

CB-II No. _____

JOINT COMMITTEE ON OFFICES OF PROFIT
(FIFTEENTH LOK SABHA)

THIRD REPORT

Presented to Lok Sabha on 30.8.2011
Laid in Rajya Sabha on 30.8.2011



LOK SABHA SECRETARIAT
NEW DELHI

August, 2011/Bhadrapada, 1933(Saka)

Price : _____

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**COMPOSITION OF JOINT COMMITTEE ON OFFICES OF PROFIT
(FIFTEENTH LOK SABHA)**

Shri Rewati Raman Singh - Chairman

**MEMBERS
LOK SABHA**

2. Shri Vijay Bahuguna
3. Shri P.C. Chacko
4. Shri Dara Singh Chauhan
5. Shri Sanjay Dhotre
6. Shri Prataprao Ganpatrao Jadhav
7. Shri Vishwa Mohan Kumar
8. Shri Rajendrasinh Rana
9. Shri Sarvey Sathyanarayana
10. Shri Ashok Tanwar

RAJYA SABHA

11. Shri S.S. Ahluwalia
12. Shri Janardan Dwivedi
13. Dr.Bharatkumar Raut
14. Shri P.R. Ranjan
15. Smt. Mohsina Kidwai

SECRETARIAT

1. Shri Deepak Mahna - Joint Secretary
2. Shri Shiv Kumar - Director
3. Shrimati Maya Lingi - Deputy Secretary

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 Third Report of the Committee.

2. The matter covered in the Report was considered by the Committee at their sitting held on 10 June, 2011. The Minutes of the sitting form part of the Report and is at Appendix - I.

3. The Committee examined the composition, character, functions etc. of District Telephone Advisory Committee, Raipur with a view to consider as to whether the nomination of a Member of Parliament in this Committee as a member would attract disqualification for being chosen as, or for being, a Member of Parliament. The Committee also examined the cases of the Delhi Gymkhana Club and Delhi Golf Club with a view to consider as to whether the nomination of Members of Parliament in the Management Committee of these bodies as Members would attract disqualification from the angle of „office of profit“ under Article 102 (1) (a) of the Constitution.

4. The detailed information regarding the composition, character, functions, emoluments and allowances payable to the members of these bodies was furnished by the State Government of Chhattisgarh and the Ministry of Urban Development.

5. The Committee considered and adopted this Report at their sitting held on 24 August, 2011(Appendix-II).

6. The Committee wish to express their thanks to the State Government of Chhattisgarh and the Ministry of Urban Development for furnishing the information desired by the Committee.

7. The observations/recommendations of the Committee in respect of the matters considered by them are given at the end of each Chapter of this Report in bold words. The recommendations of the Committee will, however, remain advisory in nature and as such can not give any protection from disqualification under the law until the recommendations are given statutory effect by the Government by suitably amending the Parliament (Prevention of Disqualification) Act, 1959.

NEW DELHI;

August, 2011
Bhadrapada, 1933 (Saka)

REWATI RAMAN SINGH,
Chairman,
Joint Committee on Offices of Profit

REPORT

CHAPTER - I

Nomination of Shri Shreegopal Vyas, Member, Rajya Sabha to the District Telephone Advisory Committee, Raipur.

Rajya Sabha Secretariat (Committee Co-ordination Section) vide their note R.S.S.I.D.No.12(3)/2008-Coord. dated 4 March, 2009 requested to place the matter regarding nomination of Shri Shreegopal Vyas, member, Rajya Sabha as a member of the District Telephone Advisory Committee, Raipur before Joint Committee on Offices of Profit for their consideration and recommendation. The subject before the Committee for consideration was whether or not the nomination of Shri Shreegopal Vyas to the aforementioned Committee could be considered as a disqualification for being a Member of Parliament.

1.2 As the information furnished alongwith the request was not sufficient to examine the matter from the angle of „office of profit“, the State Government of Chhattisgarh were requested to furnish the detailed information in this regard. The State Government furnished the detailed information on the matter extracts of which has been reproduced below:-

Constitution

- District Telephone Advisory Committee has been constituted on the basis of the circular No.8-01/2004-PHP dated 10 September, 2004 of Ministry of Communications and Information Technology (Department of Telecommunications) Government of India.
- Each TAC (Telephone Advisory Committee) is constituted under the Chairmanship of the Principal General Manager (PGM), General Manager (GM), Telecom District Manager (TDM) or Area General Manager (AGM) of BSNL/MTNL as the case may be.
- TAC Members are nominated by the Hon'ble Minister of communications and IT (MOC&IT) normally on the recommendations of Hon'ble MPs.
- The Hon'ble MPs shall be members of only one TAC falling within their constituency by virtue of their office. In case of nominated Rajya Sabha MPs, they may be nominated in the TAC falling within their adopted constituency. However, Hon'ble MPs who become Ministers shall not be nominated/cease to continue in TAC.
- Hon'ble MPs shall be given Co-Chairman status in TAC meetings in which he/she is present.

Remuneration and other facilities

- No remuneration is paid to the members of TAC.
- Hon'ble Members of Parliament are entitled to avail TA/DA as per the rules applicable to them (FRSR-II)
- Non-official TAC members are also entitled to avail TA/DA (conveyance allowance for local) as per the rule (FRSR-II)
- Each TAC member will be provided with a rent-free telephone connection on out of turn basis at his/her residence within the area of jurisdictions of the concerned TAC with 500 calls plus free calls available to general subscribers as per commercial policy without ISD/STD facility.
- As per prevailing policy, calls above the free calls shall be charged in appropriate commercial plan. Fixed WLL Telephone connection shall be provided where the area is technically non-feasible. CLIP facility shall be provided to TAC member if he/she abides by the commercial formalities. CLIP telephone/device shall be procured by the TAC members.
- TAC member shall be permitted for conversion of his/her working private telephone connection into TAC telephone provided under the capacity of TAC member subject to withdrawal of STD/ISD facility if available and clearance of up to date dues, if any. It will be incumbent upon each TAC members to pay the Telephone bill above the free calls as per the commercial policy applicable to the member from time to time.
- Concerned GM level officer will ensure that the excess billing amount is realized from the TAC member within the prescribed time limit and would initiate appropriate action as per rule. All the commercial policies for realization of due/outstanding shall be applicable to TAC members also.
- On expiry of his/her tenure, a member of TAC may be allowed to retain his/her telephone connection on private account.
- Co-Chairman of TAC will be provided STD facility on TAC telephone connection.

Functions

- TAC shall work as interface between telephone consumers and BSNL/MTNL.
- Giving the public a confidence that their grievances are properly represented as well as redressed.
- Educate public/bring awareness among telephone consumers about the various services provided by BSNL/MTNL.
- To suggest measures for efficiency.

- The Committee does not exercise executive, legislative or judicial powers.
- The Committee does not confer powers of disbursement of funds, allotment of lands
- The Committee does not have powers of appointment/removal.
- The Committee would not wield influence or power by way of patronage

Termination

The membership of a TAC can be terminated any time by the orders from Department of Telecommunications. Additionally, the ineligibility conditions which may also attract termination are following:-

- If any member fails to attend two consecutive TAC meetings of the TAC of which he/she is a member.
- On the report of the Chairman of the TAC on misbehaviour/unsocial or antisocial activities on the part of the TAC members.
- If the member runs into outstanding arrears of his/her telephone connection.

1.3 The Joint Committee on Offices of Profit considered the matter at their sitting held on 10 June, 2011 (APPENDIX-I).

1.4 The Committee note that the post of membership/Co-Chairmanship in the District Telephone Advisory Committee, Raipur is an ‘office under the Government’, since TAC has been constituted vide the Government of India circular No. 8-01/2004-PHP dated 10 September, 2004 of Ministry of Communications and Information Technology (Department of Telecommunications) and its Members are nominated by the Hon’ble Minister of Communications and Information Technology(MOC & IT). The Committee further note that no remuneration is paid to the members of TAC. However, Hon’ble Members of Parliament are entitled to avail TA/DA as per the rules applicable to them (FRSR-II) which fell under the definition of ‘Compensatory Allowance’ as defined in section 2 (a) of Parliament (Prevention of Disqualification) Act, 1959. As regards functions of the District Telephone Advisory Committee, the Committee observe that the functions are purely advisory in nature. It does not exercise any executive, legislative or judicial functions. It neither confers powers of disbursement of funds, allotment of lands, etc. to its Members nor they can wield any influence or power by way of patronage.

1.5 Having considered all aspects of the case, the Committee feel that a Member of Parliament (Shri Shreegopal Vyas, M.P. in the case before the Committee), if nominated to the District Telephone Advisory Committee, Raipur would not attract disqualification for being chosen as, or for being, a Member of Parliament.

CHAPTER - II

Query as to whether an M.P. attracts disqualification under Article 102 (1) (a) on becoming a Member of the Board of Directors of any private company or a Member of any private club as the Management Committee Members.

Rajya Sabha Secretariat vide their note R.S.S. I.D.No.15(1)/2008-Coord dated 7 March, 2008 made a reference regarding the request of Shri Santosh Bagrodia, ex-M.P (Rajya Sabha); seeking to know whether a Member of Parliament will attract disqualification under article 102 (1) (a) if he becomes a Member of the Board of Director of any private company or a Member of any private club like Gymkhana Club or Delhi Golf Club as Management Committee Member. Shri Santosh Bagrodia has since retired from the membership of Rajya Sabha on 4 July, 2010. However, since Rajya Sabha Secretariat has requested for bringing the case to its logical conclusion, it has been taken up for consideration of the Joint Committee on Offices of Profit.

2.2 One of the functions of Joint Committee on Offices of Profit is to recommend in relation to the „Committees“ examined by it, what offices should disqualify and what offices should not disqualify and it does not recommend in general. However, since the Hon“ble ex-M.P has also mentioned the names of two bodies namely Gymkhana Club or Delhi Golf Club; these bodies were taken up for detailed examination by the Joint Committee.

2.3 As the particulars regarding the provision of nomination/appointment of MPs in the aforementioned clubs and also their detailed powers and functions, remuneration, etc. were not available, the Ministry of Urban Development were requested to furnish information in this regard. The Ministry furnished the requisite information on the matter, the extracts of which are reproduced below:-

- Lease deed does not provide for Government nominees on the Board of Directors of the Delhi Gymkhana Club. There is no provision in the Perpetual Lease Deed and the allotment letter for the Land and Development Office to exercise any control over the appointment to and removal from the Managing Committee/Body and there is no control over the performance and functions of the office of Membership in Management Committee of Delhi Gymkhana Club. As such the details in respect of whether there is a provision of nomination of MPs to the Management Committee of the Club may be treated as Nil.
- As per the confirmation and amendment deed executed between GOI and Delhi Golf Club Ltd., there are three nominees of the Ministry of Urban Development on the Management Committee of the Club with full voting rights. The Government does not

exercise any control over performance and functions of the Management Committee of the Club.

- There is no provision of nomination of M.P. to the Management Committee of the Delhi Golf Club.
- The management of the affairs and concerns of the Delhi Golf Club are vested in the General Committee, which consists of an elected President, Captain and twelve elected representatives. The Member of Parliament if nominated by the Government of India, Ministry of Urban Development, to the General Committee as one of three Government nominees perform the same functions as other Committee Members. All Members of the General Committee work in honorary capacity.
- The General Committee of the Club is neither an adhoc nor a Standing Committee. The members of the General Committee are elected by the members of the Club every year for a period of one year.
- The nomination of Members of Parliament to the General Committee is in accordance with the provisions of Clause 21 of the lease deed dated 5.8.1996 executed between the Government of India through the Ministry of Urban Development and the Club and Clause 40 (1) of the Articles of Association of the Club.
- The term of Membership/President of the General Committee is one year except for the Government nominees whose term is for two years from the date of nomination or the date of cessation from Government service whichever is earlier.
- The qualification for standing for election for Committee Member/President is that the person has to be a permanent member of the Club. Only those members who have been "A" members for a minimum of 5 years and have been members of the Committee for a minimum period of one year will be eligible to stand for Captain.
- The Government cannot nominate anybody to the President's post. It is an elected office.
- No remuneration is payable to the M.P. in the General Committee of the Club.
- No special facilities are given to the M.P. in the General Committee of the Club.
- No remuneration is attached with the office of membership/presidency of the General Committee of the Club.
- The functions are not purely advisory. Collective decisions are taken by the General Committee members in accordance with and as defined under Article 21, 39-40, 49-52 of the Memorandum and Articles of Association.
- The General Committee exercises mainly executive functions.
- The General Committee has powers of disbursement of funds, allotment of lands, etc.
- It would have powers of appointment/removal.

- The Committee would wield no influence or power by way of patronage
- The Government does not exercise any control over the performance and functions of the General Committee of the Club.

2.4 The Joint Committee on Offices of Profit considered the matter at their sitting held on 10 June, 2011 (APPENDIX-I).

2.5 The Committee note from the information furnished by the Ministry of Urban Development that there is no provision for nomination of Members of Parliament on the Board of Directors of Delhi Gymkhana Club. As regards the Delhi Golf Club, there is no provision of nomination of M.Ps. to the Management Committee of the Club. However, in accordance with the provisions of Clause 21 of the lease deed dated 5 August, 1996 executed between the Government of India and the Club and Clause 40 (1) of the Articles of Association of the Club, three Government nominees can be appointed to the General Committee of the Delhi Golf Club. The Committee, however, note that there is no restriction on the appointment of a Member of Parliament to the General Committee as a Government nominee and thus, the membership to the General Committee of Delhi Golf Club as a Government nominee is an ‘office under the Government’. The Committee further observe that though no remuneration is attached to the office of Member/President of the General Committee of the Club; the functions of the Committee are not purely advisory in nature. The General Committee exercises executive functions. The General Committee of the Club also has powers of disbursement of funds, allotment of lands, etc.

2.6 Having considered all aspects of the case, the Committee feel that a Member of Parliament, if nominated/appointed as a Member in the General Committee of Delhi Golf Club as a Government nominee would entail disqualification for being chosen as, or for being, a Member of Parliament under Article 102 (1) (a) of the Constitution.

REWATI RAMAN SINGH
Chairman
Joint Committee on Offices of Profit

NEW DELHI
August, 2011
Bhadrapada, 1933 (Saka)

APPENDIX-I

M,(Vide paras 1.3 and 2.4 of Chapters I and II of the Report respectively)

EXTRACTS OF THE MINUTES OF THE TWELFTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (FIFTEENTH LOK SABHA) HELD ON 10 JUNE, 2011

The Committee met on Friday, 10 June, 2011 from 1500 hrs to 1530 hrs in Committee Room „53“, First Floor, Parliament House, New Delhi.

PRESENT

Shri Rewati Raman Singh

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Chairman

MEMBERS

LOK SABHA

2. Shri Sanjay Dhotre
3. Shri Prataprao Ganpatrao Jadhav
4. Shri Vishwa Mohan Kumar
5. Shri Rajendrasinh Rana

RAJYA SABHA

6. Shri S.S. Ahluwalia
7. Shri Janardan Dwivedi
8. Dr. Bharatkumar Raut
9. Smt. Mohsina Kidwai

SECRETARIAT

1. Shri Deepak Mahna - Joint Secretary
2. Smt. Maya Lingi - Deputy Secretary

At the outset, the Chairman welcomed the members to the sitting of the Committee and apprised them about the agenda of the sitting.

2. The Committee then took up for consideration Memorandum No.10 regarding nomination of Shri Shreegopal Vyas, Member, Rajya Sabha as a Member to the District Telephone Advisory Committee, Raipur. The Committee noted that the post of membership/Co-Chairmanship in the District Telephone Advisory Committee, Raipur is an „office under the Government“, since TAC had been constituted under the Government of India circular No. 8-01/2004-PHP dated 10 September, 2004 of Ministry of Communications and Information

Technology (Department of Telecommunications) and its members were nominated by the Hon'ble Minister of Communications and Information Technology(MOC & IT). The Committee further noted that no remuneration would be paid to the members of TAC. However, Hon'ble Members of Parliament are entitled to avail TA/DA as per the rules applicable to them (FRSR-II) which fell under the definition of „Compensatory Allowance“ as defined in section 2 (a) of Parliament (Prevention of Disqualification) Act, 1959. As regards functions, the Committee observed that the functions were purely advisory in nature. It did not exercise any executive, legislative or judicial functions. It neither conferred powers of disbursement of funds, allotment of lands, etc. to its Members nor would they wield influence or power by way of patronage.

3. Thus, having considered all aspects of the case, the Committee felt that a Member of Parliament (Shri Shreegopal Vyas, M.P. in the case before the Committee), if nominated to the District Telephone Advisory Committee, Raipur would not attract disqualification for being chosen as, or for being, a Member of Parliament.

4. The Committee then took up for consideration Memorandum No.11 regarding a query from Shri Santosh Bagrodia, ex-M.P., Rajya Sabha as to whether an M.P. attracts disqualification under Article 102 (1) (a) on becoming a Member of the Board of Directors of any private Company or a member of any private club as management Committee members. Though the Committee did not recommend in general, however, the cases of Gymkhana Club or Delhi Golf Club were taken up for consideration, as these bodies were mentioned in the request made by Shri Santosh Bagrodia, ex-M.P. The Committee noted from the information furnished by the Ministry of Urban Development that there was no provision for nomination of Members of Parliament on the Board of Directors of Delhi Gymkhana Club. As regards the Delhi Golf Club, there was no provision of nomination of M.Ps. to the Management Committee of the Club. However, in accordance with the provisions of Clause 21 of the lease deed dated 5 August, 1996 executed between the Government of India and the Club and Clause 40 (1) of the Articles of Association of the Club, three Government nominees would be appointed to the General Committee of Delhi Golf Club. The Committee, however, noted that there was no restriction on the appointment of a member of Parliament to the General Committee as a Government nominee and thus, the membership to the General Committee of Delhi Golf Club as a Government nominee was an „office under the Government“. The Committee further observed that though no remuneration would be attached to the office of membership/presidentship of the General Committee of the Club; the functions of the Committee were not purely advisory. The General

Committee exercises mainly executive functions. It also had powers of disbursement of funds, allotment of lands, etc.

5. Thus, having considered all the aforesaid aspects of the case, the Committee felt that a Member of Parliament, if nominated/appointed as a member in the General Committee of Delhi Golf Club as a Government nominee would entail disqualification for being chosen as, or for being, a Member of Parliament under Article 102 (1) (a) of the Constitution.

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The Committee then adjourned.

APPENDIX – II

MINUTES OF THE FIFTEENTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (FIFTEENTH LOK SABHA) HELD ON 24 AUGUST, 2011

The Committee met on Wednesday, 24 August, 2011 from 1500 hrs to 1530 hrs in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi. \

PRESENT

Shri Rewati Raman Singh - Chairman

MEMBERS LOK SABHA

2. Shri Vijay Bahuguna
3. Shri Sanjay Dhotre
4. Shri Ashok Tanwar

RAJYA SABHA

5. Dr. Bharatkumar Raut

SECRETARIAT

1. Shri Deepak Mahna - Joint Secretary
2. Shri Shiv Kumar - Director

2. At the outset, the Chairman welcomed the members to the sitting of the Committee.

3. The Committee, then took up the draft Second, Third and Fourth Reports for consideration and adopted the same without any modification. Thereafter, the Committee authorised the Chairman to present the same to Parliament.

The Committee then adjourned.

