

JOINT COMMITTEE ON OFFICES OF PROFIT

(FOURTH LOK SABHA)

SEVENTH REPORT

(Presented on the 10th December, 1970)



**LOK SABHA SECRETARIAT
NEW DELHI**

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Corrigenda to the Seventh Report
of Joint Committee on Offices of
Profit (Fourth Lok Sabha)

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**JOINT COMMITTEE ON OFFICES OF PROFIT
(FOURTH LOK SABHA)**

COMPOSITION OF THE JOINT COMMITTEE

CHAIRMAN

Shri K. Narayana Rao

MEMBERS

Lok Sabha

2. Shri Nathu Ram Aherwar
3. Raja Kamakhya Prasad Singh Deo Mahindra Bahadur
4. Shri Jagannathrao Joshi
5. Shri Srinibas Mishra
6. Shri Dwaipayan Sen
7. Shri Ramavatar Shastri
8. Shri Ramshekhar Prasad Singh
9. Shri S. M. Solanki
10. Shri Maddi Sudarsanam

Rajya Sabha

11. Shri Sunder Singh Bhandari
12. Shri Lokanath Misra
- *13. Shri Narayan Patra
14. Shri Biren Roy
15. Shri H. V. Tripathi.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary*

*Ceased to be Member of the Joint Committee consequent on his retirement from Rajya Sabha on the 2nd April, 1970.

REPORT OF THE JOINT COMMITTEE

I

INTRODUCTION

I, the Chairman of the Joint Committee on Offices of Profit, having been authorised by the Committee to present the Report on their behalf, present this Seventh Report of the Committee.

2. Subsequent to the presentation of the Sixth Report to the House on the 26th August, 1970, the Committee held 3 sittings* on the 13th and 14th October and 7th December, 1970 and considered 25 memoranda regarding the composition and character etc. of the Committees constituted by the Central and State Governments and the emoluments and allowances payable to their members.

3. Detailed information regarding the composition, character and functions etc., of the 'Committees' and emoluments and allowances payable to their members was furnished by the respective Ministries/Departments of the Central and State Governments on requests made by Lok Sabha Secretariat.

4. The Committee considered and adopted the Report on the 7th December, 1970.

5. The recommendations of the Committee in respect of the Committees, Boards etc. examined by them are given in the succeeding paragraphs.

II

QUESTION WHETHER WHOLE TIME DIRECTORSHIP OF A LIMITED COMPANY CONSTITUTES AN OFFICE OF PROFIT

6. The following enquiry was received from Shri Manibhai J. Patel, Member, Lok Sabha:

"Messrs. Chhotabhai Jethabhai Patel Tobacco Products Co. Ltd., is a public limited Company registered and incor-

*Minutes of the sittings form part of the Report and are at App III, pages.11-18

porated in the State of Gujarat under the provisions of the Companies Act, 1956. At present I am one of the directors on the Board of Directors of that Company.

The said Company proposes to appoint me as a whole time Director designated as 'RESIDENT DIRECTOR' under the provisions of the Companies Act, 1956. It is not clear to me whether it is possible for a Member of Lok Sabha to accept such an offer in view of the Rules under sub-clause (e) of clause (1) of Article 102 of the Constitution of India."

The Member was requested to furnish the following information:

"The extent of capital participation by the Government of Gujarat or the amount of loan(s), if any, raised by the Company either through the Gujarat State Finance Corporation or the Industrial Finance Corporation."

The Member in his reply stated as follows:

- (1) There is no capital participation of the Government of Gujarat nor any amount of loan is raised through the Gujarat State Finance Corporation and the Industrial Finance Corporation so far as Chhotabhai Jethabhai Patel Tobacco Products Co. Ltd., is concerned.
- (2) There is no capital participation of any Government and hence the provisions of Section 10 of the Representation of the People Act, 1951 are not attracted."

From the Memorandum and Articles of Association of the Company, the Committee observe that the authorised share capital of the Company is Rupees forty lacs divided into eighty thousand equity shares of Rs. 50 each. The Committee also note that the said Company is a private Company and all the shares are owned by private citizens.

Having considered the matter in all its aspects, the Committee are of the opinion that the appointment of Shri Manibhai J. Patel as a whole time Director (Resident Director) of the Company would not disqualify him from the Membership of Parliament. The Committee are also of the view that the provisions of Section 10 of the Representation of the People Act, 1951 are not attracted in the circumstances of the case.

The Committee would, however, like to add that under Article 103 of the Constitution, if any question arises as to whether a Member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of Article 102, the question has to be referred for the decision of the President whose decision is final. Before giving any decision on any such question, the President is required to obtain the opinion of the Election Commission and to act according to such opinion.

III

COMMITTEES, BOARDS ETC. APPOINTED BY CENTRAL AND STATE GOVERNMENTS

Andhra Pradesh State Road Transport Corporation

7. The Committee note that the members of the Andhra Pradesh State Road Transport Corporation, other than whole time members, viz. Chairman and General Manager, are entitled to a sitting fee of Rs. 75 per meeting. In addition, they are entitled to draw a daily allowance of Rs. 25 on the days they attend the meetings of the Corporation or its Committees. The amount of remuneration admissible to non-official members is thus more than compensatory allowance, as defined in the Parliament (Prevention of Disqualification) Act, 1959. As such, the membership of the Corporation ought to disqualify.

The Committee also note that the Chairman of the Corporation exercises executive and financial powers and is thus in a position to wield influence and patronage. As such, he also ought not to be exempted from disqualification.

Rajasthan Financial Corporation

8. The Committee note that the Directors of the Rajasthan Financial Corporation (other than the Managing Director and an employee of the Government and the nominees of the Reserve Bank of India and the Industrial Finance Corporation of India) are entitled to get Rs. 75 as sitting fee for each meeting of the Board and Rs. 50 for each meeting of the Executive Committee. The Board of Directors are responsible for the general superintendence, direction and management of the affairs and business of the Corporation with

the assistance of the Executive Committee. The Executive Committee is empowered to sanction loans upto Rs. 2,00,000 and cases of loan above Rs. 2 lakhs are put up to the Board of Directors for sanction.

The Committee are of opinion that besides being entitled to remuneration which is in excess of the 'compensatory allowance', as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959, the Directors wield influence and possess power of patronage. The Committee, therefore, feel that the Directorship of the Corporation ought not to be exempted from disqualification.

9. The Committee note that the character, composition and functions of the bodies mentioned in Appendix I are such that these ought to be included in Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959.

10. The Committee are of the view that the composition, character and functions of the Committees, Boards etc. specified in Appendix II are such that their Chairmanship, Secretaryship or Membership ought not to disqualify.

IV

REVIEW OF RECOMMENDATIONS OF THE JOINT COMMITTEE ON OFFICES OF PROFIT

State Law Commission, West Bengal

11. The Joint Committee on Offices of Profit (Fourth Lok Sabha), in para 18 of their First Report, presented to the House on the 23rd November, 1967, had recommended that as the Chairman and members of the State Law Commission, West Bengal were getting honorarium or salary or sitting fee out of Government funds, and, the remuneration in every case was more than the 'compensatory allowance', Chairmanship, Secretaryship and membership of the Commission ought to disqualify.

In regard to the co-opted Members of the Commission, the Government of West Bengal represented to the Committee as follows:

"...the case of a co-opted Member is beset with some doubt, but since the total amount received by him by way of a daily allowance is insignificant as compared with the total

amount received as daily allowance by a Member of Parliament and since the total amount of such receipts distributed over the days of membership yields daily amount much smaller than the daily amount received by a Member of Parliament on a calculation by the same method, the better view will be that, on a true construction of Clause (h) or Clause (i) of Section 3 of the Parliament (Prevention of Disqualification) Act, he is not disqualified."

The Committee are not convinced by the above argument of the West Bengal State Law Commission in regard to co-opted members of the Commission. In their opinion, for the purpose of Section 2 (a) of the Parliament (Prevention of Disqualification) Act, 1959, what is required to be determined is whether the amount payable to the holder of an office by way of daily allowance is in excess of 'compensatory allowance' which has been equated to the daily allowance admissible to a Member of Parliament under the Salaries and Allowances of the Members of Parliament Act, 1954. As the amount of 'sitting fee' payable to a co-opted member for each sitting (Rs. 100) exceeds the 'compensatory allowance' (Rs. 51 per day), the co-opted membership of the Commission ought to disqualify. The Committee have, therefore, decided to reiterate their earlier recommendation made in para 18 of their First Report (Fourth Lok Sabha).

V

IMPLEMENTATION OF RECOMMENDATIONS OF THE COMMITTEE

12. In their successive Reports, the Committee have been urging that, having regard to the expanding activities of the State in various spheres, the concept of office of profit should be defined and a comprehensive Bill, based on the recommendations of the Committee from time to time, introduced at an early date. In July, 1970, the Committee were informed by the Ministry of Law that Government were taking early steps to finalise the Bill. Taking note of this, the Committee, in para 13 of their Sixth Report (Fourth Lok Sabha) had expressed the hope that the proposed legislation would be introduced in Parliament during the Winter Session (1970) at least.

In a further communication dated the 28th November, 1970, the Ministry of Law have stated as follows:

“...The draft Bill to give effect to the recommendations contained in the various reports of the Joint Committee on Offices of Profit, could not be finalised for the reasons mentioned below:

- (i) For the purpose of implementing the recommendations made by the Joint Committee of the Second Lok Sabha, it was thought proper to undertake necessary legislation after the expiration of the term of the Committee as some of its recommendations made in the report were reconsidered by the Committee in its subsequent reports.
- (ii) After the dissolution of the Second Lok Sabha in 1962, a draft Bill was prepared to give effect to the recommendations contained in the five reports of the Joint Committee (Second Lok Sabha) but it had to be given up on account of the Chinese Aggression. It was considered that the time was not then opportune for putting Members of Parliament under additional disqualifications when a good number of them had volunteered for military service. Thereafter, not much progress in the finalisation of the Bill could be made owing to the situation created by the Indo-Pakistan conflict also.
- (iii) As a result of the Punjab Reorganisation Act, 1966, the State of Punjab was re-organised and the new State of Haryana and the Union Territory of Chandigarh were formed. It, therefore, became necessary to amend the entries in the Schedule with respect to Punjab and to include fresh entries in respect of Haryana and Chandigarh. The information from the States of Punjab and Haryana was not available till about the end of January, 1968.

It may, however, be stated that a draft Bill has been prepared to give effect to the recommendations made in the various reports of the Joint Committee on Offices of Profit and circulated to the Ministries|Departments of the Government of India for comments|concurrence. On receipt

of the comments, etc., from the Ministries|Departments, necessary steps will be taken to introduce the Bill in Parliament, as early as possible.”

The Committee observe that the question of introducing a Bill to give effect to the recommendations of the Committee has been pending for nearly eight years. The Committee would emphasise that the proposed legislation should be finalised and introduced in Parliament during the next Budget Session at least.

K. NARAYANA RAO,
Chairman,
Joint Committee on Offices of Profit.

NEW DELHI-1;
December 7, 1970.

APPENDIX I

(Vide para 9 of the Report)

Committees, Boards, etc. which ought to be included in Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959.

1. Maharashtra State Khadi and Village Industries Board.
2. Rajasthan Khadi and Village Industries Board.

APPENDIX II

(Vide para 10 of the Report)

Committees, Boards, etc. whose Chairmanship, Secretaryship or Membership ought not to disqualify

UNDER CENTRAL GOVERNMENT

1. Kendriya Sanskrit Parishad.
2. Central Advisory Committee regarding Lighthouses.
3. Railway Users' Amenities Committee.
4. Suburban Railway Users' Consultative Committee.
5. Time Table Committee.
6. Station Consultative Committee.

UNDER STATE GOVERNMENTS

Maharashtra

7. State Advisory Board on Drugs Control.

Punjab

8. Advisory Committee attached to the Special Employment Exchange for the Physically Handicapped, Chandigarh.

UNDER UNION TERRITORY OF HIMACHAL PRADESH

9. Advisory Committee for the Himachal Pradesh Hospital, Snowdon, Simla.
10. Export Promotion Advisory Committee at the State Level.
11. State Level Co-ordination Committee on Tea Development.
12. Advisory Committee on Languages of Himachal Pradesh.

13. State Level Advisory-cum-Project Implementation Committee for Rural Industries Project Mahasu and Palampur.
 14. Advisory Committee on Education.
 15. State Mineral Advisory Committee.
 16. Himachal Pradesh Tourist Traffic Development Advisory Committee.
 17. Beas Sutlej Link Oustees Advisory Committee.
 18. State Committee on Employment.
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APPENDIX III

MINUTES OF JOINT COMMITTEE ON OFFICES OF PROFIT

I

Thirty-fifth Sitting

The Committee met on Tuesday, the 13th October, 1970 from 14.00 to 16.00 hours.

PRESENT

Shri K. Narayana Rao—*Chairman*.

MEMBERS

Lok Sabha

2. Shri Nathu Ram Aherwar
3. Raja Kamakhya Prasad Singh Deo Mahindra Bahadur
4. Shri Jagannathrao Joshi
5. Shri Ramavatar Shastri
6. Shri S. M. Solanki
7. Shri Maddi Sudarsanam.

Rajya Sabha

8. Shri Sunder Singh Bhandari
9. Shri Lokanath Misra
10. Shri H. V. Tripathi.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary*.

2. The Committee took up consideration of Memoranda Nos. 288 to 303 relating to the various Committees/Bodies constituted by the Central and State Governments.

3. The Committee were of the opinion that the composition and character of the following Committees|Bodies were such that the Chairmanship or Secretaryship or Membership thereof ought not to disqualify:—

- (1) Kendriya Sanskrit Parishad (Ministry of Education and Youth Services).
- (2) State Advisory Board on Drugs Control (Government of Maharashtra).
- (3) Central Advisory Committee regarding Lighthouses (Ministry of Shipping and Transport).
- (4) Advisory Committee for the Himachal Pradesh Hospital, Snowdon, Simla.
- (5) Export Promotion Advisory Committee at the State Level (Government of Himachal Pradesh).
- (6) State Level Co-ordination Committee on Tea Development (Government of Himachal Pradesh).
- (7) Advisory Committee on Languages of Himachal Pradesh.
- (8) State Level Advisory-cum-Project Implementation Committee for rural Industries Project Mahasu and Palampur (Government of Himachal Pradesh).
- (9) Advisory Committee on Education (Government of Himachal Pradesh).
- (10) State Mineral Advisory Committee (Government of Himachal Pradesh).
- (11) Himachal Pradesh Tourist Traffic Development Advisory Committee.
- (12) Beas Sutlej Link Oustees Advisory Committee (Government of Himachal Pradesh).
- (13) State Committee on Employment, Himachal Pradesh.

4. The Committee considered Memorandum No. 288 regarding views of West Bengal Government in respect of State Law Commission, West Bengal. After some discussion, the Committee felt that

that the argument put forth by the State Law Commission, West Bengal in regard to the co-opted members of the Commission that the fee of Rs. 100 payable to them would be much less than what Members of Parliament would get as daily allowance for a period of 5 years (duration of Parliament) did not carry any conviction as the sitting fee of Rs. 100 for each sitting paid to the co-opted Members was definitely more than the compensatory allowance per day as admissible to a Member of Parliament. As such, the Committee decided to reiterate their earlier recommendation made in para 18 of their First Report that 'Chairmanship, Secretaryship and Membership of the Commission ought to disqualify.'

5. The Committee then considered Memorandum No. 290 regarding query from Shri Manibhai J. Patel, M.P. on office of profit. The Committee decided that the appointment of Shri Manibhai J. Patel, as a whole time Director (Resident Director) of Chhotabhai Jethabhai Patel Tobacco Products Co. Ltd., Gujarat would not disqualify him from the membership of Parliament as it was a private Company and all its shares were owned by private citizens. The Committee also desired that Shri Manibhai J. Patel, M.P. might also be intimated accordingly (Annexure).

6. In regard to the Maharashtra State Khadi and Village Industries Board (Memo No. 292), the Committee were of the view that the Chairman and Secretary of the Board wielded influence and power by way of patronage owing to the exercise of executive and financial powers. As such the Committee recommended the inclusion of this Board in Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959.

7. The Committee were then apprised of the information received from the State Government of Kerala in regard to the Kerala State Coir Corporation Ltd. in response to a clarification sought from them on the payment of sitting fee and D.A. to the Directors of the Corporation, who were M.P.s., for the same sitting. The Committee decided that the papers in this regard might be circulated for consideration separately.

8. The Committee then adjourned to meet again on Wednesday, the 14th October, 1970 at 15.00 hours to take up further consideration of the matter.

ANNEXURE

No. 12|1|CII|70.

From

Shri M. C. Chawla,
Deputy Secretary.

To

Shri Manibhai J. Patel, M.P.

SUBJECT : *Query regarding Office of profit.*

Sir,

With reference to your letter dated the 7th October, 1970 on the subject noted above, I am directed to state that the Joint Committee on Offices of Profit at their sitting held on the 13th October, 1970 considered the whole matter pertaining to your query regarding office of profit and have decided that your appointment as a whole time Director (Resident Director) of Chhotabhai Jethabhai Patel Tobacco Products Co. Ltd., Gujarat would not disqualify you from the Membership of Parliament.

Yours faithfully,

Sd|-

Deputy Secretary.

II

Thirty-sixth Sitting

The Committee met on Wednesday, the 14th October, 1970 from 15.00 to 16.00 hours.

PRESENT

Shri H. V. Tripathi—*In the Chair.*

MEMBERS

Lok Sabha

2. Shri Nathu Ram Aherwar
3. Raja Kamakhya Prasad Singh Deo Mahindra Bahadur
4. Shri Jagannathrao Joshi
5. Shri Ramavatar Shastri

Rajya Sabha

6. Shri Sunder Singh Bhandari
7. Shri Lokanath Misra.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. In the absence of Shri K. Narayana Rao, Chairman of the Committee, Shri H. V. Tripathi was elected Chairman for the sitting under Rule 258 (3).

3. The Committee took up further consideration of Memorandum No. 304 regarding the Disqualification or otherwise, of the Directorship of the Kerala State Coir Corporation Ltd. After discussing the matter at considerable length, the Committee noted that the Directors of the Corporation were paid only sitting fee of Rs. 25 for the day of sitting of the Corporation and that no D.A. was paid to them for that day. As such, the Directors of the Corporation did not get more than Compensatory Allowance, as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959. They ought not, therefore, to disqualify.

4. The Committee, however, noted that the Board of Directors of the said Corporation exercised both executive and financial powers and wielded influence and patronage. As such, the Committee considered that the Board of Directors of this Corporation ought not to be exempted from disqualification.

5. The Committee then adjourned.

III

Thirty-Seventh Sitting

The Committee met on Monday, the 7th December, 1970 from 16.00 to 17.00 hours.

PRESENT

Shri K. Narayana Rao—*Chairman*

MEMBERS*Lok Sabha*

2. Raja Kamakhya Prasad Singh Deo Mahindra Bahadur
3. Shri Dwaipayan Sen
4. Shri Ramavatar Shastri
5. Shri S. M. Solanki

Rajya Sabha

6. Shri Sunder Singh Bhandari
7. Shri Lokanath Misra.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. The Committee took up consideration of Memoranda No. 305 to 312 relating to the various Committees|Bodies constituted by the Central and State Governments.

3. The Committee were of the opinion that the composition and character of the following Committees|Bodies were such that the Chairmanship or Secretaryship or Membership thereof ought not to disqualify:

- (1) Advisory Committee attached to the Special Employment Exchange for the Physically Handicapped, Chandigarh (Government of Punjab).
- (2) Railway Users' Amenities Committee (Ministry of Railways).
- (3) Suburban Railway Users' Consultative Committee (Ministry of Railways).
- (4) Time Table Committee (Ministry of Railways).
- (5) Station Consultative Committee (Ministry of Railways).

4. The Committee noted that the members of the Andhra Pradesh State Road Transport Corporation (Memo. No. 305), other than whole time members, viz., Chairman and General Manager, were entitled to a 'sitting fee' of Rs. 75 per meeting. In addition, they were entitled to draw a daily allowance of Rs. 25 on the days

they attended the meetings of the Corporation or its Committees. The amount of remuneration admissible to non-official members was thus more than compensatory allowance, as defined in the Parliament (Prevention of Disqualification) Act, 1959. As such, the membership of the Corporation ought to disqualify. The Committee also noted that the Chairman of the Corporation exercised executive and financial powers and was thus in a position to wield influence and patronage. As such, he also ought not to be exempted from disqualification.

5. The Committee noted that the character, composition and functions of the Rajasthan Khadi and Village Industries Board (Memo. No. 311) were such that Chairman and Secretary thereof should not be exempted from disqualification and that recommendation should be made for its inclusion in Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959.

6. The Committee noted that the Directors of the Rajasthan Financial Corporation (Memo. No. 312), other than the Managing Director and an employee of the Government and the nominees of the Reserve Bank of India and the Industrial Finance Corporation of India, were entitled to get Rs. 75 as sitting fee for each meeting of the Board and Rs. 50 for each meeting of the Executive Committee. The Board of Directors were responsible for the general superintendence, direction and management of the affairs and business of the Corporation with the assistance of the Executive Committee. The Committee also noted that the Executive Committee was empowered to sanction loans upto Rs. 2 lakhs and cases of loans above Rs. 2 lakhs were put up to the Board of Directors for sanction.

The Committee were of the opinion that besides being entitled to remuneration which was in excess of the 'compensatory allowance', as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959, the Directors wielded influence and possessed power of patronage. The Committee, therefore, felt that the Directorship of the Corporation ought not to be exempted from disqualification.

7. The Committee then considered their draft Seventh Report and adopted it excepting Para 12 regarding Kerala State Coir Corporation Ltd. further consideration of which they deferred to their sitting to be held on the 25th January, 1971.

8. The Committee decided that the Report might be presented to Lok Sabha on Thursday, the 10th December, 1970 and laid on the Table of Rajya Sabha on the same day.

9. The Committee authorised the Chairman and, in his absence, Shri Dwaipayan Sen to present the Report to Lok Sabha on their behalf.

10. The Committee authorised Shri Lokanath Misra and, in his absence, Shri Sunder Singh Bhandari to lay the Report on the Table of Rajya Sabha.

11. The Committee then adjourned.

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