



TWELFTH KERALA LEGISLATIVE ASSEMBLY

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

EIGHTH REPORT

(Presented on December 11, 2008)

SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM

2008

TWELFTH KERALA LEGISLATIVE ASSEMBLY

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

EIGHTH REPORT

(Presented on December 11, 2008)

On

**The Action Taken by Government on the Recommendations
contained in the First Report of the Committee on
Subordinate Legislation (2001-2003)**

CONTENTS

		<i>Page</i>
Composition of the Committee	..	v
Introduction	..	vii
Chapter I	Report	1
Chapter II	Recommendations in respect of which replies from Government have been accepted by the Committee	2
Chapter III	Recommendations in respect of which replies received from Government were not accepted and further remarks of the Committee	13

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

Chairman :

Shri Jose Thettayil

Members :

Shri P. Krishnaprasad
,, 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. Prasannakumari, Additional 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 Report on their behalf, present this, the Eighth Report of the Committee.

This Report is based on the Action Taken by the Government on the recommendations/observation contained in the First Report of the Committee on Subordinate Legislation of the Eleventh Kerala Legislative Assembly.

The First Report of the Committee on Subordinate Legislation (2001-2003) was presented to the Assembly on 24th July, 2002. The Government have furnished replies indicating the action taken by Government in regard to the recommendations/observations contained in the Report. The Committee considered all the replies received at their various sittings.

The Committee considered and finalised this Report at their meeting held on 10th December, 2008.

Thiruvananthapuram,
11th December, 2008.

JOSE THETTAYIL,

*Chairman,
Committee on Subordinate Legislation.*

REPORT

The Action taken by Government on the Recommendations contained in the First Report of the Committee on Subordinate Legislation (2001-2003) (Eleventh Kerala Legislative Assembly)

CHAPTER I

The First Report of the Committee on Subordinate Legislation of the Eleventh Kerala Legislative Assembly was presented on July 24, 2002. The report contained recommendations/observations of the Committee on SROs issued by the Government during the year 1998, under the provisions of the Kerala Preservation of Trees Act, 1986. The Forest and Wild Life Department have furnished replies indicating the action taken by Government in regard to all the recommendations contained in this report vide their letter No.8356/E2/02/F&WLD dated 3-8-2005.

The Committee considered the action taken statements furnished by the Govt. at its meetings held on 24-8-2005, 13-9-2006 and 21-5-2008.

Chapter II of this Report contains the recommendations/remarks of the Committee and the replies received from Government which were accepted by the Committee.

Chapter III contains recommendations/observations in respect of which replies received from Government were not accepted by the Committee. Further remarks/observations of the Committee are also included in this chapter along with the replies from Government.

CHAPTER II

RECOMMENDATIONS IN RESPECT OF WHICH REPLIES FROM
GOVERNMENT HAVE BEEN ACCEPTED
BY THE COMMITTEE**Recommendation (Para No. 9)**

[S.R.O. No. 29/98. Notification G.O.(P)No.4/98/F&WLD. dated, 9-1-1998]

The Committee recommend that the name of the area shall invariably be specified in the Schedule in future.

Reply from Government

Recommendation implemented.

Recommendation (Para No. 12)

The Committee recommend that all the detailed specifications regarding boundaries shall be given in the Schedule in future.

Reply from Government

Detailed boundaries are being given.

Recommendation (Para No. 15)

The Committee recommend that in future, explanatory note of the S.R.O issued by invoking the provisions contained in section 5, should invariably contain the date of restoration after litigation, and also the total number of trees standing on the land at the time of restoration.

Reply from Government

Section 5 notification is issued prior to effecting restoration. Normally, the Administrative Department issues direction to the concerned officer to restore possession of land to its ex-owners after proper verification of records, survey and demarcation of the property as per provisions contained in the Kerala Private Forest (Vesting & Assignment) Act, 1971 and the rules made thereunder and after notifying it under section 5 of the Kerala Preservation of Trees Act, 1986. Hence it is not practical to include the date of restoration as well as the tree enumeration report in the schedule to the notification.

Recommendation (Para No. 19)

[S.R.O. No.48/98. Notification G.O.(P) No.6/98/F&WLD. dated, 12-1-1998]

The Committee suggest that whenever an S.R.O. reproduces an extract of an Act, it should contain the exact words given in the Act.

Reply from Government

Every notification issued from the Forest & Wildlife Department is duly scrutinised by the Law Department and taking into faith the recommendation of the Law Department that the notification is in order, such notifications alone are issued from this Department. However, the suggestion of the Committee will be implemented in future.

Recommendation (Para No. 23)

[S.R.O. No.236/98.Notification G.O.(P)No.17/98/F&WLD. dated, 26-2-1998]

The Committee observe that the practice of allotting particular species of trees for different officers of the Forest Department by categorising trees, is prejudicial to the provisions in section 5 of the Act, and will defeat the purpose of the notification issued under section 5, since as per section 5 tree means all trees. The Committee, therefore, recommend to recast the S.R.O. in conformity with the provisions contained in section 5 of the Act also.

Reply from Government

As the locality and the region of the land ordered for restoration are varying, the tree species of the said land will also have the same pattern of difference. However, proper care will be given to fulfill the recommendation.

Recommendation (Para No. 25)

The Committee maintain that land should be demarcated by area and not by species of trees, and officers not below the rank of a Ranger, shall be appointed to preserve the tree growth in the area.

Reply from Government

Direction issued to the PCCF to ensure the recommendation.

Recommendation (Para No. 40)

[S.R.O.No.586/98. Notification G.O.(P) No. 49/98/F&WLD. dated, 2-7-1998]

The Committee observe that the words 'tree constitute' appearing in item (a) of the notification is incorrect and suggest that the correct usage 'tree constitutes' as given in section 5(i)(a) of the Kerala Preservation of Trees Act, 1986, shall be substituted for the same.

Reply from Government

The exact wording 'tree constitutes' as given in section 5(i)(a) of the Kerala Preservation of Trees Act, 1986 is being used in the notifications.

Recommendation (Para No. 42)

[S.R.O. No. 587/98 Notification G.O.(P) No.47/98/F&WLD. dated, 30-6-1998]

The Committee notice that, in the schedule appended to this notification, the western boundary of the area is given in the transliteration form of the Malayalam word 'Vazhi'. The Committee suggest that the proper English word for the word 'Vazhi' should be given in future.

Reply from Government

The recommendation is accepted.

Recommendation (Para No. 44)

[S.R.O.No.761/98. Notification G.O.(P)No.58/98/F&WLD. dated, 18-8-1998]

The Committee observe that the word 'deceased' appearing in item (b) of the notification is incorrect. The Committee suggest that the correct word 'diseased' shall be substituted for the same.

Reply from Government

The observation is accepted and the correct word 'diseased' is being used.

Recommendation (Para No. 55)

[S.R.O. No.864/98. Notification G.O.(P) No.63/98/F&WLD. dated, 25-8-1998]

The Committee suggest that the usage of the Malayalam transliteration 'valappu' shall be avoided, and its English equivalent 'Compound' shall be substituted in column No.(8) of the Schedule.

Reply from Government

The suggestion of the Committee is estimated as valuable. However, it is practically difficult to issue an erratum notification simply for substituting a Malayalam word with that of an English in a notification issued nearly five years back.

Recommendation (Para No. 56)

The Committee also suggest that the word 'constitutes' should be used instead of the word 'constitute' appearing in item (a) of the notification.

Reply from Government

The exact wording 'tree constitutes' as given in section 5(i)(a) of the Kerala Preservation of Trees Act, 1986 is being used in the notifications.

Recommendation (Para No. 57)

The Committee observe that this notification dated 25-8-1998 has been published as Gazette Extraordinary on 28-9-1998, after a lapse of 34 days. The Committee reiterate their recommendation contained in Chapter 3 of the 1st report of 6th Kerala Legislative Assembly which is given below.

Para No. 58

“..... the Committee recommend that in the case of such notifications, the Department should see that the notifications are forwarded to the Government Press soon after they are issued, with suitable instructions to publish the same on the very same day as a Gazette Extraordinary.

Para No. 59

The Committee are also of opinion that the two suggestions put forward by the witness if given effect to, will help to check the delay to a great extent. The Committee urge the Government to issue necessary instructions to all the Departments of the Secretariat in this regard.

Para No. 60

The Committee also recommend that a proper register should be maintained in the Government Presses and a Senior Officer should be placed in charge of this work.”

Reply from Government

Action is being taken to implement the suggestion in the Forest Department and it is ensured that the notifications issued from this Department are mostly send to the Government Press on the very same date with direction to publish the same as Gazette Extraordinary after assigning an SRO number.

Recommendation (Para No.63)

[S.R.O. No. 866/98. Notification G.O.(P) No.74/98/F&WLD. dated, 31-8-1998]

The Committee suggest that for the word ‘constitute’ the word ‘constitutes’ shall be substituted in item (a) of the notification.

Reply from Government

The exact wording ‘tree constitutes’ as given in section 5(i)(a) of the Kerala Preservation of Tree Act, 1986 is being used in the notifications.

Recommendation (Para No. 64)

The Committee also suggest that all the relevant detailed specifications shall be included in the schedule of the notification in future.

Reply from Government

The suggestion is being carried out.

Recommendation (Para No. 67)

[S.R.O. No.868/98 Notification G.O.(P) No.78/98/F&WLD. dated, 17-9-1998]

The Committee suggest that for the word 'constitute' appearing in item (a) of the notification the word 'constitutes' shall be substituted.

Reply from Government

The exact wording 'tree constitutes' as given in section 5(i)(a) of the Kerala Preservation of Trees Act, 1986 is being used in the notifications.

Recommendation (Para No. 70)

[S.R.O.No. 874/98 Notification G.O.(P) No.77/98/F&WLD. dated, 15-9-1998]

The Committee suggest that all the relevant detailed specifications shall be included in the schedule in future.

Reply from Government

The suggestion is being carried out.

Recommendation (Para No. 72)

[S.R.O. No.875/98 Notification G.O.(P)No.80/98/F&WLD. dated, 23-9-1998]

The Committee suggest that, for the word 'constitute' the word 'constitutes' shall be substituted.

Reply from Government

The exact wording 'tree constitutes' as given in section 5(i)(a) of the Kerala Preservation Trees Act, 1986 is being used in the notifications.

Recommendation (Para No. 77)

[S.R.O. No. 896/98 Notification G.O.(P)No.73/98/F&WLD. dated, 31-8-1998]

The Committee desire to be informed of the following points.

1. What measures had been taken to preserve the tree growth on receipt of the judgment of Forest Tribunal, Kozhikode.
2. Whether the details regarding the trees standing in the area concerned had been prepared.

3. If so, how many trees were there in the area at the time of receipt of the judgment and at the time of publication of the notification, give details.

Reply from Government

Eventhough the judgments were pronounced during 1986 and 1993 respectively, the land involved in OA 16 and 17/81 and MFA 300/89 had been under possession of Government until it was restored to the party fulfilling all the legal and executive formalities. Therefore, there is no possibility of felling trees from the OA scheduled property, the land which had been under possession of the Forest Department. Hence issuance of section 5 notification at a later date, i.e. on 30-9-1993 will not make any change in the nature of the lands and the incumbents shall not be able to cut trees until it is formally restored to him. Section 5 notification is issued prior to effecting restoration. Normally, the Administrative Department issues direction to the officer concerned to restore possession of land to its ex-owners after proper verifications of records, survey and demarcation of the property as per provision contained in the Kerala Private Forest (Vesting & Assignment) Act, 1971 and the rules made thereunder and after notifying it under section 5 of the Kerala Preservation of Trees Act, 1986. Hence it is difficult to include the date of restoration as well as the tree enumeration report in the schedule to the notification.

Recommendation (Para No. 82)

[S.R.O. No.914/98 Notification G.O.(P)No.84/98/F&WLD. dated, 5-10-1998].

The Committee suggest that for the word ‘constitute’ the correct word ‘constitutes’ should be substituted.

Reply from Government

The exact wording ‘tree constitutes’ as given in section 5(i)(a) of the Kerala Preservation Trees Act, 1986 is being used in the notifications.

Recommendation (Para No. 89)

[S.R.O. No.933/98 Notification G.O.(P)No.87/98/F&WLD. dated, 8-10-1998]

The Committee suggest that the number of the O.A. and the date of restoration inter alia shall be given in the notification invariably in future.

Reply from Government

Section 5 notifications are issued prior to effecting restoration. Normally, the Administrative Department issues direction to the concerned officer to restore possession of land to its ex-owners after proper verification of records, survey and demarcation of the property as per provisions contained in the Kerala Private Forest

(Vesting & Assignment) Act, 1971 and the rules made thereunder and after notifying it under section 5 of the Kerala Preservation of Trees Act, 1986. Hence it is practically difficult to include the date of restoration as well as the tree enumeration report in the schedule to the notification. However, the O.A. number and the name of Forest Tribunal are invariably included in the section 5 notifications.

Recommendation (Para No. 99)

[S.R.O.No. 1022/98. Notification G.O.(P) No. 99/98/F&WLD. dated, 12-11-1998]

The Committee reiterate their earlier recommendation contained in para 268 of 10th Report of 10th Kerala Legislative Assembly, which is given below.

Para No. 100

“The Committee suggest that whenever a Department publishes notification in the Official Gazette assigning S.R.O. numbers, that Department should take care to ensure that earlier dated notifications shall be assigned earlier S.R.O. Nos. and subsequent dated shall be assigned with subsequent S.R.O. Numbers”.

Reply from Government

The Director/Superintendent of Government Presses at their choice is assigning S.R.O. numbers to the notification in the Official Gazette. The Government Press is not under the administrative control of this Department. However, the recommendation of the Committee will be brought to notice of the Director of Printing and the Superintendent of Government Presses.

(Govt. Letter No. 8356/E2/02/F&WLD. Dated, 3-8-2005)

Further Recommendation of the Committee (2006-2008)

The Committee requires Government to enquire about the action taken by the Director of Printing for rectifying the anomaly in assigning serial numbers to SROs.

Reply from Government

Director of Printing has been directed to take action to rectify the anomaly in allotting SRO numbers to notifications issued by various departments.

(Government letter No. 17693/H3/07/HED. dated, 26-6-2007)

The Committee considered the reply in the meeting held on 21-5-2008 and approved it.

Recommendation (Para No. 115)

[S.R.O. No. 1069/98. Notification G.O.(P) No. 111/98/F&WLD. dated, 26-11-1998]

The Committee suggest that the word “Kadu” appearing in the schedule below column (8) shall be substituted with the proper English word “Forest”, as given in S.R.O. No. 367/98, and also suggest to furnish the name of the canal instead of the word “canal” appearing below column (11) of the schedule in the notification.

Reply from Government

The word “Kadu” will be substituted with the proper English word “Forest”. The narrow streams stretching one or two feet is normally marked as “canal” in the survey records. Such canals will not have any popular names. Hence it is practically difficult to name the canal in the notification.

Recommendation (Para No. 121)

[S.R.O. No. 1100/98. Notification G.O.(P) No. 114/98/F&WLD. dated, 10-12-1998]

The Committee find that the Explanatory Note appended to this notification, is silent about the aforesaid points, and suggest that the Explanatory Note shall contain all the relevant facts so as to make the Explanatory Note self-contained as given in SRO No. 1101/98.

Reply from Government

Notifications are prepared in the Administrative Department with utmost vigil. It is being scrutinised by more than 3-4 level officers both in the Administrative and Law Departments. The Law Department vets all notifications issued on this behalf and ensure that the contents are sufficient. However, special care will be given to avoid occurrence of such defects as pointed out by the Committee, in future.

GENERAL REMARKS**Recommendation (Para No. 126)**

The Committee maintain that mistakes in the schedule and on the body of the notification visibly altered from the phraseology of the Act might have been made deliberately with motives. The Committee therefore recommend that Government should enquire into these aspects, fix responsibility and take effective remedial measures: The action taken in this regard should be reported to the Committee.

Reply from Government

Notifications are prepared in the Administrative Department with utmost vigil. It is being scrutinised by more than 3-4 level officers both in the Administrative

and Law Departments. Therefore, there is no room for any suspicion regarding incurring a deliberate error. The notified publications are being scrutinised, errors if any found got rectified from the Government Press and 150 copies forwarded to the Legislature Secretariat for placing before the Committee on Subordinate Legislation. Hence, there is no need to depute anybody to enquire into the fact that whether any mistake had been deliberately made.

Recommendation (Para No. 127) (i)

Explanatory note in the SROs issued in exercise of the powers conferred by Section 5 of the Act should contain the date of restoration, reasons for any delay in the issue of notification after restoration, the number of trees in the land at the time of restoration.

Reply from Government

Section 5 notification is issued prior to effecting restoration. Normally, the Administrative Department issues direction to the concerned officer to restore possession of land to its ex-owners after proper verification of records, survey and demarcation of the property as per provisions contained in the Kerala Private Forest (Vesting & Assignment) Act, 1971 and the rules made thereunder and after notifying it under section 5 of the Kerala Preservation of Trees Act, 1986. At the time of physical restoration of the property, the concerned DFO/Range Officer is preparing a mahazar, which contain the tree enumeration details. Hence it is practically difficult to include the date of restoration as well as the tree enumeration report in the schedule to the notification.

Recommendation (Para No. 127) (2) (v)

The Committee like to underline the point that the schedule appended to the notification form part of the notification which should be uniform in structure and form while publishing the same, exercising the powers conferred under the same Act.

Reply from Government

The suggestion is being scrupulously followed. The schedules to the notification issued during 2005 are uniform in structure and form. It invariably contain 13 columns such as (1) O. A. No. and name of Forest Tribunal, (2) Name of Forest Division, (3) Name of Forest Range, (4) Name of Revenue District, (5) Name of Taluk, (6) Name of Village, (7) Locality, (8) Survey No, (9) Extent in hectares and Boundary specifications containing 4 directions in 10, 11, 12, 13 columns.

Recommendation (Para No. 127) (2) (vi)

The Committee suggest that the schedule appended to the notifications issued under the Kerala Preservation of Trees Act, 1986 shall contain detailed specifications such as serial number, name of the Petitioner/Applicant, name of Locality/Area Survey number, Extent, name of Village, name of Taluk, name of Revenue District, name of Range, name of Forest Division, O.A. number, etc. and also the columns provided for boundaries with detailed specifications shall contain name of Owner of private land, Survey number, VFC Number in the case of Vested Forest etc.

Reply from Government

The suggestion is being scrupulously followed. The schedules to the notification issued during 2005 are uniform in structure and form. It invariably contain 13 columns such as (1) O.A. No. and name of Forest Tribunal, (2) Name of Forest division, (3) Name of Forest Range, (4) Name of Revenue District, (5) Name of Taluk, (6) Name of Village, (7) Locality, (8) Survey No., (9) Extent in hectares and Boundary specifications containing 4 directions in 10, 11, 12 and 13 columns. Future care will be taken to include the name of O.A. Applicant/Petitioner in addition to the above particulars.

Recommendation (Para No. 127) (3)

The wordings in the notifications should not vary from the wordings contained in section 5 of the Act .

Reply from Government

The suggestion will be observed.

Recommendation (Para No. 127) (4)

All notifications should be approved by a designated officer of that range or division and responsibility of mistakes in the notifications should be owned by him, who approves the notifications.

Reply from Government

Notifications under section 5 of the KPT Act are being issued by the Administrative Department based on the recommendations of the Custodian of the Vested Forests or the concerned CCF. The draft notifications are approved by an officer not below the rank of a Joint Secretary.

Recommendation (Para No. 127) (5) (iii)

The Committee maintained that such mistakes occurring in statutory notifications will vitiate the purpose for which it is issued. The Theory behind every

legislation is that a draft legislation shall go through various interpretation levels, i.e., verbal interpretations, grammatical interpretations, logical interpretations, etc. before its becoming a statute. The Committee are at a loss to understand how numerous mistakes are seen in Statutory Rules, even after its publication;

Reply from Government

The anxiety expressed by the Committee is also shared by the Administrative Department. Spelling mistakes are often crept into the notification due to lack of proper proof reading in the Government Press. Admittedly, words were wrongly spelt in the notifications sent from the Government. Considering the above, special care is taken to avoid such mishaps in future.

CHAPTER III

RECOMMENDATIONS IN RESPECT OF WHICH REPLIES RECEIVED
FROM GOVERNMENT WERE NOT ACCEPTED AND FURTHER
REMARKS OF THE COMMITTEE.**Recommendation (Para No. 26)**

[S.R.O. No. 327/98. Notification G.O.(P) No. 24/98/F&WLD. dated, 3-4-1998]

The Committee observe that the area restored to the Arya Vaidya Sala measured to 44.7042 hectares, instead of 41.2528 hectares already notified. This variation is stated to be due to certain errors crept in the survey records. The Committee demand specific details, as to whether any compensation is claimed to the additional acres of land included in the vested forest.

Reply from Government

Details being collected.

(Government letter No. 8356/E2/02/ F&WLD. dated, 3-8-2005)

Observations of the Committee

The Committee observe that the reply furnished by the Department is incomplete and unsatisfactory. The Committee are at a loss to understand why the department could not gather basic information such as the land restored and whether compensation had been claimed etc. even after the lapse of 3 years. The Committee had sought for specific details regarding additional acres of land included in the vested forest and compensation. The Committee take serious note of furnishing vague, evasive and incomplete replies. The inordinate delay in furnishing reply to the recommendations of the Committee is to be avoided in future. The Committee requires the Department to furnish the details without further delay.

Recommendation (Para No. 27)

[S.R.O. No. 327/98. Notification G.O.(P) No. 24/98/F&WLD. dated, 3-4-1998]

The Committee also find from the explanatory note that the area of the bit of forest is given as 'above 0.57 hectares'. The Committee suggest that the vague expression 'above' should be avoided in statutory notifications. The Committee are of the opinion that the exact extent of land should be given and avoid vague expression.

Reply from Government

Vague expressions will be avoided in future notifications.

(Government letter No. 8356/E2/02/ F&WLD. dated, 3-8-2005)

Observation

The Committee observe that the reply is vague and has not clarified the points noted by the Committee. The Committee requires Government to provide a more clear reply.

Recommendation (Para No. 80)

[S.R.O. No. 913/98. Notification G.O.(P) No. 81/98/F&WLD. dated, 23-9-1998]

The Committee reiterate their earlier recommendation that the duty of the Department concerned does not cease as and when the notifications are send to the Government Press for publication. The Department should see whether any error has crept into the notification published, and if any defects are found, the same should be rectified by issuing erratum without any delay. The Committee recommend to depute a senior officer, to enquire into the aspects that these kinds of visible mistakes are committed deliberately or not and fix responsibility.

Reply from Government

Notifications are prepared in the Administrative Department with utmost vigil. It is being scrutinised by more than 3-4 level officers both in the Administrative and Law Departments. Therefore, there is no room for any suspicion regarding incurring a deliberate error. The notified publications are being scrutinised, error if any found got rectified from the Government Press and 150 copies forwarded to the Legislature Secretariat for placing before the Committee on Subordinate Legislation. Hence, there is no need to depute anybody to enquire into the fact that whether any mistake had been deliberately made.

(Government letter No. 8356/E2/02/ F&WLD. dated, 3-8-2005)

Observation

The Committee cannot but disagree with the view of the department that there is no need to depute an officer specifically to enquire into the mistakes that crept in the publication of notifications. Having scrutinised with utmost vigil by more than three-four level officers both in the Administrative and Law Departments as claimed by the Department, the Committee wonder how obvious mistakes are

seen in the notification published. The Committee observe that the reply is unsatisfactory and not in accordance with the spirit of the recommendations made by the Committee.

Thiruvananthapuram,
11th December, 2008.

JOSE THETTAYIL,
Chairman,
Committee on Subordinate Legislation.
