

HARYANA VIDHAN SABHA

REPORT

OF

THE COMMITTEE

ON

SUBORDINATE LEGISLATION
(TWENTY FIFTH REPORT)
1993-94

(Presented to the Haryana Vidhan Sabha on the 17th March, 1994)



HARYANA VIDHAN SABHA SECRETARIAT, CHANDIGARH
March, 1994.

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COMPOSITION OF THE COMMITTEE

(1993-94)

Chairman

Shri Hari Singh Nalwa

Members

*Shri Phool Chand Mullana

Shri Birender Singh

Shri Om Parkash Beri

Shri Suraj Bhan Kajal

Shri Krishan Lal

Shri Karan Singh Dalal

**Shri Chander Mohan

Advocate General

Secretariat

1. Shri Sumit Kumar, Secretary

2. Shri Data Ram, Accounts Officer

The Committee was constituted vide Haryana Vidhan Sabha Secretariat Notification No. HVS-LA (Sub-Leg)-1/1993-94/25, dated the 20th April, 1993.

*Shri Phool Chand Mullana, M.L.A., resigned from the Membership of the Committee with effect from 6th August, 1993 (forenoon) on his appointment as Cabinet Minister, Haryana.

**Shri Chander Mohan, M.L.A., was nominated by the Speaker as Member of the Committee with effect from 18th August, 1993 for the remaining period of the year 1993-94, vide Notification No. HVS-LA (Sub-Leg)-1/1993-94/46, dated the 19th August, 1993.

INTRODUCTION

1. the Chairman of the Committee on Subordinate Legislation having been authorised by the Committee to present the report on their behalf present this Twenty Fifth Report to this House

2. The Committee consisting of eight members (including the Advocate General) was nominated by the Speaker, Haryana Vidhan Sabha under Rule 243 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly on the 19th April, 1993 and was notified in the official Gazette vide Notification No HVS-LA (Sub-Leg)-1/1993-94/25, dated the 20th April, 1993.

3. A brief record of proceedings of each meeting of the Committee has been kept on record of the Haryana Vidhan Sabha Secretariat.

4. The Committee place on record their appreciation for the valuable and willing assistance given by the Administrative Secretaries of Agriculture and Town and Country Planning Departments and representative of the Law Department in their deliberation.

5. The Committee also place on record their high appreciation for whole hearted co-operation and assistance given by the Secretary, Officer and Staff of the Legislation Branch.

Chandigarh :

The 7th February, 1994.

HARI SINGH NALWA
CHAIRMAN

REPORT

1. The Committee on Subordinate Legislation for the year 1993-94 consisting of eight members, including the Chairman and the Advocate General was nominated by the Speaker, Haryana Vidhan Sabha under Rule 243 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly on the 19th April 1993 and was notified in the official Gazette vide notification No. HVS-LA (Sub-Leg)-1/1993-94/25, dated the 20th April, 1993.

2. Shri Hari Singh Nalwa was appointed as the Chairman of the Committee by the Speaker.

3. The Committee held 61 sittings till the presentation of this Report. Before scrutinising the Haryana Development and Regulation of Urban Areas Rules 1976 framed under the Haryana Development and Regulation of Urban Areas Act, 1975 and the Rules, By-laws & Regulations made under the Punjab Agricultural Produce Markets Act, 1961, the Committee discussed its scope and functions and the procedure for scrutinising the Rules, Regulations, order etc. The Committee also orally examined the representatives of the Town and Country Planning Department and the Agriculture Department of the State Government.

SCOPE AND FUNCTIONS OF THE COMMITTEE

The scope and functions of the Committee are set down in rules 242, 250 and 251 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly. Rule 242 enjoins upon the Committee "to scrutinise and report to the House whether powers to make regulations, rules, sub-rules, bye-laws, etc. conferred by the Constitution or delegated by legislature are being properly exercised within such delegation and consider such other matters as may be referred to it by the Speaker". Further rule 250 of the said Rules lays down that while examining any such set of rules, bye-laws, etc., the Committee shall, in particular consider :—

- (i) whether it is in accord with the general objects of the Constitution or the Act pursuant to which it is made,
- (ii) whether it contains matters which in the opinion of the Committee should more properly be dealt within an Act of the Legislature ;
- (iii) whether it contains imposition of any tax ;
- (iv) whether it directly or indirectly bars the jurisdiction of the courts ,
- (v) whether it gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power ;
- (vi) whether it involves expenditure from the Consolidated Fund of the State or the Public Revenues ;

- (vii) whether it appears to make some unusual or unexpected use of the powers conferred by the constitution or the Act pursuant to which it is made ;
- (viii) whether there appears to have been unjustifiable delay in the publication or laying it before Legislature ; and
- (ix) whether for any reason its form or purport calls for any elucidation.

Rule 251 lays down as follows :—

1. If the Committee is of opinion that any order should be annulled wholly or in part or should be amended in any respect, it shall report that opinion and the grounds thereof to the House.

2. If the Committee is of opinion that any other matter relating to any order should be brought to the notice of the House, it may report that opinion and matter to the House.

In short, the functions of the Committee are to see if the rules framed by the Executive are within the scope of the delegation made under the Act and do not go beyond the scope of such delegation. If the Committee finds that any rule is beyond the scope of the powers delegated under the Act by the Legislature, the committee can recommend that the rule be suitably amended or omitted.

There are certain rules which are required by the statute to be laid before the Legislature. But the Committee is competent to examine all the Rules, Regulations etc. framed by the Government under various Acts irrespective of the fact whether these have been laid on the Table of the House or not.

The Committee is competent to send for persons, papers or records if such a course is considered necessary for the discharge of its duties. In this connection attention is invited to rule 248 of the rules of Procedure and Conduct of Business in the Haryana Legislative Assembly, which reads as under :—

“248 (1) The Committee on Subordinate Legislation shall have power to require the attendance of persons or the production of papers or records, if such a course is considered necessary for the discharge of its duties.”

Provided that if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee, the question shall be referred to the speaker, whose decision shall be final.

Provided further that Government may decline to produce a document on the ground that its disclosure would be prejudicial to the safety or interest of the State.

(2) A witness may be summoned by an order signed by the Secretary and shall produce such documents as are required for the use of the Committee.

(3) It shall be in the discretion of the Committee to treat any evidence tendered before it as secret or confidential.

(4) No document submitted to the Committee shall be withdrawn or altered without the knowledge and approval of the Committee."

The Committee has framed the working rules wherein the detailed procedure has been laid down. Generally the Committee from time to time select set of rules framed under the various Acts for their scrutiny and examine these at the first instance at their own level with the assistance of the Law Department and the Vidhan Sabha Secretariat. The Committee then invites the Administrative Secretary concerned for oral examination to explain the discrepancies found in the various rules/orders. After the rules/orders and the departmental representatives have been examined the Committee prepares the report and presents it to the House.

Some of the Parliamentary conventions established in connection with the scrutiny of Rules, Regulations, Bye-laws etc., are given below :—

1. The Committee would scrutinise only such rules as have already been framed and published in the Gazette and not the draft rules.

2. The Committee should see that rules are framed under an Act as early as possible after the enactment of the Act and in no case this period should exceed six months. If the rules are not framed within six months, the Committee may ask the Department about the reason for the delay in framing the rules. This is only by convention.

3. Executive should ensure that no rules goes beyond the power delegated by legislature. If the rules go beyond the powers delegated by legislature, the Committee may examine the same and report to the House.

4. The Executive should be impressed upon that whenever rules are framed or amendments are made in the existing rules, these should be serially and centrally numbered and should indicate in the margin of each rule the reference of the section under which the rules are framed.

However, some of the broad principles established by the Committee for the guidance of the Executive are given below :—

- (i) As far as possible, guidelines criteria to be followed by the authority concerned for the exercise of discretionary power vested in it should be laid down in the rules.
- (ii) In cases where the authority concerned deviates from a norm it should be required to record in writing the reasons for such deviation.
- (iii) Before any adverse action is taken against a party, it should given a reasonable opportunity of being heard; and after a decision adversely affecting a party has been taken it should have the right of appeal or representation, as the case may be.

- (iv) In order that the persons similarly placed are not treated differently, the powers of exemption/relaxation should be exercisable in respect of categories or classes of persons, as contra distinguished from individuals.
- (v) In cases where an authority concerned is vested with the power to suspend a licence or supplies, pending institution of regular proceedings, a maximum time-limit for suspension should be laid down in the rules.
- (vi) The provisions of rules which may make a citizen liable to a penalty should be well-defined and not worded vaguely.
- (vii) In case of seizures and searches, suitable safeguards like the presence of witness, preparation of inventories of seized goods and giving a copy thereof to the persons concerned should be provided.
- (viii) In case of rules relating to disciplinary proceedings not only the punishing powers of the competent authority should be precisely defined but the procedure to be followed by the competent authority be also laid down in the rules.
- (ix) Statutory rules should be amended by statutory rules only and not by executive orders.
- (x) The rules made in exercise of powers delegated under statute are precise and free from ambiguity instead of being cryptic, sketchy or skeleton or needing further interpretations. It should be in simple language so that different people cannot put different interpretations. For example, expressions like 'unreasonable, large quantity', 'reasonable interval' or 'frequent intervals' etc., should be avoided.

GENERAL OBSERVATIONS/RECOMMENDATIONS OF THE COMMITTEE

1. Delay in framing the Rules

The Committee reiterates the recommendations made in its previous twenty four Reports and observes that ordinarily Rules should be framed as early as possible after the enactment of an Act and in no case the period should exceed six months. If no rules are framed within the said period after the enactment of the Act, the department concerned should bring in each case this fact to the notice of the Committee stating the reasons to the satisfaction of the Committee for not framing the rules within that period.

The Committee further recommends that whenever an Ordinance is promulgated, the rules should be prepared simultaneously so that there should not be wide gap between the Ordinance/Act and the Rules.

2. Reference of Section under which Rules are framed

The main function of the Committee on Subordinate Legislation is to scrutinise and report to the House whether the powers to make

regulations, rules etc., conferred by the Constitution or delegated by Legislature are being properly exercised by the Executive within the delegation. The Committee observes that the Government Department generally supply the copies of rules without the preamble or note above the rules with the result that it becomes rather difficult for Committee to know under what precise authority the rules have been framed. The Committee further observes that reference of the section under which each rule or order was framed is not indicated generally in the margin of each rule. The Committee is of the view that giving of reference of the section under which each rule has been framed in the margin of each rule is essential to enable the Committee and all concerned to know under what precise authority each rule has been framed.

The Committee reiterates the recommendations made in its earlier Reports that whenever rules are supplied to it the authority or the relevant section under which a particular rule or set of rules has/have been framed should also be mentioned in the margin of each rule.

If in the margin of each set of rules there is no reference of the section (s) under which each rule has been framed Government Departments may invariably supply a memorandum containing the reference to the relevant section of the Act under which each rule has been framed so that the Committee may be able to understand under what precise authority each rule has been framed and whether in any case the Government has transgressed the powers delegated by the Legislature.

The Committee further recommends that whenever several amendments are made in a set of rules the same may be republished after incorporating all the amendments made from time to time. This recommendation of the Committee should be observed meticulously.

3. (i) Supply of printed and up-to-date corrected copies of the Rules

The Committee observed that certain Departments supplied cyclo-styled copies of the rules for its scrutiny. During the scrutiny of the rules the Committee came across a large number of typographical/spelling mistakes in those copies, with the result that it was difficult for it to determine whether the errors were typographical or they actually existed in the rules, as originally published in the Gazette. The Committee, therefore, recommends that copies of the rules to be supplied to it by the Department should be in the printed form or in the form of Gazette in which they are published if, however, it is not possible for the Department to do so, it should be ensured that the copies of the rules, orders etc. are up-to-date, meticulously compared and duly corrected before supplying these to the Committee to save its valuable time in pointing out such mistakes.

The Committee further recommends that it is the duty of the Department concerned to see that the rules supplied to the Committee are amended up-to-date and ensure that the suggestions/recommendations/observations made by the Committee from time to time and agreed to by the concerned Department are implemented by the Department and incorporated in the rules.

The Committee further recommends that whenever any Act is amended, it should be looked that the relevant rules and forms are also amended so as to bring them in consonance with the change in the Act.

(ii) Footnote in the Act and Rules

It came to the notice of the Committee that some times it is laid down in the Act and Rules that such Act and Rules shall come into force on such date as may be specified in the notification by the State Government. The Committee is of the view that in such circumstances the date of commencement of the Act and Rules should invariably be given in the footnote so that legislators in particular and the public in general may come to know as to from which date the Act and Rules had come into force.

The Committee further recommends that whenever any amendment is made in an Act or Rules framed thereunder, it should also invariably be stated in the footnote the reference of the Act or Rules by which amendment has been made.

4. Publishing the Acts and Rules in Hindi

The Committee observes that at present Acts and Rules are available in English language only. The Regional language of the State as well as National Language is Hindi. Under the Haryana Official Language Act, 1969 at present, whenever any Bill is introduced in the State Legislature, its authenticated Hindi translated version is also supplied to the Members. The committee reiterates its earlier recommendation and recommends that all the Acts and Rules be translated into Hindi and made available to the legislators in particular and the public in general so that every body may be able to know the law of the land.

5. Laying of Rules on the Table of the House

The Committee has observed that a majority of the Acts contain provisions requiring the Government merely to publish the Rules framed thereunder in the Official Gazette. There is no provision for laying the same on the Table of the House, with the result that the House can exercise no direct check over them. The committee is of the view that there should be uniformity in the provisions of the Acts, deligating legislative powers and recommends that in future all the Acts, enacted by the State Legislature whether falling in the State List or Concurrent List of Seventh Schedule of the Constitution of India, which contain provisions for making rules, should also invariably lay down provisions for laying of rules on the Table of the House as soon as possible.

6. Delay in laying Rules on the Table of the House

The Committee recommends that where the rules, orders etc., are required to be laid on the Table of the House before the State Legislature under any statute, the same should be laid on the Table of the House as early as possible immediately following such publication in the Gazette, so that the House may statutorily modify or annul such rules. If such rules are published while the assembly is in Session, the rules should be laid on the Table of the House during that Session.

8

SCRUTINY OF THE HARYANA DEVELOPMENT AND REGULATION OF URBAN AREAS RULES 1976 FRAMED UNDER THE HARYANA DEVELOPMENT AND REGULATION OF URBAN AREAS ACT, 1975:

The Committee scrutinise the Haryana Development and Regulation of Urban Areas Rules 1976 framed under the Haryana Development and Regulation of Urban Areas Act, 1975 and made the following observations/recommendations thereon :-

General

While scrutinising the Haryana Development and Regulation of Urban Areas Rules 1976 framed under the Haryana Development and Regulation of Urban Areas Act, 1975, the Committee came across a large number of typographical mistakes in the copies of the Rules supplied to the Committee which had resulted in unnecessary wastage of valuable time of the Committee in pointing out the spelling mistakes etc. Therefore, the Committee recommends that the Rules be got re-printed after implementing the recommendations/observations made by the Committee.

Rule—4

“4(1)

a

(2) In the layout plan of an industrial colony, the land reserved for the purpose specified in sub-rule (1) shall not be less than thirty-five percent of the gross area of the land under the colony :

Provided that the Director may reduce this percentage to a figure not below twenty wherein his opinion the planning requirements and the size of the colony so justify.”

The Committee observes that Rule 4(2) appears to be irrational hence recommends that this rule be amended suitably so that it can convey clear sense.

Rule—5

“5. The designs and specifications of the development works to be provided in a colony shall include :—

(a)

(b) turfing and plantation with trees of open spaces;

(c) to (e)

(f) any other works that the Director may think necessary in the interest of proper development of the colony.”

The Committee recommends that in Rule 5(b) for the word “with” the word “of” and for the word “of” the word “in” be substituted.

The Committee observes that Rule 5 (f) gives unfettered powers to the Director in respect of development work of the Colony. 4

The Committee, therefore, recommends that this sub-rule be deleted. 5

Rule—15

"15. The colonizer shall commence the laying out of the colony and development works within a period of three months of the grant of licence under rule 12 and shall complete the same before the expiry of the period of Licence."

The Committee recommends that in rule 15 for the word "commence" appearing in line 1 the word "start" be substituted. 6

Rule—16

"16. (1) * * * * *

(2) After such scrutiny, as may be necessary, the Director may issue a completion certificate in form LC. IX or refuse to issue such certificate stating the reasons for such refusal :

Provided that the coloniser shall be afforded an opportunity of being heard before such refusal."

The Committee recommends that in line 1 of Rule 16(2) the word "such" be deleted being superfluous. 7

The Committee further recommends that in line 2 of Rule 16(2) for the word "may", the word "shall" be substituted. 8

Rule 18

"18.(1) & (2)

* * * * *

(3) After hearing the coloniser and considering such representation as he may make, the Director may either cancel the licence or grant him further time for complying with the requirements of the notice issued under sub-rule (1). If however, the coloniser does not comply with the said requirements within such extended period, the Director shall cancel the licence and thereafter within a reasonable time shall cause a proclamation made in the locality about the cancellation of the licence by beat of drum.

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The Committee recommends that in line 6 of Rule 18(3) for the words "within reasonable time", the words "within one month" be substituted. 9

Agriculture

10

**SCRUTINY OF THE RULES, BYE-LAWS AND REGULATIONS
FRAMED UNDER THE PUNJAB AGRICULTURAL PRODUCE,
MARKETS ACT, 1961.**

The Committee scrutinised the Rules, Bye-Laws and Regulations framed under the Punjab Agricultural Produce Markets Act, 1961 and made the following observations/recommendations thereon.

General

1. While scrutinising the Rules, Bye-Laws and Regulations framed under the Punjab Agricultural Produce Markets Act, 1961, the Committee came across a large number of typographical mistakes in the copies of the Rules supplied to the Committee which had resulted in unnecessary wastage of valuable time of the Committee in pointing out the spelling mistakes etc. Therefore, the Committee recommends that the Rules be got re-printed after implementing the recommendations/observations made by the Committee within six months.

2. The Committee observes that no rules have been framed under Section 18 of the Punjab Agricultural Produce Markets Act, 1961. Under the provisions of this Section, the plots are allotted to the licencees who act as commission arhtiya within the area of the Principal Yards to facilitate the farmers of the area of a particular market committee for the sale and purchase of the agricultural produce of the farmers. These plots are transferred to the licencees of the Committee on permanent basis for construction of shops within the Mandi area. As has been informed by the Secretary to Government, Haryana, Agriculture Department, to the Committee that the prices for these plots are fixed by the Marketing Board after the completion of all developmental works in a particular mandi and all these plots are allotted to the licence dealers on the recommendations of the concerned Market Committee through a resolution passed by the majority of not less than 3/4 of the Members of the Committee with the prior approval of the Chief Administrator of the Marketing Board. In the absence of the rules where the procedure is required to be laid down, the Committee fails to understand how the purpose of this Section are being achieved. Further the Committee has been informed by the representative of the department that policies are framed by the said Board from time to time and according to these policies, the provisions of Section 18 in respect of allotment of plots to the dealers are followed through these but it came to the notice of the Committee during the course of oral examination that the policies as referred to above framed by the Marketing Board have not been notified as provided under Section 43 of the Act, by the competent authority. Until and unless these policies are notified by the competent authority it is difficult to hold that such policies have legal sanctions in the eyes of law and there is likely hood of misuse of such policies on account of non-notification. For instance, the Marketing Board has framed the policy for allotment of plots to the dealers of different mandis that the dealer where-ever he is required to be a licence holder for a period of two years. This type of condition was imposed through the policy framed by the said Board but the Hon'ble Supreme Court has held in the case of M/s Prem Chand, Trilok Chand and others versus State of Haryana and others, writ petition (c) No. 736/1990 dated

7th August, 1991 that the Government to provide at new site for all the licensee dealers sufficient accommodation for carrying on their trade. Until that is done, it would not be possible for the Government to direct the closure of the old site and no such conditions, as has been mentioned in the policy, has been put by the Court. To give more facilities to the dealers and the agriculturists the competent authority is shifting the congested old mandi sites to new mandi sites and in those new mandi sites, according to the Hon'ble Supreme Court ruling, every licensee dealer of the de-notified old mandi to be given plots irrespective of the fact that whether they are licensees for the past two years or not. In view of this ruling, the policy framed by the competent authority is contrary to the law laid down by the apex Court wherein so many conditions have been imposed for allotting the plots to the licensees

The Committee observes that through these policies of the Board which are not notified for the public, the licensee dealers are put to a lot of unnecessary harassment.

The Committee, therefore, recommends that:

A.(i) Uniform policy in respect of allotment of plots to the dealers keeping in view the judgment of apex court as referred to above be framed and duly notified in the official Gazette by the competent authority.

(ii) The Committee also recommends that the Government to constitute a Committee to review the cases of allotment of plots to licensee dealers after coming into force the Supreme Court Judgment (from the date of Judgement). The Competent authority to take appropriate further action thereafter in order to ensure in public interest that allotment of plots are being done in accordance with the law and the judgment of the Supreme Court. The Committee be informed of the appropriate action taken in the matter within a period of six months

B. The Committee noticed during the course of oral examination that the rules by the competent authority has not been framed to carry-out the purposes of Section 28 read-with Section 43 (XVI) of the Punjab Agricultural Produce Markets Act, 1961.

The Committee, therefore, recommends that in public interest and in order to improve the efficiency and the quality of developmental activities of the Market Committees/Mandis the rules be framed under Section 43 (XVI) of the said Act in order to carry-out the purposes set out in Section 28 of the Act by the competent authority expeditiously.

3. During the course of oral examination, the Committee observes that in the construction work being carried out by the concerned Committee, these Committees have no control or supervision over the payments made to the contractors or going into the genuineness of the works done by the contractors in the concerned market committees as at present the procedure adopted by the Board is that the payment is to be made by the Board to the contractors after getting the money from the concerned market committee. Rather the market committees are asked to deposit the contract money with the Board in advance and when the work is completed, the payment is made by the Board to the contractor. The committee has

no control whatsoever over the contractor and no supervision over the quality of works. The funds belongs to the committees and the committees are the legal entities to see whether the work has been executed in accordance with the contract or not. The Committee, therefore is of the view that it is against the natural justice and fundamental principles of law. The Committee, therefore, recommends that the Committees be allowed to have control of inspection of the developmental works regarding its quality and execution of works according to the contract entered into with the contractor so that the quality may improve. The Committee further recommends that the rules be framed for this purpose as no rules in this respect have been framed under Sections 27 & 28 of the Act.

4. Under Section 6 D and 6 G(1) and (2) of the Punjab Agricultural Produce Markets Act, 1961 no rules have been framed for the implementation of Scheme which is a serious lapse.

The Committee, therefore, strongly recommends that the rules under Section 6D and 6G (1) and (2) of the said Act be framed within a period of three months and the Committee be informed accordingly.

According to Section 6 D, the competent authority is required to frame a scheme to determine what portion of the assets and other properties vested in one Committees shall vest in the other Committee and in what manner the liabilities of the Committees shall be apportioned between the two Committee after consulting the Committees. In the case of Bapoli Market Committee and Panipat Market Committee, the Committees were not consulted only the Secretaries of both the Market Committees were consulted as informed to the Committee during the course of oral examination. The Secretaries of the Market Committees are not the Committees, but they are the functionnaires of the Committees. This action of the Board is against the provision of Section 6 D of the said Act.

The Committee, therefore, recommends that the Scheme for the apportionment of the assets and liabilities between two or more market Committees be framed after consulting the respective Committees and not the Secretaries of the Committees as provided in the Act.

The Committee further recommends that in the case of Bapoli and Panipat Market Committees, the Scheme be framed after consulting the respective Committees within a period of three months as it has already been delayed and the Committee be informed accordingly.

Rule—3

“3. Constitution of the Board.—(1) For the purpose of enabling the State Government to nominate non-official members ;—

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- (iii) under sub-clause (iii) of clause (b) of sub-section (1) of section 3, the Director of Agriculture shall submit a panel of four names, two from each division ;

* * *

- (v) under sub-clause (v) of clause (b) of sub-section (1) of section 3, the Registrar shall submit a panel of four names, two from each division.

* * *

- (vii) under sub-clause (vii) of clause (b) of sub-section (1) of section 3, the Director of Panchayats shall submit a panel of four names, two from each division.

* * *

The Committee observes that there is an ambiguity regarding "two from each division" and Director shall submit a panel of four names" but there are four divisions in the State of Haryana and according to this in the last portion of sub-rule (iii), (v) and (vii) the figure should have been 8. Similarly the Committee finds some other discrepancies in this Rule. The total number of names to be submitted by the various functionaries of the Government will undergo a change and consequent amendments will have to be made in this Rule. The Committee, therefore, recommends that this Rule be amended suitably so that all Revenue Division and Districts should get their representation.

13

Rule 4 Section 3 (ii) and (2) (ii)

"4. Functions and powers of Chairman, Chief Administrator and Secretary of the Board—

(1) The Chairman of the Board shall preside over the meetings of the Board.

(2) The Chief Administrator shall,—

(a) be responsible for the administration of the Act and shall subject to any other provision contained in these rules, exercise general control over the employees of the Board and those of Committees ;

(b) enjoy the powers of the Head of the Department as are being enjoyed by the Director of Agriculture in relation to matters pertaining to Agriculture Department ;

(c) be the competent authority for approving the budget of the Committees; and.

(d) be responsible for the preparation of the annual Budget of the Board.

(3) The Secretary of the Board shall in relation to matters pertaining to the Board, enjoy the same powers as are being enjoyed by a Head of office in the Agriculture Department in relation to matters of that Department."

17 In the margin against rule 4 of the Punjab Agricultural Produce Markets (General) Rules, 1962, the Section 3(ii) and 2 (ii) has been wrongly mentioned. It should have been 3 (1) and 3 (2). Except rule 4 (2) (b) rule 4 is not in conformity with the provision of Section 3 under which this rule has been framed.

15 4(2) (b) Therefore, the Committee recommends that rule 4 except rule 4(2) (b) be recasted in accordance with the provision of Section 3.

Rule 6 Section 3 (13)

"6. Budget of Board and Committees.—(1) The Board shall meet not later than first week of February every year to finalise the budget for the next financial year.

(2) The budget finalised by the Board shall be submitted to the State Government not later than the last week of February preceding the year to which the budget relates.

(3) No expenditure shall be incurred by the Board unless there is a provision in the budget to meet the same.

(4) The Board may re-appropriate any amount under the Head of Account to another with the prior approval of the State Government.

(5) The provisions of sub-rules (1), (2) and (3) shall, as far as may be, apply to the preparation, finalisation and submission for sanction of the budget of the committees;

Provided, that, the budget in the case of committees shall be submitted for sanction to the Chief Administrator of the Board through the Sub-Divisional Officer (Civil) and the Deputy Commissioner. If it is not received back within two months from the date of despatch by the committee, it shall be presumed to have been sanctioned.

Provided further that the budget sent by the committee shall not be retained each by the Sub-Divisional Officer (Civil) and the Deputy Commissioner for more than ten days."

Rule 6 framed under Section 3 (13) as mentioned in the margin of the rule has not been legally framed as the words "Committees" have illegally been inserted because Section 3 (13) referred to the Budget of the Board only and no mention of the Committees have been made therein. Like-wise, sub-rule 5 of Rule 6 is also in contravention of the provisions of Section 3 (13). Similarly the provisos 1 and 2 of sub-rule 5 are also in contravention of the provisions of Section 3(13) of the Act.

16 Therefore, the Committee recommends that Rule 6 be recasted in view of the existing provisions of Section 3 (13) of the Act:

Rule—7

“7. Publication of notification under section 6.—

(1) Copies of notification issued under section 6 shall be published under the orders and at the discretion of the Chief Administrator, of the Board, in one or more of the modes specified below :—

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(b) by affixing a copy of the notification in Hindi language or in such other language as may be considered necessary by the Chief Administrator of the Board, in the office of every Municipal Committee, Notified Area Committee, Panchayat Samiti, if any, within whose jurisdiction the notified market area or any part thereof is situated, and at some conspicuous place in the existing, if any market ;

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(3) The expenses of publication under sub-rule (1) of copies of the notification issued under section 6 shall be met out of the Marketing Development Fund.”

The expression “at some conspicuous place in the existing, if any market” in Rule 7(1)(b), does not give any sense. The Committee, therefore, recommends that this sub-rule be suitably recasted.

The Committee also recommends that for the word “of” appearing before the word “copies” in the line 1 of rule 7(3) the words “for the” be substituted.

Rule—10

“10(1) to (5)

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(6) The Chairman shall be competent to grant casual leave the Secretary and Assistant Secretary of the Committee. For granting other kinds of leave the competent authority will be the Chief Administrator of the Board.

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The Committee recommends that after the word “leave” appearing in line 1 of rule 10(6) the word “to” be added.

Rule—14

“14(1) to (4)

(5) It shall be the duty of the Secretary to carry into effect the provisions of the Act, rules and bye-laws framed under the Act and instructions of the Board, and the decisions of the Committee and of the Chairman of the Committee consistent with the Act, the rules and the bye-laws and instructions the Board and of the Chief Administrator or Secretary of the Board and to effect maximum improvement in the market.

2 The Committee recommends that in the 5th line, between the words “instructions” and “the” in rule 14 (5) the word “of” be inserted.

Rule—40

“40. Procedure for appeals.—(1) Every appeal preferred under sub-section (4) of section 10, sub-section (3) of section 29 and section 40 shall bear a court fee stamp of one rupee and shall be presented to the appellate authority in the form of a memorandum by the appellant or his duly authorised agent. The memorandum shall set forth concisely the grounds of objection to the order appealed from and shall also be accompanied by a copy of such order.

(2) The limitation for filing an appeal under section 40 shall be thirty days from the date of order appealed from.

2 The Committee recommends that in sub-rule (1) and (2) of rule 40 the words “appealed from” be substituted by the words “appealed against”.

Rule 42

“42, Preservation of records.—The respective records of the Board and Market Committee shall be preserved for the periods noted against each in the schedule hereto annexed :—

SCHEDULE

Description	Period
Budget	.. 5 years
General Cash Book	.. Permanently
Establishment Bill	... 35 years
General Bills	... 3 years
Balance Sheet	... 10 years

Description	Period
Ledger	... 10 years
Register of Deposit	... Permanently
Application in Form A	.. Permanently
Other Application Form	... 5 years
Returns of daily purchases and sales	.. One year after audit.
Receipts	... 3 years
Register of sale and purchase of agricultural produce	... 10 years
Register of Licences	... 10 years
Provident Fund Register	.. 10 years or till all accounts to which it relates are closed
Service books of the employees	... 5 years after retirement or death (which ever is earlier)
Register of proceedings of the Board or Committee or Sub-Committee	... Permanently
Register of correspondence	... Permanently
Cheque Books	... 10 years
Pass Books	... 10 years
Travelling Allowance Bills	... 3 years
Lease deeds Allowance Bill	... 10 years from the date they cease to have effect
Security Bonds	... —do—
Treasury Challans	.. 3 years
Imprest Account Register	... 3 years
Attendance Register	... 1 year
Movable Property Register	... 10 years
Library Register	.. 10 years
Demand and Collection Register	... 10 years
Register of stamps	.. 3 years
Stock Register	.. 10 years
Register of Court cases	... 10 years
Investment Register	... Permanently
Files about the appointment, removal and dismissal of employees	.. 35 years
Other record which the Board or Committee may decide to preserve for more than three years.	... Such period (not less than 10 years) as may be prescribed by the Board or Committee

The Committee recommends that in the Schedule attached to Rule 42 against the entry "Treasury Challan" the words "3 years" appearing under the column period be substituted by the words "5 years".

MARKET COMMITTEES BYE—LAWS

Bye-Law-6 Conduct of proceedings and presidency of a meeting :—

"6(1) to (8)

* * * * *

(9) Every meeting of the Committee shall be presided over by its Chairman or in his absence by its Vice-Chairman, but if both are absent the members present shall elect one of the member members present to act as Chairman for the occasion and such, Chairman shall have, for that meeting, all the powers of the Chairman and be designed as such.

(10) to (12)

* * * * *

(13) After calling the attention of the meeting to the conduct of a member who persists in speaking or in arguing upon a matter, which in the opinion of the Chairman is irrelevant, or its respecting his own argument or the arguments used by other members or is exceeding the time allotted to him, the Chairman may direct the member concerned to discontinue his speech.

(14) and (15)

* * * * *

23 The Committee recommends that in Bye-Law 6 (9) the word "members" appearing in line 3 after the word "member" be deleted being superfluous, and for the word "designed" appearing in the last line the word "designated" be substituted.

24 The Committee further recommends that in clause 13 of this Bye-law the words "its respecting" be substituted by the words "is repeating," appearing in line 3.

Bye-Law-9. Minutes of meetings :—

"9 (1)

* * * * *

(2) Recorded proceedings of the meeting shall be read out in the next meeting of the Committee as the first item on the agenda and the member

who were present in the former meeting shall have the right to questioning the correctness of the recorded minutes, which shall be corrected with such modifications as may be decided upon to bring those in conformity with the facts. In case of any dispute about the correctness of the minutes, the opinion of the Chairman under whose signatures, the record was made, if he be present, shall be final. If however, the said Chairman be not present when the dispute arises, the matter shall be decided in accordance with the majority of the votes of the members who had attended the former meeting and are present.

(3) and (4)

* * * * *

The Committee recommends that in line 3 of clause (2) of Bye-Law 9 for the word "to" the word "of" be substituted, and in line 7 for the word "be" the word "is" be substituted. 25

Bye-Law-10. General :—

"10 (1) Any member of the Committee may ask for any information regarding anything done or purporting to be done by the Committee or regarding the affairs of the Committee by written notice and shall be supplied with such information by the Chairman of the meeting. The requisition for such information shall reach at least 4 days before the meeting in the office of the Committee.

Provided that the Chairman may refuse to supply any information divulgence of which, in the opinion of the Chairman, be against the interest of the Committee.

(2) to (6)

* * * * *

The Committee recommends that in proviso to clause (1) of By-Law-10 for the word "be" the word "is" be substituted. 26

Bye Law—11. Conditions for the use of Market :—

"11 (1) Where Kacha Arhtiya is authorised to conduct auction himself, he shall be responsible to keep and maintain register in the same manner as are to be kept by an auctioneer.

The Kacha Arhtiya shall provide such kinds of services to the labourers engaged for the purpose of as may be presented by market Committee.

(2) The least difference between the two bids offered for a lot of agricultural produce, in case of cotton, chillies, oilseeds and wool shall not be less than twenty naya paise while in other cases not less than ten naya paise.

(3) Rates offered in a auction shall be on basis of one quintal and at decimal coin age.

(4) When once the price of a lot of the agricultural produce has been settled by open auction, in favour of a person, the lot shall be delivered to such person and papers executed in its favour. No buyer shall be allowed to associate, any other person in such a transaction before he has taken delivery and has made the payment in respect of such a transaction.

(5 and 6)

* * * *

The Committee recommends that for the word "auctioneer" appearing in line 2 of clause (1) of Bye law 11 after the word "an." the word "auctioner" be substituted.

The Committee also recommends that the word "of" appearing in line 4 of clause (1) of Bye Law 11 be deleted being superfluous.

The Committee further recommends that in clause (3) of this Bye law for the word "coin age" the word "coinage" be substituted.

The Committee also recommends that in line 3 of clause 4 of the same Bye law for the word "its" the word "his" be substituted and between the words "associate and" "any" the word "with" be substituted appearing in line 4.

Bye Law 12. Weighment of agricultural produce :—

"12 (1) Fees for weighment on a weighbridge installed by a Committee for weighment of agricultural produce shall not exceed that following :—

- (i) 30 naya paise per Cart.
- (ii) 35 naya paise per trolley (Tractor)
- (iii) 50 naya paise per truck.

Provided that no fee shall be chargeable if the weighment is made for the purpose of test weighment of agricultural produce.

(2) to (4)

* * *

The Committee recommends that in sub-clause (1) for the word "that" the word "the" be substituted and in clauses (i) to (iii) the word "naya" be deleted.

Bye-Law—14

"14. Duties of Weighmen measures and surveyors :—

A licensed weighman, or measure or surveyor shall correctly weigh or measure or assess the quality, as the case may be, of the agricultural produce brought to him for weighment, or measurement or survey.

The Committee recommends that in the heading for the word "measures" the word "measurers" be substituted and in clause (1) for the words "measure or survey or" the words "measures and surveyer" be substituted. 32

Bye-Law-15

"15. Books to be kept by weighmen, measurers, surveyors and brokers:—

Every broker shall keep a book in form to be prescribed by the Market Committee in which he shall record his daily work."

The Committee recommends that before the word "broker" the words "weighmen, Measurer, surveyors" be inserted. 33

The Committee observes that no such form has been prescribed for the purpose as indicated in the bye-law. The Committee, therefore, recommends that form may be prescribed and attached with these Bye-Law. 34

Bye-Law-16. Market hours :—

"(1) and (2)

*	*	*	*
*	*	*	*

(3) The buyer desirous of purchasing agricultural produce shall personally or through an approved and bonafide representative attend the auction within one hour of the time of the start of auction fixed under sub-clause (1). In case of his inability to attend the auction in time, he shall intimate explicitly to the office of the Market Committee before auction commences."

The Committee recommends that in line 2 of clause (3) for the word "bonafied" the word "bonafide" be substituted. 35

Bye-Law-19

"19. Sub-Committees, Joint Committees and Adhoc Committees."

(1) A sub-committee or a joint committee or an adhoc committee appointed under section 9 of the Act may be for the full term of the Committee or for a shorter fixed period. The appointment or removal of members of such a Committee and delegation or withdrawal of powers and duties shall be by a resolution of the Committee in a regular meeting :

Provided that decision of joint committee shall be valid only when the same has been ratified by the Committee.

(a) The Committee while setting up a sub-committee or a joint committee or an adhoc committee, shall fix the quorums for its meetings and shall appoint one of its members as its Chairman in each case, who shall be convenor of its meetings and shall submit a record of all the work done by it in every meeting of the Committee through the Chairman ; 36

Provided that the Chairman of the Committee when appointed on a sub-committee, a joint committee or an adhoc committee shall, subject to the provision of rule 13 be in ex-officio Chairman of such a Sub-Committee a joint committee or an adhoc committee.

(3) and (4) *

37 The Committee recommends that after proviso to clause (1) the serial number of clause should be "(2)" instead of "(a)".

38 The Committee further recommends that in line 3 of proviso to clause (2) for the word "in" the word "the" be substituted.

Bye-Law—20

"21. Complaint register, institution of prosecutions:

(1) (i) The committee shall keep a register in Form 'D' annexed to these Bye-laws in which all offences punishable by or under the Act, the Rules or these By-laws detected by an Officer or servant of the Committee or which may be reported to the Committee by any person shall be recorded under the signature of the reporting officer or the complaint as the case may be

(11) & (2) *

39 The Committee recommends that in line 4 of clause (1) for the word "complaint" the word "complainant" be substituted.

Bye Law—21

"21. Complaints, notices, suits against or on behalf of the Committee—
How to be dealt with

(1) Unless otherwise provided for in the Act, the Rules and these bye-laws, all application, notices, summons, warrants, appeals, letters, complaints and any other documents or papers addressed to the Committee delivered at its office shall be received by the Secretary or on his behalf by an employee of the committee as may be authorised by him. The Secretary shall put before the Chairman all such papers for his orders.

(2) Unless otherwise provided for in the Act, the Rules and these Bye-laws all letters, applications, notices and complaints on behalf of the Committee may be given, issued and lodged by the Secretary under his hand and seal of his office".

The Committee recommends that in line 1-2 of clause (1) for the word "application" the word "applications" be substituted and in clause (2), after the words "Bye-laws" the sign " , " be inserted 40

Bye law—22

"22(1)

* * *
* * *

(2) The Chairman, may, before making order or taking decision on a matter, obtain the opinion of the Secretary on every such matter and every order made by the Chairman or decision taken by him shall include a reference to the opinion given by the Secretary on the matter."

The Committee recommends that in clause (2) after the word "Chairman the sign " , " be deleted being superfluous. 41

Bye-Law—23

"23. Grant of Licences.—

Application for grant and renewal of licences under rule 19(1) shall be received at the office of the Committee. The Secretary shall enquire or cause to be enquired into the contents of the application to satisfy the information supplied is correct and also regarding the conduct and business of the applicant and record his findings on the application within three days of its receipt by him. The Chairman or any other employee authorised by the Committee under rule 19(2) shall, on being satisfied that the conduct and business of the applicant are satisfactory and that the information contained in the application is correct, issue a licence forthwith under his signature, stamp of his office and common seal of the committee :

Provided that the Committee may, for reasons to be recorded, amend, alter or rescind any order of the Chairman or any other employee authorised by the Committee under rule 19(2) refusing grant or renewal of a licence :

Provided further that every order of such refusal shall be recorded in a brief statement of reasons for the same and every such matter shall be reported to the Committee in the first meeting taking place next after the date of such order."

The Committee recommends that in the first proviso to this Bye-law for the word "rescind" the word "rescind" be substituted. 42

Bye-law—24

"24. Control of staff—

(1) The Secretary shall be head of the committee and shall call the roll of the staff daily and shall prepare the duty roster for different employees. He may call for any return of work done by a member of staff during a specified period. His orders shall be complied with promptly.

(2) The Secretary may assign to the employees of the Committee a part from their regular duties, such other duties as he may consider necessary for the discharge of official duties and shall see that the employees under him perform their duties properly and efficiently. He may report to the Chairman that action is called for against any of the employees of the Committee on the ground stated in the report. Provided that an opportunity shall be afforded to the employee concerned before action is taken against him.

(3) * * * * *

43 The Committee observes that in clause (1) the expression "the Secretary shall be head of the Committee and shall call." is not correct and not in conformity with the Act and the Rules. The Committee, therefore, recommends that the same be recast as :-

44 The Committee further recommends that in clause (2) the words "a part" the word "apart" be substituted appearing in line 1 & 2.

Bye-Law—25. Copies of orders resolution and balance sheet :—

"25(1) * * * * *

(2) For the grant of a copy under clause (1) following fee shall be charged :—

Resolutions and orders 25 N.P per 100 words or fraction thereof subject to a minimum of 50 N.P per copy.

Balance sheet, 25 N.P. per document.

Note :—Copies of orders against an employee shall be supplied to him free of charge.

* * * * *

45 The Committee recommends that in clause (2) for the words "N.P." wherever occurring, the word "paise" be substituted.

Bye-Law—26

"26. Payments at office of the Committee :

(1) A sum due to the Committee shall be paid at its office during hours as may be fixed by the Market Committee and shall be received by a person appointed for the purpose who shall sign and issue receipt therefor.

Provided that receipt for amounts exceeding Rs. 20/- shall be countersigned by the Secretary or such other person authorised by him.

(2) An employee of the Committee appointed to receive or handle money on behalf of the Committee shall, before entering on his duties, furnish a cash security of Rs. 500/- or personal security equal to four times the amount which is expected to handle within a week. The Chairman shall be the final authority to determine the amount which a servant is expected to handle within a week, on behalf of the Committee.

Provided that this clause shall not apply to a person who has been appointed in stop gap arrangement within from the office."

The Committee recommends that in line 3 and 4 of sub-clause (1) for the word "therefore", the word "therefor" be substituted.

The Committee further recommends that in line 1 of sub-clause (2) for the word "of" occurring between the words "receive" and "handle" the word "or" be substituted.

The Committee also recommends that in line 3 of sub-clause (2) the spelling of the word "personal" be corrected.

The Committee further recommends that in proviso to clause (2), in line 2 the word "from" occurring between the words "within" and "the" be deleted being superfluous

Bye—Law 27. Trade Allowance :—

"27 (1) and (2)

(3) All item shall be paid for at sale price, except those taken under bye-law 32."

The committee recommends that, in clause (3)-- for the words "All item" the words "All the items" be substituted

Bye—Law 29

"29. Supply of prescribed forms by the Committee:—

All forms and registers prescribed under rules or these Bye-laws to be maintained or executed by the persons licensed shall be serially numbered and properly bounded in books of at least one hundred or multiple thereof.

No such form or register shall be valid for use unless first or last page of the same is signed, stamped and dated by the Secretary or any officer authorised by him in this behalf and each page of such form or register bear the stamp of the Committee maintained for such purpose.

(2) and (3)

(4) Form I, J. and M. books may be sold to any licensee in any number, but the licensee shall put into only one book at a time and forms written in the serially, numbered order of the Book."

The Committee recommends that in the second para of clause (1) for the word "bear" appearing in line 4 be substituted by the words "shall bear."

52 The Committee also recommends that in clause (4) in the last but one line, the sign “ , ” occurring between the words “serially” and “numbered” be deleted being superfluous.

Bye—Law 30

“30. Publications, notices and directions of the Committee, How to be notified:

(1) Orders, publications, directions and notices to the general public shall deem to have been published when these are posted on the notice board of the Committee outside its office premises.

(2) * * * * *

53 The Committee recommends that for the word “posted” appearing in line 2 of clause (1) the word “pasted” be substituted.

Bye—Law 31

“31(i) * * *

(ii) The Secretary may require the money to be kept by the Accountant of the Committee who under orders and instructions of the Secretary shall keep regular accounts of all expenditure met out of its and its reimbursement in the same manner as other accounts of the committee are maintained.

(iii) * * *

54 The Committee recommends that for the word “its” appearing in line 3 of clause (ii) the word “it” be substituted appearing between the words “of” and “and”.

Bye—Law—33

“33. Punishment.—

Whosoever contravenes the provisions of bye-laws 11,12,14,15,16,17,18, 27,28,29 and 32(2) of these bye-laws shall, on conviction, be punishable with a fine which may extended to fifty rupees.”.

55 The Committee recommends that for the word “extended” appearing in line 2, the word “extend” be substituted.

Bye—Law—34

“34. Repeal and savings.—

The Bye-laws framed under repealed the Patiala Agricultural Produce Markets Act, 2004 B.K. and the Punjab Agricultural Produce Markets Act, 1939 and the bye laws of Market Committee, Jullunder published in Government Gazette, dated 31st May, 1963 are hereby repealed :

* * * * *

56 The Committee recommends that in the first line for the words “under repealed the” the words “under the repealed” be substituted.

The Committee scrutinised the Haryana State Agricultural Marketing Board Services Rules, 1974 framed under the Punjab Agricultural Produce Market Act, 1961, and made the following recommendations/observations—

Rule 2A.

“2(a) to (f) and (i)

(ii) in the case of a degree, diploma or Certificate obtained as a result of examination held before the 15th August, 1974, the Punjab, Sind or Dacca University, or

The Committee recommends that in sub-rule (ii) of Rule 2(a) in line 2, for the figures ‘1974’ the figure ‘1947’ be substituted. S7

Rule—3

“3. The service shall comprise the posts shown in Appendix A to these rules.

Provided that nothing in these rules shall effect the inherent right of the Board to add to or reduce the numbers of the such posts or create new posts with different designation either permanently or temporarily.”

The Committee recommends that in proviso to Rule 3 in line 1, for the word ‘effect’, the word ‘affect’ be substituted. S8

The Committee further recommends that in line 2 of proviso to Rule 3, the word ‘the’ appearing between the words “of” and “such” be deleted being superfluous. S9

Rule—4

“4. (1) No person shall be appointed to the service, unless he is :—

Nationality, domicile and character of candidates appointed to the service.

- (a) a citizen of India, or
- (b) a subject of Sikkim, or
- (c) subject of Nepal, or
- (d) a subject of Bhutan, or

(e) a Tibetan refugee who come over to India before the 1st January, 1962, with the intention of permanently settling in India; or

- (c) a person of Indian origin who has migrated from Pakistan, Burma, Sri Lanka (formerly Ceylon) and East African countries of Kenya, Uganda and the United Republic of Tanzania (formerly Tanganyika and Zanzibar) with the intention of permanently settling in India;

Provided that a person belonging to categories (c), (d), (e) and (f) shall be person in whose favour a certificate of eligibility has been issued by the Government and if he belongs to category (f), the certificate of eligibility will be issued for a period of one year, after which such a person will be retained in the Service subject to his having acquired Indian Citizenship.

(2) A person, in whose case a Certificate of eligibility is necessary may be admitted to an examination or interview conducted by the recruiting authority on his furnishing proof that he has applied for the certificate and they may also provisionally be appointed subject to the necessary certificate being issued to him by the Government.

(3) No person shall be appointed to the Service by direct recruitment unless he produces :—

(i) a certificate of character from the Principal academic officer of a University, College, School or Institution last attended, if any, and similar certificates from two responsible persons, not being his relatives, who are well acquainted with him in his private life and are unconnected with his University, College, School or Institution and ;

(ii) a medical certificate of physical fitness as required under rule 3.1 of the Punjab Civil Services Rules, Volume I, Part I."

60 The Committee recommends that in Sub-Rule 1 of Rule 4 in entry (e) for the word 'come' the word 'came' be substituted.

61 The Committee further recommends that in line 3 of proviso to Sub rule (1) of Rule 4, for the word 'the' the word 'he' be substituted.

While scrutinising the Haryana State Agricultural Marketing Board Service Rules, 1974 it has come to the notice of the Committee that no service rules have been framed in respect of Class IV employees of the Committees. The framing of rules in respect of Class IV employees of the Committees are mandatory as per section 20-A of the Punjab Agricultural Produce Markets Act, 1961.

62 The Committee, therefore, recommends that the rules be framed within a period of six months and the Committee be informed accordingly.

On this account unpleasant and disorderly situation is prevailing in Class IV employees of the Market Committees. As a result thereof these employees are put to unnecessary harassment and it also results into indiscipline in the Establishment. Further more it causes financial losses to the Committees. For instance 6 Class IV employees of Panipat Market Committee have been directed to go to Bapoli Market Committee on

transfer basis. There is no speaking order in respect of their transfer from the Panipat Market Committee to Bapoli Market Committee. They were directed to be relieved on 31.7.1993 and to join on 1.8.1993 at Bapoli Market Committee. Bapoli Market Committee did not allow them to join duties in the absence of speaking transfer orders till to day. They are not working either at Panipat or at Bapoli Market Committee. They have gone to courts. Both the Market Committees had to spend money for engaging lawyers. This financial loss and harassment to Class IV employees are simply because of the Chief Administrator's illegal action which had been admitted by him before the Committee at the time of oral examination that he has ordered to the Secretary, Panipat Market Committee on the request of the Chairman, Market Committee, Panipat to transfer them to Market Committee, Bapoli. The Chief Administrator further admitted before the Committee that he has done so on the basis of past practice followed by his predecessors. He has further alleged that under Section 6 G (2), the staff of the original market area are to be observed by the Committees newly constituted. In accordance with Section 6G (2) such action if any is to be taken under the orders of the Board.

The Chief Administrator has no power to transfer any of the employees of the Market Committee. The Marketing Board has also not delegated the powers to the Chief Administrator for transferring Class IV employees from Panipat Market Committee to Bapoli Market Committee as has been admitted at the time of oral examination by him and the Chairman of the Haryana State Agricultural Marketing Board.

In reply to the observations of the Committee the Secretary to Government, Haryana has replied that Class IV employees are being governed under the Punjab Civil Service Rules. This is very funny and strange reply as the Class I, II and III employees are governed under the Haryana State Agricultural Marketing Board Service Rules, 1974 framed by the Competent authority under the Punjab Agricultural Produce Markets Act, 1961. It is very serious lapse.

Therefore, the Committee recommends that the Government to look into this aspect under intimation to the Committee.

63

Rule 5

"5. No person shall be appointed to the Service by direct recruitment unless he is not less than seventeen years and not more than Thirty years of age, on or before the first day of January, next proceeding the last day of submission of application to the Board.

Provided that in the case of candidates belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes, the upper age limit shall be such as may be fixed by the Government from time to time.

Provided that in the case of candidates already in the service of the Board, the upper age limit shall be thirty five years or such other upper age limit as the State Government may, from time to time, fix.

Provided that in the case of persons already in the service of Haryana Govt. the upper age limit shall be 35 years."

Under this rule the maximum age limit for recruitment in the Board/Committees Services is fixed as 30 years whereas in other depart-

ments of the Government the upper age limit is 35 years. In reply to the observations of the Committee, the Government representative has informed the Committee that the Board has already requested to the Government vide their memo No. Admn 91/4383 dated 17.1.1991 to make amendments in the Service Rules to raise the age limit to 35 years. It was also informed to the Committee that the matter is still under consideration of the Government but the departmental representative admitted that the upper age limit of 35 years is being followed in the case of appointments in the service of the Board.

6 The Committee is surprised to note that without amending the rules the Board is following the upper age limit of 35 years in the case of Board Services which has no legal sanction.

65 The Committee observes that till a decision is taken by the competent authority for amending the rules in respect of raising the age limit for entry into the service of Board the provision of the existing rule in respect of the age be adhere to.

Rule—6

Appointing Authority

6 Appointments to the posts, specified in column 2 of the table given below, in the Service shall be made by the authorities mentioned against each in column 3 of the table :—

TABLE

Sr. No.	Designation of post	Appointing authority
1	2	3
	1. Superintending Engineer	Board
	2. Regional Town Planner	
	3. Administrative Officer	
	4. Chief Marketing Enforcement Officer	
	5. Officer on Special Duty	
	6. Chief Accounts Officer	
	7. Chartered Accountant	
	8. Co-ordination Officer	
	9. Marketing Development Officer	
	10. Xen	
	11. Architect	

1	2	3
12.	Sub Divisional Officer	} Chief Administrator
13.	Project Officer	
14.	Asstt. Architect	
15.	Senior Marketing Enforcement Officer] Board
16.	Asstt. Account Officer	} Chief Administrator
17.	Junior Accounts Executive	
18.	Superintendent	
19.	Marketing Enforcement Officer	
20.	Inspecting Officer (Grading)	
21.	Asstt. Project Officer	
22.	Superintendent (Accounts)	} Chief Administrator
23.	Divisional (Accountant)	
24.	Deputy Superintendent	
25.	Commercial Acctt.	
26.	Asstt./Head Clerk	
27.	P.A. to Chairman/Secretary	
28.	Architectural Asstt.	
29.	Senior Draftsman (Arch.)	
30.	Circle Head Draftsman	
31.	Accountant	
32.	Naib Tehsildar	
33.	Senior Scale Stenographer	
34.	Head Draftsman	
35.	Junior Engineer	
36.	Junior Draftsman (Arch.)	
37.	Technical Asstt.	
38.	Sub Divisional Clerk	
39.	Accounts Clerk Auditor	
40.	Junior Scale Stenographer	
41.	Kanoongo	
42.	Steno Typist	
43.	Asstt. Draftsman	
44.	Clerks	
45.	Patwari	
46.	Tracer	
47.	Driver	
48.	Ferro Printer	
49.	Electrician	
50.	Restorer	
51.	Duplicating machine Operator	
52.	Road Roller Driver	

1	2	3
---	---	---

53. Daftri

54. Peon/Peon-cum-Chowkidar

56. Chowkidar

57. Sweeper

58. Mali

59. Ferro Khalasi

60. Road Roller Cleaner

61. Plumber

62. Computer

63. Legal Assitt.

Secretary

MARKET COMMITTEES

64. Selection Grade Secretary

65. Marketing Inspector (Grading)

66. Secretary

67. Asstt. Secretary

68. Acctt./Head Clerk

69. Senior Grader

70. Mandi Supervisor

71. Fee Collector

Chief Administrator

72. Clerk

73. Auction Recorder

74. Care Taker

75. Asstt. Grader

76. Grader

77. Vaid/Upvaid

78. Tubewell Driver/Operator."

Rule 13

"13. A member of the Service shall be liable to servant any place, whether within or without the State of Haryana, on being ordered so do by the (1) Chief Administrator."

The Committee recommends that in line 1 of Rule 13, for the word 'servant' the words 'serve at' be substituted. 66

The Committee further recommends that in line 2 of Rule 13, for the word 'without' the word 'outside' be substituted. 67

The Committee further recommends that in line 3 of Rule 13, between the words 'do' and 'by' the word 'so' be inserted. 68

Rule 15**Discipline penalties & Appeals.**

"15. (1) In matters relating to disciplines, punishments and appeals the members of the Service shall be governed by the Punjab Civil Service (Punishment & Appeal) Rules, 1952, as applicable in the State of Haryana from time to time.

Provided that the nature of penalties which may be imposed, to authority empowered to impose such penalties, the appellate authority shall, subject to the provisions of any law or rules made under subsection (2) of section 43 of the Punjab Agricultural Produce Market Act, 1961, be as specified in Appendix C to these Rules.

(2) The authority competent to pass an order under clauses (C) and (D) of sub-rule 10 of the Punjab Civil Service (Punishment and Appeal) Rules 1952 and the appellate authority, shall also be as specified in Appendix C to these rules."

Rule 6, 13 and 15

Rule 6 provides the appointing authority for the services of different categories of services in the Haryana State Agricultural Marketing Board. 69

According to rule 6, for 13 categories of posts, the appointing authority has been mentioned as Board and for the remaining categories the Chief Administrator and the secretary of the Board has been prescribed.

In rule 13, the transferring authority has been prescribed as Chief Administrator within and outside the State of Haryana. In appendix (C) of rule 15, the Board and the Chief Administrator of the Board have been prescribed as the punishing authority. Whereas the appointing authority of the members of the service of the Board is the Board only, according to the provisions of Section 20 (1). In Section 20 (6), the transferring authority has been mentioned as board which can transfer its members of service only within the State of Haryana, whereas in section 20(5) of the Marketing Act, the power to suspend, removal, dismissal or otherwise punish, the official in the service of the Board has been vested in the Board and in respects of members of the Committee, the Committee shall have the powers to impose minor punishments like censure and stoppage of increments, 70

While examining the Commissioner and Secretary to Government, Haryana, Agriculture Department, he was asked by the Committee to explain the legal aspects of these rules in view of Section 20 of the Act. He explained that the major penalties like dismissal, removal from service or reduction in rank, can not be imposed by any authority, lower than the appointing authority. The transfer of a member is an administrative act as per the Act, hence it can be exercised by an authority lower than the appointing authority, who has been as Administrative Incharge of the organisation under the provisions of Punjab Agricultural Produce Markets (General) Rules, 1962. According to rule 4(2) (a), the Chief Administrator is responsible for the administration of the Act and is supposed to exercise general control over the employees of the Board and those of the Committees.

The Committee do admit that if it is a legal situation according to the existing provisions of Punjab Agricultural Produce Market Act, 1961 and rule 4(2)(a) is framed in conformity with the provisions of the Act, but here the situation is quite against the provisions of the Act.

Rule 4(2)(a) has been shown as to have been framed under Section 3(ii) and 2(ii) but section 3(1) only says that the Chief Administrator who shall be an officer of the Board as the Head of the Department, so he can exercise the Powers as prescribed in rule 4(2)(b) of Punjab Agricultural Produce Market (General) Rules, 1962. Thus this section does not confer the powers on the Chief Administrator as provided in rule 4(2)(a), (c) and (d).

The Committee do not agree with the contention of the Commissioner and Secretary to Government, Haryana, Agriculture Department as rule 4(2)(a) is against the provisions of Section 3 of the Act. The power to appoint members of the service of Board vest with the Board only under Section 20 of the Punjab Agricultural Produce Markets Act, 1961. If these powers are delegated by the Board to the Chief Administrator under Section 3(17)(ii) of the Act then the Chief Administrator under section 3(17) (ii) of the Act being an authority lower than the appointing authority, can exercise the powers of appointments, transfers and punishments otherwise not. Rather the Committee observes that Chief Administrator has no powers to appoint or transfer any member of the service of the Board or of Committee any-where within the State or outside the State of Haryana. Rule 6, 13 and 15 of the Haryana State Agricultural Marketing Board Services, 1974 are against the provisions of Section 20(1)(6) and (7) of the Act.

In reply to the observations of the Committee, the Commissioner and Secretary to Government, Haryana, Agricultural Department has informed that the service rules have been framed under Section 43 of the Act and thus operation of Section 20(b) is subject to the relevant provision of service rules namely rule 13.

The Committee do not agree with this type of explanation which prime-facie looks illegal. How can Section 20(6) is subject to the provisions of Service rule 13 made under Section 43 of the Act. There is a specific provision of appointment, punishment, transfers and rule-making power under Section 20(i), 20(5), 20(6) and 43 of the Act respectively.

Section 43 of the Act, 1961 only empowers the State Government to frame rules in accordance with the forgoing provisions of this Act, whereas in Section 43(2), it is mentioned as under :—

“In particular and without prejudice to the generality of the forgoing powers, such rules may provide for.”

It means where there is a specific and particular powers given in the foregoing sections of the Act, the Government can frame rules strictly according to these provisions.

Section 20(6) specifically deals with transfers of the members of the service of the Board and that too by the Board only and Section 20(7) also says that Board or Committees shall exercise powers conferred on them subject to the rules made by the Government. On the one hand, the Secretary admits that the Chief Administrator can not transfer outside the State any member of the service of the Board according to the provisions of Section 20(6) of the Act and on the other hand he says that section 20(7) has over-riding powers of foregoing sub-sections of Section 20. If it is so then the powers prescribed under service rules 13, wherein the Chief Administrator has been authorised to transfer any member of the service of the Board outside the State is also correct. But it is not so.

The Committee, therefore, recommends that :—

1. The service rule 4(2) (a) (c) and (d) of rules be amended in conformity with the provisions of the Act. 76

2. Rule 6, 13 and 15 be recasted and amended in conformity with the provisions of Section 20(1), 20(5) and 20(6) of the Act. 77

Rule—17

Power of relaxation “17. Where the Board is of the opinion, that it is necessary or expedient so to do, it may, by order for reasons to be recorded writing, relax any of the provisions of these rules, with respect any class or category of persons with the approval of the Govt.”.

The Committee recommends that in line 3 of Rule 17, for the word ‘writing’ the word ‘in-writing’ be substituted. 78

The Committee further recommends that in line 3 between the words ‘respect’ and ‘any’, the word ‘of’ be added. 79

Agriculture

The Committee scrutinised the Haryana State Agricultural Marketing Board and Market Committees Investment and disposal of Surplus Funds Rules, 1981 framed under the Punjab Agricultural Produce Markets Act, 1961 and made the following observations/recommendations.

“3. Part-II Investment of Surplus Funds.

Investment of surplus funds Sections 27,43 (2) (XX).(1) A Committee subject to any directions issued by the Chief Administrator in this behalf may invest its surplus funds or any portion thereof in securities of the Central Government Saving Bank Account or Fixed Deposit Receipts of Post Office, Nationalised Banks, Haryana State Government Board and undertakings or in the Haryana State Co-operative Bank or the Central Co-operative Bank established under the Co-operative Societies Act, 1912. The surplus funds of the Board may also be similarly invested by the Chief Administrator.

(2) The income resulting from such investment shall be credited to the funds of the Committee concerned or the Board, as the case may be.

4. Part-III Disposal of Surplus Funds

Disposal of surplus funds Section 43 (2) (XX). A Committee may utilise its surplus funds for the following purposes, with the prior sanction and subject to such other directions as may be given by the Chief Administrator, namely :—

- (a) repayment of principal amount of loan raised by the Board for establishment or development of markets in the market area or for carrying out any other development works of the Committee ;
- (b) payment of interest accrued on loan taken under cause (a) ;
- (c) payment of any expenditure incurred by the Board in the interest of the Committee within its notified market area ;
- (d) advancement of loans to the Board for any development work for the fulfilment of the purposes for which Board has been constituted ;
- (e) construction of staff quarters for officials employed or working in connection with the affairs of the Committee concerned.”

The Committee observes that the creation of statutory authority of a local body is with a view to bring it within the ambit of article 12 of the Constitution of India so that it can discharge its functions within the parametres of statutory law, under which it functions and it cannot be subjected to the control of any person of the authority except to the extent of providing a statutory provisions whereby power to be exercised by an authority is expressly provided, whereas a rule has been framed under sub-clause 20 of sub-section (2) of section 43 of the Act, in the year 1981 whereby the Committees has been subjected to any direction issued by the Chief Administrator regarding the investment and disposal of surplus funds of the Committees. Neither any power has been given to the Chief Administrator under the Act nor any of the entry provides under section 43 of the Act under which the said rules has been purported to be notified. Moreover, the provision of rule reveals that wide powers have been given to the Chief Administrator in the absence of any guideline in the Act or in the rules framed thereunder, particularly in the cases of investment and disposal which by very nature are sensitive financial matters and cannot be left without laying down the clear parametres within which such powers can be exercised in the absence of such a controlling mechanism. There may be gross abuse or misuse of such powers. Therefore, this is a case of an excessive delegation of power to an authority. It is a fact that no guideline have been provided under which circumstances the investment shall be made and when the funds will be treated as surplus funds and in case of Committees particularly on the one hand there may be a feeling that more funds are needed by the Committees to achieve the statutory object and on the other hand the mandatory directions issued by the Administrator, as his will to invest the surplus funds in such a manner and in such an institution/body where the investment may neither be profitable nor in the public interest at the cost of not fulfilling the statutory provisions provided under the Act for the betterment of the people of the Market Committees' areas and especially when the Committees are undertaking and carrying out such activities as enjoyed upon under the law.

Therefore, the Committee recommends that the said rules be amended suitably in such a manner that investment of surplus funds, if any, or disposal of surplus funds, if any, may be done by the Committees concerned at their favourable and appropriate parametres for investment and disposal of surplus funds and the guidelines be laid down by the Government/Competent authority for framing rules so that no misuse or abuse concerning

investment or disposal of the surplus funds may take place. It is desirable that the recommendations of the Committee needs to be implemented expeditiously.

25328—H. V. S.—H. G. P., Chd.