay. The lists of such orders were appended to 4th, 5th and 6th Reports of the

26. Para 23 and 24, 5th-Rep., para 19, 6th Rep. (3rd L.S.).

27. Para 51-53, 4th Rep. (3rd L.S.).

of the Committee which reveal that a large number of them were "laid" after the delay of several months. This tendency was condemned by the committee in strong words and the Ministries concerned were asked to give reasons for the delay.²⁸

(I) Others defects;

Many sets of rules, regulations, bye laws etc were brought to the notice of the House either because the authority under which they were made was not quoted, or because they were published in the wrong section of the Gazette of India or because they were incompletely published. Printing and clerical mistakes were also noted.

The Committee did not hesitate even in making recommendations for improving substance of orders with a view to make them reasonable. Thus at the instance of the Committee certain rules were modified to provide that the standard rent recovered in excess of 10% would be refunded,²⁹ and to provide that registration fee would be refundable if the application of registration was rejected.³⁰ Similarly certain other rules, which imposed a penalty of Rs.50/- on a medical practitioner if he failed to report that one of the dock workers under his treatment suffered from a scheduled disease, were amended to provide that the penalty would be payable only if the failure to report was wilful.³¹

CONCLUSION:

What conclusions can be drawn from the reports under discussion? At least one thing is distinctly

28. Para 38, 6th Rep. (3rd L.S.).

29. Para 14, 1st Rep. (3rd L.S.).

30. Para 33, 2nd Rep. (3rd L.S.).

31. Para 18, 3rd Rep. (3rd L.S.).

clear. Barring a new exceptions, all the recommendations of the committee suggesting amendments to subordinate legislation have been accepted by the Government and given effect to. Whenever the committee has taken objection to a provision in rules, the Government has generally shown its inclination to accept the view point of the committee. Of course some times the Government departments have felt unhappy with its recommendations, but this seems unavoidable to some extent looking to the supervisory function of the committee. However, such occasions were too few. By and large the committee was successful in its object of removing objectionable provisions from the rules scrutinized by it.

The success of the Committee should be attributed to the zeal and perservance with which it pursues its proposed amendments with the government departments. Exchange of letters between the committee and the concerned department goes on expressing their respective view points till the one satisfies the other. In this process the objectionable portions of subordinate legislation gets suitably amended.

Another factor, equally important, is that though the recommendations of the committee are laid before the House they are never discussed there. Under the Standing Directions of the Speakers, the Department concerned are required to send to their comments on such recommendations directly to the committee which takes them into consideration and again submits its recommendations. This enables a dispassionate discussion to take place between the committee and the Department and avoids criticisms of the government on the floor of the House where decisions are often taken on party lines rather than on merit.

The contribution of the Lok Sabha Secretariat to the success of the committee is not insignificant. The rules made by the Government are first scrutinized by the Secretariat Officers who draw the attention of the Committee to such rules only as appear to them to be defective in any manner. The usefulness of the committee can therefore be further increased by associating with its work a larger staff having adequate legal training.

The reports of the Committee have not aroused that public interest which some other parliamentary committees (like those concerned with Public Accounts

and Estimates) have done. But looking to the valuable role which it has played in keeping checks over rule making powers of the administration, the Lok Sabhas Committee on Subordinate Legislation deserves greater public recognition that it has received so far.

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