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TWELFTH KERALA LEGISLATIVE ASSEMBLY

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

FIFTH REPORT

(Presented on March 14, 2008)

SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2008

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

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Smt. R. Prasannakumari, Joint Secretary
,, J. Sarala Devi, Deputy Secretary
,, P. Jayalekshmi, Under Secretary

INTRODUCTION

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

This Report contains the observations, comments and recommendations of the Committee on the S.R.O.s issued during the years 2004 and 2005 by the Government, under the provisions of the Abkari Act I of 1077. The list of S.R.O.s considered and approved by the Committee with and without remarks is given as Annexure.

This Report was finalised by the Committee at its meeting held on 11-3-2008.

Thiruvananthapuram,
14th March, 2008.

JOSE THETTAYIL,
Chairman,
Committee on Subordinate Legislation.

REPORT

ABKARI ACT 1 of 1077

SRO No. 120/2004 [G.O.(P) No. 17/04/TD Dated 10-2-2004]

1. By this SRO Government have in exercise of powers conferred by Section 6, 7, 17 and 18 of Abkari Act 1 of 1077 made further amendment to notification issued under G.O. (P) No. 24/94/TD Dated 3-3-1994 published as SRO No. 256/94.

2. In the notification it is stated that 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.

1	Rs. 235 and above but below Rs. 250	Rs. 34.5/proof litre
2	Rs. 250 and above but below Rs. 300	Rs. 40/proof litre
3	Rs. 300 and above but below Rs. 400	Rs. 53/proof litre
4	Rs. 400 and above but below Rs. 500	Rs. 66/proof litre
5	Rs. 500 and above but below Rs. 1000	Rs. 80/proof litre
6	Rs. 1000 and above	Rs. 100/proof litre

3. The Committee noted that in the notification Sub item (a) of item (3) is not seen included in the SRO. 256/94. The Committee opine that further amendments of SRO. 256/94 has taken place only after 10 years and subsequent amendments if any made is not specified anywhere in the notification.

4. The Committee recommend that the subsequent amendments in this regard be intimated .

SRO No. 314/2004 [G.O.(P) No. 46/04/TD Dated 31-3-2004]

5. By this SRO Government have prescribed the rates of gallonage fee on Indian Made Foreign Liquor and beer sold by the FL-9 licensees in the State for the year 2003-2004.

6. The Committee noted that the name of the parent Act i.e., Abkari Act 1077 and the concerned Sections have not been specified and also the year of the Rule, i.e., Foreign Liquor Rules during which it was brought into effect has not been mentioned. The Committee opine that the relevant provision of the Parent Act should be quoted in the SRO which empowers the Government to make rules including amendments.

7. The Committee therefore recommend that all Government Notifications relating to amendments to Statutory Rules should be self contained, self explanatory and unambiguous.

8. Further, the Committee also recommend that the year shall be mentioned in the short title of the Rules.

SRO No. 431/2004 [G.O.(P) No. 68/04/TD Dated 4-5-2004]

9. By this SRO, Government have in exercise of the powers conferred by Section 18 A and 29 of Abkari Act 1 of 1077 amended the Kerala Abkari Shops Disposal Rules, 2002.

10. The operative part of the notification states that 2nd provision in subrule (2) of rule (7) of Kerala Abkari Shops Disposal Rule has been substituted by the following.

“Provided further that the restriction in distance from an educational institution, temple, church, mosque, burial ground and SC/ST Colonies for locating toddy shops shall not apply to those shops which remained unlicensed for want of any unobjectionable site, but were to be located at the same place where they were licensed for the year 2001-2002”.

11. The following facts are also noted :

- (1) By SRO No. 583/02, Government have inserted 2nd proviso to Sub rule (2) of rule 7 for the purpose of giving relaxation from the restriction in distance for locating toddy shops for the year 2002-2003.
- (2) Also by SRO No. 630/2003, Government have substituted the 2nd provision of Sub rule (2) of rule 7 and again given relaxation from restriction in distance for the year 2003-2004 to those toddy shops which were located at the same place where they were functioning during the year 2002-2003.

12. While examining this SRO Committee noted that nothing is mentioned in the operative part of the explanatory note about the previous SROs by which amendments were made earlier to the same sub rule. The Committee opine that the Government has to mention all the SROs which were issued previously to give relaxation for the location of toddy shops in the operative part of SRO.

13. The Committee therefore recommend that whenever an SRO is issued in continuation of previous one (SRO) for making amendments to a particular sub rule of a Rule, the details of the relevant notification which were issued for amending the same sub rule issued earlier should be mentioned along with the explanatory note.

SRO No. 452/2004 [G.O.(P) No. 69/04/TD Dated 7-5-2004]

14. By this SRO, Government have amended the notification issued as SRO No. 614/03.

15. By this notification Foreign Liquor Shop No. 325 of Chavakkad Range of Chavakkad Taluk of Thrissur Division has been shifted to a location in Vadanappally Range of Chavakkad Taluk of the same division.

16. The Committee pointed out that in the explanatory note of the notification Public Interest is stated to be the reason for shifting of the Foreign Liquor Shops. Committee opine that the reason showed in the explanatory note is vague.

17. The Committee therefore suggest to enquire whether any complaints have been received from the public against shop No. 325 of Chavakkad Range of Chavakkad Taluk.

18. The Committee take strong exception to this kind of reason as "Public Interest" and also recommend that whenever a Foreign Liquor shop is to be shifted from one place to another, the Government should specify the exact reason for doing so instead of mentioning the reason as 'Public Interest'

19. The Committee also opine that this sort of practice which legalises an irregular practice that would derogate the purpose of the Abkari Act, should not be resorted to.

SRO No. 715/2004 [G.O.(P) No. 110/04/TD Dated 9-7-2004]

20. By this SRO, Government have amended the Kerala Abkari Shops Disposal Rules 2002 published as SRO 198/02.

21. By this SRO the 2nd provision in Sub Rule (2) of rule 7 of Kerala Abkari Shop Disposal Rules 2002 has been substituted by the following:

“Provided further that the restrictions regarding distance from an Educational Institution, Temple, Church, Mosque, Burial ground and SC/ST Colonies for locating toddy shops shall not apply to those shops which remained unlicensed for want of unobjectionable site and which are for that reason sought to be located at the same place where they were licensed in previous years availing of the exemptions given to them by notification/ Government Orders in this regard”.

22. This SRO is issued to grant relaxation of rule, regarding distance restrictions in licensing Toddy Shops. As per this SRO exemption was granted to those Toddy Shops which were given exemption and allowed to be located at the same place where they were licensed in previous years.

23. The Committee noted the following facts :

- (1) The SRO does not clearly specify the years for which exemption was given earlier.
- (2) The number and date of the prior Notification/Government Orders by which exemptions/relaxation of the rule regarding the distance restrictions in licensing Toddy Shops were granted earlier is not given.

24. The Committee are of the opinion that the practice of giving exemptions to the Toddy Shops to be located in the objectionable sites mentioned above ignoring public protest year after year could not be encouraged as this may topple down the very objective of the rule.

25. The Committee therefore recommend that the practice of giving exemption to Toddy Shops on the basis of the amendment to 2nd proviso in Sub Rule (2) of Rule 7 of Kerala Abkari Shop Disposal Rules 2002 is to be discouraged as otherwise it would be tantamount to regularise an irregular act.

SRO No. 857/2004 [G.O.(P) No. 128/04/TD Dated 9-8-2004]

26 By this SRO, Government have amended the Kerala Abkari Shops Disposal Rules 2002, published as SRO No. 198/2002.

27. The Explanatory note of the notification states that Government had inter alia decided that a toddy shop licensee should undertake an arrack worker in his shop according to district level seniority. Consequently Government have issued the Kerala Abkari Shops Disposal Rule, 2002 and published as SRO No. 198/2002. The Chief Welfare Fund Inspector, Kerala Abkari Workers Welfare Fund Board prepared a seniority list of erstwhile arrack workers as per the above norms. Though a computerized seniority list was published there are still so many complaints regarding the criteria adopted for the preparation of the Seniority list. Government have therefore decided to amend the said rules suitably by omitting the 'district level seniority' mentioned therein, so that the Government may fix revised criteria based on the date of registration as Abkari Workers to the date of birth in the case of bulk registrations, i.e., if a number of registrations are granted on the same day their inter se seniority would be assigned on the basis of their date of birth.

28. The explanatory note also states that the government intend to amend the rule suitably by omitting the 'district level seniority' and the seniority of the Abkari worker is to be assigned on the basis of the date of birth. Instead of incorporating this criteria in Rule 4 Sub-rule (2) the words 'on the basis of district level seniority' the words 'as may be decided by the government' is substituted.

29. The Committee opine that in the explanatory note of the notification, the Government have made it clear to substitute the words “on the basis of district level seniority” by the words “that the government may fix revised criteria based on the date of the registration” i.e., if a number of registrations are granted on the same day the inter se seniority would be assigned on the basis of date of birth. But the amended rules do not explain anything about the revised procedure to be adopted to ascertain the seniority of the Abkari worker.

30. The Committee, therefore desire to be informed of the opinion of the Taxes Secretary as to the substitution of words “as may be decided by the Government”. This would confer upon the government any arbitrary powers to effect frequent changes on the criteria to be adopted for the selection of Abkari workers. Such provisions may sometimes prove to be detrimental to the interest of the Abkari workers and if so, government may decide the criteria for selection of Abkari workers after calling for any objection from them and giving an opportunity of being heard.

SRO No. 1359/2004 [G.O.(P) No. 202/04/TD Dated 24-12-2004]

31. By this SRO, Governemnt have in exercise of powers conferred by Section 18 A of Abkari Act 1 of 1077, read with sub-rule (1) of rule 3, sub rule (4) and (5) of rule 4 and sub rule (3) of rule 7 of the Kerala Abkari shops Disposal Rule 2002 amended SRO No. 614/03.

32. The explanatory note of the notification states that the Kerala State Beverages Corporation (Manufacturing and Marketing) Ltd. has requested to change the elika of FL 1 Shop No. 337 Kumbala Range of Kasaragode Taluk in Kasaragode Division to Bandaduka in Kasaragode range in order to curb the sale of illicit liquor and increase the sale potential of the shop.

33. The Committee do not understand the logic behind the criteria adopted in this regard and how the department can arrive at a conclusion that the Corporation can increase the sales potential of the shop by shifting the existing FL Shop No. 337 to the newly modified area. The Committee wonder whether the Kerala State Beverages (M&M) Corporation Ltd. had conducted any market survey before arriving at such a conclusion as stated in the Gazette Notification.

34. The Committee notice that there are enormous number of Rules under the Abkari Act. These Rules appear to be contradictory to one another in many instances.

35. The Committee therefore, recommend that the Government should take necessary steps to bring out comprehensive rules under the Abkari Act, avoiding contradiction and complexity.

SRO No. 66/2005 [G.O.(P) No. 7/05/TD Dated 24-1-2005]

36. By this SRO, Government have amended the Kerala Distillery and Warehouse Rules, 1968.

37. It is stated in the explanatory note that by the amendment Government have enhanced the licence fee for Bonded ware house from Rs. 3000 (Rupees Three Thousand only) to Rs. 10,000 (Rupees Ten Thousand only) and have prescribed the security amount of Rs. 50,000 (Rupees Fifty Thousand only) to be deposited by the licensee.

38. The Committee notice that by the amendment the Government have incorporated sufficient provisions in the said rules as suggested by the Accountant General in various Audit Reports, for expiratory spirit by the distilleries licensed under this rules.

39. In Order to enhance the licence fee for Bonded ware houses the amendment made in the SRO is as follows :

40. In sub rule (1) of rule 16, in clause (b) for the words and figures “fee of Rs. 3000”, the words and figures “fee of Rs. 10,000” shall be substituted. The Committee suggest that number and date of the notification which enhanced the fee to Rs. 3000 should invariably be mentioned in this SRO.

41. The newly inserted Rule— ‘Rule A’ deals with import of Extra Neutral Alcohol/ware house licence under bond clause (a) of sub-rule (2) of Rule 47 A states as follows”—

(2) “A warehouse licence obtained under bond shall (a) be in form IV A”.

42. The format of IV A given in the notification contains certain conditions to be fulfilled by the incumbent for obtaining licence for the possession and use of non-duty paid imported/Transported Extra Neutral Alcohol (Neutral spirit of alcoholic drinks) Grape spirit/Malt Spirit in a bonded ware house.

43. Conditions No. 5 of format IV A states that No Extra–Neutral Alcohol/Grape Spirit/Malt spirit which is discoloured or contaminated due to long storage or any other reason shall be used in the manufacture of any items mentioned in condition No. 1 unless permitted by the Commissioner.

44. The Committee notice that Commissioner is empowered to give permission to use discoloured or contaminated ENA/Grape Spirit/Malt Spirit for the manufacture of any items (Indian Made Foreign Spirits) mentioned in Condition No. 1. The Committee doubt whether the contaminated or discoloured

Spirit can be used for the manufacture of any items specified in Condition No. 1 and whether the competent authority that is the Excise Commissioner can permit such Extra Neutral Alcohol/Grape Spirit/Malt Spirit as it may pose health hazards to the consumers. The Committee therefore suggests that such ambiguity should be avoided. The Committee also recommend that they should be intimated the exact details in this regard.

45. Condition No. 18 states as follows :—

“The licensee shall pay in Government Treasury in advance in the first week of each month from the date of licence, the average cost of the staff appointed for the purpose of excise, supervision which includes dearness allowance, uniform allowance and other compensatory allowances and also pension and leave salary contributions calculated at such rates as may be prescribed by the Excise Commissioner from time to time. If the licensee fails to remit the amount on the first day of every month, interest at the rate of 18 per cent shall be charged from the 20th day of month. Penal interest at the rate of 2.50 per cent shall also be charged. In case of revision of pay and/or allowance of the staff with retrospective effect, the licensee shall be liable to pay to the Government the whole amount of arrears of differential cost caused by such retrospective revision”.

46. The Committee would like to point out that the first two sentences of condition No. 18 contradict each other. As per the first sentence the licensee shall pay the amount in the first week of each month from the date of licence and the second sentence state that if the licensee fails to remit the amount on the first day of every month interest shall be charged. Therefore the Committee urge the department to bring in more clarity when framing Rules and the ambiguity in this regard should be removed.

47. In the third line of condition No. 18 the Committee recommend to delete the comma between the words “excise and supervision” to make it a meaningful sentence.

48. Condition No. 22 states that “when a licence is suspended or cancelled or if a licence is not renewed after the expiry of its period, licence shall not dispose of the stock held by him except on the orders of the Excise Commissioner”.

49. The Committee observe that this condition allows the licensee to keep the stock with the permission of the Excise Commissioner even if he does not possess a valid licence. It has not been specified whether the licensee is permitted or not to release the stock during this period. The Committee therefore desire to be intimated about the procedure adopted in this regard.

50. The Committee point out that in condition No. 22 the word “licensee is wrongly stated as ‘licence’ in the second line as the subject matter relates to the disposal of stock by the licensee. The Committee therefore recommend that the error be corrected by issuing an erratum notification”.

51. The Committee also noticed that in the explanatory note of the notification in the second para the word ‘decided’ is wrongly spelt as ‘deiced’.

52. The Committee reiterates its earlier recommendation that the concerned administrative department should give more attention to avoid printing mistakes in the Gazette Notification. The Committee urge the department concerned to avoid errors either factual or printing mistakes in the Notification as occurrence of mistake in the Gazette Notification is viewed as lack of seriousness on the part of the departments and therefore recommend that the errors should be corrected by issuing necessary erratum Notification wherever necessary.

SRO No. 107/2005 [G.O.(P) No. 17/05/TD Dated. 3-2-2005]

53. By this SRO, Government have made amendments to the Kerala Liquor Transits Rules 1975 published as SRO No. 165/76.

54. By this amendment Government have added a new proviso in Rule 3 namely :—

“provided further that when liquor has to be moved through the state of Kerala to Mahe, permit shall be issued by the Excise Commissioner”.

55. Also in Sub rule (3) of Rule 5 the following proviso has been added.

“provided that a fee of Rs. 25,000 (Rupees Twenty Five Thousand only) shall be collected for each permit issued for the transit of liquor through the state of Kerala to Mahe”.

56. The explanatory note of the notification states that Government have noticed the import of Indian Made Foreign Liquor to Mahe on the strength of Transit permit issued from the State is very high when compared with the adult male population in Mahe and hence it was evident that the IMFL imported to Mahe in excess was smuggled out to Kerala and the Government was losing crores of rupees per month by way of Sales Tax and Excise duty. Hence Government have taken preventive measures against the practice by imposing fee on transit of liquor to Mahe through Kerala.

57. The Committee therefore directs the department to intimate whether the number of transit permits issued have come down or not after the amendment and also whether the cases of illegal transits of liquor to Kerala has come down.

SRO No. 328/2005 [G.O. (P) No. 44/2005/TD Dated 31-3-2005]

58. By this SRO, Government have in exercise of the powers conferred by Section 18 A of the Abkari Act of 1077 read with Sub rule (1) of Rule 3 and 4 of the Kerala Abkari Disposal Rules 2002 made amendment to the SRO No. 294/2005.

59. The operative part of the Notification states that "In exercise of the powers conferred by Section 18 A of the Abkari Act 1 of 1077, read with Sub rule (1) of Rule 3 and 4 of the Kerala Abkari Shops Disposal Rules 2002 and all other powers vested in Government in this regard."

60. The Committee notice that the usage of "all other powers vested in Government" is vague. Committee are of the opinion that in the face of it one gets an impression that the Government is exercising unlimited power not expressly mentioned either in the relevant rules or Parent Act. The Committee therefore recommend that in order to avoid any ambiguity the Government has to mention clearly the relevant provision of the Act or the Rules as the cases may be which empower the Government to bring out an amendment to the rules in the notification.

61. The explanatory note of the notification states that the Government have decided to continue such relaxation this year also. The Committee observe that the Licensees of Toddy Shops will be eligible for relaxation for this year also but there is an ambiguity as to 'this year' means the financial year 2004-2005 since the date of notification is 31-3-2005. If the period of year has been mentioned after the words 'this year also' it would have been more clear. The Committee recommend that they may be informed of the reason for the delayed amendment and publication of the Notification. The Committee also desires to recommend the Government to indicate the relevant rule and the period of applicability very clearly in the notifications and to avoid the publication of Notification in the eleventh hour in future.

62. The Committee also point out that the wording "certain relaxation given to some toddy shops for renewal when they were remained unsold are not given" in the explanatory note is vague and it would be difficult to understand as to which category of Toddy Shops owners are eligible for the benefit of relaxation of rules. The Committee suggest that the eligible category should be explained clearly in the Explanatory note.

SRO No. 329/2005 [G.O. (P) No. 38/2005/TD Dated 31-3-2005]

63. By this SRO Government have extended the period of privilege granted in respect of the Foreign Liquor Shops specified in Column (3) of the schedule of the Notification issued as SRO No. 199/2002.

The amendment is as follows :—

64. In the second paragraph of the said notification for the words and figures “for a period of one year from 1-4-2002 and for a further period of one year from 1-4-2004” the words and figures “for a period of one year from 1st April 2005” shall be substituted.

65. The explanatory note states that period of privilege granted to FL-1 shop vide G.O. (P) No. 25/02/TD dt. 30-3-2002 and published as SRO No. 199/02, was only up to 31st March 2005. The Government have issued this notification in order to extend the period of privilege granted in respect of FL-1 shops for a further period of one year.

66. The Committee point out that the original SRO No. 199/2002 in which the details of the FL-1 shops with schedule limits were specified by the Government does not contain the wording “for a period of one year from 1-4-2002 and for a further period of one year from 1-4-2004”.

67. The operative part of this SRO states that the above wording has been substituted by the words and figures “ for a period of one year from 1st April 2005”. The Committee opine that the subsequent amendments had already been made to SRO 199/02 and the details of those SROs such as Date and No. are not seen specified in the notification.

68. The Committee therefore recommend that the notification issued to amend a prior Notification containing the rule or sub rule should be self contained and self explanatory.

69. The Committee also note that in the operative part the word “extend” is wrongly spelt as ‘extent’. Despite the Committee’s serious views on printing errors or clerical errors time and again through its observations in the Previous Reports, such things are seen repeated contrary to the assurance given by the Government.

70. The Committee would like to offer same remarks to SRO No. 330/05 dated 31-3-2005.

G.O. (P) No. 38/2005/TD Dated 31-3-2005.

SRO No. 414/05 [G.O. (P) No. 78/2005/TD Dated 29-4-2005].

71. By this SRO, Government have in exercise of the powers conferred by Section 18A of Kerala Abkari Act 1 of 1077 read with Sub rule (1) of rule 3, rule 4, rule 5B and Sub rule (3) of Rule 7 of the Kerala Abkari Shops Disposal Rules 2002, the Government hereby made amendment to the SRO No. 208/2002.

72. The explanatory note of the notification states that Government have notified the number of independent Toddy Shops in each of the range and now it has become necessary to change the Schedule limit of the above Toddy shops for the smooth functioning of the Toddy Shops and hence intended to achieve the above object.

73. The Committee observe that the reason for changing the Schedule limit to the Toddy shop is not mentioned anywhere in the notification. The Committee also fails to understand the wording in the explanatory note “for the smooth functioning of Toddy Shops”.

74. The Committee therefore recommend that the reason for changing the schedule limit of the Toddy shop should be mentioned in the operative part as well as in the explanatory note of the notification.

75. The Committee would like to offer same remarks to SRO No. 846/2005 [G.O. (P) 127/2005/TD Dated. 30-8-2005].

Thiruvananthapuram,
14th March, 2008.

JOSE THETTAYIL,
Chairman,
Committee on Subordinate Legislation.

ANNEXURE

List of SROs issued during 2004 under the ABKARI ACT 1 of 1077

88, 89, 120, 289, 296, 297, 316, 317, 334, 343, 357, 401, 402, 431, 452, 453, 527, 537, 538, 571, 715, 771, 857, 892, 921, 972, 985, 1032, 1066, 1125, 1222, 1223, 1224, 1229, 1246, 1278, 1359.

List of SROs issued during 2005 under the ABKARI ACT 1 of 1077

66, 78, 81, 89, 107, 293, 294, 314, 328, 329, 330, 331, 353, 389, 414, 422, 541, 549, 846, 847, 982.
