

HARYANA VIDHAN SABHA

REPORT

OF

THE COMMITTEE

ON

SUBORDINATE LEGISLATION

THIRTYSECOND REPORT

2001-2002

(Presented to the Haryana Vidhan Sabha on the 14th March, 2002)



HARYANA VIDHAN SABHA SECRETARIAT, CHANDIGARH



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(ii)

**COMPOSITION OF THE COMMITTEE
(2001-2002)**

Chairperson

Vaid Kapoor Chand

Members

Shri Kanwar Pal

Rao Dharam Pal

Shri Bhim Sain Mehta

Shri Ranbir Singh Mandola

S Nishan Singh

Shri Bishan Lal Saini

Advocate General

Special Invitees

Shri Bhagwan Sahai Rawat

Shri Dan Singh

*Shri Malik Chand Gambhir

Secretariat

1 Shri Sumit Kumar Secretary

2 Shri Data Ram, Deputy Secretary

The Committee was constituted vide Haryana Vidhan Sabha Secretariat Notification No HVS LA (Sub Leg) 1/2001 2002/26 dated the 3rd April 2001

* Shri Malik Chand Gambhir M L A was nominated as Special Invitee w e f 28th February 2002 vide notification No HVS LA(Sub Leg) 1/2001 2002/5, dated 1st March 2002

INTRODUCTION

1 The Chairperson of the Committee on Subordinate Legislation having been authorised by the Committee to present the report on their behalf present this Thirty Second Report to the House

2 The Committee consisting of eight members (including the Advocate General) and two Special Invitees was nominated by the Speaker Haryana Vidhan Sabha under Rule 252 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly on the 3rd April, 2001 notified in the official gazette *vide* notification No HVS LA (Sub Leg) 1/2001 2002/26 dated the 3rd April 2001. A Special Invitee was also nominated *vide* notification No HVS LA (Sub Leg) 1/2001 2002 dated 1st March 2002

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

4 The Committee also place on record their high appreciation for whole hearted co operation and valuable assistance given by the Secretary Deputy Secretary and staff of the Legislation Branch

Chandigarh
The 26th February 2002

VAID KAPOOR CHAND
CHAIRPERSON

REPORT

1 The Committee on Subordinate Legislation for the year 2001-2002 consisting of eight members including the Chairperson the Advocate General and two Special Invitees was nominated by the Speaker Haryana Vidhan Sabha under Rule 252 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly on the 3rd April 2001 and was notified in the official Gazette vide notification No HVS LA (Sub-Leg)-1/2001-2002/26 dated the 3rd April 2001 A Special Invitee was also nominated vide notification No HVS LA (Sub Leg) 1/2001-2002 dated 1st March 2002

2 Vaid Kapoor Chand was appointed as the Chairperson of the Committee by the Speaker

3 The Committee held 48 sittings till the presentation of this Report

4 Besides watching the implementation work relating to earlier Reports the Committee scrutinised the Haryana Canal and Drainage Rules 1976 framed under the Haryana Canal and Drainage Act 1974

The Committee also orally examined the various departments of the State Government and made its observations/recommendations on the relevant Rules under scrutiny

SCOPE AND FUNCTIONS OF THE COMMITTEE

The scope and functions of the Committee are set down in rules 251 259 and 260 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly Rule 251 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 259 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 of the Public Revenues

- (vii) whether it appears to have made 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
- Rules 260 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 or 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 257 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly which reads as under —

"257 (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) The 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 which have been finally published in the Gazette and not the draft rules.

2. The Department of the Govt. would ensure 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 rule 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, those 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 or discretionary power vested in it should be laid down in the rules.
- (ii) In case 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 be 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 exerciseable 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
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GENERAL OBSERVATIONS/RECOMMENDATIONS OF THE COMMITTEE

1 **Delay in framing the Rules**

The Committee reiterates the recommendations made in its previous Thirty first Report 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 for amending the Act or bringing new legislation involving provisions for making the Rules is promulgated the rules should be prepared simultaneously so that there should not be wide gap between the Ordinance/Act and 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.

2 **Reference of Section under which Rules are framed**

The Committee is of the view that giving of reference of the section in the margin of each rule under which the rule has been framed is essential 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.

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 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 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 expeditiously.



(ii) Footnote in the Act and Rules

It came to notice of the Committee that sometimes 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 recommends that sincere efforts be made to publish the Acts and Rules in Hindi also so that the copies of the Acts and Rules may be available in Hindi easily at reasonable price.

5 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.



6 Implementation of recommendations of the Committee

The Committee recommends that the action on the outstanding recommendations and observations contained in its earlier reports should be given top priority and expedited. The Committee also recommends that when a recommendation is implemented by the Government the Department concerned should supply a copy of the notification containing the amendment in the rules alongwith the statement showing the action taken by the Government in the implementation of the recommendations/observations.

7 Availability of Copies of Acts and Rules to Public

The Committee is of the view that copies of all the Acts and Rules framed thereunder as amended up to date are generally not available in the Government Press for the use of the Public. The Committee therefore recommends that copies of all the Acts and Rules made thereunder should be kept up to date by the Department and should get the Acts and the Rules printed/reprinted from the Government Press so that these may be made available for sale to the Public at reasonable price.



Further observations/recommendations made by the Committee in respect of non-implementation of its earlier recommendations in respect of —

1 TWENTY EIGHTH REPORT 1996 97

HOUSING DEPARTMENT

The Housing Board Haryana (Disposal of Property Betterment Charges Eviction Assessment of Damages and Manner of Appeal) Rules 1975 framed under the Haryana Housing Board Act 1971

The Committee after taking into consideration the reply of the department dated 18-1-2001 was of the view that the Committee be informed regarding the decision taken by the Council of Ministers in the matter

This matter was referred in the 31st Report of the Committee showing outstanding recommendations/observations. Despite protracted correspondence neither the recommendations/observations of the Committee were implemented nor any decision taken by the Council of Ministers in the matter was communicated by the Department for the information of the Committee/House till December, 2001. The Committee was apprised regarding the action taken by the Department vide letter dated 21st December, 2001 wherein again it was stated that the matter will be put up before the Council of Ministers very soon and decision taken will be intimated accordingly.

The Committee feels that the matter has already much delayed. The department should take up the matter on priority basis and action taken be informed expeditiously.

2 THIRTIETH REPORT 1998-99

(i) DEVELOPMENT & PANCHAYATS DEPARTMENT

The Haryana Panchayati Raj Finance Budget Accounts Audit Taxation and Works Rules 1996 framed under the Haryana Panchayati Raj Act 1994

The Committee was satisfied with the action taken by the Development & Panchayats Department regarding implementation of most of its recommendations/observations made in its 30th Report in respect of the Haryana Panchayati Raj Finance Budget Accounts Audit Taxation and Works Rules 1996 framed under the Haryana Panchayati Raj Act 1994

The Committee in its 31st Report had observed that efforts be made to implement the remaining/outstanding recommendations at an early date by issuing necessary notification amending these Rules. However, the department vide their letter dated 14th December, 2001 showed some inability to implement the recommendations/observations of the Committee reiterating the reasons mentioned in their letter dated 15th January, 2001 which was communicated to the previous Committee. The letter dated 14th December, 2001 was considered by the Committee in its meeting held on 27th December, 2001 and the Committee decided to discuss the matter with the Department representatives in its meeting held on 23rd January, 2002. At the time of watching the implementation work the Committee was apprised about the outstanding recommendations/observations made on the following Rules —

Rules 13, 34, 57, 64, 67, 71, 77, 99, 120 (7), 120 (9) and 128

The above Rules and the recommendations/observations made by the Committee in its 30th report and referred to in its 31st report as outstanding were discussed by the Committee with the departmental representatives. After oral examination of the departmental representatives observations/recommendations of the earlier Committee and now further observations/recommendations on each rule is as under —

Rule—13

13 No amount shall be withdrawn from the Gram Fund for carrying out any construction/repair or other similar activities till the estimate of such activity has been passed by competent authority

The Committee recommends that Rule-13 be recast as under —

No amount shall be withdrawn from the Gram Fund for carrying out of the duties and obligations imposed on the Gram Panchayat or any Committee thereof involving an expenditure exceeding Rs 2500/- till activities have been passed by the competent authority "

Further observations/recommendations —

The Committee was satisfied with the reply of the departmental representatives. Hence, the recommendation was dropped

Rule—34

34 Employment of class IV servants to fetch or carry money should be discouraged. The money should be obtained and remitted into the treasury only through an employee of some length of service proved trustworthiness.

The Committee recommends that rule 34 be recast as under —

The money shall be obtained and remitted into the Treasury by an employee not below the rank of Group 'C

Further observations/recommendations —

The departmental representatives suggested some amendment in the rule. Keeping in view the suggestion the Committee observes that the rule be amended as under —

The money shall be obtained and remitted into treasury by an employee not below the rank of Group C having some length of service, proved trustworthiness

Rule—57

"57 (I) Separate acknowledgement shall be taken at the time of making payment and will be attached to the voucher concerned except in the case of disbursement of pay of staff and allowances to members where payees receipts can be taken on the bill itself or the acquittance roll. Where the payment is made to an illiterate person the acknowledgement must be got attested by one or more witnesses

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|-----------|---|---|---|---|---|
| (2) & (3) | * | * | * | * | * |
| | * | * | * | * | * |

The Committee recommends that in the last line of sub rule (I) of Rule 57 for the words "one or more witnesses" the words "at least one witness" be substituted

Further observations/recommendations —

The Committee observes that the existing provision should continue. Hence, recommendation was dropped

Rule—64

64 In the event of transfer of any of the servants of the Panchayat Samiti or Zila Parishad the Executive Officer or Chief Executive Officer as the case may be shall issue a Last Pay Certificate to him in Form XXII

The Committee observed that a time period for issuance of last pay certificate be mentioned in the rule itself to avoid different interpretations of the Rules. The Committee therefore recommends that a specific time period for issuance of Last Pay Certificate be provided in the rules so that the same may not be withheld unnecessarily

Further observations/recommendations —

The departmental representatives stated that providing specific period for issuance of Last Pay Certificate may not be in the interest of transferred employee as the LPC would be withheld unnecessarily upto the specific period however, agreed to add the word immediately after the word "issue" mentioned in the last line of this rule

Keeping in view the suggestion of the departmental representatives the Committee further observes that a provision be made in the rule to issue Last Pay Certificate immediately and the rule be amended accordingly

Rule—67

"67 In order to avoid double payment of any claim travelling allowances check register shall be mentioned in Form XXVI "

The Committee recommends that in the second line of Rule 67 for the word "mentioned" the word "maintained" be substituted

The Committee observed that in Form XXVI appended with these Rules there is no mention about the authority as to who will examine the check register and by whom it will be attested or signed The Committee therefore recommends that a provision should be made in the above Form for the examination and attestation of the check register by Executive Officer or Chief Executive Officer as the case may be keeping in view the provisions of the Act and the Rules

Further observations/recommendations —

The departmental representatives agreed to the recommendations/ observations of the Committee to make a provision in Form XXVI for examination and attestation of Check Register by E O or C E O as the case may be

Thus, the committee further recommends that an authority be specified to examine and attest the Check-Register in Form XXVI appended with the Rules

Rule—71

71 every Officer of the Panchayat Samiti or Zila Parishad shall realise fully and clearly that he will be held responsible not only for any loss sustained by the Panchayat Samiti or Zila Parishad through fraud or negligence on his part but also for the loss arising out of fraud or negligence on the part of any other servant to the extent to which it may be shown that he contributed to the loss by his own action or negligence "

The Committee feels that Rule 71 is not nappily worded as the loss arising out of fraud or negligence on the part of any other servant makes every officer responsible for the fraud or negligence which has not been committed by him

Therefore the Committee observes that the responsibility for loss sustained through fraud or negligence should be of such officer/official who has actually committed the loss Thus the rule be suitably amended

Further observations/recommendations —

The departmental representatives stated that it should not be construed to mean to involve innocent persons. Persons responsible for contributory negligence have been covered under the said rule.

The Committee was satisfied with the reply of department. Therefore agreed to drop the recommendation earlier made.

Rule—77

"77 (1) Every subordinate or Cashier or Store-keeper of Panchayat Samiti or Zila Parishad as the case may be who shall be required to handle cash or stores shall furnish security to be fixed by the Executive Officer or Chief Executive Officer as the case may be. The amount of the security shall be fixed according to the Government instructions as available in this behalf failing which according to the circumstances and local conditions. When an official who has furnished security takes regular leave or is deputed to other duty the official who is appointed to officiate for him shall be required to furnish the full amount of security prescribed for the post unless a competent authority on valid reasons which must be recorded in writing has authorised a relaxation of the rules regarding security applicable to his case.

(2) Whenever a private person or firm contracts to supply stores or execute a work he or it shall unless exempted by the Panchayat Samiti or Zila Parishad as the case may be to do so be required to give security for the fulfilment of his or its contract and a suitable provision regarding security shall be incorporated in the agreement.

(3) * * * * *

At present the amount of security required to be deposited by the Cashier/Store keeper etc. of Panchayat Samitis/Zila Parishad are fixed by the Executive Officer or Chief Executive Officer as the case may be keeping in view the circumstances and local conditions. The Committee recommends that minimum and maximum limit of the amount of securities may be fixed to make the rule more clear and avoid arbitrariness.

Further observations/recommendations —

The departmental representatives agreed to suitably amend the rule to fix some amount of securities keeping in view the circumstances, local conditions and fiscal position of the Panchayati Raj Institutions.

The Committee agreed to the reply of the Department.

Rule—99

"99 (1) The audit of accounts of all receipts and expenditure of every Gram Panchayat shall be conducted once after every two years and that of Panchayat

Samiti and Zila Parishad after every year by such officer as may be appointed by the Secretary to Government Haryana Finance Department and Director Local Audit Haryana

(2) Every Gram Panchayat or Panchayat Samiti or Zila Parishad as the case may be or any officer authorised by it in this behalf shall be responsible for producing the relevant record to the auditors for conducting the audit and shall keep all records statements and registers of accounts ready for the purpose of audit

(3) The Gram Panchayat or Panchayat Samiti or Zila Parishad as the case may be or any other officer authorised by it in this behalf shall make suitable arrangements to enable the Auditor to hold his office for conducting audit "

The Committee observes that for maintaining uniform pattern of auditing rule 99(1) required to be recast as under —

"The audit of account of all receipts and expenditure of every Gram Panchayat Panchayat Samiti and Zila Parishad shall be conducted once after every year by such officer as may be appointed by the Government "

Further observations/recommendations —

The departmental representatives stated that due to huge number of Gram Panchayats and paucity of audit staff, yearly audit of Gram Panchayat is not possible

The Committee accepted the reasons explained by the departmental representatives, therefore, observes that the existing provision should continue The recommendation was dropped

Rule—120

"120 (1) For the purposes of assessment of any tax a census of all the persons affected by it shall be conducted by the officer authorised by the Panchayat Samiti or Zila Parishad as the case may be with the help of the Gram Panchayat concerned

(2) Before conducting the census the Officer so authorised shall draw up a programme in consultation with the Gram Panchayat concerned and shall notify it by affixing a copy thereof at a conspicuous place in the village or area of which he proposes to conduct the census The said officer shall also furnish a copy of the programme to the Gram Panchayat concerned and shall proceed to conduct the census accordingly

(3) A preliminary assessment statement in form XLVI will thus be prepared by the assessing authority on the basis or the conducted by the said officer

(4) to (6) * * * * *

(7) On the date and at the time and place specified in the notice the assessing authority shall take up the objections received in the order in which they are entered in the register of tax objections in Form XLVI and shall pass an order dismissing such objections in which the objector is not present. In other cases the assessing authority shall after hearing the objector and making a brief memorandum of such evidence as the objector may produce in support of his objections and any other evidence which the assessing authority may think fit to record pass such orders in respect of each objection as it may think fit.

Provided that if the objector is a female or is incapacitated from appearing in person due to old age sickness or any other reason which the assessing authority considers to be sufficient the objector may be allowed to appear through a authorised representative

(8) * * * * *

(9) Any assessee who objects to this assessment as shown in the final assessment statement prepared under sub rule (8) may submit in writing an appeal against such assessment to the Block Development and Panchayat Officer in case of Panchayat Samiti and Additional Deputy Commissioner in case of Zila Parishad within thirty days of date of exhibition of the final assessment statement. The Block Development and Panchayat Officer or Additional Deputy Commissioner as the case may be shall fix the date time and place for hearing the appeal and shall send an intimation about the same to the appellant and the assessing authority. The Block Development and Panchayat Officer or the Additional Deputy Commissioner as the case may be shall after giving an opportunity to the appellant or his authorised representative of being heard and after making such enquiry as he may deem fit pass such orders in respect of the appeal as he may think fit. Such orders shall be final and the assessment statement shall if necessary be corrected in accordance therewith.

Provided that no appeal shall be heard by the Block Development and Panchayat Officer and the Additional Deputy Commissioner as the case may be unless he is satisfied that the tax in question has been deposited. If the appeal is accepted the tax so deposited by the appellant shall be refunded in accordance with the terms of the order.

The Committee also observed that in sub rule (7) or Rule 120 in lines 4 and 5 after the word 'objector' the words 'or his/her authorised representative' be added to safeguard the interest of the objector.

The Committee further observes that the proviso to this sub-rule may be recast as under —

"The Objector may be allowed to appear through an authorised representative

Further observations/recommendations —

The departmental representatives accepted the recommendations/ observations of the committee and agreed to amend the sub rule (7) of rule 120 and the proviso accordingly

The Committee also observes that in proviso to sub rule (9) of Rule 120 in line 3 for the word "Tax" the figure sign and words "50% of the Tax" be substituted to make the Rule judicious in nature

Further observations/recommendations —

The departmental representatives stated that in view of meagre resources of Gram Panchayat it is not desirable. The Committee agreed to drop the recommendations

123 The assessing Authority or the appellate authority as the case may be under whose order the assessment statement is finalised under sub rule (8) or sub rule (9) of rule 120 may at any time within one year from the date of any order made by it rectify any clerical or arithmetical mistake apparent from the record

Proviso * * * * *

* * * * *

The Committee recommends that in rule 123 in line 3 for the words "One Year" the words "Two Years" may be substituted for rectifying any clerical or arithmetical mistake etc. apparent from the record

Further observations/recommendations —

The Committee was of the view that one year time is sufficient so, the existing rule should continue. Hence, dropped the recommendation

Rule—128

"128 (1) A Panchayat Samiti or Zila Parishad as the case may be may at a special meeting pass a resolution to propose the levy of fees under section 91 or 149 respectively

(2) to (9) * * * * *

* * * * *

The Committee observes that in line 2 of rule 128 (1) for the words and figure "under section 91 or 149 respectively" the words and figures subject to the provisions of Section 91 or 149 respectively be substituted

Further observations/recommendations —

The Committee was of the view that the existing rule also convey the same sense. Hence, dropped the recommendations made by the earlier Committee

THIRTY FIRST REPORT 2000-2001

(i) Animal Husbandry Department

The Punjab Livestock Improvement Rules 1958 framed under the Punjab Livestock Improvement Act 1953

The Committee observed that the previous Committee had made only two recommendations/observations i.e. on Rule 5 and 7 of the Punjab Improvement Rules 1958, in its 31st Report which were sent to the Department in the month of April, 2001 for implementation and to intimate the action taken in the matter within two months. But despite protracted correspondence these recommendations are still outstanding as per communication received from the department vide their letter dated 12th February, 2002. The Committee is dissatisfied over the fact that these recommendations could not be implemented uptill now and the Department has simply stated that the matter is under consideration and has not given any convincing reason for the delay in not implementing the recommendations.

The Committee further observes that the recommendations be implemented on top priority basis without further delay and 25 copies of the notification implementing the recommendation may be sent to this Secretariat for information of the Committee.

(ii) Mines and Geology Department

The Haryana Minerals (Vesting of Rights) Rules 1979 framed under the Haryana Minerals (Vesting of Rights) Act 1973

The Committee observed that only two observations/recommendations were made by the previous Committee in its 31st Report in respect of the Haryana Minerals (Vesting of Rights) Rules, 1973 which were sent to the Department in the month of April, 2001 for implementation and to send information in the prescribed proforma regarding action taken in the matter within two months. But despite protracted correspondence these recommendations are still outstanding as per communication received from the department vide their letter dated 15th February, 2002.

The Committee is dissatisfied over the fact that these recommendations could not be implemented uptill now and the department has simply stated that the necessary amendment in the Rules is being made. However, the department has not given any reason for the delay in not implementing the recommendations.

The Committee observes that the recommendations be implemented at the earliest and 25 copies of the notification implementing the recommendations may be sent to this Secretariat for information of the Committee without further delay.

(iii) Prohibition, Excise and Taxation Department

The Haryana Liquor License Rules 1970 framed under the Punjab Excise Act 1914

The Committee observed the Haryana Liquor License Rules, 1970 were scrutinised by the previous Committee and several recommendations/observations were made by the Committee as contained in its 31st Report. The recommendations/observations were sent in the month of April, 2001 to implement the same and to intimate the action taken in the matter within two months. Several reminders were issued to expedite the action in the matter. Now *vide* letter dated 9th January, 2002 the department has intimated that except one recommendation on sub-rule (14) of rule 37 the department has agreed to amend the rules in view of recommendations/observations of the Committee. The Committee is satisfied with the reply of the department and also recommends to drop the recommendations made on sub-rule (14) of rule 37 *ibid*. However, the Committee further observes that implementation work should be taken up by the department at the priority level and the Committee be informed at an early date implementing the recommendations/observations of the Committee. The Committee also desires that 25 copies of the notification amending the rules be also sent to this Secretariat for information of the Committee.

(VI) Scrutiny of Rules and observations and Recommendations thereon

Scrutiny of the Haryana Canal and Drainage Rules 1976 framed under the Haryana Canal and Drainage Act 1974

The Committee scrutinised the above Rules and made the following observations/recommendations —

General

As per decision of the Committee Irrigation Department was requested *vide* this Secretariat letter date 11th April, 2001 to supply amended upto-date copies of the Haryana Canal and Drainage Rules, 1976, framed under the Haryana Canal and Drainage Act, 1974. The copies of the Rules were sent by the Department *vide* letter dated 23rd April, 2001. While scrutinising the above Rules, the Committee came across a large number of typographical/printing mistakes in the Rules. Thus, the Committee made observations/recommendations to rectify these mistakes/errors and amend the rules accordingly. Later on, at the time of oral examination of the departmental representatives it came to the notice of the Committee that some of the rules had already been amended *vide* notification dated 30th October, 1987, which was supplied by the Department in the meeting dated 30th January, 2002.

The Committee fails to understand as to why the amended upto-date Rules were not supplied earlier to the Committee. Had the amended upto-date copies of the Rules supplied by the department earlier meticulously

compared the valuable time of the Committee would have been saved in pointing out the corrections/amendments which had already been carried out

The Committee feels that the Department should note that it is the duty of the department concerned to see that the Rules supplied to the Committee are amended upto-date and meticulously compared and ensure that the suggestions/ recommendations 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 expeditiously. The Committee hopes that the department would give due consideration to the observations of the Committee made above.

Rule—3

3 If any person installs a tubewell in contravention of the provision of Section 5 the Divisional Canal Officer may by order direct the owner thereof to remove it within a period of thirty days from the date of receipt of order by him. If the owner fails to remove the tubewell within the specified period the Divisional Canal Officer may in addition to any other action that can be taken under these rules get it removed."

Power to
remove
tubewell
Section 6

After discussion with the departmental representatives the Committee was of the view that there should be a provision of appeal against the order of the Divisional Canal Officer to the Superintending Canal Officer under Rule 3 to meet the ends of justice.

The Committee recommends that in view of the above observations the rule be amended suitably.

Rule—5

5 An application under section 17 or section 24 shall be in form I and shall be prescribed in duplicate and shall be stamped in accordance with law in force relating to court fees."

Application
for water
Section 17
and 24

Keeping in view the suggestion of the departmental representatives, the Committee recommends that in the second line of rule 5, for the word "prescribed", the word "presented" may be substituted and in the end of the rule after the words "court fees", the words "against the receipt", be added.

Rule—6

"6 No alteration in outlet shall be carried out during the period from the 11th May to the 30th September and from the 16th November to the 31st March without obtaining the prior approval of the Chief Canal Officer.

Alteration in
outlet
Section 17

Provided that in cases involving increase in size of outlet or alterations sanctioned at the request of all the irrigators alteration may be made at any time "

After discussion with the departmental representatives at the time of oral examination the Committee was of the view that this rule be suitably amended

Thus, the Committee recommends that to avoid any misuse of the provisions of Rule 5 the proviso to this rule be substituted as under —

"Provided that in cases involving increase in size of outlet, or alterations sanctioned at the written request of concerned irrigators, alterations may be made at any time "

Rule—14

Apprehended
wastage
Section 26

"14 Supply of water shall not be granted where in the opinion of the Divisional Canal Office loss from wastage is likely to occur. An application for revision may be preferred to the Superintending Canal Officer against the decision of the Divisional Canal Officer "

The Committee was of the view that a time limit for preferring an application for revision to the superintending Canal Officer under rule 14 against the decision of the Divisional Canal Officer may be prescribed to discourage the unnecessary cases

After discussion with the departmental representatives and in view of reply the Committee recommends that a provision of time of fifteen days for appeal/revision may be made in the rule

Rule—16

Sanitary
reasons
Section 26

(1)* * * * *

(2) * * * * *

(3) Every supply of water shall be deemed to be given subject to the condition that the water shall not be used for the cultivation of any particular kind of crop in any particular locality in which the use of canal water for that kind of crop has been prohibited by the State Government on Sanitary grounds by notification. When however the right to impose this prohibition is exercised in regard to existing cultivation the occupiers shall be entitled to such compensation if any as the State Government may think just "

The Committee recommends that in line 1 of sub rule (3) of Rule 16 for the word "Candition", the word Condition be substituted to make the rule grammatically correct

Rule—20

"20 An order to stop the supply of water to any water course under clause (a) of sub section (I) of section 27 shall be in writing and a copy thereof shall expeditiously be sent to the Irrigation Booking Clerk of each village concerned or in his absence to the Sarpanch or the Gram Panchayat or a Lambardar of the village. The receipt of each person to whom a copy of the notice is sent shall be affixed to a schedule prepared for the purpose which shall be recorded in the Divisional Canal Office. It shall be the duty of the Irrigation Booking Clerk or Sarpanch or Lambardar who receives the notice to affix it at once in a conspicuous place in the village and to make it purport generally known.

Procedure to
notify orders
Section 27
(1) (a)

The Committee feels that it would be desirable to give notice to the concerned person before stopping the supply of water to afford him an opportunity of being heard.

After discussion with the departmental representatives at the time of oral examination and keeping in view the reply, the Committee recommends that 7 days notice should be given to the concerned person and thereafter Divisional Canal Officer should pass written orders which should be final.

The Committee recommends that the rule be amended accordingly.

Rule—21

"21 Stoppage of supply of water to any water course under clause (b) of sub section (I) of section 27 may be enforced if the Divisional Canal Officer has satisfied himself that the watercourse is not maintained in proper customary repair. The order for such stoppage shall be in writing."

Stoppage of
supply in
improperly
maintained
watercourse
Section
27(1)(b)

The Committee was of the view that the order of stoppage of supply of water may be served upon/communicated to the affected party to comply with the principle of natural justice.

After discussion with the departmental representatives at the time of oral examination and in view of the reply the Committee recommends that the order of stoppage of supply of water may be served upon/communicated to the affected party with a notice of fifteen days to comply with the principle of natural justice.

Rule—25

25 (I) The Sub Divisional Canal Officer shall within a period of seventy-two hours of the receipt of any information by him that the water supplied through a canal is being used in an unauthorised manner under section 28 or is suffered to run to waste under section 29 inform the Divisional Canal Officer empowered under sub section (2)

Supply of
information to
Divisional
Canal Officer
Sections 28
29 and 30

of section 30 in writing giving the date time and place of such use or waste of water and all other informations relevant thereto The Sub Divisional Canal Officer shall simultaneously direct his subordinates to make preliminary investigation and measurement of the area for the preparation of special charges case the Sub Divisional Canal Officer shall also serve a notice to the persons chargeable with special rate

(2) * * * * *

The Committee recommends that in line 4 of rule 25(1) for the word "wase" the word "waste" be substituted to make the rule intelligible

Rule—32

Water rate
on fields
resown
Section
31(1)

32 When the original crop sown in a canal irrigated field fails and is ploughed up without deriving any benefit therefrom and a fresh crop is sown in the same season the water rate to be levied shall be on the crop which comes to maturity

The Committee recommends that in line second of this rule for the word "fesh", the word "fresh" be substituted to convey the correct sense

Rule—34

Water rate
on fields
partly
irrigated
from canal
partly from
wells or
other
sources
Section 31(1)

"34 When a portion of a field has been irrigated with canal water and portion with water from a well or any other source the whole field will be treated as irrigated with canal water unless a clearly distinguishable boundary demarcated by a well defined ridge (Watt) exists between the two portions Where such a boundary exists enquiry will be made whether the use of water from a well or any other source was owing to deficiency in the supply of canal water in which case the water rate on the portion irrigated by canal shall be reduced to lift rates "

The Committee feels that to hold a fair enquiry, a provision may be made in this rule to associate the Lambardar or Sarpanch of the concerned village also

Rule—45

Filing of
objections in
respect of
entries
relating to
Khasra Nehri
and Khatauni
Sections 31
and 65(2)(f)

"45 If a cultivator desires to contest the correctness of the entries relating to him in the demand statement or Khasra Nehri whether as to the fact of the land having been irrigated or of its being charged "flow" or "lift" or as to the measurement and entries of crop or class or amount he must file an objection before the Divisional or Sub Divisional Canal Officer or Deputy Collector or Zildar within twenty one days of the date on which the demand slips were distributed on completion of the demand statement of the village he has been charged

without having done any irrigation from the canal during the harvest under assessment or if no demand slip has been delivered either to him or to the Lambardar within ten days of the date on which he first become acquainted with the claim against him and the claim shall be investigated on the spot within fifteen days of filing the objection and shall be promptly decided. On an objection being filed before a Zildar he will immediately make local enquiry and report the circumstances of the case to the Divisional Canal Officer for orders. The order of the Divisional or Sub Divisional Canal Officer or Deputy Collector in such cases shall forthwith be communicated to the objector and shall be subject to appeal to the Commissioner."

The Committee was of the view to prescribe some time limit for preferring an appeal to the Commissioner against the order of the Divisional or Sub Divisional Canal Officer or Deputy Collector

After discussion with the departmental representatives and in view of the reply of the department the Committee recommends that a time limit of thirty days may be fixed for such appeal. However, the words "by Divisional Canal Officer" be added after the words promptly decided, as suggested by the department. The Committee also agreed to the suggestion of the department to delete the words "or Sub Divisional or Deputy Collector" from the last para of this rule as the order is to be passed by Divisional Canal Officer.

Rule—46

46 If after delivering the demand slip any addition made to the demand or any reduction is allowed on a claim under rule 23 or representation under rule 40 or by way of remission under clause (2) of section 27 or otherwise such addition or deduction shall be communicated to the cultivator by means of supplementary demand slips. Demands shall be shown in black letters and remissions in red letters. All such alterations as are made before the despatch of the Khatauni to the Collector shall be included therein and shall also be written on slips in black for additions and in red for deductions and attached to the Khatauni. Alterations made after the despatch of the Khatauni shall be communicated to the Collector by means of similar slips.

Methods of dealing with alterations in the demands Section 31 and 65(2)(f)

The Committee is of the view that in line one of this rule after the word 'addition', the word 'is' may be added to make the rule grammatically correct

The departmental representatives also accepted the recommendations

Rule—48

Filing of
objection by
Lambardar
etc
Sections 31
36 37 and
65(2)(f)

"48 When a Lambardar or other person is responsible under section 36 or section 37 for the payment of the water rate in a village or any part thereof complaints under these rules may be lodged by such by Lambardar or other person instead of by the cultivator and any refund that may be necessary in consequence of the order passed upon objection so lodged shall be paid by the Collector to such Lambardar or other person on behalf of the cultivators concerned

The Committee recommends that in line one of this rule the word "is ' be deleted being superfluous

The Committee also recommends that in line three of this rule after the word 'such', the word 'by' be deleted being superfluous

The departmental representatives also agreed to the recommendations of the Committee

Rule—49

Charge for
tubewell
irrigation
Sections 26
and 65(2)(f)

"49 Notwithstanding anything contained in the foregoing rules the charge for the use of water supplied from a State tubewell shall be at such rate as the State Government may from time to time by notification specify"

The Committee feels that in line two of this rule, for the word "rate" the word "rates" may be substituted to convey the proper sense

The departmental representatives agreed to the recommendations of the Committee

Rule—65

Divisional
Canal Officer
empowered
to remove
rafts Section
39

"65 Rafts not removed within the time specified in rule 64 and rafts found unattended may be taken out of the water by the Divisional Canal Officer or his agent "

The Committee recommends that in line three of this rule after the word "agent" the words, " at the cost of the owner or person in charge of raft, be added

The departmental representatives agreed to the recommendations of the Committee

Rule—71

Boats and
rafts to be
moored so as
not to
obstruct
traffic
Section 39

"71 No boat or raft shall be placed in such a position as to endanger the safety of other boats or rafts or to obstruct their passage or to impede navigation and no bamboos or poles shall be allowed to be erected or to remain erected on vessels moored to the bank "

The Committee recommends that in line three of this rule after the word poles the words or any structure, be added , to make it more clear

The departmental representatives also accepted the recommendations

Rule—72

"72 every boat and raft floated on a canal shall at all times have person in attendance on board

Every boat
or raft to be
manned
Section 39

The committee recommends that in line one of this rule for the word person" the words, adult person", be substituted to make the rule unambiguous

The department agreed to amend the rule in view of the recommendation of the Committee

Rule—94

"94 All proceedings under sections 7 8 13 14 15 16 17 21 24 27 28 29 30 52 53 55 and 59 shall be taken in a summary manner and any officer who is required or empowered to take action in any matter under any of these sections shall unless for reasons to be recorded in writing by him it is not practicable to do so decide such matter within a period of four months A brief memorandum of evidence produced in such proceedings shall be prepared by the officer hearing them "

Proceedings
to be taken in
summary
manner
Section
65(2)(f)

The Committee observes that this rule is not happily worded The Committee recommends that for the words A brief memorandum of evidence produced in such proceedings shall be prepared by the officer hearing them, the words, The evidence produced in such proceedings shall be recorded by the officer concerned", be substituted to make the rule more clear

The department in their reply also accepted the recommendation The Committee recommends that the rule be amended accordingly

Rule—101

"101 No change shall be made in the irrigation boundary of a canal project without the prior sanction of the Chief Canal Officer irrespective of whether the change refers to the exclusion of an area already included within the irrigation boundary on to the inclusion of a new area "

Change in
irrigation
boundaries
Section
65(2)(f)

The Committee recommends that in line four of this rule for the word 'on the word or' be substituted to make the rule clear

The departmental representatives also agreed to the observations of the Committee

Rule—106

When appeal
may be
summarily
rejected
Section
65(2)(f)

106 The application may be rejected " upon perusal of the grounds of appeal and the copy of the decision or order appealed against it appears to the court unnecessary to proceed in the matter

The Committee recommends that this rule may be recast as under —

The appeal may be rejected summarily if, upon perusal of the grounds of the appeal and the copy of the decision or order appealed against, it appears to the Court unnecessary to proceed in the matter or if it does not comply with the requirements of the Act and the rules 103 to 105

Rule—114

Adjournment
Section
65(2)(f)

114 The hearing may be adjourned as the court may see fit by written order to direct to any subsequent date and notice of such date shall be given to the parties in such manner as the court may direct "

The Committee observes that this rule is not properly drafted It may be recast as under —

The hearing may be adjourned to any subsequent date by written order, as the court may deem fit and notice of such date shall be given to the parties in such manner as the court may direct

Rule—115

Attendance
or
representation
of parties not
essential
Section
6(2)()

"115 The attendance of the parties in person or by representative shall not be necessary at the hearing of any petition or appeal but any party so attending shall be entitled to be heard "

The Committee recommends that in the marginal heading of this rule for the word and figure 'Section 6(2)(f)', the word and figure, Section 65(2)(f), be substituted to rectify the mistake

Rule—118

Supply of
copies
Section
65(2)(f)

"118 A copy of the decision or order of the court in English or Hindi shall be granted to any person who applies for the same on payment of the proper court fee and copying charges "

The Committee was of the view that in this rule some time limit should be prescribed to supply the copy of the decision or order to the person who applies for the same

After discussion with the departmental representatives the Committee recommends that copy of the decision or order should be supplied to the applicant at the earliest

In view of above observations the rule may be amended accordingly

Rule—119

119 If any party against whom an order or decision is made or given upon an appeal heard in his absence shall within thirty days from the date of such order or decision satisfy the court that he had received no notice of the time and place fixed for the hearing thereof or had not received such notice in sufficient time to permit to appear and that he did not wilfully evade service thereof the court may pass an order if it thinks such order requisite for the ends of the justice and not otherwise upon such terms as appear just setting aside its previous decision or order and grant a rehearing which shall be subject to the same rules as the hearing of an appeal "

Rehearing
Section
65(2)(f)

The Committee observes that this rule is required to be re-drafted as under —

If the appellant appears and the respondent does not appear before the Court on the date of hearing of appeal in spite of the summons duly served, the Court may proceed ex parte. Where the respondent appears and the appellant does not appear before the Court when the appeal is called on for hearing, the Court shall dismiss the appeal. However on the application of the either party within 30 days from the date of such order, on assigning good cause for his previous non-appearance, the Court may pass an order if it thinks such order requisite for the ends of the justice and not otherwise upon such terms as appear just, setting aside its previous decision or order and grant a rehearing which shall be subject to the same rules as the hearing of an appeal

The departmental representatives also agreed to the recommendations of the Committee

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