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കേരള സർക്കാർ
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KERALA GAZETTE
കേരള ഗസറ്റ്
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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 1138/Legn.1/2006/Leg.

Dated, Thiruvananthapuram, 19th June, 2006

The Kerala Professional Colleges (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non Exploitative Fee, and Other Measures to Ensure Equity and Excellence in Professional Education) Bill, 2006 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum Regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. M.C. VALSON,

*Secretary,
Legislative Assembly*

Twelfth Kerala Legislative Assembly
Bill No.4

THE KERALA PROFESSIONAL COLLEGES (PROHIBITION OF CAPITATION FEE, REGULATION OF ADMISSION, FIXATION OF NON EXPLOITATIVE FEE AND OTHER MEASURES TO ENSURE EQUITY AND EXCELLENCE IN PROFESSIONAL EDUCATION) BILL, 2006

A

BILL

to provide for prohibition of capitation fee, regulation of admission, fixation of non exploitative fee, reservation of seats to Scheduled Castes, Scheduled Tribes and other socially and economically backward classes and other measures to ensure equity and excellence in professional colleges and for matters connected therewith or incidental thereto:

Preamble – WHEREAS, the Hon'ble Supreme Court has held that where there is more than one minority or non-minority institution or similarly situated institution in the State imparting education in any one discipline, then a single common entrance test followed by centralized counseling or in otherwords single window system of admission is necessary in order to achieve the twin objectives of transparency and merit and further has held that the State can take over the admission procedure to ensure that it is fair, transparent and non-exploitative;

AND WHEREAS, it is considered that in the light of the past experiences of mal-administration of entrance test held by the Consortium of Private Professional Colleges in the State, all institutions of the same or similar type, whether minority or non-minority shall be required to fill their seats on the basis of merit determined through a single common entrance test followed by centralized counseling administered by the State Commissioner for Entrance Examinations;

AND WHEREAS, in the Constitution (Ninety-third Amendment) Act, 2005, a provision has been made under article 15 (5) as follows: -

“(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions to their admission to educational institutions including private educational institutions whether aided or unaided by the State, other than the minority educational institutions referred to clause (1) of article 30”;

AND WHEREAS, it is necessary to provide freship and scholarship to a large number of economically weaker students to protect and strengthen the State's long tradition of providing equitable opportunities for education at all levels of learning, and to

promote social justice in accordance with the directive principles of the Constitution, it is necessary to apply the principle of using the excess funds generated from NRI seats for benefiting students such as students from economically weaker sections of society as enunciated in the Supreme Court as one of the considerations for the fixation of fee by the competent authority appointed for the purpose and to set up a Higher Education Scholarship Fund for providing scholarship to the socially and economically weaker students;

BE it enacted in the Fifty-Seventh Year of the Republic of India as follows: -

1. *Short title and commencement* – (1) This Act may be called the Kerala Professional Colleges (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006.

(2) It shall come into force at once.

2. *Definitions* – In this Act, unless the context otherwise requires -

- (a) Admission Supervisory Committee means the committee constituted under section 4 for regulating admission in unaided professional colleges;
- (b) ‘Aided College’ means a professional colleges receiving financial aid or grant-in-aid from any State or Central Government and includes minority and non-minority professional college;
- (c) ‘Capitation Fee’ means any amount by whatever name called whether in cash or in kind paid or collected or received directly or indirectly in addition to the fees determined under this Act;
- (d) ‘Common Entrance Test’ means the entrance test conducted for determination of merit of the candidates followed by centralized counselling for the purpose of admission to professional colleges through a single window procedure by the State Commissioner for Entrance Examinations;
- (e) ‘Fee’ means all fees including tuition fee, development fee and an other fee fixed by the Fee Regulatory Committee;
- (f) ‘Fee Regulatory Committee’ means the Committee constituted under section 6 for determining the fee for admission to unaided professional colleges;
- (g) ‘Freeship’ means full or partial remission of tuition fee awarded to Scheduled Caste and Scheduled Tribe and other socially, educationally and economically backward students on merit-cum-means principle;

- (h) 'general merit seats' means seats other than reservation seats, minority seats and NRI seats and notified as such by Government or any agency authorised by it;
- (i) 'Government' means the Government of Kerala;
- (j) 'Higher Education Scholarship Fund' means the fund for providing freeship and scholarship to economically backward students on merit cum means basis;
- (k) 'management' means any person or body by whatever name called, under whose administration any unaided professional college is functioning;
- (l) 'minority' for the purpose of this Act means a community belonging to a religious or linguistic minority as may be notified by Government taking the State as a unit;
- (m) 'minority professional college' means a professional college established and maintained by a minority that fulfills the non-discriminatory criteria prescribed by Government taking the State as a unit and declared as such by the Government;
- (n) 'minority seats' means seats reserved for students who belong to the community that runs the minority unaided professional college and filled up on the basis of *interse* merit from the rank list prepared by the Commissioner for Entrance Examinations;
- (o) 'Non-Resident Indian seats' means seats reserved for children or wards or dependants of Non-Resident Indians to whom admission is given by the management in a fair, transparent and non-exploitative manner on the basis of fees prescribed;
- (p) 'prescribed' means prescribed by rules made under this Act;
- (q) 'professional college' means a college aided or unaided imparting professional courses in any of the following disciplines, namely:-
- (a) Engineering and Technology;
 - (b) Medicine, Dentistry, Pharmacy, Ayurveda, Homoeopathy, Siddha and Nursing;
 - (c) Any other discipline as may be declared by the Government by notification in the Gazette;
- (r) 'qualifying examination' means the examination as may be prescribed as qualifying for the purpose of appearing for the Common Entrance Test;
- (s) 'reservation seats' means seats reserved as such under section 9 of the Act;

- (t) 'single window system' means the centralized system for admission administered by the State Commissioner for Entrance Examinations to professional courses in both aided and unaided, minority and non-minority colleges;
- (u) 'State' means the State of Kerala;
- (v) 'unaided professional college' means professional college which is not receiving aid or grant-in-aid from any State or Central Government;
- (w) 'University' means a University established under any law made by the Legislature of the State.

3. *Method of admission in Professional Colleges* – Notwithstanding anything contained in any other law for the time being in force or in any judgement, decree or order of any Court or any other authority, admission of students in all professional colleges shall be made through Common Entrance. Test conducted by the State followed by centralized counselling through a single window system in accordance with such procedure as may be specified.

4. *Admission Supervisory Committee* – (1) The Government shall constitute an Admission Supervisory Committee to supervise and guide the process of admission of students to unaided professional colleges consisting of the following members, namely: -

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| (i) | A retired Judge of the Supreme Court or a High Court | - | Chairperson |
| (ii) | The Secretary to Government. Higher Education Department (<i>ex-officio</i>) | - | Member Secretary |
| (iii) | The Secretary to Government, Health & Family Welfare Department (<i>ex-officio</i>) | - | Member |
| (iv) | The Secretary to Government, Law Department (<i>ex-officio</i>) | - | Member |
| (v) | The Commissioner for Entrance Examinations, Kerala (<i>ex-officio</i>) | - | Member |
| (vi) | An Educational Expert belonging to the Scheduled Caste or Scheduled Tribe Community | - | Member |

(2) The Admission Supervisory Committee may adopt its own procedure for the conduct of its business.

(3) The terms and conditions of service of the Chairperson and the members of the Admission Supervisory Committee shall be as may be prescribed.

(4) The Admission Supervisory Committee shall supervise and guide the entire process of admission of students to the unaided professional colleges with a view to ensure that the process is fair, transparent, merit-based and non-exploitative under the provisions of this Act.

(5) The Admission Supervisory Committee may hear complaints with regard to admission in contravention of the provisions contained herein. If the Admission Supervisory Committee after enquiry finds that there has been any violation of the provisions for admission on the part of the unaided professional colleges, it shall make appropriate recommendation to the Government and the Government may direct the concerned University to levy and collect a fine upto rupees ten lakhs in case of each such violation or any other course of action as it deems fit. It shall be lawful for the University to levy such fine. The Admission Supervisory Committee may also declare admission to be *de-hors* merit and therefore invalid and in such case the concerned University shall not permit such candidates to appear for the examination. The University shall not approve all or any or the admissions made to such colleges in violation of the provisions of this Act.

(6) The Admission Supervisory Committee may if satisfied that any unaided professional college has violated any of the provisions of this Act, recommend to the University or Statutory Body for withdrawal of the affiliation or recognition of such college or any other course of action it deems fit.

5. *Collection of capitation fee prohibited* – (1) No capitation fee shall be collected by or on behalf of an unaided professional college or by any person who is in charge of or is responsible for the management of such college from or in relation to any candidate in consideration of his admission to or continuance of any course of study or his promotion to a higher class in such college or an institution under the management.

(2) Where the Admission Supervisory Committee on receipt of any complaint or is otherwise satisfied that the management of an unaided professional college or any person who is in charge of it or is responsible for the management of such college has violated the provisions of sub-section (1), the Admission Supervisory Committee may after due enquiry recommend to the Government for taking penal action against the management.

(3) The Admission Supervisory Committee shall have the power to regulate its own procedure in all matters arising out of the discharge of its functions, and shall, for the purpose of making any enquiry under this Act, have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) while trying a suit in respect of the following matters, namely: -

- (a) summoning and enforcing the attendance of any witness and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavit; and

- (d) issuing commissions for the examinations of witnesses and for local inspections.

and any proceeding before such committee shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 and for the purposes of section 196 of the Indian Penal Code (Central Act 45 of 1860).

6. *Fee Regulatory Committee* – (1) The Government shall constitute a Committee called the Fee Regulatory Committee for determination of the fee for admission to the unaided professional colleges consisting of the following members, namely: -

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|-------|--|---|------------------|
| (i) | A retired Judge of the Supreme Court or High Court | - | Chairperson |
| (ii) | The Secretary to Government either in charge of Medical or Higher Education, as the case may be, depending on the course of study | - | Member Secretary |
| (iii) | A Chartered Accountant nominated by the Government in consultation with the Chairperson | - | Member |
| (iv) | A representative of either the Medical Council of India or the All India Council for Technical Education, as the case may be, depending on the course of study | - | Member |
| (v) | An Educational Expert nominated by the Government in consultant with the Chairperson | - | Member |

(2) The Fee Regulatory Committee shall adopt its own procedure for the conduct of its business.

(3) The terms and conditions of service of the Chairperson and other Members of the Fee Regulatory Committee shall be as may be prescribed.

(4) The Fee Regulatory Committee shall have power to-

- (a) require each unaided professional college to place before the Committee the proposed fee structure of such college with all relevant documents and books of accounts for scrutiny well in advance of the commencement of the academic year i.e not later than 31st December of the previous academic year;
- (b) verify whether the fee proposed by each college is justified and it does not amount to profiteering or charging of capitation fee;

- (c) approve the fee structure or determine some other fee which can be charged by the college.

(5) The fee determined by the Committee shall be binding on the unaided professional college for a period of three years. The fee so determined shall be applicable to a candidate who is admitted to a college in that academic year and shall not be revised till the completion of his course in the said college. No unaided professional college shall collect a fee amounting to more than one year's fee from a candidate. Collecting of more than one year's fee shall be construed as collecting of capitation fee and shall be liable to be proceeded against.

(6) No person who is associated to any unaided professional college shall be eligible for being a member of the Fee Regulatory Committee.

(7) A member of the Fee Regulatory Committee shall cease to be so if he performs any act, which in the opinion of the Government, is unbecoming of a member of the Committee.

Provided that no such member shall be removed from the Committee without giving him an opportunity of being heard.

(8) The Fee Regulatory Committee shall have the power to regulate its own procedure in all matters arising out of the discharge of its functions, and shall, for the purpose of making any enquiry under this Act, have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) while trying a suit in respect of the following matters, namely: -

- (a) summoning and enforcing the attendance of any witness and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavit; and
- (d) issuing commissions for the examination of witness and for local inspections

and any proceeding before such Committee shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (Central Act 45 of 1860).

7. *Factors for determination of fee* – The Fee Regulatory Committee shall determine the fee or fees to be charged by an unaided professional college taking into consideration the factors, such as;

- (a) the obligation on the part of all unaided professional colleges to provide freeship to students admitted under section 9;

- (b) the location of the unaided professional college;
- (c) the nature of the professional course;
- (d) the available infrastructure;
- (e) the expenditure on administration and maintenance;
- (f) a reasonable surplus required for the growth and development of the college;
- (g) the additional expenses over and above the excess funds generated from Non-Resident Indian and charity on the part of managements required for providing freeship to the students in the reservation category under section 9;
- (h) any other factor as the Committee may deem fit.

8. *Fees not to be collected excessively* – (1) No unaided professional college shall collect any fee by whatever name called from the candidate for admission over and above the fee determined by the Fee Regulatory Committee and the fee prescribed by the University concerned.

Provided that the Fee Regulatory Committee shall fix the fee for Non-Resident Indian seats and the amount so collected over and above the fee determined for other students in the College shall be utilized for providing freeship and scholarship to economically backward students.

(2) Notwithstanding anything contained in any other provisions of the Act, the fixation and levy of fees at the rates fixed by the Committee constituted before the date of coming into force of this Act shall be deemed to be validly fixed and collected.

9. *Reservation of seats* – (1) In every professional college other than a minority college -

- (a) ten per cent of the total number of sanctioned seats shall be earmarked for the Scheduled Castes and Scheduled Tribes;
- (b) twenty five per cent to the Other Socially and Educationally Backward Classes in such manner as may be prescribed;
- (c) three per cent of the total number of sanctioned seats shall be earmarked for physically challenged persons as prescribed; and
- (d) twelve per cent of the total number of sanctioned seats shall be earmarked for the other class of weaker sections of society not otherwise covered:

Provided that in an unaided professional college the provision in clauses (c) and (d) shall apply in accordance with the consensus based on mutual agreement arrived at between the unaided professional college and the Government and following such principles and in such manner as may be prescribed:

Provided further that the admissions contemplated in clauses (b), (c) and (d) above shall be in compliance with the rules as may be prescribed.

(2) In an unaided professional college belonging to both minority and non-minority, upto fifteen per cent of the total number of sanctioned seats may be filled by candidates under the category of Non-Resident Indian seats.

(3) Where the seats reserved for the Scheduled Castes/Scheduled Tribes and other Socially and Educationally Backward Classes are left unfilled due to non-availability of the candidates, or where students of reserved categories leave after they select the seats, the same shall be filled by the candidates belonging to the same category out of the merit list of the Common Entrance Test. In the absence of candidates from the same category, the seats shall be filled up from the general merit. Seats not filled up under Non-Resident Indian seats shall be filled up from the general merit seats.

(4) Minority unaided professional college shall admit not less than fifty per cent of the students from the community that runs the colleges on the basis of *inter se* merit from the rank list prepared by the Commissioner for Entrance Examinations and may surrender up to thirty five per cent of the seats to be filled up by the Commissioner for Entrance Examinations from the Reservation or General merit seats. Any seat not so surrendered shall also be treated as minority seats and filled up in the manner as may be prescribed.

10. *Invalidation of admissions* – Any admission made in violation of the provisions of this Act or the rules made thereunder shall be invalid.

11. *Higher Education Scholarship Fund* – (1) The Government may by notification in the Gazette constitute a Fund called the Higher Education Scholarship Fund for providing scholarship to socially and economically backward students admitted in professional colleges on merit cum means basis.

(2) The corpus of the fund shall be the contribution from the Government, the amount of fine levied under this Act and the funds raised from any other source including Non-Resident Indians.

(3) The fund shall be administered by an Administrator appointed by the Government. The administration of the fund including the corpus shall be in such manner as may be prescribed.

(4) The accounts of the Fund shall be audited annually by the Accountant General.

(5) The Administrator shall before such date, in such form and at such interval as may be prescribed submit a report to the Government and the Government shall cause a copy of such report to be laid before the Legislative Assembly.

12. *Protection of action taken in good faith* – No suit, prosecution or other legal proceedings shall lie against any member of the Admission Supervisory Committee or Fees Regulatory Committee or any other officer of the Government for anything which is done in good faith or intended to be done in good faith under this Act.

13. *Power of the Government to issue directions* – (1) The Government may give such directions to any professional college as in its opinion are necessary or expedient for carrying out the purposes of this Act or give effect to any of the provisions contained therein or in any rules or orders made thereunder and the management of the college shall comply with every such direction.

(2) The Government may also give such directions to the officers or authorities under its control which in its opinion are necessary or expedient for carrying out the purposes of this Act.

14. *Penalties* – (1) Whoever contravenes the provisions of this Act or the rules made thereunder shall, on conviction be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than rupees fifty lakhs.

(2) A penalty under this section may be imposed without prejudice to the penalty specified in any other Act.

15. *Cognizance of offence* – No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by an officer authorized by the Government in this behalf by notification published in the Gazette.

16. *Power to remove difficulties* – (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, as occasion requires, but not later than two years from the date of commencement of this Act, do anything not inconsistent with the provisions of this Act which appears to them necessary for removing the difficulty.

(2) Every order issued under sub-section (1) shall be laid, as soon as may be after it is issued, before the Legislative Assembly.

17. *Power to make rules* – (1) The Government may, by notification in the Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen

days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following the Legislative Assembly makes any modification to the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

18. *Repeal* – The Kerala Self-Financing Professional Colleges (Prohibition of Capitation Fees and Procedure for Admission and Fixation of Fees) Act, 2004 (17 of 2004) is hereby repealed.

STATEMENT OF OBJECTS AND REASONS

The Hon'ble Supreme Court in its judgment in *P.A. Inamdar and others Vs State of Maharashtra* has held that the State Government in the absence of a Central Legislation, can come out with a detailed well through out legislation for ensuring fair, transparent and non-exploitative procedure for admission to ensure merit based admission in unaided professional colleges. The 93rd Constitutional amendment has empowered the State Legislatures to reserves seats in unaided professional institutions for socially and educationally backward classes of citizens and for the Scheduled Castes and the Scheduled Tribes. The policy of the State is to protect and strengthen its long tradition of providing equitable opportunities for education at all levels by providing freeship scholarship to socially and economically backward classes of students. Providing greater access to professional education would enhance national wealth, more so in the emerging Knowledge Economy. The State on its own does not have the resources to provide free education to all meritorious students belonging to the socially and economically weaker sections who want to pursue in professional education. The State has therefore decided to check the commercialization of professional education and to promote charitable investment in the unaided professional education sector.

2. The Bill is intended to achieve the above

FINANCIAL MEMORANDUM

Clause 4 of the Bill empowers Government to constitute an Admission Supervisory Committee to supervise and guide the process of admission of students to unaided professional colleges. There will be additional expenditure both recurring and non-recurring towards the remuneration of Chairperson, establishment of office of the Committee, and payment of DA and TA of the members of the Committee. An amount of rupees fifteen lakhs is anticipated in the first year and an annual recurring expenditure of approximately rupees twenty lakhs.

Clause 6 of the Bill empowers Government to constitute a Fee Regulatory Committee for determination of the fee for admission to unaided professional colleges. There will be additional expenditure both recurring and non-recurring towards the

expenditure of the Committee. It is expected that there will be initial non-recurring expenditure to the tune of rupees fifteen lakhs is anticipated in the first year and an annual recurring expenditure of approximately rupees twenty lakhs.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (h) of clause 2 of the Bill seeks to empower the Government or any agency authorized by it to notify the general merit seats. Sub-clause (1) of the said clause of the Bill seeks to empower the Government to notify the Community as minority for the purpose of this Act taking the State as a unit. Sub-clause (m) of the said clause of the Bill seeks to empower the Government to prescribe the non-discriminatory criteria to be fulfilled by a minority professional college and to declare it as a minority professional college.

2. Item (c) of sub-clause (q) of clause 2 of the Bill seeks to empower the Government to declare a professional college of any other discipline by notification in the Gazette.

3. Sub-clause (r) of clause 2 of the Bill seeks to empower the Government to prescribe the examination as a qualifying examination for the purpose of appearing for the Common Entrance Test.

4. Clause 3 of the Bill seeks to empower the Government to specify the procedure for admission of students in all professional colleges through common entrance test conducted by the State followed by centralized counselling through a single window.

5. Sub-clause (1) of clause 4 of the Bill seeks to empower the Government to constitute an Admission Supervisory Committee to supervise and guide the process of admission of students of unaided professional colleges. Sub-clause (3) of the said clause of the Bill seeks to empower the Government to prescribe the terms and conditions for service of the Chairperson and the members of the Admission Supervisory Committee.

6. Sub-clause (1) of clause 6 of the Bill seeks to empower the Government to constitute a Fee Regulatory Committee for determination of fee for admission to the unaided professional colleges. Sub-clause (3) of the said clause of the Bill seeks to empower the Government to prescribe the terms and conditions of service of the Chairperson and other members of the Fee Regulatory Committee.

7. Sub-clause (1) of clause 9 of the Bill seeks to empower the Government to prescribe the manner for reservation of seats for Scheduled Castes and Scheduled Tribes and Other Socially and Educationally Backward Classes and Physically Challenged persons and other class of weaker sections of society not otherwise covered. The proviso to sub-clause (1) empowers the Government to prescribe the principles and manners of reservation seats in clause (c) and (d) of sub-clause (1). Sub-clause (4) of the said clause of the Bill seeks to empower the Government to prescribe the manner of filling the seats

not surrendered by the minority unaided professional college treating them as minority seats.

8. Sub-clause (1) of clause 11 of the Bill seeks to empower the Government to constitute the Higher Education Scholarship Fund, by notification in the Gazette. Sub-clause (3) of the said clause of the Bill seeks to empower the Government to prescribe the manner of the administration of the said fund. Sub-clause (5) of the said clause of the Bill seeks to empower the Government to prescribe the date, form and interval to submit a report by the Administrator.

9. Sub-clause (1) of clause 13 of the Bill seeks to empower the Government to give directions to the professional colleges for carrying out the purpose of the Act. Sub-clause (2) of the said clause of the Bill seeks to empower the Government to give directions to the officers or authorities for carrying out the purpose of the Act.

10. Sub-clause (1) of clause 16 of the Bill seeks to empower the Government by order, to do anything not inconsistent with the Act to remove any difficulty that may arise in giving effect to the provisions of the Act.

11. Sub-clause (1) of clause 17 of the Bill seeks to empower the Government to make rules for the purpose of carrying into effect the provisions of the Act.

12. The matters in respect of which notifications may be issued or rules may be made are matters of procedure and are routine or administrative in nature. Further the rules, after they are made, are subject to scrutiny by the Legislative Assembly. The delegation of the legislative power is, thus, of a normal character.

M. A. BABY