



TWELFTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
SUBORDINATE LEGISLATION
(2009-2011)**

TWELFTH REPORT
(Presented on March 25, 2010)

On

**The Action Taken by Government on the Recommendations/Observations
contained in the Sixth Report of the Committee on Subordinate
Legislation (2004-06)**

SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2010

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COMPOSITION OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (2009-2011)

Chairman :

Shri Mathew T. Thomas

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,, V. Chenthamarakshan
,, Simon Britto Rodrigues
,, K. Sivadasan Nair
,, P. Thilothaman
,, Thomas Unniyadan
,, M. Ummer

Legislature Secretariat :

Shri P. D. Rajan, Secretary
Smt. T. Usha Devi, Special Secretary
,, J. Sarala Devi, Deputy Secretary
,, P. Jayalekshmi, Under Secretary

INTRODUCTION

I, the Chairman of the Committee on Subordinate Legislation having been authorised by the Committee to present this Twelfth Report on their behalf, present this, the Twelfth Report of the Committee.

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

The Sixth Report of the Committee on Subordinate Legislation (2004-06) was presented to the House on February 5, 2004. The Government has furnished replies indicating the action taken in regard to the recommendations/observations contained in the Report. The Committee considered the action taken by the Government at its various sittings.

The Committee considered and finalised this Report at its meeting held on March 22, 2006.

Thiruvananthapuram,
25th March, 2010.

MATHEW T. THOMAS,
Chairman,
Committee on Subordinate Legislation.

REPORT

CHAPTER I

This Report contains the action taken by the Government on the recommendations/observations contained in the Sixth Report of the Committee on Subordinate Legislation (2004-2006).

The Sixth Report of the Committee on Subordinate Legislation was presented to the House on February 5, 2004. This Report was prepared based on the scrutiny of S.R.Os. issued under the Abkari Act, (1 of 1077) and the S.R.Os. issued under the Motor Vehicles Act, 1988, Kerala Motor Vehicles Rules, 1989 and Central Motor Vehicles Rules 1989. Government has furnished replies indicating the action taken in regard to the recommendations/ observations contained in the Report. The Committee considered the action taken statements furnished by the respective Government Departments in detail and accepted the replies in respect of all the recommendations.

This Report contains 3 Chapters. The 2nd and 3rd chapters contain two parts each, where part A contains the recommendations of the Committee in respect of which replies from the Government have been accepted by the Committee and part B contains the details of recommendations in respect of which replies from Government have been considered by the Committee and further clarification sought.

CHAPTER II

S.R.Os. issued under the provisions of the Abkari Act, (1 of 1077)

Part A—Recommendation in respect of which replies from Government have been accepted by the Committee.

*(a) S.R.O. No.920/2001/ [G.O.(P) No. 115/2001/TD. dated, 8-10-2001]
Recommendation No. 1 to 4*

1. By this notification, the Government have amended the Foreign Liquor Rules by adding a new Sub-rule after Sub-rule (14) of Rule 13 which states:—

“(15) Notwithstanding anything contrary contained in these rules, if the Government are satisfied that the annual rental/fee prescribed for the license issued under rule 13 is not reasonable, they may enhance the annual rental/fee at any time during the course of a financial year and on such enhancement all licensees are liable to remit the difference between the amount of annual rental/ fee already remitted and the enhanced rental/fee”.

2. The Committee noted that Government has vested some sort of a residuary power by bringing a new provision as Sub-rule (15) to Rule 13. By this new rule, Government is empowered to enhance the fee/rental at any time during a financial year, if the Government is satisfied that such rental/fee is not reasonable. **The Committee desires to know in what sense of connotation the word 'reasonable' is used.**

Reply from Government

The State has a monopoly in trade of liquor and has the right to yield maximum profit out of it. If the Government is satisfied that at a given circumstance, the fee levied is not in commensurate with the profits earned by the licences, the State can make a reasonable hike in licence fee. The Word 'reasonable' means profitable to the State.

The meeting of the Committee held on 24-11-2004 considered the reply and accepted the same.

Recommendation No. 13

During the visit of the Committee to Alappuzha, the Assistant Excise Commissioner, Alappuzha has informed the Committee that several cases of spirit confiscation are pending disposal in the district for a long time. The main reason for this pathetic situation is the delay in getting the Chemical Examination Report from the Chemical Examination Laboratory. Earlier, Chemical Examination Laboratories were functioning in every district headquarters which were later abolished. At present, there are only three zonal laboratories functioning in the State and these are over burdened with work. This resulted in the illegal spirit or liquor confiscated all over the State being sent to these three laboratories for examination. The result of the examination of these samples are naturally pending in these laboratories for three to four years which in turn delays the disposal of the cases. The Assistant Excise Commissioner had, therefore, suggested that had there been one Chemical Examination Laboratory in each district, the situation could have been improved. **The Committee considers that this is a reasonable demand and hopes that the Government would give due consideration to this aspect.**

Reply from Government

Before the arrack ban in 1996, Mobile Testing Laboratories were functioning in each Excise Division. But only arrack was tested in these laboratories and were later abolished after arrack ban. At present only 3 zonal Chemical Examination laboratories are functioning in the state and these laboratories are over burdened with work. The Excise Commissioner has agreed

with the recommendation of the Committee and informed that necessary proposal for re-establishing Mobile testing Laboratories in each district is being obtained from Excise Commissioner.

The Committee considered and accepted the reply on 21-12-2005.

Recommendation No. 26

S.R.O. No.199/02 [G.O. (P)No. 25/02/TD., dated: 31-3-2002]

The Committee is of the view that instead of quoting rule 4 the Department should have specified the rule as sub-rule (4) of rule 4 in the preamble as well as in the explanatory note of this notification.

Reply from Government

The recommendation of the Committee will be observed strictly in future.

The Committee considered the reply and accepted the same on 24-11-2004.

Recommendation No. 29

S.R.O. No. 659/01 [G.O. (P)No. 79/01/TD., dated: 30-6-2001]

By this notification the Government has amended the Abkari Shops Disposal Rules, 2001. The Committee noted, in the course of the examination, that the reason for sanctioning the additional 55 Foreign Liquor-I shops, was not seen mentioned in the explanatory note of the SRO.

The Committee, therefore, wants to know the circumstances, which led to the issuance of the SRO.

Reply from Government

The Government considered the fact that there are 18 ranges in the State without FL1 shops and vast areas without facilities for getting genuine IMFL at reasonable prices, which may lead to the sale of illicit liquor, Moreover the conduct of the FL1 shops by KSBC and Consumer Federation has proved a success and that it has effectively prevented the entry of "seconds" in the market. Government therefore sanctioned 55 additional FL1 shops.

The Committee considered and accepted the reply on 24-11-2004.

Recommendation No. 32

S.R.O. No. 660/01 [G.O.(P)No. 80/01/TD., dated: 30-6-2001]

By this notification, the Government had notified the number of additional Foreign Liquor –I shops to be opened under each division as specified in the

Abstract of Abkari shops and specified the names of ranges and the number of shops in each range, and also fixed the limits within which the shops may be located.

The Committee noted that the main purpose of sanctioning the shops, as mentioned in explanatory note, was to prevent the entry of “Seconds” in the IMFL market. Though the term “Seconds” used in this regard, was understood to be used to denote illegal or impure liquor, the propriety of the term was not explained properly in the notification.

The Committee, therefore desires that the Government may explain the propriety of the term “Seconds” used in the Explanatory Note.

Reply from Government

By ‘seconds’ Government means the liquor sold illegally without paying the legitimate tax.

The Committee considered and accepted the same on 24-11-2004.

Recommendation No. 45

S.R.O. No. 330/02 [G.O.(P)No. 64/02/TD., dated: 3-5-2002]

By this notification, the Government has notified the privilege of vending Toddy for the financial year 2002-2003 in the shops, the sale of which was rejected by the Excise Commissioner.

It is understood from the explanatory note that the sale of Toddy shop numbers 4, 8, 9, 10, 15, 16, 17 and 18 of Alankode Range, Toddy Shop No.37 of Chittoor Range and Toddy Shop No. 54 of Palakkad Range Conducted by the District Collector of Kannur and Palakkad on 22-4-2002 and 23-4-2002 respectively, was rejected by the Excise Commissioner, under rule 5(15) of the Abkari Shops Disposal Rules, 2002 and has been decided to sell the shops afresh.

The Committee desires to know the circumstances under which the sale of the above shops were rejected by the Excise Commissioner and is of the view that the discretionary powers conferred upon the Excise Commissioner under Rule 5(15) of the said Rules is of arbitrary nature.

Reply from Government

In pursuance to the detection of a series of irregularities in the issue of experience certificate by Toddy Workers Welfare Fund Inspector, Kannur, the

Commissioner of Excise has rejected the sale and decided to conduct the sale afresh. The Commissioner being the licencing authority should have some discretionary powers to carry out the duties entrusted with him properly. It may not be considered as arbitrary.

The Committee considered the reply on 24-11-2004 and accepted the same.

Recommendation No. 49

S.R.O. No. 42/02 [G.O.(P)No. 75/02/TD., dated: 22-5-2003]

By this notification the Government has amended the notification published as SRO No.199/2002 in which Government has notified the number of independent Foreign Liquor-I shops in each of the Ranges and the limits within which the shops are to be located. It is understood from the explanatory note that the notification came to be issued when it was decided to shift one Foreign Liquor-I shop from Chelannur Range at Koyilandy Taluk to Kunnamangalam Range at Kozhikode Taluk.

The Committee has on several occasions, pointed out that the practice of changing the schedule limits after notifying the same in the Gazette should be avoided as it affects the sale of IMFL from the respective Foreign Liquor shops due to shifting of locations.

The Committee desires to know the circumstances which necessitated the present change in the Range and limits within which the shops are to be located and recommend that in future, the Government should make a thorough scrutiny before allocating the Schedule limits of all newly sanctioned Foreign Liquor-I shops, so as to avoid the practice of shifting of shops, which necessitates issuing of several amendment notifications to that effect. However, if the change is necessitated, the reason for the change should be stated in the Explanatory Note.

Reply from Government

As the shop No. 274 could not be effectively commenced by the KSBC due to stay order issued by the Hon'ble High Court in various litigations, the Managing Director, KSBC has requested to shift the same to Kunnamangalam range. Government accepted the proposal and issued the above SRO. Such changes are made only when it is absolutely necessary.

The Committee considered and accepted the same on 24-11-2004.

PART B—Recommendation in respect of which replies from Government have been considered by the Committee and further clarification sought

Recommendation No. 11

In view of what was witnessed in the distillery, the Committee could gather that as per the provisions contained in the Kerala Distillery and Warehouse Rules, 1968, the distillery could follow only the batch fermentation system in the production of spirit. It is the present amendment [G.O. (P) No. 120/2001/TD. dated 24-10-2001], which enabled the distillery to adopt the continuous fermentation system legally. The Committee views that there are reasons to believe that the Mc. Dowell's distilleries have adopted the continuous fermentation system long before the amendments in the Rules were effected, which is a clear violation of the statutory provisions. It is presumed that the Excise Department staff attached to the distillery has not brought the instance to the notice of the concerned authorities in time. **Therefore, the Committee recommends that a departmental enquiry be conducted to find out when the new plant for continuous fermentation system was commissioned in the distillery and also whether there was any intentional violation of the statutory provisions, and the persons responsible for the same.**

Reply from Government

This recommendation is being examined in consultation with the Commissioner of Excise.

Committee considered the statement on 24-11-2004 and directed to call for a final reply in this regard. Accordingly Government furnished the following reply.

As recommended by the Committee on Subordinate Legislation, Deputy Excise Commissioner, South Zone, Thiruvananthapuram had conducted a departmental enquiry on the issue of continuous fermentation system adopted in Mc. Dowell distillery, Cherthala. His enquiry revealed that Excise Commissioner accorded tentative sanction for the continuous fermentation system and also approved the plant lay out vide Order No. XCI-14826/98 dated 19-4-1999. The trial run for continuous fermentation system started on 5-5-2000 and it was stopped on 27-7-2000. The new plant for continuous fermentation system was fully commissioned on 19-1-2002 after the amendment published vide SRO No. 964/2001 in G.O.(P) No. 120/2001/TD dated 4-10-2001. Enquiries also revealed that there was no intentional violation of statutory provisions and therefore there was no violation here.

The Committee considered and accepted the same on 21-12-2005.

Recommendation No. 12

The Committee during its visit, was informed by the management officials of the distillery that the excise duty levied upon the products is 100% of its basic price. Due to this taxation policy the company often finds it difficult to produce premium brands as their selling price could escalate resulting in poor sale of the product. Therefore, the company solicited a reasonable revision in the excise duty for the promotion of these brands. **Under the circumstances, the Committee feels that this request on the part of the distillery is only just and recommends that the Government may consider this matter and take a favourable decision at an early date.**

Reply from Government

Government has considered this aspect and as announced in the Budget Speech for 2004-05, Government decided to change the Excise Duty structure of Indian Made Foreign Liquor from 'advalorem basis' to 'specific duty basis'. Necessary notification was issued as per G.O. (P) No. 17/04/TD dated 10-2-2004 (Copy enclosed).

The Committee considered the statement at its meeting held on 24-11-2004 and accepted the reply and directed to obtain a copy of G.O.(P) No. 17/04/TD dated 10-2-2004 which was not seen enclosed with the reply.

As directed by the Committee, copies of this GO were forwarded to the Committee later. (Appendix I)

Recommendation No. 17

S.R.O. No. 194/2002 [G.O. (P) No. 23/2001/TD., dated 30-3-2002]

By this notification, the Government had amended the notification issued under G.O.(P) No. 24/94 so as to enhance the Excise duty on Indian Made Foreign Liquor consumed by Defence Service Personnel and Ex-servicemen supplied through Canteen Stores Department.

By the amendment in the schedule to the Notification, the Rate of Duty against item No. IV has been enhanced from Rs. 7 to Rs. 21.

The Committee is of the view that a three times enhancement of Excise duty is not a fair proposition as it imposed on the Defence Service Personnel and Ex-servicemen. In this context the Committee desire to be informed of the present rate of excise duty being levied on IMFL issued through Canteen Stores Department.

Reply from Government

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

The reply was considered by the Committee and directed to obtain a clear and final reply from Government. Accordingly the following reply was furnished by Government.

At present the rate of Excise duty on Indian Made Foreign Liquor issued through Canteen Stores Department is Rs. 21 per proof litre.

The Committee considered and accepted the same at the meeting held on 21-12-2005.

Recommendation Nos. 34, 35

S.R.O. No. 767/01 [G.O. (P) No. 93/01/TD., dated 2-8-2001]

By this notification, the Government had amended the SRO No. 660/01.

It was stated in the explanatory note that the shops numbered 231 and 234 could not be located at Balaramapuram and Sreekaryam, where they were intended to be located. The Committee expressed wonder as to how such a mistake could occur in the earlier schedule limit and also whether the action was deliberate or not. **The Committee desires to be informed where these shops were functioning till date.**

The Committee expressed a view in this connection, that the SRO notification seemed to have been issued in haste without giving proper attention, which could have led to these mistakes. The Committee also recommends the Government to take appropriate action to widen the area prescribed to enable location of shops.

Reply from Government

The recommendations are being examined in consultation with the Managing Director, Kerala State Beverages Corporation and the Excise Commissioner.

The Committee directed to obtain final reply from Government. Accordingly following reply had been furnished by the Taxes Department.

Vide G.O.(P) No. 80/01/TD., dated 30-6-2001, Government have notified the schedule limits of FL1 Shops Nos. 231 and 234 and these shops are intended to locate at Balaramapuram and Sreekaryam respectively. The shops could not be opened there due to some technical reasons like non-availability of

suitable building/unobjectionable site/public agitation/court direction etc. Therefore Government vide G.O.(P) No. 93/01/TD., dated 2-8-2001 rescheduled the limits of FL1 shop Nos. 231 and 234 by covering the area in Balaramapuram junction and Sreekaryam junction respectively. These shops were licensed on 13-8-2001, after the amendment of schedule.

Kerala State Beverages Corporation first finds out the sale potential area for locating the FL1 Shops and sends proposal to Government for the sanction of new shops. After the sanction is received from Government, Excise Commissioner fixes the boundaries of the shop as per the request from K.S.B.C. Some times KSBC could not find out the suitable building for the function of FL1 shop within the schedule limits as per Abkari Shop Disposal Rules and on some occasions they could not conduct the FL1 shop smoothly due to the public agitation and Hon'ble court directions. Hence they are compelled to change the boundaries of the shops.

If the eluka of FL1 shop is fixed in wider areas, another agency shop would be placed in the proposed shops eluka and it will affect the sale potential of both the shops.

The Committee considered and accepted the reply on 21-12-2005.

Recommendation Nos 37, 39 and 41

G.O.(P) No. 122/01/TD (SRO No. 986/01)

By this notification the Government had amended SRO No. 330/01

It was noted that Government has either made correction to these areas/places already mentioned in the SRO or brought changes including addition or omission to the limits already fixed for the functioning of the Toddy/Foreign Lilquor- I shops. In this context the committee is of the opinion that the practice of changing the limits after auction and allocation of the area/limit could not be considered as a healthy practice as the same could affect the prospects of toddy shop vendors whose license is given only for a financial year.

The practice of issuing amendment notifications with the purpose of changing or re-fixing the schedule limits which were once fixed by the Government has been seen followed by the concerned department.

In the above circumstances the committee recommends that since the auction is limited to a financial year, the Government should be more careful while fixing the schedule limits of toddy shops, so that the name of area/locality can be correctly notified in the Gazette.

The Committee notices, along with, that the Government Order to sanction additional liquor shops was issued in the month of June 2001. It was notified as SRO 695/01. Immediately after that, SRO No. 660/01 was seen issued prescribing the schedule limit of the shops. As the schedule limit prescribed, was fraught with mistakes, modifications had to be issued through SRO No. 767/01 and this SRO No. 986/01.

The Committee desires to know the reasons, which necessitated the issue of the S.R.Os. in such haste particularly at a time when a new Government was formed and before an Abkari Policy was introduced by that Government.

Reply from Government

The recommendations are being examined in consultation with the Commissioner of Excise.

The Committee considered the reply on 24-11-2004 and urged the department to furnish a final reply in this regard.

Accordingly the following reply has been furnished from the Taxes department.

At present, licences for toddy shops/FL1 shops are issued only for a financial year. After the allocation/sale of the toddy shops or FL1 shops, in rare areas, the privilege holder could not find out unobjectionable site/building to locate the shop or the building/land owner is not willing to let his building/land to conduct the shop for the current year or in the middle of the contract period, the department is forced to change the schedule limit of the shop. In some cases, due to mass agitation against the functioning of shops and Hon'ble court directions, it is also decided to change the schedule limits of the Abkari shops after the commencement of financial year for the safeguard of the revenue of Government, interest of the workers of the Abkari shops and protect public interest. After the issuance of G.O.(P) No. 32/2001/TD dated 23-3-2001 and published as SRO No. 330/2001, Govt. have noticed that some errors have crept into the notification. Accordingly, Government has decided to issue an amendment notification and it was issued in G.O.(P) No. 122/01/TD dated 31-10-2001.

The Committee considered and accepted the reply on 21-12-2005.

CHAPTER III

SROs. ISSUED UNDER THE MOTOR VEHICLES ACT, 1988, KERALA MOTOR VEHICLES RULES, 1989 AND CENTRAL MOTOR VEHICLES RULES, 1989.

Part A—Recommendations in respect of which replies from Government have been accepted by the Committee.

Recommendation No. 6

S.R.O. No. 70/99 and SRO No. 966/99

In the explanatory note it is stated that these buses are equipped with modern passenger amenities. The Committee wants to know what sorts of modern passenger amenities have been provided in these services. The Committee also wants clarification as to whether this exemption is granted to private bus services also. If not, is it because nobody has sought permission for the same or the Government has rejected the request.

The Super Deluxe Buses are provided with push back seats in two-by-two configuration for use as Semi-Sleeper giving separation to each passenger and comfortable width between seats with the provision of headrest and revolving footrests as well. Because of this arrangement the number of seats provided in the Super Deluxe buses have to be reduced to 37 in all, including driver's seat. Hence KSRTC had requested the Government for granting exemption from Rule 269 of the KMV Rules. Besides, only one passenger door is provided that too on the extreme front left side of the bus to enable the driver to ensure the safety of the passengers while boarding/alighting. Details of private buses in which exemption given if any is not readily available.

The Committee examined the reply and accepted the same at the meeting held on 16-11-2006.

Recommendation No. 14 and 15

S.R.O. 828/99 [G.O. (P) No. 34/99/Tran., dated 16-9-1999]

Accordingly, in the schedule appended to the notification, 53 festivals have been enumerated with the period of their occurrence and number of days. In the list, Serial Nos. from, 1 to 32 have been marked with the letter "(R)". But the reason for this demarcation has not been cited elsewhere in the notification.

The Committee wants to get clarification for the status of this demarcation in the list of festivals.

Reply from Government

'R' stands for "Regional", ie, approved regional festivals.

The Committee considered and accepted the reply on 16-1-2006.

Recommendation No. 20 and 21

S.R.O. No. 118/99 [G.O.(P) No. 4/99/Tran., dated 1-2-1999]

In this case, the Committee notes that the Hon'ble High Court of Kerala had directed the state Government to come out with rules for defining the various classes of Stage Carriages in the year 1994. But the Government has amended the rule for defining the various Stage Carriages only in 1998.

The Committee notes that the Government took four years to amend the Kerala Motor Vehicles Rules, 1989 in spite of the direction of the High Court of Kerala. The Committee views this delay very seriously and recommends to avoid such delay in future.

Reply from Government

Noted for future guidance.

The Committee considered and accepted the reply in its meeting on 16-11-2006.

Recommendation No. 27

The Committee desires to seek clarification as to whether a person or an institution other than a fleet owner is allowed to operate Luxury Service, Super Deluxe Service, Super Express Service and Super Fast Service. The Committee also desires to know the details of such owners who are allowed to operate the same and also other relevant details regarding types of service, routes and number of services on each route.

Reply from Government

As per the definition 2(eb) 'fleet owner' means a person or an institution who or which the registered owner of not less than fifty stage carriage kept for use in the State. Only the fleet owners are entitled to operate Luxury Service, Super Deluxe Service, Super Express Service, Super Fast Service etc. As per the definitions only Managing Director, KSRTC is the only fleet owner in the State who owns more than 50 Stage Carriages.

The Committee examined the reply and accepted the same on 16-11-2006.

Recommendation No. 35 and 36

S.R.O. No. 313/2002 [G.O.(P) No. 13/2002 dated 22 April 2002]

The date on which the Government has been given direction to take appropriate steps in this regard is not seen given in this notification. If it is presumed that the copy of the judgement had been given to the Government in the same year i.e., 1997 the Government had further taken five years time to frame the rules with the purpose of preventing public nuisance, caused especially to women passengers, travelling in a private stage carriages.

The Committee expresses their dissatisfaction over the indifferent attitude of the government in this regard, and suggests that the delay in framing such rules should be avoided in future.

Reply from Government

Noted for future guidance

The Committee considered and accepted the reply at the meeting held on 16-1-2006.

Recommendation No. 40 and 41

Also, Rule 153 C states as follows:

“153 C—Uniform to be worn by persons other than the conductor and driver of a stage carriage.—Any persons other than the conductor and driver employed in a stage carriage, referred to in rule 153B, shall, while on duty, wear the uniform and name badge as may be specified by the Transport Commissioner.

The Committee understands that most of these employees do not comply with the above rule. Therefore, the Committee strongly recommends that Government should take appropriate action to ensure that the above rule is strictly enforced throughout the State.

Government reply

As per Section 177 of MV Act whoever contravenes any provision of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offences be punishable for the first offence with a fine which may extend to one hundred rupees, and to any second or subsequent offence with fine which may extend to three hundred rupees. Director General of Police, Kerala is addressed to take appropriate action against the offenders with a copy of the notification issued by Transport Commissioner.

The Committee considered the reply and accepted at the meeting held on 16-1-2006.

Recommendation No. 43

S.R.O. No. 896/2001 [G.O. (P) No. 24/2001/Tran., dated 28-9-2001]

The Committee examined the S.R.O. in detail and opined that at present there are so many anomalies in the fare stage fixed for stage carriages in the State. This causes several hardships to the passengers who depend on the public transport system for their daily travel. **Therefore the Committee recommends that the Government should take immediate steps to revise the existing fare stages so that the present anomalies could be removed.**

Government Reply

The anomalies occurred in the notification has to be rectified by the Regional Transport Authority by giving publicity by a notification calling for objection or suggestion in consultation with State Transport Authority after giving the representatives an opportunity of being heard as laid down in proviso to section 67(1) of the Motor Vehicles Act.

The Committee considered and accepted the same on 16-1-2006.

Recommendation 45

The Committee therefore recommends that the maximum distance fixed for issuing concession tickets to the students be enhanced from 40 Km. to 60 Km. and that the facility of concession tickets be made available in the Inter-state Services also, at least for the students residing in the border districts.

Reply from Government

There is no proposal at present to enhance the maximum distance fixed for issuing concession ticket to the students from 40 Kms to 60 Kms. Judgements in WP 36490/03, 34023/03 and 34089/03 have held that the inter-state stage carriage operators are bound to give concession to the students as provided in clause (G) of the notification.

The Committee accepted the reply at its meeting held on 16-1-2006.

Recommendation No. 46

Regarding the validity of the students concession issued as per the present system, the Committee understands that the students undergoing various courses experience much difficulties due to the limitation of the validity to 10 months in an year. The Committee wishes to suggest that there shall not be any such limitation of 10 months in a year to the

students concession ticket, and it shall be issued in such a manner that it shall extend to the entire period of the course which the student is undergoing.

Reply from Government

The commencement of academic year varies from course to course. The existing provision does not stipulate specific month as end of academic year. As per 3rd proviso to clause (G) the eligibility for students concession is ten months in an academic year from the month of commencement of the course which clearly manifests that March has not been fixed as the end of an academic year. Hence government decided to drop the proposal of extending the validity from 10 months to 12 months for the time being.

Committee accepted the reply on 16-1-2006.

Part-B—Recommendation in respect of which replies from government have been considered by the Committee and further clarification sought.

Recommendation No. 9

S.R.O. No. 680/99 [G.O. (P) No. 24/99/Trans., dated 7-8-1999]

By this notification, the Government have amended the rule 365 of the Kerala Motor Vehicles Rules, 1989, with regard to the precautions to be taken while a visually challenged person crosses the road. The amendment is that the driver of the vehicle should treat the whitecane used by the blind person as a traffic sign to stop the vehicle.

In this connection the Committee recommends that similar amendments should be brought to the Rules to ensure the safety of other disabled persons, such as persons moving on trolley, to treat his hand pad as a traffic sign to stop the vehicle.

Reply from Government

Amendment to Rules as done in the case of blind person to ensure the safety of other disabled person such as persons moving on trolley, to treat his hand pad as a traffic sign to stop the vehicle will be examined by Government and decision will be intimated in due course.

The Committee considered the statement on 16-11-2006 and urged the department to furnish the detailed reply in this regard. Accordingly the following reply has been furnished by the transport department vide letter No. 11780/B2/Tran, dated 13-11-2009.

In the 6th report of the Subordinate Legislation Committee of the XI Kerala State Legislative Assembly, in para 9 of Chapter II, the Committee recommended incorporation of a new sub-rule to Rule 365 of the Kerala Motor Vehicles Rules, 1989, so as to treat the hand pad of disabled persons moving on trolley, as a traffic sign.

The proposal is based on the sub-rule (e) of rule 365 of the Kerala Motor Vehicles Rules 1989, incorporated by S.R.O. No. 680/99, wherein it is provided that the driver of the vehicles should treat the white cane used by blind persons, as a traffic sign to stop the vehicle.

The matter relating to traffic control is provided in Chapter VIII of the Motor Vehicles Act, 1988 (Central Act 59 of 1988).

In this chapter, sub-section (1) of section 119 *inter alia* provides that every driver of a motor vehicle shall drive the vehicle in conformity with any indication given by mandatory sign, and in conformity with the driving regulation made by the Central Government.

As per sub-section (2) of the said section mandatory traffic sign means, a traffic sign included in Part-A of the First schedule of the Act of any traffic sign of similar form (that is to say, consisting of or including a circular disc displaying a device, word or figure and having a red ground or border) placed or erected for the purpose of regulating motor vehicle traffic under sub-section (1) of Section 116.

As per Section 116 of the Motor Vehicles Act, 1988, in respect of traffic signs, the State Government has the power only to erect traffic signs, as specified therein.

None of the provisions in Chapter VIII of the said Act empowers the State Government to prescribe any sign as a deemed traffic sign, or to add any signs to the Mandatory Traffic Signs set forth in the First Schedule to the Act.

According to sub-section (7) of Section 116 of the Act, the Government of India alone can make any addition or alteration to the signs set forth in the First Schedule for the purpose of bringing them in conformity with any international convention relating to motor traffic to which the Government of India are for the time being, a party. In section 121 of the Act also, it is *inter alia* provided that a driver of a motor vehicle shall make such signals and on such occasions as may be prescribed by the Government of India.

As per section 118 of the said Act, the power to make regulations for the driving of a vehicle is vested with the Government of India, and the

Government of India have already issued such regulations in the name 'Rules of the Road Regulations, 1989'.

Therefore, any other Rules to regulate driving of a motor vehicle shall not be in conformity with the said provision.

The provision contained in sub-rule (3) of Rule 365 of the Kerala Motor Vehicles Rules, 1989, has the effect of regulating the driving of a vehicle for the which State Government are not invested with powers to make such a provision. The scheme of the Act is also arranged in such a way that a driving license and the driving regulation shall have effect throughout India.

From a reading of the above provisions and other provisions in the Chapter, it appears that the Act does not empower a State Government to prescribe a new traffic sign or signal for the purpose of the Act, since such traffic signs must have a uniform pattern all over India.

Therefore the State Government has no rule-making power as per the provisions in the Motor Vehicle Act, 1988 to prescribe the hand pad as a traffic sign as recommended by the Committee in para 9 in Chapter II of the 6th Report of the Subordinate Legislation Committee (2001-2003).

However, by incorporating sufficient provisions in the Kerala Motor Vehicles Rules, 1989, the State Government can direct the Police Officers engaged in the Traffic Control, to assist blind persons and handicapped persons moving on trolley, cross the road, by stopping the vehicles moving on the road.

The State Government has examined this matter in detail and found that necessary provision would be incorporated in the KMV Rules 1989 for the purpose mentioned above.

Committee considered the above reply and accepted the same on 10-2-2010.

Recommendation No. 16

The Committee also noted that the minimum fare fixed for Super Express is Rs. 7 and that of the Super Deluxe Services is Rs. 13. Since the difference between these two fares is very high, the Committee desire to know, what special feature/additional facilities are provided in the Super Deluxe Services for charging such a high rate.

Reply from Government

Remarks will be forwarded after getting details from Chairman and Managing Director, KSRTC.

The Committee considered the statement on 16-1-2006 and urged the department to furnish the final reply in this regard. Accordingly the following reply has been furnished by the transport department vide letter No. 2137/B1/04/Tran, dated 21-8-2006.

In Super Deluxe buses, the seating capacity is only 37 in all whereas in super express the capacity is 50 in all. The reduction in the number of seats in Super Deluxe buses is meant to provide higher comfort level. As opposed to the fixed seats provided in express buses, the seats in the Super Deluxe buses are adjustable. More leg space, seat width and gangway are provided in the Super Deluxe buses by virtue of the seats being reduced to 37 in all. This 25% reduction in the number of seats when compared to super express buses amply justifies the increase in passenger fare in the Super Deluxe buses;

The Committee considered and accepted the reply on 16-11-2006.

Recommendation No. 17

The Committee also wants to enquire whether there are any other categories of services being run by the KSRTC, in addition to those mentioned in item 'C' of the notification.

Reply from Government :

Remarks will be forwarded after getting details from Chairman and Managing Director, KSRTC.

The Committee considered the statement on 16-1-2006 and directed to furnish the final reply in the regard. The reply furnished by the transport department in this regard vide letter No. 2137/B1/04/Tran, dated 21-8-2006 is as follows :

KSRTC is not operating any other category of service in addition to those mentioned in item 'C' of the notification.

The Committee considered and accepted the reply on 16-11-2006.

Recommendation No. 28 and 29

Through Rule 2(ii) of the present notification is added the following new proviso in the rule 206 after the existing proviso:

'Provided that the stopping place of the Luxury Services and Super Deluxe Express Services shall be at the district headquarters and that of the

Super Express Services shall be at the Taluk Headquarters, with facilities for advance reservations”.

In this case the Committee wanted to enquire whether all the Taluk Headquarters have facilities for advance reservation for Super Express Services.

In the letter No. 2137/B1/04/Tran, dated 5-11-2005 received from the transport department it was assured that the reply will be furnished soon. The Committee considered the same and wanted to furnish the final reply immediately. The department furnished the following reply vide letter No. 2137/B1/04/Tran, dated 21-8-2006.

KSRTC has at present only two Express services Viz., Thiruvananthapuram-Palani & Payyannur-Bangalore and these services have advance reservation facilities only at Thiruvananthapuram and Payyannur respectively.

The Committee considered and accepted the reply on 16-11-2006.

Recommendation No. 30, 31

By Rule 2 (iii) of this notification a new rule ‘260 A’ has been inserted after the existing rule 260, which is as follows :

“260 A. Special provisions applicable to a stage carriage permitted to be operated as certain classes of services:—

A stage carriage older than five years from the date of its registration shall not be permitted to be operated as Fast Passenger Service and a stage carriage older than three years from the date of its registration shall not be permitted to be operated as Super Fast service and a stage carriage older than two years, from the date of its registration shall not be permitted to be operated as a Luxury Service, a Deluxe Service or a Super Express Service”.

The Committee felt that the said rule is some what impractical in the present scheme of things, in the sense that a good number of vehicles presently being used as Fast and Super Fast and Super Express Services by the Kerala State Road Transport Corporation and private fleet owners, show signs of being more than the age prescribed for that category in the Rule. **Under the circumstances, the Committee wants to know the present status of the vehicles being run as Fast, Super Fast and other Luxury Services with latest statistics.**

The interim reply furnished by the department was considered by the Committee at their meeting on 16-1-2006 and directed to call for final reply. The following statement had been furnished by the Transport department vide letter No. 2137/B1/04/Tran, dated 21-8-2006 as final reply.

<i>Type</i>	<i>Total</i>	<i>Above 5 years</i>	<i>Below 5 Years</i>	<i>Above 3 Years</i>	<i>Below 3 Years</i>	<i>Above 2 Years</i>	<i>Below 2 Years</i>
FP	1073	229	844	..	..	..	..
SFP	305	..	..	5	300	..	..
Super Deluxe	11	..	..	..	..	6	5
Volvo Garuda	2	..	..	..	..	2	..
Lightning Express	3	..	..	..	..	3	..
A/C Air bus	4	..	..	..	..	..	4
Air Bus	5	..	..	..	..	..	5
Super Express	4	..	..	..	..	..	4

The Committee accepted the reply on 16-11-2006.

MATHEW T. THOMAS,

Thiruvananthapuram,
25th March 2010.

Chairman,
Committee on Subordinate Legislation.

ANNEXURE

GOVERNMENT OF KERALA

Taxes (G) Department

NOTIFICATION

G.O.(P) No. 17/2004/TD. Dated, Thiruvananthapuram, 10th February, 2004.

S. R. O. No. 120/2004.—In exercise of the powers conferred by sections 6, 7, 17 and 18 of the Abkari Act, 1 of 1077, the Government of Kerala hereby make the following further amendments to the notification issued under G.O. (P) No. 24/94/TD, dated 3rd March, 1994 published as S. R. O. No. 256/94 in the Kerala Gazette Extraordinary No. 180 dated 3rd March, 1994, namely:—

AMENDMENT

In the said notification, for sub-item (a) of item (3), the following item shall be substituted, namely:—

“(a) Indian Made Foreign Liquor
(Excluding beer and wine) of a
value (per case) ranging from

- | | |
|---|---------------------------|
| (i) Rs. 235 and above but below Rs. 250 | Rs. 34.5 per proof litre. |
| (ii) Rs. 250 and above but below Rs. 300 | Rs. 40 per proof litre. |
| (iii) Rs. 300 and above but below Rs. 400 | Rs. 53 per proof litre. |
| (iv) Rs. 400 and above but below Rs. 500 | Rs. 66 per proof litre. |
| (v) Rs. 500 and above but below Rs. 1000 | Rs. 80 per proof litre. |
| (vi) Rs. 1000 and above | Rs. 100 per proof litre. |

Explanation :— For the purposes of the sub-item above, case means 48 bottles of 180 ml. each or 24 bottles of 375 ml. each or 18 bottles of 500 ml. each or 12 bottles of 750 ml. each or 9 bottles of 1000 ml. each or 6 bottles of 1500 ml. each.”

This notification shall come into force on the 1st April, 2004.

By order of the Governor,

SAJEN PETER,
Secretary to Government.

Explanatory Note

(This does not form part of the notifications, but is intended to indicate its general purport.)

The price of premium brands of liquor in the State is very high compared to other brands due to the present *advalorem* excise duty system. Due to this, the sale of these brands is coming down every year. To avoid revenue loss to Government due to this, in the Budget speech for 2004-05, Government have declared its decision to change the excise duty structure of Indian Made Foreign Liquor from *advalorem* basis to “specific duty” basis. In order to carry out the above decision the existing notification has to be amended.

This notification is intended to achieve the above object.
