



TWELFTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
SUBORDINATE LEGISLATION
(2006-2008)**

FIRST REPORT

(Presented on 27th March, 2007)

SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2007

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COMPOSITION OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (2006-2008)

Chairman :

Shri Jose Thettayil

Members :

Shri P. Krishna Prasad
,, Murali Perunelly
,, V. Sasikumar
,, Simon Britto Rodrigues
,, K. Sivadasan Nair
,, P. Thilothaman
,, Thomas Unniyadan
,, M. Ummer

Legislature Secretariat :

Dr. N. K. Jayakumar, Secretary
Smt. R. Prasanna Kumari, Joint Secretary
Shri M. P. Syed Abdul Khader, Deputy Secretary
Smt. P. Jayalekshmi, Under Secretary

INTRODUCTION

I, the Chairman, Committee on Subordinate Legislation, having been authorized by the Committee to present this report on their behalf, present this, the First Report of the Committee.

This Report is based on the action taken by the Government on the recommendations/observations contained in the Fifth Report of the Committee on Subordinate Legislation of the Eleventh Kerala Legislative Assembly.

The Fifth Report of the Committee on Subordinate Legislation (2001-2003) was presented to the Assembly on 30th July 2003. The Government have furnished their replies indicating the action taken by them on various recommendations/observations contained in the Report. The Committee considered all the replies received from the Government at their various sittings.

The Committee considered and finalized this Report at their meeting held on 13-2-2007.

JOSE THETTAYIL,

Chairman,

Committee on Subordinate Legislation.

Thiruvananthapuram,
27th March, 2007.

**The action taken by Government on the Recommendations/
observations contained in the Fifth Report of the Committee
on Subordinate Legislation (2001-2003-XI KLA)**

CHAPTER I

REPORT

The Fifth Report of the Committee on Subordinate Legislation (Eleventh Kerala Legislative Assembly) contained recommendations/observations on SROs issued by Government during the year 1999, 2000 & 2001, under the provisions of the Abkari Act, (Act I of 1077). The Government have furnished replies showing the action taken by them on the recommendations/observations.

2. The Committee accepts the replies furnished by the Government in respect of the recommendations/observations included in Chapter II of this Report.

3. Chapter III of the Report contains recommendations/observations in respect of which replies received from Government are not accepted by the Committee, the reason thereof, together with further remarks of the Committee and the final reply received are given below the respective recommendations.

CHAPTER II

**Recommendation in respect of which replies from Government
have been accepted by the Committee.**

S.R.O's issued under Abkari Act (I of 1077)

- (1) SRO No. 23/99 [GO (P) No. 5/99/TD. dated 5-1-1999]

Recommendation No. 8

As regards, the SRO, the Committee decided to reiterate their earlier remarks that the number and date of the amendment of SROs issued in between must be mentioned in the Explanatory Note.

Reply from Government

This will be considered while issuing the amendments in future.

(Government Letter No. 16820/G1/03/TD. Dated 13-2-2004)

- (2) SRO No. 179/99 [GO (P) No. 39/99/TD. Dated 26-2-1999]

Recommendation No. 15

The auction sale of Abkari Shops were confirmed or rejected by the Board of Revenue before it was abolished; On the abolition of the Board of Revenue the power is vested in the Commissioner of Excise; As the Government have decided to entrust the power of confirmation/rejection of the auction sale of Abkari Shops to a Committee consisting of the Commissioner of Excise, Joint Commissioner of Excise and Secretary to Government Finance (Expenditure) Department, the amendment has been made.

The Committee therefore suggest to make similar amendments in other rules, wherever the words 'Board of Revenue' occur. For eg. in definition, (Rule2) in rule 3(1) and to its proviso and in sub-rule (10) of Rule 5.

Reply from Government

As Government have done away with the system of auction of toddy shops and the Abkari Shops Disposal Rules, 1974 has subsequently been repealed by the Abkari Shops Disposal Rules, 2001 and 2002, no further action is required in this regard.

[Govt. Lr. No. 16820/G1/03/TD. Dated 13-2-2004]

- (3) SRO No. 127/99 [G.O (P) No. 22/99/TD. Dated 5-2-1999]

Recommendation No. 22

It could be inferred that since the misuse of the facility of possessing 4.5 litres of IMFL without permit has been found the Government reduced the quantity to 1.5 litres, the Committee express doubt whether the intention of the Government behind the reducing of quantity of IMFL that can be possessed and transported without permit, can serve the aim in its full extent. The Committee wish to be informed of the real benefit and aim of the Government behind this notification.

Reply from Government

As has been pointed out in the explanatory note, Government had permitted to possess 4.5 litres of IMFL. Later it was found that there was large scale misuse of this facility. The aim of issuing the amendment was to minimize this misuse.

Now the condition has again changed when Government noticed that the Excise Official themselves have a tendency to book cases of such individual possessions having more than 1.5 litre of liquor and to let off large quantities of unauthorized possessions. So Government have enhanced the limits of individual possession as follows:—

IMFL	3 litres
Beer	7.8 litres
Wine	7.8 litres

[Vide G.O. (P) 127/2003/TD. Dated 2-8-2003]

[Govt. Letter No. 16820/G1/03/TD. Dated 13-2-2004]

(4) SROs No. 128/99 [GO (P) No. 28/99/TD. Dated 5-2-1999]

Recommendation No. 26, 28, 29.

26. The second amendment, as a new proviso, the Committee commended, served no purpose rather than an advertisement for transportation of liquor.

28. The new proviso proposed to be added by (b) of Rule 2 also appeared to the Committee to be unnecessary in the context.

29. The Committee direct to enquire the necessity for making the second amendment i.e.(a) and (b) in Rule 11-A.

Reply from Government

As per G.O.(P) No. 22/99/TD. Dated 5-2-1999 published as SRO No. 127/99, Government notified that the quantity of IMFL other than beer, wine and FMFL that can be possessed and transported without licence would be 1.5 litres. But corresponding changes were not brought about in the Rule. This notification was issued to give effect to the decision in the Foreign Liquor Rules.

[Govt. Letter No.16820/G1/03/TD. Dated 13-2-2004]

(5) SROs No. 170/99 [GO(P) No. 33/99/TD. Dated 23-3-2003]

Recommendation No. 55

55. The Committee note with serious concern that most of the notifications issued under Abkari Act were not laid before the Assembly. The Committee recommend to lay all future S.R.Os. issued under the Act in the next immediate session of the Assembly and fix responsibility against the Officers who violate this procedure. They also recommend to add the laying formula in the Abkari Act by introducing fresh Amendment Bill.

Reply from Government

This is only a sale notification. As per rule the sale dates are to be notified in the Gazette before 7 days of proposed sale. This notification is issued to achieve the above purpose. This is not an amendment notification as noted by the Committee.

Govt. Letter No.16820/G1/03/TD. Dated 13-2-2004]

(6) SROs No. 259/2000 [GO (P) No. 13/2000/TD. Dated 21-8-2000]

Recommendation No. 107, 113, 114

107. The Committee desire to obtain precise details in this regard.

113. The Committee fear that the present and past arrears occurring over a period of time, are an end result of the above provisions incorporated in the rules.

114. The Committee therefore suggest that there does not seem to be need of any leniency, by virtue of these provisions, and recommend in this connection to amend or modify the said provisions suitably, in order to prevent any possible misuse in this regard.

Reply from Government

The matter is under consideration of Government.

[Govt. Letter No.16820/G1/03/TD. Dated 13-2-2004]

[(7) SRO No. 274/2000 GO (P) No. 47/2000/TD. Dated, 27-3-2000]

Recommendation No. 121

121. The Committee decide to seek clarification as to whether the toddy is analysed, and discover whether the quantity of alcohol exceeds the prescribed percentage on each day before sale, and under such circumstances, what penal action is taken against the licencees who are authorised to sell toddy through those shops.

Reply from Government

The Excise Officials are authorized to conduct periodical inspections to ascertain whether there are any malpractices being committed by the contractors. At the time of inspection the Excise officials take samples of toddy and get it analyzed through analytical labs. When instances of alcohol contents above the prescribed limit is noticed penal action against the contractor by way of cancellation of licence, registration of Abkari cases, imposition of fine etc. are taken.

[Govt. Letter No. 16820/G1/03/TD. Dated 13-2-2004]

(8) SROs No. 280/01 [GO(P) No. 26/01/TD. Dated 17-3-2001]

Recommendation No. 140, 141.

140. The Committee understand that these rules have not been laid before the Assembly,

141. The Committee reiterate their suggestions in respect of S.R.O. No. 170/99, given earlier.

Reply from Government

Necessary instruction has been given to the concerned to take timely action to place the SRO before the Assembly.

[Govt. Letter No.16820/G₁/03/TD. Dated 13-2-2004]

(9) SRO No. 281/01/ [GO(P) No. 27/01/TD. Dated 17-3-2001]

Recommendation No. 148, 150, 152.

While Examining this SRO Committee noted that no reference to the words in the notification could be seen in the original rules.

148. The Committee wish to learn the reason for this occurrence.

Also the Committee feel strongly that the invoking of section 10 of the Abkari Act to effect this amendment is not appropriate as the said section is seen to relate to transporting of liquor or intoxicating drug and states;

“No liquor or intoxicating drug, exceeding such quantity as the Government may, from time to time, prescribe by notification in the gazette either generally for the whole state or for any local area, shall be transported except under a permit issued under the provisions of the next following section”.

150. The Committee desire to obtain clarification in this regard

152. The Committee understand that these rules also have not been laid before the Assembly, and reiterate their suggestion to SRO. No. 170/99 and 280/2000 given earlier.

Reply from Government

The matter is being examined in consultation with the Excise Commissioner. Necessary instruction has been given to the concerned to avoid the omission in laying the SRO before the Assembly.

[Govt. Letter No.16820/G1/03/TD. Dated 13-2-2004]

[(10) SRO No. 338/2001 GO (P) No. 40/2001/TD. Dated 13-3-2001]

Recommendation No. 158

158. While scrutinising the SRO, the Committee commended that the issuance of two notifications of different subjects, and with different Government Order numbers bearing the same SRO numbers could make matters confusing and misleading

Reply from Government

The SRO Numbers are assigned in the Government Presses. This discrepancy is being brought to the notice of the Superintendent of Government Presses, Thiruvananthapuram to avoid such instances in future.

[Govt. Letter No. 16820/G1/03/TD. Dated 13-2-2004]

CHAPTER III

Recommendations in respect of which replies received from Government have not been accepted by the Committee and further clarifications sought .

SRO No. 180/99 [GO (P) No. 44/99/TD. Dated 26-2-1999]

Recommendation No. 36, 37

It is seen that the Toddy Shops of Nagankulangara was abolished during the year 1995-96. But the reason for abolishing the same is not seen mentioned in the explanatory note. Likewise, the grounds for restoring the same through a Government order after approximately 3 years, was also not seen stated in the same,

36. The Committee seek clarification from the concerned Department in this matter.

37. The Committee also stress the need to define the purpose and reason of issuing an SRO in the Explanatory Note for giving clarity on the same.

Reply from Government

The matter is being examined in consultation with the Excise Commissioner.

[Govt. Letteer No. 16820/G1/03/TD. Dated 13-2-2004]

The meeting of the Committee held on 31-3-2004 examined the above reply and desired to be informed of the latest position in this regard.

Further Reply from Government

In the Excise Policy for 1995-96 Government have decided inter alia that a certain number of Arrack Shop and Toddy Shop shall be closed down. Accordingly 31 toddy shops including Toddy Shop No. 142 (Nagankulangara) of Cherthala Range were abolished. The Cherthala Taluk Chethu Thozhilali Union have submitted representation before the Government to restore the Toddy Shop No. 142 of Cherthala Range considering the fact that the shop was functioning in an unobjectionable place and also the toddy workers attached with the shop find it difficult to get employment in any of the other Toddy Shops. Meanwhile certain labourers of the shops filed O. P. No. 26106/98 before the Hon'ble High Court of Kerala and Hon'ble Court in its judgment dated 7-1-1999 directed the authority to consider the representation; pending in the matter and take appropriate decisions in accordance with law without any delay. Government have examined the case in detail and restored the Toddy Shop No.142 (Nagankulangara) of Cherthala Range vide G. O.(Rt) No.136/99/TD dated 22-2-1999.

The recommendation of the Committee to “define the purpose and reason of issuing an SRO should be clearly mentioned in the explanatory note for giving clarity on the same” will be strictly observed in future.

[Govt. Letter No. 16820/G1/2003/TD. Dated 28-12-2005]

The Committee at its meeting held on 21-12-2006 considered the above reply and approved the same.

SRO No. 486/2000 GO(P) No. 88/2000/TD. dated 2-6-2000.

Recommendation No. 93 & 94.

93. The Committee like to point out that there is specific provision in the rules that interest should be liquidated first from the principal on Abkari arrears. They find numerous circular instructions also in this regard. Yet the Officials have not carried out these instructions. Had it been done adjusting interest first against principal on all remittances, huge interest could not have been accumulated in astronomical figures. The Committee, therefore, recommend to fix responsibility and to take strong penal action against the persons responsible, who violated the principles.

94. As the Act and Rules do not approve the reductions, the Committee recommend to stop all concessions on tax arrears. Instead the Department should adopt various methods available as per the Act, such as cancellation of license and non-renewal of Licensee and permits. The department can also resort to revenue recovery proceedings and imprison those culpable defaulters who declare themselves insolvents. The Committee also support recommendation made by PAC to empower the Taxes Department with initiating Revenue Recovery Proceedings rather than it be done by Land Revenue Authorities which cause inordinate delay. The Revenue Recovery Act shall be amended to this effect.

Reply from Government

This is a policy decision of the Government. The Commissioner of Excise reported that there are huge amount of Abkari arrears pending collection. The total amount of arrears as Principal was Rs. 137,12,04,483 as on 30-11-1999. She opined that if some sort of concessions were given to the defaulters, remittance of old arrears would be augmented. Hence the proposal was examined in consultation with Finance Department and as concurred by them, the Cabinet approved the suggestion. Accordingly necessary amendments were issued in this regard. The total amount collected by extending this concession, is being collected from the Commissioner.

[Govt. Letter No. 16820/G1/03/TD. Dated 13-2-2004]

Further Recommendations of the Committee

The Committee considered the above reply and decided to obtain the details regarding the amounts collected towards principal and interest as Abkari dues after the issuance of this SRO. The Committee have also decided to seek the details of pending amount both as interest and principal towards Abkari dues in the State as on 31-3-2004 and also to inform the date of approval and by the Cabinet as mentioned in the action taken statement

Further Reply from the Government

An amount of Rs. 8,31,26,189 had been collected under the Amnesty Scheme. District-wise breakup of the amount collected is furnished below.—

Thiruvananthapuram	2736855
Kollam	4849496
Pathanamthitta	1918891
Alappuzha	1253875
Kottayam	18537669
Idukki	3118422
Ernakulam	8932335
Thrissur	12122426
Palakkad	109500
Kozhikode	6690826
Malappuram	1560792
Wayanad	11422451
Kannur	7297747
Kasaragod	<u>2574904</u>
Total	<u>83126189</u>

Introduction of Amnesty Scheme is under consideration of Government.

Cabinet decision on giving concession to defaulters on remittance of old arrears was taken on 31-5-2000.

[Govt. Letter No. 16820/G1/03/TD. dated 28-12-2005]

The Committee at its meeting held on 21-12-2006 considered the above reply and approved the same.

SRO No. 412/2001 [G.O (P) No. 53/2001/TD. dated 20-4-2001]

Recommendation No. 162 & 163

162. The Committee understand that the aim of the notification is to extend the date that is prescribed earlier for remitting the rental amount. The Committee doubt in this connection whether the Government could achieve the object through the extension in the date for another 10 days.

163. The Committee also desire to know whether all the Co-operative Societies have remitted 30% of the rentals before the extended time of 30th April, 2001, and if not what action had been taken to recover the dues from the Co-operatives for the period they have run the toddy shops.

Reply from Government

The matter is under correspondence with the Excise Commissioner,
[Govt. Letter No. 16820/G1/03/TD. dated, 13-2-2004]

Further Recommendation

The Committee desires to be informed of the latest position of the matter.

Final reply from Government

The Co-operative Societies of 21 Ranges had not remitted 30% Security Deposit in time ie., on or before 30-4-2001. But subsequently the Co-operative Societies of 12 Ranges had remitted the amount by 9-5-2001. R.R.C have been issued in the other 9 cases to collect the arrear amount.

[Govt. Letter No. 16820/G1/03/TD. dated 28-12-2005]

The committee at its meeting held on 21-12-2006 considered the above reply and approved the same.

JOSE THETTAYIL,

Thiruvananthapuram,
27th March, 2007.

Chairman,
Committee on Subordinate Legislation.