

HARYANA VIDHAN SABHA

REPORT

OF

THE COMMITTEE

ON

SUBORDINATE LEGISLATION

FORTIETH REPORT

2011 - 2012

(Presented to the Haryana Vidhan Sabha on 9th March, 2012)



HARYANA VIDHAN SABHA SECRETARIAT
CHANDIGARH
2012

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**COMPOSITION OF THE COMMITTEE
(2011-2012)
COMMITTEE ON SUBORDINATE LEGISLATION**

Chairperson

Shri Jagbir Singh Malik MLA

Members

Shri Balbir Pal Shah MLA

Shri Sri Krishan Hooda MLA

Shri Naresh Sharma MLA

*Shri Gian Chand Oadh MLA

Shri Rameshwar Dayal Rajoria MLA

Shri Ghanshyam Saraf MLA

Advocate General Haryana

Special Invitees

**Shri Rajbir Singh Barara MLA

***Shri Subhash Choudhary MLA

Secretariat

Shri Sumit Kumar Secretary

Shri Puran Mal Under Secretary

The Committee was constituted *vide* Haryana Vidhan Sabha Secretariat Notification No HVS SLC-1/ 2011-12/ 30 dated 28th April 2011

* Expired on 12th September 2011

** Nominated as a Special invitee of the Committee with effect from 2nd June 2011 for the remaining period of the year 2011-2012 vide Notification No HVS-SLC 1/2011-12/40 dated 23 dated 2nd June 2011

*** Nominated as a Special invitee of the Committee with effect from 8th June 2011 for the remaining period of the year 2011-2012 vide Notification No HVS-SLC 1/2011-12/41 dated 8th June 2011

INTRODUCTION

1 I the Chairperson of the Committee on Subordinate Legislation having been authorized by the Committee to present the Report on their behalf present this Fortieth Report to the House

2 The matters covered by this Report were finally considered by the Committee at their sitting held on 18th February 2012 and adopted this Report

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 places on record their high appreciation for whole hearted co operation and valuable assistance given by the Secretary Under Secretary and Staff of the Legislation Branch

Chandigarh
The 18th February 2012

JAGBIR SINGH MALIK
Chairperson
Committee on Subordinate Legislation

REPORT

1 The Committee on Subordinate Legislation for the year 2011-2012 was nominated by the Speaker Haryana Vidhan Sabha under rule 252 of Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly on the 28th April 2011 and was notified in the Official Gazette *vide* Notification No HVS SLC-1/2011-12/23 dated the 28th April 2011

2 Shri Jagbir Singh Malik MLA was appointed as the Chairperson of the Committee by the Speaker

3 The Committee held 83 sittings till the presentation of the Report

4 Besides watching the implementation work relating to earlier reports the Committee scrutinized the following Rules —

- (i) The Haryana Public Distribution System (Licensing and Control) Order 2009 framed under the Essential Commodities Act 1955
- * (ii) The Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules 1965 framed under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act 1963
- (iii) The Haryana Tax on Luxuries Rules 2008 framed under the Haryana Tax on Luxuries Act 2007

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

* The Committee made some observations/recommendations. However on the request of the Department concerned the Committee withheld the scrutiny of the Rules as the copies of the Rules supplied earlier to the Committee were not meticulously compared with Gazette Notification

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 scrutinize and report to the House whether powers to make regulations rules sub rules bye laws etc conferred by the Constitution or delegated by the 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 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 it 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 260 lays down as follows —

1 If the Committee is of opinion that any Order/Rules/Bye law etc 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 in its Report

2 If the Committee is of the opinion that any other matter relating to any Order/Rules/Regulation 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

rules 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/By-laws etc. framed 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 internal 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

However the Chairperson of the Committee may on a request being made to him permit in exceptional circumstances any other senior officer to represent the department before the Committee. After the rules/orders and the departmental representatives have been examined the Committee prepares the report and presents it to the House. Copies of the report after its presentation to the House are forwarded to the concerned departments for taking further action on the observations/recommendations of the Committee. The action taken

by the Departments are watched by the Committee from time to time. In case where any Department is not in a position to implement or feels any difficulty in giving effect to a recommendations made by the Committee, the Department is required to place its views before the Committee, which may, if it thinks fit, present further observations/recommendations to the House after considering the views of the Department in the matter.

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

- 1 The Committee would scrutinize only such rules which have been finally published in the Gazette and not the draft rules.
- 2 The Department of the Government 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 exercisable in respect of categories or class of persons, as contra distinguished from individuals.

- (v) In cases where an authority concerned is vested with the power to suspend a license or supplies pending institution or 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 intervals etc should be avoided
 - (xi) Generally Rules should not be made applicable from retrospective effect adversely affecting the rights of any class or category unless specifically permitted by the Act
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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 Ninth 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

The Committee further recommends that whenever an ordinance for amending the Act or bringing new legislation involving provisions for making the Rules if 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 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 that 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 there under, 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 Act 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 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

As per prevailing practice and convention, the Departments are required to furnish from time to time statements of action taken or proposed to be taken by them on the recommendations/observations of the Committee made in its Reports. But no time limit is fixed now. With a view to ensuring speedy implementation of their recommendations, the Departments should implement the recommendations expeditiously and not later than a period of six months. If in any particular case it had not been possible to adhere to this time limit, they should ask for extension of time from the Committee after explaining the difficulties in implementing the recommendations. Still, the cases of delay continue to occur. The Committee can not but stress again that the Department should evolve suitable measures to streamline their procedure in order that the

recommendations made by the Committee are implemented on top priority basis within a maximum period of six months

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 there under 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 there under should be kept up to date by the Department and should get the Acts and the Rules printed/reprinted from the Government Press from time to time so that these may be made available for sale to the General Public also at reasonable price

At present the old edition of 1975 of Haryana Code(s) available for the use of the Committee are not much useful as several amendments have taken place in the State Acts contained there in

The Committee is of the view that as and when the copies of the Haryana Code are reprinted, the same should be supplied to the Committee by the Controller Printing and Stationery Haryana at the earliest. The Law and Legislative Department Haryana is expected to ensure supply of up-to-date 25 copies of the Haryana Code(s) to the Committee from time to time as per above observations/recommendations

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

35TH REPORT 2005 - 2006

(HEALTH DEPARTMENT)

- (i) **The Punjab Ayurvedic and Unani Practitioner's (General) Rules, 1964 framed under the Punjab Ayurvedic and Unani Practitioner's Act, 1963**

The Committee watched the implementation work regarding observations/recommendations made by the previous Committee in respect of the Punjab Ayurvedic and Unani Practitioner's (General) Rules 1964 framed under the Punjab Ayurvedic and Unani Practitioner's Act 1963 as contained in its 35th 39th Reports

The Committee observed that almost all the observations/recommendations of the Committee had already been implemented by the department however on remaining two points regarding prescribing the qualification for the post of Chairman and enhancement of penalty for contravention of the provisions of the Act on the pattern of the Government of India are yet to be implemented as per assurance given by the departmental representatives during the oral examination held 3 1 2012. However the Department concerned vide their letter dated D-2/AY/HR/2012 dated 2-1-2012 stated as under —

- (1) The matter is under consideration with the State Government to amend the qualification for the post of the Chairman of the Board. It has been proposed that the Chairman of the Board shall be appointed by the State Government amongst the practitioners who possesses the degree mentioned in schedule II III & IV of the Indian Medicine Central Council Act 1970 (Central Act 1970) Registered with the Board residing the State
- (2) To amend the Act the matter is under consideration of the Government. It has been proposed that any person who contravenes the provisions of section 28 or 29 shall on conviction be punishable for the first offence with imprisonment which may extend to three years with the fine which may extend to twenty five thousand rupees and for every subsequent offence with imprisonment which may extend to five years with fine which may extend to fifty thousand rupees

In view of the above the Committee observes that the Department may take further action in the matter and the Committee may be informed accordingly

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

36TH REPORT 2006 - 2007

(ANIMAL HUSBANDRY & DAIRYING DEPARTMENT)

- (i) **The Punjab Animal Contagious Diseases Rules, 1953 framed under the Punjab Livestock and Birds Diseases Act, 1948**

The Committee observed that the department concerned had stated before the previous Committee that after the enactment of the prevention and Control of infectious and Contagious Diseases in Animals Act 2009 the rules will framed by the Central Government as well as State Governments to carry out provisions of the Act on the subject at an early date

The Committee was of the view that the Observations/ Recommendations made by the Committee in respect of aforesaid rules which are not inconsistent with Central Act may also be looked into by the Department while framing the Rules

However the matter remained under consideration with the Department for a considerable period Accordingly the present Committee held the oral examination of the Departmental representatives on 3-1 2012 to know the latest position in the matter The department vide there letter dated 3 1-2012 which was placed before the Committee stated as under

In this regard it is submitted that the Government of India enacted The Prevention and Control of Infectious and Contagious Diseases in Animals Act 2009 which have come into force throughout the country except U P State with effect from 25 08 2009 Under this Act both the Central as well as State Government with prior approval of Central Government can frame rules to carry out the provisions of the Act in terms of Sections 42 and 43 of the Act Under Section 45 of this Act the Glanders and Farcy Act 1899 the Dourine Act 1910 and any other corresponding law of any State so far as it is in consistent with the provisions of this Act shall stand repealed Therefore in view of the above mentioned Central Act in the previous meeting of the Legislation Committee it was proposed that no further action was warranted in the matter

In response to the above the Committee on Subordinate Legislation of the Haryana Vidhan Sabha in its 39th meeting observed that while framing the Rules under the Central Act the State Government may also look into the recommendations/observations of the Committee made on the Punjab Animal Contagious Diseases Rules 1953 which are not inconsistent with Central Act recently enacted

A meeting was held on 23 12 2011 at Krishi Bhawan New Delhi under the Chairmanship of Secretary Government of India Ministry of Agriculture Department of Animal Husbandry Dairying & Fisheries wherein the issue regarding framing of rules under this Act by States was discussed The Proceedings of the meeting are still awaited Once the proceedings of the meeting are received the draft rules shall be incorporated in the proposed State rules and thereafter the State shall frame the rules under section 43 of this Act after getting the same vetted from the LR and approval from Government of India and finally the rules shall be framed after passing by the Legislative Assembly

It is again reiterated that while framing the rules under this Act the State Government shall give due consideration to the observations/ recommendations of the Committee

Besides it the departmental representatives assured the Committee that while framing the Rules under the new Act the State Government will give due consideration to the observations/recommendations of the Committee made in this regard The Committee expects that the matter will be taken upon priority basis

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

38TH REPORT 2008 - 2009

(URBAN LOCAL BODIES DEPARTMENT)

(i) The Haryana Municipal (Tax on Buildings and Land) Rules, 1987 framed under the Haryana Municipal Act, 1973

The Committee watched the implementation of observations/recommendations made by the Committee in respect of the Haryana Municipal (Tax on Buildings and Land) Rules 1987 framed under the Haryana Municipal Act 1973 as contained in its 38th 39th Report

During the course of oral examination the departmental representatives had stated before the previous committee that the observations/recommendations made by the Committee had been taken into consideration by the Government/Department and the policy of the House Tax is under consideration of the Government. They had also clarified before the Committee that the House Tax policy was being simplified as per recommendations of the Minister's Committee and the same was under consideration of the Chief Minister. It was also explained that Tax Code would be changed and the observations/recommendations of the Committee in this regard would be taken into consideration while framing/amending the relevant rules.

The previous Committee was of the view that necessary action in the matter would be taken by the department at an early date and the Committee might be informed accordingly.

39th Report was sent to the department vide letter 22nd March 2011 for information and necessary action. The department vide their letter dated 9th May 2011 sent an interim reply and further vide their letter dated 1st August 2011 informed that the matter is under consideration of the Government. It was also informed that as and when the final decision is taken to amend the relevant rules, the Committee will be informed accordingly.

As observed by the Committee, the Haryana Vidhan Sabha Secretariat vide letter dated 14th November 2011 requested the department concerned to supply the latest/requisite reply in the matter. In response to that communication, the department concerned vide their letter dated 30th November 2011 also informed that the matter was still under consideration of the Government and further intimated

that as and when the matter is finalised the Committee will be informed accordingly
This factual position was brought to the notice of the Committee in its meeting held
on 5th December 2011

In view of above position the Committee expects that necessary action in
the matter will be taken by the department on priority basis and final notification
after amendment of the relevant rules implementing the observations/
recommendations of the Committee may be sent to the Committee at an early
date

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

38th Report 2008-2009

(HOME DEPARTMENT)

(ii) The Haryana Home Guards Rules, 1980 framed under the Haryana Home Guards Act, 1974

The Committee watched the implementation of observations/recommendations made by the Committee in respect of the Haryana Home Guards Rules 1980 framed under the Haryana Home Guards Act 1974 as contained in its 38th-39th Reports. The Department concerned had agreed to implement the observations/recommendations made by the previous committee in principle. However procedural requirements to issue the final notification to amend the rules was to be completed.

The previous committee in its 39th Report had made further observations on Rule 6 regarding revising the daily allowance to the Home Guards and on Rule 26 to consider the increase an ex-gratia amount to the family members of deceased Home Guards Employees. The department was requested to look into the matter so that effective steps may be taken to encourage the public render the services as Home Guards. The 39th Report was sent to the department *vide* letter dated 22nd March 2011 to implement the observations/recommendations made by the Committee on priority basis. The reminders were sent on 9th November 2011, 14th December 2011 and 19th January 2012 to obtain the latest/requisite reply from the department concerned. The department *vide* their letter dated 30th January 2012 sent 25 copies of their reply in English and Hindi *vide* which a draft notification to amend the relevant rules in the light of observations/recommendations made by the Committee was supplied for the perusal of the Committee. From the perusal of the same the Committee was satisfied to see that almost all the major recommendations of the Committee had been accepted by the department concerned, however the notification to amend the rules was yet to be issued after following the due procedure.

The oral examination of the departmental representatives was conducted on 30th January 2012 and the departmental representatives apprised the Committee regarding increase in daily allowance. The department also explained the reasons of not equating the ex gratia amount of Home Guards with the Police Department. The departmental representatives also enlightened the Committee regarding Disaster Management Scheme of Govt. of India which is going to be commenced. On account of it there will be a remarkable combination of Home Guards and Civil Defence which will certainly enhance the status of Home Guards Employees.

In view of above facts and circumstances, the Committee expects that the department would take up the matter on priority basis and supply the copy of final notification amending the relevant rules to the Committee at an early date.

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

**39TH REPORT 2010-2011
(DEVELOPMENT & PANCHAYAT DEPARTMENT)**

- (i) The Punjab Village Common, Lands (Regulation) Rules, 1964 framed under the Punjab Village Common Lands (Regulation) Act, 1961**

The Committee watched the implementation of observations/recommendations made by the Committee in respect of the Punjab village Common Lands (Regulation) Rules 1964 framed under the Punjab Village Common Lands (Regulation) Act 1961 as contained in its 39th Report

The Committee observed that 39th Report was sent to the Department *vide* letter dated 29th March 2011 for implementing the observations/recommendations made by the Committee. The reminders were sent to the department on 14th November 2011 and 14th December 2011. The department concerned sent the copy of the notification dated 14th November 2011 *vide* their memo dated 11th January 2012. The said notification was perused by the Committee in its meeting held on 20th January 2012. After perusing the same the Committee was satisfied to see that almost all the observations/recommendations made by the Committee in respect of aforesaid Rules had been implemented. The Committee however observed that two recommendations on Rule 12 (iv) and Rule 13 were neither implemented nor explained any reason for not implementing the recommendations thereon.

As observed by the Committee a communication dated 23rd January 2012 was sent to the department to send their comments/reasons of not implementing the recommendations of the Committee on the aforesaid two Rules within a week from the receipt of the communication but no reply received from the department.

The Committee appreciates the action taken in the matter well in time by the department for issuing the notification amending the relevant Rules as per observations/recommendations of the Committee made in its 39th Report. The Committee however expects that reasons for not implementing the two recommendations on Rule 12(iv) and Rule 13 may be conveyed for the consideration of the Committee so that the Committee may consider the same and make further observations in the matter.

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

**39TH REPORT 2010-2011
(REVENUE AND DISASTER MANAGEMENT DEPARTMENT)**

- (ii) **The Haryana Regulation of Property Dealers and Consultants Rules, 2009 framed under the Haryana Regulation of Property Dealers and Consultants Act, 2008**

The Committee in the year 2010-2011 had scrutinised the Haryana Regulation of Property Dealers and Consultants Rules 2009 framed under the Haryana Regulation of Property Dealers and Consultants Act 2008 and made general observations thereon as the department concerned did not send specific reply to the observations made by the Committee as the matter was sub judice

The 39th Report was sent to the department *vide* letter dated 29th March 2011 to intimate the action taken in the matter by the Government. However the department *vide* their letter dated 23rd May 2011 communicated as under -

Kindly refer to your letter No HVS-SLC Imp -12/2011-12/3974 dated 29-3-2011 on the subject noted above. I am directed to inform you that the matter is still Sub-judice in Writ petitions namely CWP No 1507 3665 3687 9207 3688 3692 3689 3690 3691 and 7593 all of 2010 that are pending admitted before the Hon ble First D B of the Hon ble Punjab and Haryana High Court at Chandigarh. The replies to CWPs have been filed. The cases were last heard on 19-1-2011. No information regarding next date of hearing has been received from the Hon ble High Court. One more CWP No 2229 of 2011 titling Ambala City Property Dealers Association (Regd) V/s State of Haryana has also been filed which is fixed for hearing on 30-5-2011 (tentative)

In view of the facts explained above the Committee may kindly be informed that the matter is still sub judice in the Hon ble High Court and as per the recommendation of the Committee in its 39th Report necessary action would be taken on the recommendations/observations of the Committee after the decision of the writ petition so that the Committee may make specific and final recommendations thereon. Committee would be apprised of the position of the Court cases from time to time.

The Committee was apprised of the above position. However as observed by the Committee to know the latest position in the matter a communication was again sent to the department on 15-11-2011. A reminder was also sent on 19-1-2012 to obtain the latest information in the matter. The department concerned *vide* their letter dated 23-1-2012 informed that there was no change in the position as already mentioned in their letter dated 23-5-2011. The latest information as

received *vide* letter dated 23-1-2012 was placed before the Committee in its meeting on 6 2-2012

In view of the position stated by the department the Committee expects that the department would take up the matter on priority basis and send the specific reply to the each observation/recommendation made by the Committee on the aforesaid Rules after the decision of the writ petitions so that the Committee may make specific and final observations/recommendations thereon. The Committee further observes that the department would supply the information to the Committee at an early date

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

**39TH REPORT 2010-2011
(THE FORESTS AND WILD LIFE DEPARTMENT)**

(iii) The Wild Life (Protection) Haryana Rules, 1974 framed under the Wild Life (Protection) Act, 1972

The Committee watched the implementation of observations/recommendations made by the Committee in respect of the Wild Life (Protection) Haryana Rules 1974 framed under the Wild Life (Protection) Act 1972

The Committee observed that 39th Report was sent to the Department on 24th March 2011 for implementing the observations/recommendations of the Committee made in respect of aforesaid Rules. The department concerned intimated *vide* their letter dated 24-6-2011 in their annotated reply that they had already accepted most of the recommendations in principle however the latest proceedings of the meeting of the Committee may be sent to the department so that proposed amended relevant rules could be got vetted from the Law and Legislative Department. The Committee was apprised of the matter and a copy of 39th Report along with performa was sent again *vide* letter dated 5-7-2011 to the department for taking further necessary action in the matter. As observed by the Committee reminders were sent to the department on 15-11-2011, 14-12-2011 and 19-1-2012 to obtain the latest position in the matter. The department sent the copies of latest requisite reply *vide* their letter dated 23-1-2012. From the perusal of the same the Committee observed that the department had already accepted most of the observations/recommendations made by the Committee in respect of aforesaid Rules, however notification to amend the Rules was to be issued after following the due procedure.

The Department again *vide* their letter dated 27-1-2012 again intimated that the department has mainly agreed with the observations/recommendations of the Committee. It was also intimated that as there is a large scale amendments in Wildlife (Protection) Act 1972 hence Rules are being framed afresh by the department. The observations/recommendations of the Committee will be incorporated in the new rules. After advice of Legal Remembrancer Haryana these rules will be placed before the Council of Ministers. After clearance of the rules by the Council of Minister these rules will be notified by the State Government. After the issue of notification of the new rules the copies of notification will be sent to Committee on Subordinate Legislation for their information.

The aforesaid communication was taken into consideration by the Committee. The oral examination of the department was conducted on 30-1-2012. The departmental representatives assured the Committee that the observations/recommendations of the Committee made in respect of aforesaid rules will be

incorporated in the amended Rules and after vetting the same by the Law Department and also after following the due procedure the process of amendment will be completed within a period of six months

In view of above position the Committee expects that the department will take up the matter on priority basis and supply the copy of the notification amending the Rules to the Committee at an early date

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

**39TH REPORT 2010-2011
(HOME DEPARTMENT)**

- (iv) The Punjab Chaukidara Rules published in the Punjab Government Gazette, dated 17-9-1965, as applicable to the State of Haryana**

The Committee watched the implementation of observations/recommendations made by the Committee in respect of the Punjab Chaukidara Rules published in the Punjab Government Gazette dated 17-9-1965 as applicable to the State of Haryana

The Committee observed that 39th Report was sent to the department on 29th March 2011 to intimate the action taken in the matter by the department. Reminders were also sent on 14-11-2011 and 19-1-2012 as observed by the Committee. The department concerned *vide* their letter dated 6-2-2012 intimated that the draft of Haryana Chukidara Rules have been framed and approved by Hon ble CM. The concurrence of the Finance Department has also been obtained. Now the case is to be sent to LR for final vetting with reference to their observations and thereafter the matter will be placed in the Council of Ministers for their approval. The aforesaid communication was placed before the Committee in its meeting held on 6-2-2012.

In view of above position the Committee expects that the department would take up the matter on priority basis and supply the copy of the notification amending the Rules to the Committee at an early date.

SCRUTINY OF THE HARYANA PUBLIC DISTRIBUTION SYSTEM (LICENSING AND CONTROL) ORDER, 2009

The Committee scrutinized the Haryana Public Distribution System (Licensing and Control) order 2009 and made the following observations/ recommendations thereon —

Order 3

3 (1) Except kerosene Oil the license shall be granted to the dealers by the licensing authority Kerosene Oil License conditions shall be governed by the Haryana Kerosene Oil Dealers Licensing Order 1976 *Grant of licence to dealers*

(2) No dealer shall be granted a license under this order unless he has first been appointed as such by the competent authority

(3) No dealer shall hold a license to deal in a commodity under the Public Distribution system under this Order if he or any of his family members have a commercial interest in a business or commercial users of the said commodity or a commodity closely related to the said commodity entrusted with supervision of the Public Distribution System

Explanation —For the purpose of this clause —

- (i) commercial interest shall include business partnership and relationship of tenant/landlord of a commercial building
- (ii) diesel and petrol shall be deemed to be commodities closely related to Kerosene
- (iii) owner of a commercial vehicle including boat shall be deemed to be commercial user of diesel/petrol
- (iv) family shall mean a family unit consisting of the individual concerned his spouse their unmarried sons and daughters and married sons and dependent parents

Provided that prohibition under this clause shall not apply in relation to the vehicles meant for and primarily used for transportation of Kerosene from oil depots of the oil marketing companies to the business premises of wholesaler agent of an oil marketing company

Provided further that the license shall not be cancelled for violation of provisions of this clause if the dealer or his family member as the case may be relinquishes his interest in such other businesses within a period of three months from the date of coming into force of this order

Observation of the Committee

The Committee would like to know as to who is the competent authority for the purpose of appointing a person for applying for licenses as mentioned in clause (2) of order 3

The Department in their written reply stated as under —

It is agreed that the competent authority to appoint dealer before grant of license has not been clearly defined. State Government is the competent authority for the purpose of appointing a person for applying for licenses as mentioned in clause (2) of order 3

Recommendation of the Committee

The Committee recommends that desirability may be considered to mention the definition of Competent Authority to grant a license to the declares under these Orders

Order 5

*Issue of Fair
Price Shop
license*

5 (1) Licensing authority shall call for applications through local publicity and munadi in the local area of the Fair Price Shop. If any applicant is a graduate he shall be preferred. The order of preference of all eligible applicants shall be as under —

- 1 Self Help Group or Sakshar Mahila Group
- 2 Unemployed female/male graduate
- 3 Scheduled Caste female/male
- 4 Backward Class (A) female/male
- 5 Ex serviceman

A committee comprising District Food and Supplies Controller, Inspector Food and Supplies concerned and the Sarpanch of village in rural area and District Food and Supplies Controller, Inspector Food and Supplies concerned and Municipal Councilor in urban area shall recommend to the licensing authority the name of the eligible applicant as per these priorities/preference. The licensing authority shall appoint such recommended applicant as Fair Price Shop Owner within the next 7 days. Appeal against the decision of the licensing authority shall lie before the Deputy Commissioner within a period of fifteen days of issue of the orders of the licensing authority. The Deputy Commissioner shall decide the appeal within a period of thirty days. The orders of the appellate authority shall be final.

(2) Every application for a license of a Fair Price Shop or for renewal thereof or for duplicate copy thereof shall be made to the licensing authority in Form A.

(3) Every license issued reissued or renewed under this order shall be in Form B and shall specify the commodity/commodities scheme wise which the licensee shall deal in and the place of business and jurisdiction where the licensee shall operate

(4) Every application for renewal shall be made along with the original copy of license at least forty-five days before the date of expiry of such license

(5) Application for renewal of license shall be disposed off before the date of expiry of the license

Provided that where an application for renewal of license has been received by the licensing authority within the specified period and not rejected or returned to the applicant the validity of license shall not be deemed to have expired until disposal of the application

(6) Where a license issued under this order has been lost or destroyed or defaced the licensee shall immediately obtain a duplicate copy thereof from the licensing authority on application by depositing the fee as per rule 6(2) (iii)

(7) Grant of a license shall not confer a right on the licensee for allotment of Public Distribution System items. The authority competent to allocate Public Distribution System items shall decide on the quota to be allocated to each Fair Price Shop Owner with due consideration to factors like utilization of the quota allocated earlier distance from the area proposed to be serviced compliance of the provisions of this order by the Fair Price Shop Owner and requirements of overall efficiency of the Public Distribution System

(8) No family member of a Fair Price Shop Owner shall be eligible to get a new license for another Fair Price Shop

(9) The license shall not be transferred to any person or family member or any other relative or any other person in any case

Observation of the Committee

After perusing the Order 5 read with definition of eligible applicant in order 2(h) the Committee is of the view that both the Orders relating to the same matter appears to be self contradictory and are not having harmonious interpretation on the subject

The Committee feels that the provisions of the Order 5 needs to be clarified in consonance with the expression given in the definition of eligible applicant.

The Committee further feels that the Committee which recommends to the Licensing Authority the names of the eligible

applicant is also not in consonance with the due representation point of view as Members of the Legislative Assembly are nowhere in the said Committee to recommend the name of eligible applicant for the purpose of license of fair price shop. The Committee would like to know the reasons behind it to ignore the Members of Legislative Assembly from the Committee of the concerned area.

The Department in their written reply stated as under —

Order 2 (h) defines the eligible applicants where as order 5 deals with the preference to be given to different categories of applicants amongst the eligible applicants. However preferences are to be given only if an applicant is eligible under order 2(h). In the line second of order 5(1) these words 'if any applicant is a graduate he shall be preferred' are superfluous and should be omitted.

The Committee to recommend the names has local level elected representative like Sarpanch/Municipal Councilor because detailed credentials of the applicants are likely to be known to the local elected representative. However matter can be submitted to the Government for recommendation in this regard to include concerned Members of Legislative Assembly in this regard.

Recommendation of the Committee

The Committee recommends that this order may be examined as per observations of the Committee made above and it may be amended suitably giving due consideration to the recommendations of the members of the Legislative Assembly with regard to the names of eligible applicants for the purpose of license of fair price shop.

*Period of
license and
fee
chargeable*

6 (1) Every license granted under this order shall unless revoked or expired earlier be valid for a period of two years or part of a year and may be renewed for a period of two years or part of a year at a time on Form A.

Explanation — 'year' means the financial year commencing on the 1st day of April and ending on the 31st day of March of the succeeding year.

(2) The fees chargeable in respect of each license for a period of two years or part thereof shall be as under:

- | | | |
|------|------------------------|--------------------------|
| (i) | for issue of license | two thousand rupees only |
| (ii) | for renewal of license | five hundred rupees only |

Provided that if a licensee fails to renew his license before 31st March he can get it renewed within three months from the expiry

date But for his failure to renew the license within the stipulated period he shall produce sufficient reasons justifying the delay If the Fair Price Shop Owner applies for renewal of the license in 1st month after the expiry period he shall pay Rs 250/ in addition to the renewal fee If he applied in 2nd month of its expiry he shall pay Rs 500/ in addition to renewal fees and in 3rd month of its expiry he shall pay Rs 1000/- in addition to the renewal fees

(iii) for issue of duplicate license five hundred rupees only

(3) The fees specified above shall be deposited in the Government Treasury by a challan to the credit of the State Government under the Head 0435-Other Agricultural Programme 800-other Receipt-(96) L/fee for the storage of food grain

(4) The application shall be accompanied by a receipt treasury challan in token of payment of prescribed fees

Observation of the Committee

GENERAL OBSERVATION

(i) The Committee observes that the words Rs wherever occurring in this Order may be written as ₹

ORDER 6

(ii) The Committee observes that in Form A instead of Form 4 the words Form A may be substituted to make the same grammatically correct

(iii) The Committee observes that in the last para of Form A wrongly written as Form 4 the sign of asterisk has been given against clauses (a) (c) (d) and (e) whereas it has nowhere specified as for what purposes these asterisks have been given The Committee feels that if there is any significance of these asterisks then the same may be expressed in the note below the form

(iv) The Committee observes that in line fourth of the proviso of clause (2) of Order 6 for the word produce the word show" may be substituted to make the Order more clear

(v) The Committee observes that in line seventh of the proviso of clause (2) of Order 6 for the word applied the word applies may be substituted to make it grammatically correct

(vi) The Committee would like to know as to whether the words duplicate license includes re-issue of license also

(vii) The Committee would like to know as to whether the provision for the depositing the license fee by way of cash is not possible?

(viii) The Committee observes that no time limit has been prescribed within which the licensing authority will decide the renewal of license or issuance of duplicate license. On account of it there may be possibility of harassment of the applicant as well as misuse of the provisions of the Orders. The Committee feels that some time limit should be fixed within which the licensing authority shall be bound to decide the application of renewal of license or issue of duplicate license.

The Department in their written reply stated as under —

- (i) Agreed
- (ii) Agreed
- (iii) Agreed
- (iv) Agreed
- (v) Agreed
- (vi) The words duplicate license does not include re issue of license. Both are different.
- (vii) Yes provision for deposition of the license fee by way of cash is possible at the office of licensing authority.
- (viii) Agreed. Some time limit should be fixed within which the licensing authority shall be bound to decide the application of renewal of license or issue of duplicate license.

Recommendations of the Committee

The Committee recommends that the observations of the Committee made above may be considered and the Order may be amended suitably to achieve the purpose in letter and spirit.

ORDER—7

*Security
Deposit*

7 (1) Every Fair Price Shop owner or dealer shall before a license is issued to them deposit an amount mentioned below by way of security in favour of the licensing authority in the manner hereinafter as specified below —

for Fair Price Shop	Rs 5 000/- (five thousand rupees only)
for dealer	Rs 20 000/ (twenty thousand rupees only)

(2) The security deposit referred to in sub clause (1) shall be in form of Deposit at Call-Receipt of the State Bank of India/any Nationalized Bank endorsed in favour of the licensing authority.

Observation of the Committee

The Committee observes that in line first of Order 7(1) the word 'owner' may be written as 'Owner'.

The Department in their written reply stated as under —
Agreed

Recommendation of the Committee

The Committee recommends that the words 'Shop Owner or Dealer' may be written in capital letters as per punctuation point of view

Order—8

8 (1) The licensing authority may refuse to renew any license if it is of the opinion that the performance of the licensee was not satisfactory or that the licensee has contravened any provisions of the Act or any order issued thereunder or terms and conditions of license or that the licensee has other commercial interests which may be detrimental to the smooth functioning of Public Distribution System or that the expected size of operations of the dealer is not economically viable and/or that the renewal of license would otherwise be not in the interest of efficient functioning of the Public Distribution System

*Power to
refuse
renewal of
license of
dealer and
Fair Price
Shop
Owner*

(2) Where the application for grant of license is not refused the licensing authority shall grant the applicant a license in Form B subject to the conditions mentioned therein and such other conditions as the licensing authority may specify or instructions as the licensing authority may issue from time to time

Observation of the Committee

The Committee feels that to meet the ends of justice it would be appropriate to provide a provision that before refusing to renew any license the licensing authority shall give a reasonable opportunity of being heard to the applicant and after hearing the applicant he will record the reasons of refusal of license in writing

The Committee observes that in Clause (2) of this Order arbitrary powers have been given to the licensing authority as sufficient terms and conditions and requirements have already been provided in Order itself in Form B while granting or refusing the license. The Committee feels that the words 'and such other conditions as the licensing authority may specify or instructions as the licensing authority may issue from time to time' may be deleted being arbitrary and unreasonable

The Department in their written reply stated as under —
Agreed

The provision has been made in case in order to take care of unforeseen situations. This clause may be required

Recommendation of the Committee

The Committee recommends that the observations of the Committee made above may be kept in view and the Order may be amended accordingly

Order—9

*Responsibilities
and duties of
Fair Price
Shop
Licensees*

9 The responsibilities and duties of the Fair Price Shop Licensees shall include *inter alia*—

- (i) sale of essential commodities as per the entitlement of ration card holders at the retail issue price fixed by the State Government under the Public Distribution System
- (ii) display of up to date information on a notice board at a prominent place in the shop on a daily basis regarding—
 - (a) list of Below Poverty Line and Antyodaya beneficiaries
 - (b) entitlement of essential commodities
 - (c) scale of issue
 - (d) retail issue price
 - (e) timings of opening and closing of the Fair Price Shop
 - (f) stocks of essential commodities received during the month
 - (g) opening and closing stock of essential commodities and
 - (h) authority for redressal of grievances/lodging complaints with respect to quality and quantity of essential commodities under the Public Distribution System
- (iii) maintenance of record of ration card holders (Above Poverty Line Below Poverty Line and Antyodaya) stock register issue or sale register
- (iv) furnishing of copies of specified documents namely ration card register stock register sale register to the office of the Gram Panchayat or Nagar Palikas or Vigilance Committee or any other body authorized for this purpose
- (v) display of samples of foodgrains being supplied through the Fair Price Shop
- (vi) production of books and records relating to the allotment and distribution of essential commodities to the inspecting

agency and furnishing of such information as may be called for by the authority

- (vii) account of the actual distribution of essential commodities and the balance stock at the end of the month to the concerned Sub Inspector Food and Supplies/Inspector Food and Supplies/ Assistant Food and Supplies Officer and District Food and Supplies Controller with a copy to the Gram Panchayat / Local Municipal Body
- (viii) opening and closing of the Fair Price Shop as per the prescribed timings displayed on the notice board
- (ix) the ration card holder shall not be denied the supply as per entitlement of essential commodities lying in stock with Fair Price Shop Owner under the Public Distribution System
- (x) the Fair Price Shop Owner shall *provide* the relevant extract of the record maintained by him to the beneficiary on payment of Rs 10/ only
- (xi) the Fair Price Shop Owner shall not retain ration card after the supply of essential commodities
- (xii) the Fair Price Shop Owner shall use only such weights and measures which are duly verified by the Legal Metrology Department Haryana
- (xiii) the Fair Price Shop Owner shall keep the complete records of the PDS items for at least two years in his/ her safe custody
- (xiv) In Fair Price Shop Owner shall give information every month about the allocated PDS items the quantity distributed by him to the eligible consumers and the balance stock etc to any two members of the Vigilance Committee otherwise no supply PDS item shall be given to the Fair Price Shop Owner for the next month He shall also obtain satisfactory certificate from the Vigilance Committee regarding satisfactory distribution of all allotted items in the previous month
- (xv) the Fair Price Shop Owner shall be responsible for making all essential entries in the ration cards
- (xvi) the Fair Price Shop Owner shall store and sell essential commodities only at the place specified in the license
- (xvii) behave with the consumers cordially and with due courtesy

Observation of the Committee

The Committee would like to know to discuss the provisions of Order 9 at the time of oral examination

(Due to paucity of time Oral examination of the Department could not be held)

Recommendation of the Committee

The Committee recommends that the Department should make time to time inspection of Fair Price Shops so that the responsibilities and duties mentioned in the Order are adhered to by the licensees in letter and spirit

*Responsibilities
and duties of
dealers*

- 10** (1) The dealers shall be responsible for —
- (a) keeping the essential commodities meat for Public Distribution System after obtaining the same from the authorized/nominated agency in the month preceding to the month to which the allotment relates
 - (b) supplying the Public Distribution System Commodities to the Fair Price Shop Owner immediately on demand and subject to prepayment of cost of commodities and production of tally register etc as prescribed
 - (c) maintaining register/records as prescribed by the Government or licensing authority from time to time
 - (d) producing such records and information as called for by the authorized inspecting officers
 - (e) keeping certified weights and measures as may be prescribed by Government
 - (f) displaying the following information on a notice board at prominent place outside the business premises near the entrance of the premises namely
 - (i) timing of the shop
 - (ii) opening stock quantity received sold closing stock on a daily basis
 - (iii) issue price of each (commodity) and
 - (iv) license number/name of owner
 - (g) maintaining books of accounts in the manner prescribed by the State Government/licensing authority and provide these to authorized officers for inspection and verification on demand

- (h) providing correct cash memo in sequential order and in case of listed essential commodities printed copy of weighment slip to the Fair Price Shop Owner
 - (i) displaying samples of foodgrains in stocks kept for sale
 - (j) providing relevant extracts of records to any person on payment of prescribed fees
 - (k) arranging for scientific storage of Public Distribution System Commodities and
 - (l) ensuring that the agents and employees comply with all terms and conditions of the license and provisions of this order
- (2) The Dealer shall not—
- (a) close the business premises during the business hours on working days without obtaining prior written permission of the licensing authority or an officer authorized by the Licensing Authority or by State Government
 - (b) deliver Public Distribution System Commodities to any person other than that a licensee for whom the commodities are meant to be supplied
 - (c) stock/store the Public Distribution System commodities at any place other than the place allowed in the license
 - (d) retain the tally register of other licensees with him and
 - (e) keep the records relating to the business at any place other than the licensed business premises

Observation of the Committee

The Committee would like to discuss the provisions of Clause 1 (e) of Order No 10 at the time of oral examination of the Department

The Committee would like to know as to what is the prescribed fee for obtaining the extracts of records as mentioned in Clause 1 (i) of Order No 10

Whether any lime limit can be prescribed to supply the relevant extracts of records to a person on payment of prescribed fee?

Is it not desirable to prescribe the fee for obtaining the copy of relevant extract of record in the order itself ?

The Committee observes that in Clause (2) of this Order the word 'dealer' has been used whereas in Clause (1) the word 'dealers' have been used. The Committee observes that to maintain the symmetry of the rules, the word 'dealers' may be substituted for the word 'dealer'.

The Department in their written reply stated as under —

To be discussed orally at the time of examination

Yes, provision should be made

Yes, provision for time limit should be made

Agreed

Agreed

(Oral examination could not be held due to paucity of time)

Recommendation of the Committee

The Committee recommends that the observations of the Committee made above may be kept in view and the Order may be amended suitably to achieve the purpose.

Order—13

*Contravention
of conditions
of license or
control order*

13 (1) No holder of a license issued under this order shall contravene any of the terms or conditions of the license or of any control order issued under the Act. If he contravenes any of the said terms or conditions, without prejudice to any other action that may be taken against him, the licence shall be suspended immediately without giving any notice. If the licensing authority is satisfied that the licensee has contravened any of the conditions of the license or is not performing his responsibility and duties properly, the licensing authority shall take one or more actions against the licensee as mentioned below:

- (i) forfeiture of the security deposit in full and suspension of licence

Provided that the licence may however be validated and suspension revoked by depositing the amount of security by the licensee

- (ii) cancellation of the license and forfeiture of the security deposit in full
- (iii) registration of criminal case as per provisions of the Act

Provided that no order with regard to above mentioned penal action shall be made under this clause unless the licensee has been given a reasonable opportunity of being heard

(2) Upon compliance with all obligations under the license by the licensee the amount of security deposit or such part thereof which is not forfeited as aforesaid shall be refunded to the licensee after termination of the license by the licensing authority

(3) The licensing authority may by a written order suspend the license of a Fair Price Shop Owner if a proceeding under sub-clause (1) of this clause has been initiated against the Fair Price Shop Owner and the said licensing authority is satisfied that it is not in the interest of the smooth operation of the Public Distribution System to allow the dealer or the Fair Price Shop Owner to handle the Public Distribution System stocks No prior notice shall be necessary before passing any order under this sub clause

Explanation — For the purpose of this sub clause the proceedings under sub clause (1) shall be deemed to have been initiated on the date of issue of the show-cause notice by the licensing authority

(4) No prior show cause notice shall be required for withholding the allocation of quota to any licensee for a period not exceeding sixty days pending enquiry or investigation against the licensee if the licensing authority has reasons to believe that the licensee has not maintained proper and correct accounts in respect of the quota allocated to him earlier or has diverted the Public Distribution System stocks or committed any other irregularities

Observation of the Committee

The Committee is of the view that in case of cancellation of license and forfeiture of security deposit the reasons should be recorded by the competent authority

The Department in their written reply stated as under —

Agreed

Recommendation of the Committee

The Committee recommends that the Order may be amended suitably as per observation of the Committee made above

Order—15

15 (1) The licensee shall submit to the licensing authority concerned a true return in Form C so as to reach him not later than the fifth day of each month of stocks receipts and deliveries of each of the essential commodities pertaining to the preceding month

*Submission
of returns*

(2) Notwithstanding anything contained in sub clause (1) the State Government or the Director of Food Supplies or the Collector of the District or the licensing authority may direct the licensee to submit a return in a form prescribed by that authority

Observation of the Committee

The Committee observes that when the licensee shall submit to the licensing authority concerned a true return in Form C within a prescribed time then what is the intention behind it to prescribe another form to file the return as mentioned in clause (2) of Order 15

The Department in their written reply stated as under —

The provision has been made in case any eventualities/developments arise This clause may be required

Recommendation of the Committee

The Committee recommends that the observation of the Committee made above may be considered again and the Order may be amended suitably

Order—16

Appeal

16 All appeals against the any order the licensing authority under this order shall lie before the Deputy Commissioner/Collector of the concerned Districts Such appeals shall have to be filed within a period of thirty days of the date of order of the licensing authority

Observation of the Committee

The Committee observes that in line first the word 'the' mentioned after the word 'against' be deleted being superfluous The Committee further observes that in line 3rd for the word 'Districts' the word 'District' may be substituted to make it grammatically correct

The Department in their written reply stated as under —

Agreed

Recommendation of the Committee

The Committee recommends that the Order may be amended as per observations of the Committee made above

Order—17

*Power to
direct
disposal of
stocks*

17 Where any person or licensee holding any stock of essential commodities under the Public Distribution System does not wish to obtain/retain a license after commencement of this Order or where any licensee holding any stock of essential commodities does not wish to renew a license or where his application for renewal thereof has been refused or as the case may be his license has been cancelled or suspended the licensing authority may direct such person to dispose off stocks of essential commodities held by him by sale/transfer to such other person or persons by such date as may be specified in the direction and the person shall comply with such direction

Observation of the Committee

The Committee observes that Order 17 needs to be improved from drafting point of view. The Committee would like to discuss it at the time of oral examination.

The Department in their written reply stated as under —

To be discussed orally at the time of examination

(Due to paucity of time oral examination could not be held)

Recommendation of the Committee

The Committee recommends that the language/wordings of the Order may be simplified and improved to avoid any confusion.

Order—19

19 (1) The State Government shall issue distinctive paper or smart Issue of ration electronic ration cards to beneficiaries under the Public Distribution System. Ration cards shall be issued following such procedure as may be prescribed by the State Government from time to time.

*Issue of
ration cards*

Provided that ration cards shall not be issued to those persons who are not Indian Citizens and/or who are not normally residents of the State.

(2) No person shall —

- (i) apply for or receive ration card if a ration card has already been issued to him or in favour of a member of his family with his name included in the card; and
- (ii) give incorrect details or information while applying for a ration card for the family.

(3) The holder of a ration card shall get the same registered with the concerned Fair Price Shop. The ration card holder may obtain Public Distribution System commodities by submitting the ration card before the Fair Price Shop where the ration card is registered.

Provided that ration cards issued prior to date of coming into force of this order shall remain valid till such date as the State Government may decide.

(4) Ration cards shall have clearly marked on it the name and address of the ration card holder, name, age of family members and their relation with head of family and name and number of the Fair Price Shop along with the address of its location from where the ration

card holder is entitled to purchase essential commodities and such other details as may be decided by the State Government

(5) No person not being a member of the family for which the card has been issued shall obtain hold or use the ration card of another person

(6) Every ration card under this order shall be the property of the State Government but the person to whom it is issued or to the authority to whom it has been surrendered by him shall be responsible for its safe custody

(7) If any ration card is defaced lost or destroyed an authorized officer after making such enquiry as he may think fit issue a new ration card in place thereof on payment of such fee as may be specified

(8) When a new ration card is issued in place of a lost ration card it shall be the duty of the person to whom the new ration card has been issued to return the lost ration card forthwith to the officer by whom it was issued if the lost ration card is subsequently found

(9) The authority competent to issue a ration card shall be competent to withdraw or cancel a ration card if it is found that the holder of the card is not eligible for the card and in every such case the holder of the ration card shall be bound to surrender the ration card on demand for endorsement or cancellation as the case may be

(10) Ration Card shall not be used as document of identity

Observation of the Committee

The Committee would like to know as to whether a time limit can be prescribed in Order 19 itself for issuance of ration card to the users in the State

The Committee feels that Order 19 needs to be made more exhaustive to cover all eventualities regarding issue and refusal/addition of members in ration card The Committee would like to discuss it at the time of oral examination

The Department did not send any comments/reply in the matter

Recommendation of the Committee

The Committee recommends that the observations of the Committee made above may be considered and the order may be amended suitably to make it more specific and clear

Order—21

21 No person who is not holding a license in his name shall operate a shop as proxy/benami Fair Price Shop or as a de facto owner by using a licence granted to another person Self Help Group Cooperative Society or Gram Panchayat

*Prohibition
benami
dealership*

Observation of the Committee

The Committee observes that in line third of Order 21 for the word licence the word license may be substituted to make it grammatically correct

The Department did not send reply in this regard

Recommendation of the Committee

The Committee recommends that the Order may be amended as per observation of the Committee made above

Form B*[See clause 5(3) and 8(2)]*

The Haryana Public Distribution System (Licensing and Control) Order 2009
 License for operation as a Fair Price Shop Owner/Dealer

1 Subject to the provisions of the Haryana Public Distribution System (Licensing Control) order 2009 and to the terms and conditions of this license is here by authorized to operate as a retailer/a wholesaler/ a sub wholesaler in the PDS commodities mentioned below

(i)

(ii)

(iii)

(iv)

2 (a) The licensee shall carry on the aforesaid business / e store and sale of essential commodities only at the following place —

Premises in details

Building Street Address

Description of boundaries

East

West

North

South

Owner of land

(b) He may purchase the essential commodities from the authorized persons/depots and store the same for sale at places specified under item (i) above

Note — If the licensee intends to store his stocks of essential commodities in a place other than that specified above he shall obtain prior permission thereof from the licensing authority in writing

3 The License is subject to following terms and conditions —

- (a) The licensee shall have adequate storage space for entire allotment of the months and he shall take adequate measures to ensure that the PDS commodities stored by him are maintained in proper condition and that in case of food grains and sugar damages due to ground moisture rain insects rodents birds fire etc such other causes

are avoided Suitable dunnage shall be used to avoid damage from ground moisture and the foodgrains shall be fumigated with chemical approved for the purpose by person who has undergone practical training in that regard The licensee shall also ensure that materials likely to contaminate foodgrains and sugar are not stored along with the same in the same godown or in immediate juxtaposition of foodgrains and sugar

- (b) In case of the storage of Superior Kerosene Oil following guidelines are to be followed scrupulously
 - (i) Barrels of least 215 liter capacity are to be used
 - (ii) All barrels shall be filled uniformly to the level of 200 liters Only one barrel can be filled to less than 200 liters
 - (iii) The name of the licensee license number and serial number of barrel shall be painted on the barrel in white letters
 - (iv) All barrels shall be painted in blue colour
- (c) Declaration of business stock price and entitlement are to be displayed near the entrance on the outside of the shop
- (d) The Fair Price Shop /Dealer should operate the shop himself Accounts must be authenticated by the licensee himself every day
- (e) The prior permission from the licensing authority in writing is to be obtained if the place of business is going to be closed for specific day (s)
- (f) The Fair Price Shop Owner/Dealer shall keep certified weights and measures and obtain fire safety clearances and other statutory clearances required for business
- (g) The licensee shall keep reserve stock in such quantities as may be directed by the licensing authority
- (h) The licensee shall install electronic weighing equipments for correct weighment of PDS commodities
- (i) Citizen s charter shall be displayed prominently in the business premises
- (j) The licensee shall meticulously comply with their responsibilities enumerated in clause 10 and 11 of the Order

4 The licensee shall complete his accounts specified in clause 12 of the Haryana Public Distribution System (Licensing and Control) Order 2009 for each day to which shall be upon him There shall be no overwriting in the register in case corrections are necessitated the old entry will be scored off and new entry be recorded duly initiated by the licensee

5 The licensee shall furnish the reports and returns as specified in clause 15 of the Haryana Public Distribution System (Licensing and Control) Order 2009. He shall furnish correctly such information relating to his business as may be demanded by the licensing authority or by any officer authorized in this behalf.

6 The Licensee shall not contravene the provision of the Haryana Public Distribution System (Control) Order 2009 or any other Order relating to the essential commodities issued under the Essential Commodities Act 1955 (10 of 1955) or any other law relating to said essential commodities for the time being in force.

7 The licensees shall give all facilities at all reasonable times to the licensing authority or any officer authorized by it or Government for the inspection of his stocks, accounts at any shop, godown or other place used by him for storage, sale or purchase of essential commodities and for taking samples of such commodities for examination.

8 The licensee shall exhibit at the entrance or some other prominent place of his business premises the price list and stock position of essential commodities held by him for sale. Such list shall be legibly written in the principal language of locality concerned. The board shall be painted on the wall or affixed securely thereon in such a manner that the same can not be removed without breaking/damaging the wall. The minimum dimensions of the board shall be as follows:

Dealer 4 feet by 6 feet

Fair Price shop 3 feet by 4 feet

9 (a) Fair Price Shop/Dealer licensee shall, except when specially exempted in this behalf, issue to every person from to whom essential commodities are purchased/sold a correct receipt, invoice or memo, as the case may be, giving therein his own name, address and license No. and name, address of the person from to whom purchased/sold with his signature, as also the date of transaction, the name of the essential commodities, the quantities purchased/sold, the rate per quintal / kilo liter or kilogram/liter as the case may be, the total price paid/received for each item as also the grand total of the amount paid/received and shall keep a duplicate of the same in his record to make available for inspection on demand by the licensing authority or any officer authorized in this behalf. The cash memos shall be serially numbered and issued sequentially.

(b) The licensee shall make necessary entries in the ration cards correctly of the name(s) of essential commodities, date(s) of transaction, the rate, etc. under the appropriate columns therein and obtain signature or the thumb impression of the ration card holders in the sale register about receipt of the commodity by the ration card holder(s).

10 The licensee shall comply with any direction that may be given to him by the State Government or the Licensing Authority in regard to purchase, sale and storage of essential commodities.

- 11 The license shall be attached to any application for renewal
- 12 The license shall be valid up to the 31st March

Place

Date

Licensing Authority
Signature of the licensees

Observation of the Committee

The Committee observes that in line third of clause (5) of Form B after the word He the word shall may be inserted to make it grammatically correct

The Department did not send any reply in this regard

Recommendation of the Committee

The Committee recommends that clause (5) of the Form B may be corrected as per observation of the Committee made above

SCRUTINY OF THE HARYANA TAX ON LUXURIES RULES, 2008 FRAMED UNDER THE HARYANA TAX ON LUXURIES ACT, 2007

The Committee scrutinized the Haryana Tax on Luxuries Rules 2008 framed under the Haryana Tax on Luxuries Act 2007 and made the following observations/ recommendations thereon —

PART - I

Rules—2 (b)

- (b) agent means a person authorized in writing by a proprietor to appear on his behalf before any office empowered under the Act to carry out the purposes of the Act being—
- (i) a relative of the proprietor or
 - (ii) a person in the regular and whole time employ of the proprietor or
 - (iii) a person who has been enrolled as Chartered Accountant in the Register of Accountants maintained by the Central Government under the Auditor s Certificate Rules 1932 or
 - (iv) a person who possesses a degree in commerce law economics or banking including higher auditing conferred by any University incorporated by law for the time being in force or any Foreign University duly approved in this behalf by the State Government

Observation of the Committee

The Committee recommends that in line 2nd for the word 'office' substituted the word 'officer' to make the rule gramatically correct

The Committee would like to know for its information as to who is authorized agent in case of a firm which is constituted by partner. In case of partnership the Committee would like to know as to whether the partner can also be termed as an agent of partnership firm or not ?

The Department in their written reply stated as under —

The recommendation of the Committee is accepted and the necessary word 'officer' will be substituted in the Rules

Any person as prescribed under the sub rule (2) when authorized by a partnership firm is an authorized agent of the firm. A partner of a firm being owner himself is not an agent but at par with the proprietor

Recommendation of the Committee

The Committee recommends that in line 2nd of rule 2(b) for the word 'office' substitute the word 'officer' to make the rule grammatically correct

Rule—2 (j)

- (i) 'Inspector' means a Taxation Inspector posted under the control of Deputy Excise and Taxation Commissioner Sales Tax

Observation of the Committee

The Committee would like to know as to who is the competent officer to have an administrative control on the working of Excise Inspector as in the definition of Inspector a Taxation Inspector is posted under the control of Deputy Excise and Taxation Commissioner Sales Tax

The Department in their written reply stated as under —

DETC (X) is the competent officer having administrative control on the working of Excise Inspector as Excise Inspectors are posted in Excise Wing for excise work and Taxation Inspectors are posted in Sales Tax Wing under the control of DETC(ST)

Recommendation of the Committee

In view of the reply of the Department the Committee recommends that the definition of 'Inspector' in rule 2(j) may be made more explicit to cover the Inspectors working in excise wing under the control of Deputy Excise and Taxation Commissioner (X)

PART — II

Rule—3(3)

(3) When the assessing authority after making any enquiry that it may think necessary is satisfied that the applicant is a *bona-fide* proprietor and has correctly given all the requisite information that he has deposited the required registration fee into the appropriate Government treasury and that the application is in order it shall register the proprietor and shall issue a certificate of registration in Form LT-2

Observation of the Committee

Will it not be appropriate to fix some reasonable time period for issuance of certificate of registration in Form LT-2 ?

The Department in their written reply stated as under —

Yes it will be quite appropriate to fix reasonable time period for issuance of registration certificate. Appropriate instructions as per Section 4 of the Act can be issued for the purpose to the field officers for finalising the matter within a limited time period

Recommendation of the Committee

The Committee recommends that some reasonable time period for issuance of registration certificate may be fixed. As agreed to by the Department appropriate instructions as per section 4 of the Act can be issued for the purpose.

Rule—3(4)

(4) The appropriate assessing authority shall give to the proprietor an attested copy of the registration certificate free of cost for every additional hotel/ banquet hall enumerated therein.

Observation of the Committee

The Committee would like to know for its information as to what is the procedure for issuance of certificate of registration in case of death of the proprietor whose application for registration is pending for cancellation before the assessing authority.

The Committee would like to know for its information as to whether the Rule 5 covers the manner of levy and collection of tax on luxuries as mentioned in section 7, 8 & 9 of the Act also or it relates to a payment of tax in advance only.

The Department in their written reply stated as under —

Though no procedure has been provided for issuance of certificate of registration in such an eventuality yet when sub section (2) of section 25 relating to Tax Payable on Transfer of Business is read and applied which says that in case of death of a proprietor then his executor administrator or other legal representative shall be deemed to be the proprietor for the purpose of this Act. So all the future liability and responsibility will be taken over by the legal representative and the Assessing Authority can issue the registration certificate once the legal representatives steps in.

Recommendation of the Committee

The Committee recommends that to cover an eventuality of death for the purpose of issuance of certificate of registration to the legal representatives of a proprietor some procedure may be incorporated in this rule.

Rule—7 (d)

(d) daily account of occupation of a banquet hall and collection of luxury therefor.

Observation of the Committee

The Committee recommends that in Rule 7(d) in line first after the word Luxury the word Tax may be added to make the sub-rule more clear.

The Department in their written reply stated as under —

The recommendation of the Committee is accepted

Recommendation of the Committee

The Committee recommends that in rule 7(d) in line first after the word *Luxury* the word *Tax* may be added to make the sub rule more clear

Rule—11

11 (1) When the appropriate assessing authority considers necessary to make an assessment under section 15 or section 17 or re assessment under section 16 in respect of proprietor it shall serve a notice in Form LT-5—

*Assessment
and
collection of
tax
Section 15*

- (a) calling upon him to produce or cause to be produced the bound registers maintained under rule 8 and such other documents as may be specified in the notice which such authority wishes to examine together with any other evidence on which such proprietor may wish to rely in support of its claim
- (b) stating the period or the return period or periods in respect of which assessment or re-assessment is proposed and he shall fix a date ordinarily not less than 10 days after the date of the service of the notice for producing such documents and evidence and for considering any objection which the proprietor may prefer

(2) A proprietor who has been served with a notice under sub rule (1) may prefer an objection in writing personally or through an agent. No fee shall be payable in respect of any such objection

(3) The assessing authority may make such enquiries in respect of the objection preferred under sub rule (2) as it may deem fit and record a finding thereon

(4) After the tax has been assessed under sections 15, 17 or 16 together with interest and/or penalty if any the assessing authority shall issue an assessment order which shall be in writing and where the assessing authority determines the tax at a figure different from that shown in the return submitted under the provisions of these rules the order shall state briefly the reasons thereof but failure to state the reasons shall not effect the validity of the assessment order

Observation of the Committee

The Committee observes that as per provisions of Section 26 the Proprietor is bound to maintain the registers regarding accounts of

his transactions/business relating to assessment of tax and he is bound to maintain separate registr for each purpose as menioned in Rules 7 and 8 The Committee would like to know as to what are those other documents which can be demanded by the assessing authority to make assessment or re assessment of tax

The Department in their written reply stated as under —

The other documents are contained in List of Documents mentioned in the Notice in Form LT-5 issued by the Assessing Authority for calling for framing assessment These documents include cash book bank pass book ledger bill registers trading and profit and loss account etc and other document necessary to prove correctness of the returns

Recommendation of the Committee

In view of the reply of the Department the Committee recommends that the term other documents necessary to prove correctness of the returns may also be specified and clarified in the rule to avoid different conclusion or interpretation

Rule — 12

*Demand
notice
section 21*

12 If any sum becomes payable by the proprietor upon completion of assessment under sections 15 16 or 17 assessing authority shall serve a demand notice in Form LT-7 upon him specifying the date not less than 15 days and not more than 30 days from the date of service of the notice on or before which payment shall be made and proof thereof submitted to the appropriate assessing authority

Observation of the Committee

The Committee would like to know for its information as to in which manner the demand notice is served upon the proprietor

The Department in their written reply stated as under —

The demand notice is served upon the proprietor/authorized agent/employee either by delivery by hand through Process Server or through registered post acknowledgment due

Recommendation of the Committee

The Committee recommends that mode of service to serve the demand notice upon the proprietor/authorised agent/employee may be mentioned in the rule itself to make it more clear and specific

Rule—15

15 An assessing authority shall in order to carry out the functions envisaged under sub section (I) of section 30 obtain prior approval of the district in-charge (Sales Tax) In case the in charge of the district is not available at the relevant time intimation regarding the inspection shall be duly given to the district in charge within 24 hours of the inspection

*Prior
approval
Section 30*

Observation of the Committee

The Committee observed that for inspection of relevant register and record of the proprietor the assessing authority can inspect the same within a reasonable time To avoid any misuse of the provision will it not be desirable to mention that the assessing authority shall inspect the record or make search between sun rise and sun set

The Department in their written reply stated as under —

In this regard when the business location is inspected by an officer the same is done only during business hours and when the business is open for public as well Though it is not specifically contained in the Act/Rules yet while inspecting a residential house of a proprietor the officers do not enter it after sun set and before sun rise and that too after obtaining prior permission from the Deputy Commissioner or Sub Divisional Magistrate of the concerned area

Recommendation of the Committee

The Committee recommends that to avoid harrassment to the tax payers Instructions may be issued in this regard that inspection shall be made within a reasonable time i e during only business hours

Rule — 16

16 (1) Every memorandum of appeal under section 31(1) shall—

(a) be written on the standard water marked judicial paper along with a court fee of five hundred rupees duly affixed thereon

*Appeal
revision
review and
rectification
sections 31
32 and 33*

Observation of the Committee

The Committee would like to know for its information as to what is the Court fee for the purpose of filing the revision review and rectification as in Rule 16 a reference of Court fee of Rs 500/- have been given for the purpose of filing an appeal only

The Committee would like to discuss the provision of appeal revision review and rectification at the time of oral examination of the Departmental Representatives

The Department in their written reply stated as under —

No specific court fee has been prescribed for filing of revision review or rectification Court fee of Rs 500/- is prescribed for filing an appeal against an order only

Recommendation of the Committee

The Committee recommends that to avoid ambiguity in the Rule specific court fee may be prescribed for filing of revision review or rectification

Rule —17

Hearing and disposal of appeal section 31

17 (1) If the memorandum of appeal omits to state any of the particulars required under rule 16 or is not accompanied by the order in original or duly authenticated copy of the order against which it is made or any other grounds considered sufficient the appeal may be rejected summarily after providing the reasons therefor

Provided that no appeal shall be rejected summarily under this sub rule unless the appellant is given a reasonable opportunity to amend the memorandum of appeal

Observation of the Committee

The Committee observes that as per provisions of Rule 16(1) (I) an appellant can file the appeal without annexing a copy of the order or authenticated copy thereof after explaining the reason of not filing the same with the appeal However as per the provisions of Rule 17(1) an appeal can be rejected summarily if the copy of the original order or authenticated copy thereof has not been annexed with the appeal A bare perusal of both the above provisions of the rule would go to show that both these provisions are contradictory with each other The Committee further observes that section 31 of the Act has not given any delegated powers to the appropriate authority to reject the appeal summarily The Committee would like to know as to under what provisions of the Act this power has been given to the appellate authority to reject the appeal summarily as mentioned in Rule 17 The Committee further observes that the language of Rule 17 is not properly worded as it does not convey the correct sense

The Department did not offer any comment on the observation of the Committee made above

Recommendation of the Committee

The Committee recommends that for the purpose of harmonious construction and interpretation of the provisions of rules 16 and 17 the observation of the Committee made above may be kept in view and rule 17 may be recast properly to achieve the purpose

Rule—18

18 (1) If the appellate authority does not reject the appeal under rule 17 it shall fix a date for admission of the appeal and it shall also give a notice of the same to the assessing authority or officer against whose order the appeal has been preferred. Such notice may be delivered personally or may be sent by registered post.

*Rejection of
appeal for
want of
sufficient
particulars
section 31*

(2) The appellate authority shall send a copy of memorandum of appeal and the written prayer along with other documents to the assessing authority or the officer against whose order the appeal has been preferred asking him to send the records of the order appealed against together with his comments.

(3) If on the date of admission the appellate authority orders the admission of appeal it shall decide such appeal after consideration of any representation that may be made by the assessing authority or the officer either in person or through any of its subordinates not below the rank of Taxation Inspector or through an authorized representative of the Excise and Taxation Department and after giving an opportunity to the appellant of being heard either in person or by a duly authorized agent.

(4) The appellate authority may before deciding the appeal under sub-rule (3) either itself hold such further enquiry or direct it to be held by the assessing authority.

(5) The appellate authority may for sufficient reasons to be recorded in writing adjourn at any stage the hearing of an appeal to a different time on the same day or on any other day.

(6) If on the date and at the time fixed for hearing or on any other date or at any other time to which the hearing may be adjourned the appellant does not appear before the appellate authority either in person or through an agent it may dismiss the appeal or decide it ex parte.

Provided that if within thirty days from the date on which the appeal was dismissed or decided ex parte under this sub rule the appellant makes an application to the appellate authority for setting aside the orders and it is satisfied that the intimation of the date of hearing was not duly served on him or that he was prevented by sufficient cause from appearing when the appeal was called for hearing it shall make an order setting aside the dismissal or ex parte decision upon such terms as it may think fit and shall appoint a day for proceeding with the appeal.

Observation of the Committee

The Committee observes that the Provisions mentioned in Rule 18 seem to be beyond the scope of delegation given by the Act Therefore the Committee would like to discuss the provisions of this rule at the time of oral examination

The Department did not offer any comment in the matter

Recommendation of the Committee

The Committee recommends that the provisions of rule 18 may be looked into so as to make it in consonance with the provisions of the Act

Rule—19

*Revision
section 32*

19 (1) When the Commissioner proposes to pass an order under section 32 which adversely affects any person he shall issue a notice to such person or the proprietor and a notice to the assessing authority or the appellate authority concerned as the case may be before whom the proceedings referred to in that section are pending and by whom the same have been disposed of or by whom the order has been made therein Such notice may be delivered personally or may be sent by registered post (acknowledgement due)

(2) The Commissioner shall pass an order under section 32 after consideration of any representation that may be made either in person or through any of its subordinates not below the rank of Taxation Inspector by the assessing authority or such other officer before whom the proceedings are pending or by whom these have been disposed of or by whom any order has been made therein and after giving an opportunity to the person or the proprietor of being heard either in person or by a duly authorized agent

(3) The provisions of sub rules (4) (5) and (6) of rule 18 shall *mutatis mutandis* apply in relation to the passing of an order by the Commissioner under section 32

Observation of the Committee

The Committee is of the view that provisions of Rule 19 are also not inconsonance within power of delegation given by the Act particularly in section 32 The Committee would like to discuss the same at the time of oral examination

The Department did not send any comment on the observation

Recommendation of the Committee

The Committee recommends that the provisions of rule 19 may be looked into so as to make it inconsonance with the provisions of the Act

Rule—21

21 (1) The Deputy Excise and Taxation Commissioner (Sales Tax) Incharge of the district may suo moto or on an application made to him in this behalf by order in writing transfer any case or proceedings or class of proceedings to any other assessing authority working under his control and may likewise transfer any such case (including a case already transferred) from one such officer to another

*Transfer of
proceedings
section 35*

(2) Jt Excise and Taxation Commissioner (Range) may suo motu or on an application made to him in this behalf transfer any case from the one district to another district in the area of his jurisdiction

(3) The Commissioner may suo moto or on an application made to him in this behalf by an order in writing transfer any appeal from one appellate authority to another

(4) The Commissioner may suo-moto or on an application made to him in this behalf by an order in writing transfer any revision from one revisional authority to another

(5) The order of transfer of any case by any authority shall be communicated to every party affected by the order and the taxing authority concerned

Observation of the Committee

The Committee recommends that in 3rd line of Sub Rule (1) of Rule 21 for the words 'by order' the words 'by an order' may be substituted to make the rule grammatically correct

The Committee further recommends that in 2nd line of Sub Rule (2) of Rule 21 after the words 'transfer any case' the words 'by an order in writing' may be added to make the Sub Rule more clear

The Committee would like to know as to what is the mode/ procedure to communicate the order of transfer of any case by any authority to the affected party and the taxing authority concerned

The Department in their written reply stated as under —

The recommendation of the Committee for substituting the words 'by an order' and 'by an order in writing' is accepted

An order is communicated either personally or through registered post acknowledgment due

Recommendation of the Committee

The Committee recommends that as agreed to by the Department rule 21 may be amended as per observations of the Committee made above

Rule—22

*Delegation
of powers
section 37*

22 (1) The Commissioner may under section 37(1) delegate in writing any of his powers to any officer not below the rank of an assessing authority

(2) Any assessing authority may by an order in writing authorize generally or in any particular case any officials subordinate to and working under its administrative control to exercise the powers conferred upon such authority under these rules to prepare and sign receipts notices challans and other documents and registers required to be drawn up maintained or issued under the Act or the rules

Observation of the Committee

The Committee would like to know for its information as to whether any restrictions and conditions for delegation of powers have been prescribed ? If so a copy thereto may be supplied to the Committee for its perusal

The Department did not send any comment in the matter

Recommendation of the Committee

The Committee recommends that rule 22 may be recast/ amended properly by prescribing the scope of restrictions and conditions of delegation of powers

FORM LT 1

[See rule 3(1)]

Application for registration under section 11(1) of the Haryana Tax on Luxuries Act, 2007

To

The assessing authority

(1) *I carrying on the proprietary business known as Or *I (name) the (State here capacity such as Partner Manager Managing Trustee Director Secretary Principal Officer) of (State here the name of the firm company local authority corporation society club association of individuals Hindu undivided family or trust) carrying on the business known as whereof the * only/ * principal place of business within the jurisdiction of the Assistant Commissioner/ Commercial Taxes Officer Circle In the district of is situated at House No Locality Road City hereby apply for registering me/ the said firm/ company/ local authority/ corporation/ society / club/ association of individuals/Hindu undivided family/ trust/ Government under sub section(1)of section 11 of the Haryana Tax on Luxuries Act 2007

(2) *The name and permanent residential address of the proprietor/* The names and permanent residential addresses of all the partners of the business or of all the members of the managing committee of the society club or other association or of all the Directors of a company or of all persons having any interest in the business (including the members of a Hindu undivided family business) their age and father s names are as follows —

Surname	Name	Father's name	Age	Permanent residential address
1	2	3	4	5

(If there are more than 5 names the above particulars shall be entered in a separate sheet which shall be affixed to this form duly signed and dated by the applicant)

(3) Date of commencement of the business

(4) The application for registration is made on account of

(a) turnover of receipts from guests availing themselves of luxuries in a hotel guest house or banquet hall for the period beginning 7th September 2007 having exceeded the prescribed limit

(b) shifting of place of business from to with effect from

(c) change in the constitution of the business from to with effect from

(d) *part/* entire transfer of business known as M/s with effect from

(5) The accounts of the said business are kept as per *the financial year /* the accounting year starting on and ending on

(6) The accounts of the said business are kept in the language

(7) *I/We have additional place/ places of business at the addresses enumerated below and have no other place of business in the State of Haryana

Name and style of business	Full address of additional places of business	Registration Certificate (Luxury Tax) No and its date of issue
1	2	3

(8) A copy of my recent photograph is affixed with this application

(9) The above statement is true to the best of my knowledge and belief

(10) Declaration by partners of a firm – We the undersigned hereby declare that we are carrying on the business in partnership known as at and other places in the State of Haryana and we state that the statements contained in this application for the registration of the said partnership

firm and this declaration are true to the best of our knowledge and belief —

Serial number	Full name of partner	Permanent residential address	Extent of share in the partnership	Names and addresses of other businesses in which the partner has any share of interest	Signature
1	2	3	4	5	6

Place

Date

(11) Declaration by a Manager Managing trustee Director Secretary or Principal Officer —

I (state here the capacity) of M/s that we are carrying on the business and we state that the statements contained in this application for registration of the said business and this declaration are true to the best of our knowledge and belief

Date

Place

Signature and Status

* Strike out whichever is not applicable

@ State here firm company local authority corporation society club association of individuals Hindu undivided family trust or Government as the case may be

** To be signed by the proprietor or any person duly authorized by him

For Office use only

Date on which called

Place at which called

Officer before whom called

Date

Signature of Receiving Officer

ACKNOWLEDGEMENT

Received an application in Form LT-1 from _____ for registration under section 11(1) of the Haryana Tax on Luxuries Act 2007

Serial No _____

Date on which called _____

Place at which called _____

Officer before whom called _____

Date _____

Signature of Receiving Officer _____

Observation of the Committee

The Committee observes that this form is very lengthy Will it not be desirable to simplify and summarize it to avoid any inconvenience to the applicant ?

The Committee would like to know for its information whether any opportunity is granted to the applicant to explain his case before the registration certificate is refused

The Department in their written reply stated as under -

The observation of the committee to simplify the form is accepted and the matter will be examined accordingly In the interest of natural justice an opportunity is being provided to the applicant to explain his case before passing any adverse order against him

Recommendation of the committee

The Committee recommends that form LT1 may be examined and simplified to achieve the purpose

FORM LT-2

[See rule 3(3)]

Certificate of Registration

This is to certify that M/s _____ whose place of business/
Head Office is situated at _____ has been granted a registration
certificate under Section 11(1) of the Haryana Tax on Luxuries Act 2007 subject to
the provisions of the said Act the rules framed thereunder with following conditions —

- (1) This certificate shall be exhibited at a conspicuous place within the premises of the business
- (2) A correct account shall be kept of the daily transactions at the place of business or additional business places
- (3) The registered proprietor shall afford all facilities for the checking of his business premises and shall at all reasonable times produce for inspection accounts or other documents and shall furnish fully and correctly any information in his possession as may be required for the purpose of the Act or the rules by any officer empowered in this behalf
- (4) The statements and returns shall be sent to the appropriate assessing authority within the time specified under the rules
- (5) This registration certificate shall not be transferred or sold nor shall it be amended without the permission of the assessing authority which shall be applied for and obtained
- (6) All corrections in this certificate shall be made and attested by the appropriate assessing authority
- (7) The registered proprietor shall be responsible for all the acts of his manager agent or servant

2 The registered proprietor has additional places of business as noted below -

- (a)
- (b)
- (c)
- (d)

3 This registration certificate is valid from _____ until cancelled

4 The holder of this registration certificate shall be liable to pay tax with effect from _____ (date) and shall file the tax returns and pay tax due according to such returns on basis so long as he remains liable to pay tax unless directed otherwise under the Act

Date

(Signed)
assessing authority

Observation of the Committee

The Committee would like to know under which section of the Act the transfer or sale of registration certificate is permissible

The Department in their written reply stated as under —

No such section is provided under the Act

Recommendation of the Committee

The Committee recommends that in view of the reply of the department para (5) of this form may be amended so as to make it in consonance with the provisions of the Act

FORM LT-3

(See rule 5)

Challan of Luxury Tax payable under the Haryana Tax on Luxuries Act 2007

Head of Account 0040 102(State Sales Tax) –

Original

Sub minor head 96(other receipts)

(for the payer)

Challan of luxury tax/ interest/ penalty paid into the
Sub-Treasury / State Bank of India for the month(s) of

Treasury /

Name of the Hotel

Amount
(in figures)

Payment on account of

Rs

P

Observation of the Committee

The Committee would like to know for its information as to whether the head of account given in this form is correct

The Committee would like to know as to whether there is any provision to pay the luxury taxes in cash also

The department did not reply in the matter

Recommendation of the Committee

The Committee recommends that if there is no provision of depositing the luxury tax in cash then this aspect may be considered to facilitate the tax payers

FORM – LT-4

[(section 13 read with rule 10(1)]

Luxury Tax R C No

**Return of Tax payable by a Hotelier / Banquet Hall owner under the
Haryana Tax on Luxuries Act, 2007**

(All figures shall be rounded off to the nearest rupee)

Name and full address of the

Hotelier /

Banquet Hall owner

Luxury Tax R C No

PART –I

Computation of turnover of receipt liable to tax

1 Total turnover of receipts during the period (This shall be calculated on the basis of tariff rates having regard to section 2(k) and (l) of the Act)

Deduction

Turnover of receipts where the charges for luxury provided in the hotel/banquet hall are less than Rs 2 000 per day or Rs 20 000 per occasion and hence tax is not payable thereon

B Turnover of receipts on which tax is not payable on account (other than (A) above) of

2 Net turnover of receipt liable to tax

PART –II**Calculation of tax payable****3 Calculation tax**

Serial no	Categories of receipts which are the constituents of turnover at Item No 2	Tax rate	Turnover over of receipts	Deduction	Balance turnover of receipts liable to tax	Tax payable@ specified in Col 3
1	2	3	4	5	6	7
	Where the charges for luxury are Rs 2000/20 000 or more					
	Total			(Net turnover as per Item No 2)		Total tax payable

PART III**Amount payable/refundable as per the return**

4 Total tax payable as per Part II

Deduct

(A)	Amount credited under refund adjustment order No Dated	Rs
(B)	Refund of Rs due as per previous return for the period from to adjusted against tax payable in this return	
(C)	Amount paid by – Challan No Dated Challan No Dated	Rs Rs
(D)	Total amount deducted on account of (A) (B) (C) above	Rs

5 Net amount payable

6 Net amount refundable if any

7 Interest under section

8 Penalty under section

9 Amount payable / refundable as per this return
Amount paid with this return (in figure)

In words amount paid in by Draft/P O
No dated of Bank

The above statement is true to the best of my knowledge and belief

Place

Signature

Date

Status

Strike out whichever phrase/clause is not applicable

Observation of the Committee

The Committee would like to know as to whether the tax paid by an Hotelier/ Banquet Hall Owner paid in excess is refunded to him during the same financial year or it is adjusted against the tax payable in the subsequent year

The Committee would further like to know whether any concession is given to such tax payer in lieu of advance tax paid in excess by him

The Department in their written reply stated as under —

Any excess tax determined at the time of finalizing of assessment is refunded to the owner at his option to get it refunded or get it adjusted towards future liability

No concession is given to such a tax payer in lieu of advance tax paid in excess

Recommendation of the Committee

The Committee recommends that the Department may consider to give some incentive to the advance tax payers

FORM LT-5

[see rule 11(1)]

Notice under sections 14(4), 15, 16 and 17 of Haryana Tax on Luxuries Act, 2007

To

(Name) Shri/M/s

Registration No

Office of the assessing authority District

WHEREAS—

- (a) you have failed to submit statement for the month of _____ as required under sub section (1) of section 14 of the Act or your statement for the month of _____ is incomplete and / or incorrect making you liable to be provisionally assessed to tax to the best of my judgement under sub section (4) of section 14 of the Act or
- (b) I am not satisfied that the return(s) filed by you under sub-section (1) of section 13 for the financial year ended _____ day of _____ is / are complete and correct and it appears to me to be necessary to make an assessment under sub section (2) (a) or 2 (c) of section 15 of the Act 2007 in respect of the above period

OR

- (c) you being a registered proprietor have failed to furnish the returns for the period from _____ to _____ and have thereby rendered yourself liable to be assessed to the best of my judgement under section 15(3) of the Act
- (d) in consequence of definite information in my possession I have reason to believe that the turnover (or part thereof) of your business assessable to luxury tax for the year ending the 31st March _____ has escaped assessment or has been assessed at a lower rate I therefore propose to assess the tax on the said turnover to the best of my judgement under section 16(1) of the Act
- (e) I am satisfied on information which has come into my possession that you have been liable to payment of tax under the Act but you have failed to apply for registration and have thus rendered yourself liable to be assessed to tax and liable to a penalty under

section 17 of the Act Now therefore you are hereby directed to—

- (i) appear in person or by an agent
 - (ii) produce evidence or have it produced in support of the returns
 - (iii) produce or cause to be produced accounts registers cash memos or other documents shown in the list given below —
- at (Place) (time)
- (date)

2 Please take notice that in the event of your failure without sufficient cause to comply with this notice you shall render yourself liable to be assessed to tax to the best of judgement

Seal of assessing authority

Date

Signature
assessing authority
District

List of documents—

- 1 Cash book
- 2 Bank pass book(s)
- 3 General ledger(s)
- 4 Bill register (s) (if any)
- 5 Counter foil or copies of bills and cash memoranda
- 6 Register of forms
- 7 Stock register (s) and ledger (s)
- 8 Trading account
- 9 Profit and loss account
- 10 Balance sheet
- 11 Correspondence
- 12 Any other documents necessary to prove correctness of returns

Note — Strike out whichever is unnecessary

Observation of the Committee

The Committee would like to know for its information as to whether there is any time limit to decide the appeal review or revision against the penalty imposed under section 17 of the Act

The Committee recommends that in the last line of para 2 of this form for the words 'best of judgement' the words 'best of my judgement on the basis of relevant official record/information' may be substituted to make the rule more clear

The Department in their written reply stated as under -

No time limit is prescribed under the Act

The observation of the Committee will be considered for amending the rules

Recommendation of the Committee

In view of the reply of the Department the Committee recommends that some time limit may be prescribed to decide the appeal review or revision against the penalty imposed under section 17 of the Act. As observed above by the committee para (2) of the form may be amended accordingly to make the rule more clear

FORM LT-6

(See rule 14)

**Notice under sections 16, 17, 18, 19 and 20
of the Haryana Tax on Luxuries Act 2007**

Before Shri

(Name and Designation)

To

(Name) Shri/ M/s

(Address)

WHEREAS

I am satisfied that the whole or part of the charges for luxury provided in the Hotel or Banquet Hall have escaped assessment / or have been assessed at a rate lower than the rate at which they are assessable Further I am *prima facie* of the view that the escapement aforesaid is on account of wilful non- disclosure of the charges by you rendering you liable to action under sub section (2) of section 16 of the Act

OR

I am satisfied that you being a proprietor liable to pay tax under the Act for the period _____ have failed to apply for registration and that the said failure *prima facie* is wilful rendering you liable to penalty under section 17 of the Act

OR

I am satisfied that you being a proprietor have collected / not collected tax in violation of sub section (1) of section 18 of the Act rendering you *prima-facie* liable to a penalty under sub section (2) of section 18 of the Act

OR

You being a registered proprietor have committed violations as specified in clauses (a) (b) (c) or (d) of section 19 of the Act rendering you *prima facie* liable to imposition of penalty under section 19 (d) of the Act

OR

You being a registered proprietor have committed the violation as specified in section 20 of the Act which *prima facie* render you liable to penalty under the said provision

Note —Attach details whenever necessary

In view of above you are hereby directed to attend in person or through a person duly authorized by you in writing in that behalf before the undersigned to explain on or before ____ at ____ as to why you should not be penalized for the

offence / offences specified hereinabove You can produce or cause to be produced any documentary evidence in support of your explanation on the time and date mentioned above

(Seal)

Signature

Date

Designation

Observation of the Committee

The Committee would like to know for its information as to what is the mode/ procedure to serve notice upon the proprietor of a hotel/banquet hall

The Department in their written reply stated as under -

The Notice is served either personally or through registered post acknowledgement due

Recommendation of the Committee

The Committee recommends that mode of service of notice upon the proprietor may be mentioned in the relevant rule and the form to make it more specific

FORM LT-8

[See rule 4 (1) (d)]

SURETY BOND

Know all men by these presents that I/we (full name) (full address) Luxury Tax Registration No (if any) am/ are held and firmly bound to the Governor of Haryana (hereinafter referred to as 'the Government' which expression shall unless excluded by or repugnant to the context include his successor in office and assigns) in the sum of Rs (rupees) hereinafter referred to as the said sum to be paid to the Government on demand for which payment will and truly to be made I / we bind myself/ ourselves/my/our heirs executors administrators and legal representatives by these presents

Whereas the above bounden has been required by the assessing authority (name of place) to furnish security for the said sum for proper use and custody of forms and for the purpose of securing the payment of any amount payable on account of tax interest or penalty by him/ them under the Haryana Tax on Luxuries Act 2007 (hereinafter referred to as the 'Act') within the time provided and in the manner specified and to indemnify the Government against all losses costs or expense which the Government may in any way suffer sustain or pay by reasons of the omission default or failure or insolvency of the above bounden or any person or persons acting under or for him/ them to pay the said sum in the manner and by the time provided by or under the said Act and the rules

Now the condition of the above written bond is such that if the above bounden his/ their heirs executors administrators and legal representatives or any other person acting under or for him/ them pays the full amount due in the manner and within the period specified under the said Act and rules on demand by any authority appointed by the Government under section 3 of the said Act such demand to be in writing and to be served upon the above bounden his/ their heirs executors administrators and legal representatives or any other person acting under or for him/ them in the manner and within the period provided by or under the Act and the rules made thereunder and shall also at all times indemnify and save the Government from all and every loss costs or expenses which have been or shall or may at any time or times hereafter during the period in which the above bounden is held liable to pay any sum due under the said Act be caused by reason of any person acting under or for him/ them this obligation shall be void and be of no effect otherwise the same shall be and remain in full force and effect and it is hereby further agreed that in the event of the death/partition/disruption/dissolution/winding up or the final

cessation of the liability under the Act or the rules thereunder of the above bounden this bond shall remain with the aforesaid authority for recovering any sum that may be payable by the above bounden/ or any loss cost or expenses that may have been sustained incurred on insolvency of the above bounden his/ their heirs executors administrators and legal representatives and which may not have been discovered until after the above bounden s death /partition /disruption/ dissolution/ winding up or final cessation or his/ their liability under the said Act or the rules made thereunder

Provided always that without prejudice to any other right or remedy for recovering any sum due under the Act or loss or damages as aforesaid it shall be open to the Government to recover the amount payable under this bond as arrears of land revenue

In witness whereof the said (full name) has hereunto set his/ their hand(s) this day of

Signed and delivered by the above named in the presence of witnesses

Sign

Signature

1 (Full Name)

Status

2 (Full Name)

We (1)

(2)

(Name and full address of the sureties) hereby declare ourselves to be sureties for the above bounden and guarantee that he/ they shall do and perform all that he/ they has/ have above undertaken to therein we hereby bind ourselves jointly and severally to pay to the Government the sum of Rs (rupees) in which the above bounden has bound himself or such other lesser sum as shall be deemed to be sufficient by the assessing authority to recover any sum payable by the above bounden and remaining unpaid and also to recover any loss damage cost or expenses which the Government may sustain incur or pay by reasons of such omission default or failure

And we agree that the Government may without prejudice to any other rights or remedies recover the said sum from us jointly and severally as arrears of land revenue

And we also agree that neither of us shall be at liberty to terminate this surety bond except upon giving to the assessing authority six calendar months notice in writing of our intention to do so and our joint and several liability under this bond shall continue in respect of all acts omissions defaults failure and insolvencies on the part of the bounden until the expiration of the said period of six months

Signature of the sureties in
Presence of witnesses

1 Signature
(Full Name)

2 Signature
(Full Name)

Names complete address and
signatures of witnesses

1 Signature
(Full Name)
Permanent Address

2 Signature
(Full Name)
Permanent Address

Observation of the Committee

The Committee would like to know the section/authority under which this form has been formulated

The Committee would like to know the criteria to determine that the sureties are solvent

The Department in their written reply stated as under -

Sub section (3) of Section 11 provides power to the assessing authority to demand security Section 40 provides power to the Government to make rules and hence the creation of Form LT 8

Unless as person standing a surety is declared insolvent the business turnover statement of assets owned by him and personal knowledge of the assessing authority are the factors to arrive at a decision that the surety is solvent

Recommendation of the committee

The committee recommends that section 40 may be mentioned in the heading of the form and some criteria may be prescribed in the rule/Form to determine that sureties are solvent as personal knowledge of the assessing authority is not a proper criteria in this regard

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