

JOINT COMMITTEE ON OFFICES OF PROFIT

(TENTH LOK SABHA)

SEVENTH REPORT



~~Be~~ presented to Lok Sabha on 25-4-95
~~Be~~ Laid in Rajya Sabha on 25-4-95

LOK SABHA SECRETARIAT
NEW DELHI

January, 1995 / Pausa, 1916 (Saka)

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JOINT COMMITTEE ON OFFICES OF PROFIT
(Tenth Lok Sabha)

COMPOSITION OF THE COMMITTEE

Shri Chiranjit Lal Sharma — Chairman

MEMBERS

Lok Sabha

2. Prof. Susanta Chakraborty
3. Shri Harisinh Pratapsinh Chavda
- *4. Shri Mohan S. Delkar
5. Shri Dau Dayal Joshi
6. Shri D.K. Naikar
7. Shri Ram Chandra Rath
8. Shri Roshan Lal
9. Shri Thota Subba Rao
- % 10. Shri S.B. Thorat

Rajya Sabha

- \$11. Shri E. Balanandan
- **12. Shri Makhan Lal Fotedar
- @13. Shri Sarada Mohanty
- £14. Shri S.K.T. Ramachandran
- **15. Shri Digvijay Singh

SECRETARIAT

1. Shri G.C. Malhotra — *Joint Secretary*
2. Shri Ram Autar Ram — *Deputy Secretary*
3. Shri J.P. Jain — *Under Secretary*

*Elected on 5.12.1991 vice Shri G.K. Kuppuswamy resigned w.e.f. 13.11.1991.

%Elected on 30.4.1992 vice Shri Mukul Wasnik resigned w.e.f. 7.4.1992.

@Elected by Rajya Sabha on 11.5.1993 vice Shri Som Pal resigned from the Committee.

£Elected by Rajya Sabha on 12.8.1992 vice Shri Santosh Kumar Sahu resigned from the Committee.

**Elected by Rajya Sabha on 12.5.1994 vice Sarvashri Subramanian Swamy and Shiv Pratap Mishra retired from Rajya Sabha.

\$Re-elected by Rajya Sabha on 15.12.1994.

REPORT OF THE JOINT COMMITTEE ON OFFICES OF PROFIT

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.

2. The matters covered by the Report were considered by the Committee at their sittings held on 14 September, 28 September, 12 October, 31 October and 21 November, 1994. Minutes of the sittings, which form part of the Report, are appended to it.

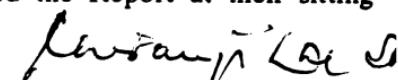
3. The Committee examined the composition, character, functions etc. of 15 Committees/Bodies etc. constituted by the State Governments/ Central Government and the emoluments and allowances payable to their members, non-official Directors, Chairmen etc. with a view to consider whether holders of offices of these bodies would incur disqualification under Article 102 of the Constitution of India, recommendations of the Committee contained in their Tenth Report (Seventh Lok Sabha) presented to Lok Sabha on 7 May, 1984 and the provisions contained in the Parliament (Prevention of Disqualification) Act, 1959.

4. The detailed information regarding the composition, character, functions, emoluments and allowances payable to the members of these bodies was furnished by the concerned Ministries/Departments of the Central and the State Governments. The Committee wish to express their thanks to those Ministries/Departments for furnishing the information desired by the Committee.

5. The Committee considered and adopted the Report at their sitting held on 17 January, 1995.

NEW DELHI;
17 January, 1995

7 Magha, 1916 (Saka)



CHIRANJEEVI LAL SHARMA,
Chairman,

Joint Committee on Offices of Profit.

CHAPTER I

NOMINATION OF MEMBERS OF PARLIAMENT ON STATE BODIES

1.1 The Committee considered the requests of the State Governments of Himachal Pradesh and Rajasthan seeking approval of the Hon'ble Speaker Lok Sabha/Chairman Rajya Sabha in regard to nominations of Members of Parliament as non-official members to the following District Level Committees for Planning and Development-Cum-20 Point Programme Implementation and Review:—

- (1) District Planning and Development-Cum-20-Point Programme review Committee-Proposal to nominate S/Shri Prem Kumar Dhumal (Bilaspur & Hamirpur), D.D. Khanoria, (Chamba & Kangra) and K.D. Sultanpuri (Shimla).
- (2) Committee for Planning Co-ordinations Implementation of 20-Point Economic Programme at District Level—Bara (Rajasthan)—Proposal to nominate Smt. Vasundhara Raje, MP as member thereof.
- (3) Committee for Planning Co-ordinations Implementation of 20-Point Economic Programme at the District Level—Bhilwara (Rajasthan)— Proposal to nominate Shri Shivcharan Mathur, MP as member thereof.
- (4) District Planning and Development Cum-20-Point Programme Review Committee—Proposal to nominate S/Shri Maheshwar Singh—District Kullu, Sushil Barongpa—District Lahaul Spiti, Krishan Lal Sharma—District Shimla, Members, Rajya Sabha as members thereof.
- (5) Committee for Planning Co-ordinations Implementation of 20-Point Economic Programme at the District Level Dungarpur (Rajasthan)—Proposal to nominate Shri Prabhu Lal Rawat, Member of Lok Sabha as member thereof.

1.2 The Committee note that the TA/DA proposed to be provided to the non-official members of the Committee and the functions performed by the aforesaid Committees on the basis of information furnished by the State Governments of Himachal Pradesh and Rajasthan. The Committee find that functions performed by the aforesaid Committees

are advisory in nature. No Executive, Legislative or Judicial work are carried out by the Committees and they have no financial powers.

1.3 In this connection attention of the Committee was drawn to Clause (h) of Section 3 of the Parliament (Prevention of Disqualification) Act, 1959 which has declared certain offices not to disqualify its holder for being chosen as, or for being, a member of Parliament, namely:—

“(h) the office of Chairman or member of a Committee (whether consisting of one or more members), set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into, or collecting statistics in respect of, any such matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance.”

1.4 Section 2(a) of the said Act defines 'Compensatory Allowance' as follows:—

“2(a) ‘compensatory allowance’ means any sum of money payable to the holder of an office by way of daily allowance [such allowance not exceeding the amount of daily allowance to which a Member of Parliament is entitled under the Salary Allowances and Pension of Members of Parliament Act, 1954 (30 of 1954)], any conveyance allowance, house rent allowance or travelling allowance, for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions, of that office.”

1.5 Keeping the above in view, the Committee recommend that non-official members (including Members of Parliament, if nominated) of the said Committees may be exempted from disqualification for being chosen as, or for being, a Member of Parliament, subject to the condition that TA/DA proposed to be provided to non-official members of the said Committees should not exceed the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

1.6 The Committee considered the request of the State Government of Himachal Pradesh in regard to nomination of the Members of Parliament as non-official members to the following State/District Level Grievances Redressal Committees seeking permission of the Hon'ble Speaker, Lok Sabha and Chairman, Rajya Sabha in the matter:—

(6) *District Level Grievances Redressal Committee (Himachal Pradesh)*—*Proposal to nominate S/Shri K.D. Sultanpuri (Shimla & Solan), Prem Kumar Dhumal (Bilaspur, Hamirpur & Unna) and D.D. Khanoria (Chamba and Kangra).*

(7) *Himachal Pradesh State Level Grievances Redressal Committee*—*Proposal to nominate S/Shri Krishan Lal*

Sharma, Sushil Barongpa and Maheshwar Singh, Members (Rajya Sabha).

(8) *District Level Grievances Redressal Committee, Sirmaur (Himachal Pradesh)—Proposal to nominate Shri K.D. Sultanpuri, Member, Lok Sabha.*

1.7 The Committee note that the TA/DA proposed to be provided to the non-official members of the above Committees and functions performed by these Committees on the basis of information furnished by the State Government of Himachal Pradesh. The Committee find that functions performed by aforesaid Committees are advisory in nature. The Committee also took note of Clause (h) of Section 3 of the Parliament (Prevention of Disqualification) Act, 1959 which has declared certain Offices of Profit function of which are advisory in nature, not to disqualify its holder for being chosen as, or for being, a Member of Parliament, if the holder of such office is not entitled to any remuneration other than compensatory allowance and accordingly recommend that non-official members (including Members of Parliament, if nominated) of the said Committees may be exempted from disqualification for being chosen as, or for being, a Member of Parliament subject to the condition that TA/DA proposed to be provided to them should not exceed the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

(9) *State Level Pong Dam Oustees Resettlement and Rehabilitation Advisory Committee Proposal to Nominate Shri D.D. Khanoria, MP as a Member thereof.*

1.8 The Committee considered the request of the State Government of Himachal Pradesh seeking approval of the nomination of Shri D.D. Khanoria, Member, Lok Sabha as non-official member of the State Level Pong Dam Oustees Resettlement & Rehabilitation Advisory Committee.

1.9 The Committee note from the information furnished by the State Government that the non-official Members (Members of Parliament) of State Level Pong Dam Project Oustees Resettlement & Rehabilitation Advisory Committee shall be entitled to TA/DA on the same scale as admissible to them under the Salary, Allowances and Pension of Members of Parliament Act, 1954 as amended from time to time. The main function of the Committee is to advise the Himachal Pradesh Government regarding Resettlement & Rehabilitation of Pong Dam Project Oustees. As such, the function is found to be advisory in nature.

1.10 The Committee recommend that the non-official members (including Members of Parliament if nominated) of the said Committee should be exempted from disqualification for being chosen as, or for being, a Member of Parliament.

(10) State level Chamera Project oustees Resettlement & Rehabilitation Advisory Committee—Proposal to nominate Shri D.D. Khanoria, MP as Member thereof.

1.11 The Committee considered the request of the State Government of Himachal Pradesh seeking approval of Shri D.D. Khanoria, MP as non-official member of State Level Chamera Project Oustees Resettlement and Rehabilitation Advisory Committee.

1.12 The Committee note from the information furnished by the State Government that the non-official members (Members of Parliament) of State Level Chamera Project Oustees Resettlement & Rehabilitation Advisory Committee shall be entitled to TA/DA on the same scale as admissible to them under Salary, Allowances and Pension of Members of Parliament Act, 1954, as amended from time to time. The main function of the Committee is to advise the Himachal Pradesh Government regarding resettlement & Rehabilitation of Chamera Project Oustees. As such, the function is found to be advisory in nature.

1.13 The Committee recommend that the non-official members (including Members of Parliament, if nominated) of the said Committee should be exempted from disqualification for being chosen as, or for being a Member of Parliament.

(11) Tourism Development and Monitoring Committee, Himachal Pradesh—Proposal to Nominate Shri K.D. Sultanpuri, MP, Lok Sabha as Chairman and Shri Sushil Barongpa, MP, Rajya Sabha as Member thereof.

1.14 The Committee considered the request of the Government of Himachal Pradesh, seeking approval of the Speaker, Lok Sabha for nomination of Shri K.D. Sultanpuri, MP, Lok Sabha as Chairman and the approval of Chairman, Rajya Sabha for nomination of Shri Sushil Barongpa, MP, Rajya Sabha as Member to the Development and Monitoring Committee of Tourism Department, Himachal Pradesh.

1.15 The Committee note that information furnished by the Government of Himachal Pradesh in regard to Development and Monitoring Committee of Tourism Department was inadequate. Accordingly, the Committee decided to call for further detailed information from the State Government in regard to the perks, facilities/amenities attached with the post of Chairman and Member of the Committee and the functions indicating whether they are executive or financial in nature.

1.16 On the basis of the further information furnished by the State Government of Himachal Pradesh, the Committee note that Sarvashri K.D. Sultanpuri and Sushil Barongpa, MPs will be provided with Government vehicles, Secretarial assistance, accommodation for office with telephone facility at Shimla, besides TA/DA as admissible to them under the rules. No salary or special allowance will, however, be paid to them for

performing the work of the Committee. The Committee further note that the functions performed by the said Committee are executive in nature as stated by the Government of Himachal Pradesh.

1.17 The Committee, therefore, feel that Chairman and Members associated or proposed to be nominated as members to the said Committee should not be exempted from disqualification for being chosen as, or for being Members of Parliament.

(12) *Level Committee to Celebrate the 125th Anniversary Celebrations of Mahatma Gandhi, Haryana, Ex-post-facto Approval in Regard to Nomination of Sarvashri Narain Singh, Dharam Pal Singh Malik, Tara Singh and Chiranji Lal Sharma, Members, Lok Sabha as Members thereof.*

1.18 The Committee considered the request of the Government of Haryana, seeking approval of the Speaker, Lok Sabha for nomination of Sarvashri Narain Singh, Dharam Pal Singh Malik, Tara Singh and Chiranji Lal Sharma, MPs, Lok Sabha as members of State Level Committee to celebrate the 125th Anniversary Celebrations of Mahatma Gandhi, Haryana.

1.19 While considering the above request, Shri Chiranji Lal Sharma, Chairman of the Joint Committee on Offices of Profit did not participate in the deliberations of the Committee since he was associated as non-official member in the said State Level Committee.

1.20 The Committee note from the information furnished by the Government of Haryana that non-official members of the Committee to celebrate 125th Anniversary celebrations of Mahatma Gandhi are provided TA/DA which is covered by the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

1.21 The main functions of the Committee are to chalk out programmes for organising the 125th Anniversary of Mahatma Gandhi at the State Level (Haryana). The Committee note that the functions performed by the said Committee are advisory in nature. In this connection, attention of the Committee was drawn to Section 3(h) of the Parliament (Prevention of Disqualification) Act, 1959 which has declared certain offices of profit not to disqualify holder thereof for being chosen as, or for being, a Member of Parliament, Section 3(h) provides as under:—

"the office of Chairman or member of a Committee (whether consisting of one or more members) set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into, or collecting statistics in respect of, any such matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance."

1.22 Keeping the above in view, the Committee recommend that non-official members (Members of Parliament, if nominated) of the said Committee may be exempted from disqualification for being chosen as, or for being, Members of Parliament, subject to the condition that TA/DA to be provided to the members of Parliament should not exceed 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

CHAPTER II

INCURRING OF DISQUALIFICATION BY NON-OFFICIAL MEMBERS OF STATE/CENTRAL BODIES

(1) *Assam State Ghar Development Authority, Dispur, Guwhati—Proposal to Nominate MPs Representing Char (Riverine Island) Areas.*

2.1 The Committee note from the information furnished by the State Government of Assam that the Members of Parliament associated with the Assam State Char Development Authority are not entitled to draw sitting fee and other allowances. The functions of the Authority are to identify a Char (Riverine Island) or a cluster of Chars as a target group and draw up comprehensive area development plan for such Char. The Committee also note that the Authority has power to execute and review these plans for the benefit of a target group and, for that purpose, Authority may take steps to ensure adequate credit to the groups by providing grants to the credit institutions. Thus, the Committee find that the Assam State Char Development Authority has executive and financial powers.

2.2 The Committee had, however, divergent views on the question whether a Member of Parliament who is associated as non-official member in a development oriented Authority, which has power to exercise executive and financial powers, should be recommended or not for disqualification for being chosen as, or for being, a Member of Parliament. The Committee, therefore, decided to take oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs with a view to elicit their legal and expert opinion in the matter.

2.3 The representative of the Ministry of Law, opined before the Committee, at their sitting held on 12 October, 1994, that the basic proposition in Law is that an office of profit involves two elements, namely, that there should be an office and that it should carry some remuneration. In the present case, the facts disclose that there is no gain at all to the members of the Governing Body of the Authority. He further stated that *prima-facie* it appears that there is no question of the Member incurring disqualification under Article 102 of the Constitution. But ultimately if a question arises, it is the opinion of the Chief Election Commissioner that will be binding. Under Article 103, the President makes a reference to the Election Commission and the opinion given by the Election Commission is binding on him. According to him, in the eyes of Law, the disqualification is not attracted in the present case.

2.4 The Committee then asked the Law Secretary to furnish a detailed note on the subject to facilitate the Committee to decide the matter.

2.5 The Ministry of Law, in their detailed note, tendered their legal opinion that nomination of MPs as members of the Assam State Char Development Authority may not disqualify them for being chosen as, or for being, a Member of Parliament.

2.6 The Committee note that no sitting fees and other allowances are payable to the members of the said Authority but the functions performed by the Authority are executive and financial in nature.

2.7 The Committee took in view their own recommendations contained in their Tenth Report (Seventh Lok Sabha) presented to Lok Sabha on 7th May, 1984 that if the Body, in which the office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, issue of licences, allotment of lands, or gives powers of appointment, etc. then office in question will entail disqualification. The Committee, therefore, recommend that non-official members (Members of Parliament, if nominated) of the Assam State Char Development Authority may not be exempted from disqualification for being chosen as, or for being, Members of Parliament.

(2) Assam Board of Wakfs, Assam.

2.8 The Committee note from the information furnished by the Government of Assam that non-official members (Chairman and Secretary) of the Assam Board of Wakfs are paid remuneration of Rs.1000/- and TA/DA admissible as per Government Rules. The remuneration payable is not covered under 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959. The Committee further note that the main functions of the Board are to administer the Wakf institutions and maintenance of Wakf property besides granting loans, raising funds and executing the scheme for the development of Wakfs and Trusts. As such, the Board has both executive and financial powers.

2.9 The Committee, therefore, recommend that the non-official members of the said Board should not be exempted from disqualification for being chosen as, or for being, Members of Parliament.

(3) Bureau of Indian Standards (Ministry of Civil Supplies, Consumer Affairs and Public Distribution).

2.10 The Committee, while examining the particulars of the Bureau of Indian Standards (Ministry of Civil Supplies, Consumer Affairs and Public Distribution) had desired that further information may be obtained in regard to TA/DA payable to Members of Parliament who are associated with Bureau of Indian Standards and whether the functions performed by the said organisation are executive or financial in nature.

2.11 On the basis of further information furnished by the Ministry of Civil Supplies, Consumer Affairs and Public Distribution, the Committee note that Member of Parliament being a member of the said Bureau, shall

not be entitled to any allowances other than compensatory allowance as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

2.12 The Committee further note that as per Section 10 of the Bureau of Indian Standards Act, 1986, the Bureau have power to grant, renew, suspend or cancel a licence for the use of the Standard Mark and to levy fees for the grant or renewal of any licence. The Committee also note that Bureau have power to make inspections, establish branches, offices and to appoint agents in India and outside India for the inspection etc. Thus the Bureau of Indian Standards enjoy executive and financial powers. Moreover, in their reply, the Ministry of Civil Supplies, Consumer Affairs and Public Distribution had stated that the functions performed by BIS are both technical as well as executive in nature.

2.13 The Committee took in view the recommendations made by them in their Tenth Report (Seventh Lok Sabha) presented to Lok Sabha on 7 May, 1984, in which the Committee had recommended that if the Body, in which the office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, allotment of lands, issue of licences, etc. or gives powers of appointment, grant of scholarship etc., then office in question will entail disqualification.

2.14 The Committee, accordingly, recommend that the Members of Parliament proposed to be nominated as non-official members of the Bureau of Indian Standards *may not be exempted* from disqualification for being chosen as, or for being, Members of Parliament.

NEW DELHI;
17 January, 1995

7 Magha, 1916 (S)


CHIRANJI LAL SHARMA
Chairman,
Joint Committee on Offices of Profit.

APPENDIX

(*Vide Para 2 of the Report*)

XXXVIII

MINUTES OF THE THIRTY-EIGHTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (Tenth Lok Sabha)

The Committee met on Wednesday, 14 September, 1994 from 1500 hours to 1540 hours in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Chiranjit Lal Sharma — *Chairman*

MEMBERS

Lok Sabha

2. Prof. Susanta Chakraborty
3. Shri D.K. Naikar
4. Shri Ram Chandra Rath
5. Shri Roshan Lal

Rajya Sabha

6. Shri Makhan Lal Fotedar
7. Shri Sarada Mohanty
8. Shri S.K.T. Ramachandran

SECRETARY

Shri Ram Autar Ram — *Under Secretary*

2. The Committee took up for consideration following six Memoranda regarding certain Committees/Bodies etc. constituted by State Governments:

1. District Planning and Development Cum-20-Point Programme Review Committee — Proposal to nominate following members from Lok Sabha:—
 - (i) Shri Prem Kumar Dhumal, MP,
Distt. Bilaspur and Hamirpur.
 - (ii) Shri D.D. Khanoria, MP,
Distt. Chamba and Kangra

D. Sultanpuri, MP
mla.

(Memorandum No. 85)

1. Grievances Redressal Committee (Himachal Pradesh)

to nominate the following members of Parliament as members thereof—

(i) Shri K.D. Sultanpuri	—Shimla
(ii) Shri P.K. Dhumal	—Bilaspur
(iii) Shri K.D. Sultanpuri	—Solan
(iv) Shri P.K. Dhumal	—Hamirpur
(v) Shri D.D. Khanoria	—Chamba
(vi) Shri P.K. Dhumal	—Unna
(vii) Shri D.D. Khanoria	—Kangra

(Memorandum No. 86)

3. (i) Committee for Planning Co-ordinations Implementation of 20-Point Economic Programme at the District Level—Bhilwara (Rajasthan)— Proposal to nominate Shri Shivcharan Mathur, M.P. as member thereof.
- (ii) Committee for Planning Co-ordinations Implementation of 20-Point Economic Programme at District Level—Bara (Rajasthan)— Proposal to nominate Smt. Vasundhra Raje, M.P. as member thereof.

(Memorandum No. 87)

4. District Planning and Development cum-20-Point Programme Review Committee — Proposal to nominate following members of Rajya Sabha:

(i) Shri Maheshwar Singh	—District Kulu
(ii) Shri Sushil Barongpa	—Distt. Lahaul & Spiti
(iii) Shri Krishan Lal Sharma	—District Shimla

(Memorandum No. 88)

5. State Level Pong Dam Oustees Resettlement & Rehabilitation Advisory Committee — Proposal to nominate Shri D.D. Khanuria, MP as member thereof.

(Memorandum No. 89)

6. State Level Chamera Project Oustees Resettlement & Rehabilitation Advisory Committee — Proposal to nominate Shri D.D. Khanuria, MP as member thereof.

(Memorandum No. 90)

3. The Committee noted that functions performed by aforementioned Committees were advisory in nature. The Committee took in view the following Section 3(h) of Parliament (Prevention of Disqualification) Act, 1959:

“3(h) the office of Chairman or Member of a Committee (whether consisting of one or more members), set up temporarily for the purpose of advising the Government or any other authority in

respect of any matter of public importance or for the purpose of making an inquiry into, or collecting statistics in respect of, any such matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance."

4. The Committee recommended that the non-official members (Members of Parliament) of the aforementioned Committees might be exempted from disqualification for being chosen as, or for being, a member of Parliament provided the amount of TADA should not exceed the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959 which reads as under:—

"2(a) 'compensatory allowance' means any sum of money payable to the holder of an office by way of daily allowance [such allowance not exceeding the amount of daily allowance to which a member of Parliament is entitled under the Salary, Allowances and Pension of Members of Parliament Act, 1954 (30 of 1954)], any conveyance allowance, house rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions, of that office;"

The Committee then adjourned to meet again on 28 September, 1994.

XXXIX

MINUTES OF THE THIRTY-NINTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (TENTH LOK SABHA)

The Committee met on Wednesday, 28 September, 1994 from 1530 to 1630 hours in Committee Room 'D', Parliament House Annex, New Delhi.

PRESENT

Shri Chiranjeevi Lal Sharma — *Chairman*

MEMBERS

2. Prof. Susanta Chakraborty
3. Shri Dau Dayal Joshi
4. Shri D.K. Naikar
5. Shri Thota Subba Rao
6. Shri Makhan Lal Fotedar
7. Shri Sarada Mohanty
8. Shri S.K.T. Ramachandran

SECRETARIAT

1. Shri Murari Lal — *Joint Secretary*
2. Shri Ram Autar Ram — *Deputy Secretary*

2. The Committee took up for consideration Memoranda Nos. 91 to 94 regarding certain bodies/Committees etc. constituted by State Governments as follows:—

(i) *Proposal to nominate Sarvashri K.L. Sharma, Sushil Barongpa and Maheshwar Singh, Members (Rajya Sabha) as non-official members in the Himachal Pradesh State Level Grievances Redressal Committee, Himachal Pradesh.* (Memorandum No. 91).

The Committee noted that non-official members of the Himachal Pradesh State Level Redressal Committee would be paid TA/DA at the rates admissible from time to time, which were covered by the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959. The Committee also noted that the functions of the Himachal Pradesh State Level Grievances Redressal Committee were to advise the Government to review the matters relating to public complaints, grievances and their redressal. Thus, the functions were advisory in nature. The Committee, therefore, recommended that

Members of Parliament if nominated might be exempted from disqualification for being chosen as or for being a Member of Parliament provided the amount of TA/DA does not exceed the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

(ii) Proposal to nominate Shri Prabhu Lal Rawat, Member (Lok Sabha) as non-official member in the Committee for Planning and Co-ordination Implementation of 20-Point Economic Programme at the district level, Dungarpur, Rajasthan (Memorandum No. 92).

The Committee noted that non-official members of the Committee for Planning and Co-ordination Implementation of 20-Point Economic Programme at district level were not paid any remuneration. No executive, legislative or judicial work was carried out by the said Committee and it had no financial powers whatsoever. The Committee felt that it was only an advisory body. The Committee, therefore, recommended that the non-official member (Member of Parliament) of the said Committee *might be exempted from disqualification for being chosen as or for being a Member of Parliament provided the amount of TA/DA does not exceed the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.*

(iii) Proposal to nominate all MPs representing Char (riverine island) Areas in the Assam State Char Development Authority, Dispur, Guwahati. (Memorandum No. 93).

The Committee noted that no sitting fee and other allowances were paid to the members of the Assam State Char Development Authority and functions of the Authority were to identify a Char (Reverine Island) or a cluster of Chars as a target group and draw up comprehensive area development plan for such Char. The Committee also noted that the authority had power to execute and review these plans for the benefit of a target group and for that purpose authority *might take steps to ensure adequate credit to the groups by providing grants to the credit institutions.* Thus in view of the functions performed by the Authority, the Committee found that the Assam State Char Development Authority had executive and financial powers.

It view of above, the Committee had divergent views on the question whether a Member of Parliament who was associated as non-official member in a development oriented authority, which had power to exercise executive and financial powers, should be recommended or not for disqualification for being chosen as, or for being, a Member of Parliament. After some deliberations, the Committee decided to take oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs with a view to elicit their legal/expert opinion in the matter.

*(iv) Assam Board of Wakfs, Assam**(Memorandum No. 94).*

The Committee noted that non-official members (Chairman and Secretary) of the Assam Board of Wakfs were paid remuneration of Rs. 1000/- and TA/DA admissible as per Government Rules. The remuneration payable was not covered under 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959. The Committee further noted that the main functions of the Board were to administer the Wakfs institutions and maintenance of Wakfs property besides granting loans, raising funds and executing the scheme for the development of Wakfs and trusts. As such, the Board had both executive and financial powers. The Committee, therefore, recommended that the non-official members of the said Board should not be exempted for disqualification for being chosen as, or for being, a Member of Parliament.

The Committee then adjourned to meet again on 12 October, 1994.

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MINUTES OF THE FOURTIETH SITTING OF THE JOINT
COMMITTEE ON OFFICES OF PROFIT
(TENTH LOK SABHA)

The Committee met on Wednesday, 12 October, 1994 from 1130 to 1230 hours in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Chiranjit Lal Sharma — *Chairman*

MEMBERS

2. Shri Harisinh Pratapsinh Chavda
3. Shri Dau Dayal Joshi
4. Shri Ram Chandra Rath
5. Shri Roshan Lal
6. Shri Thota Subba Rao
7. Shri Makhan Lal Fotedar
8. Shri Sarada Mohanty
9. Shri S.K.T. Ramachandran

SECRETARIAT

1. Shri M.R. Khosla — *Director*
2. Shri Ram Autar Ram — *Deputy Secretary*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY
AFFAIRS (DEPARTMENT OF LEGAL AFFAIRS)

1. Dr. P.C. Rao — *Law Secretary*
2. Shri R.L. Meena — *Additional Secretary*
2. At the outset, the Chairman welcomed the representatives of the Ministry of Law, Justice and Company Affairs and read the provisions of Direction 58 of the Directions by the Hon'ble Speaker, Lok Sabha.
3. The Committee then solicited the opinion of the Ministry of Law, Justice and Company Affairs whether the Members of Parliament might be exempted from disqualification by virtue of their membership in Assam State Char Areas (Riverine Island) Development Authority, Dispur, Guwahati. The Law Secretary quoted the following two judgements of the Supreme Court:—

"The plain meaning of the expression seems to be that an office must be held under Government to which any pay, salary, emolument or

allowance is attached. The word 'profit' connotes an idea of pecuniary gain. If there is really a gain its quantum or amount would not be material, but the amount of money receivable by a person may be useful in deciding whether the office really carries any profit."

"The object of enacting article 191 (1) (a) is plain. A person who is elected to a Legislature should be free to carry on his duties fearlessly without being subjected to any kind of governmental pressure. If such a person is holding an office which brings him remuneration and the Government has a voice in his continuance in that office, there is every likelihood of such person succumbing to the wishes of Government. Article 191 (1) (a) is intended to eliminate the possibility of a conflict between duty and interest and to maintain the purity of the Legislatures. The term 'office of profit under the Government' used in the above clause though indeterminate is an expression of wider import than a post held under the Government which is dealt with a Part XIV of the Constitution. For holding an office of profit under the Government a person need not be in the service of the Government and there need not be any relationship of master and servant between them. An office of profit involves two elements, namely, that there should be an office and that it should carry some remuneration. In order to determine whether a person holds an office of profit under the Government several tests are ordinarily applied such as whether the Government makes the appointment, whether the Government has the right to remove or dismiss the holder of the office, whether the Government pays the remuneration, whether the functions performed by the holder are carried on by him for the Government and whether the Government has control over the duties and functions of the holder. Whether an office in order to be characterised as an 'office of profit under the Government' should satisfy all these tests or whether any one or more of them may be decisive of its true nature has been the subject matter of several cases decided by this Court, but no decision appears to lay down conclusively the characteristics of an office of profit under the Government although the Court has no doubt determined in each case whether the particular office involved in it was such an office or not having regard to its features."

4. In the light of the aforesaid judgement of the Supreme Court, the Law Secretary observed that the basic proposition in Law is that an office of profit involves two elements, namely, that there should be an office and that it should carry some remuneration. In the present case, the facts disclose that there is no gain at all to the members of the Governing Body. He further observed that *prima-facie* it appears that there is no question of the Member incurring disqualification under Article 102 of the Constitution. But ultimately if a question arises, it is the opinion of the

Chief Election Commissioner will be binding. Under Article 103, the President makes a reference to the Chief Election Commissioner and the opinion given by the Chief Election Commissioner is binding on him. According to him in the eyes of Law, the disqualification is not attracted in the present case.

5. The Committee then told the Law Secretary to furnish a detailed note on the subject to facilitate the Committee to hold further discussion and decide the matter.

[The witness withdrew]

The Committee then adjourned.

XXXXI

MINUTES OF THE FORTY-FIRST SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (TENTH LOK SABHA)

The Committee met on Monday, 31 October, 1994 from 1400 to 1500 hours in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Chiranjit Lal Sharma — *Chairman*

MEMBERS

2. Prof. Susanta Chakraborty
3. Shri Harisinh Pratapsinh Chavda
4. Shri Dau Dayal Joshi
5. Shri Ram Chandra Rath
6. Shri Roshan Lal
7. Shri Thota Subba Rao
8. Shri Makhan Lal Fotedar
9. Shri Sarada Mohanty
10. Shri Digvijay Singh

SECRETARIAT

1. Shri Murari Lal	— <i>Joint Secretary</i>
2. Shri M.R. Khosla	— <i>Director</i>
3. Shri Ram Autar Ram	— <i>Deputy Secretary</i>

2. At the outset the Committee considered the detailed note containing the views of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) on Memo. No. 93 regarding representation of all MPs of Char (Riverine Island) Area as non-official members in the Assam State Char Development Authority, Dispur, Guwahati. The Ministry in their detailed note tendered their legal opinion that nomination of MPs as members of the aforesaid authority may not disqualify them for being chosen as or for being a Member of Parliament. The Committee noted that no sitting fees and other allowances were paid to the Members of the Assam State Char Development Authority but the functions performed by the authority were executive and financial in nature. The Committee took in view their recommendation contained in their Tenth

Report (Seventh Lok Sabha) presented to Lok Sabha on 7th May, 1984 (Annexure) and recommended that non-official members (Member of Parliament, if nominated) to the Assam State Char Development Authority should not be exempted from disqualification for being chosen as or for being Members of Parliament.

3. The Committee then took up for consideration Memorandum No. 95 regarding the proposal to nominate Shri K.D. Sultanpuri, MP, Lok Sabha as Chairman and Shri Sushil Barongpa, MP, Rajya Sabha as Member to the Development and Monitoring Committee of Tourism Department, Himachal Pradesh.

The Committee noted that information furnished by Government of Himachal Pradesh in regard to Development and Monitoring Committee of Tourism was inadequate to come to a conclusion as to whether offices proposed to be held by Members of Parliament in the said Committee are offices of profit or not. Accordingly, the Committee decided to call for further information from the Government of Himachal Pradesh regarding perks, facilities and amenities attached to the seats of Chairman and members of the monitoring Committee.

4. The Committee thereafter considered Memorandum No. 96 regarding the proposal to nominate 5 MPs by the Ministry of Parliamentary Affairs to the Bureau of Indian Standards (Ministry of Civil Supplies, Consumer Affairs and Public Distribution).

The Committee were of the view that information furnished by the Ministry of Civil Supplies, Consumer Affairs and Public Distribution in regard to the Bureau of Indian Standards was inadequate to come to the conclusion as to whether offices proposed to be held by Members of Parliament in the said Committee are offices of profit or not. Accordingly the Committee decided that the Ministry of Civil Supplies, Consumer Affairs and Public Distribution should be asked to send specific information regarding TA/DA to be paid to the Members and clearly state whether the Bureau has executive and financial powers.

*The Committee then adjourned to meet again on Monday,
21 November, 1994.*

XXXXII

MINUTES OF THE FORTY-SECOND SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (TENTH LOK SABHA)

The Committee met on Monday, 21 November, 1994 from 11.30 to 12.30 hours in Committee Room 'D', Ground Floor, Parliament House Annex, New Delhi.

PRESENT

Shri Chiranjee Lal Sharma — *Chairman*

MEMBERS

2. Prof. Susanta Chakraborty
3. Shri Ram Chandra Rath
4. Shri Roshan Lal
5. Shri Makhan Lal Fotedar
6. Shri Sarada Mohanty
7. Shri S.K.T. Ramachandran

SECRETARIAT

1. Shri Murari Lal — *Joint Secretary*
2. Shri M.R. Khosla — *Director*

2. The Committee took up for consideration Memoranda Nos. 97 to 100 regarding the following Committees/bodies etc. constituted by the State Governments/Central Government:

1. *Proposal to nominate Shri K.D. Sultanpuri, Member, Lok Sabha as member in the District Level Grievances Redressal Committee, Sirmaur, Himachal Pradesh.* (Memorandum No. 97).

—3. The Committee noted that non-official members of the District Level Grievances Redressal Committee (District Sir would be paid TA and DA at the rate admissible from time to time. The Committee further noted that the main function of the said Committee is to advise the Government to review matters relating to public complaints/grievances and their redressal. Thus, the functions of the Committee are advisory in nature and the Committee, therefore, recommended that non-official members (Member of Parliament, if nominated) of the said Committee might be exempted from disqualification for being chosen as or for being, Members of Parliament, subject to condition that TA/DA provided to the members of the said Committee should not exceed the 'compensatory allowance' as

defined in Section 2 (a) of the Parliament (Prevention of Disqualification) Act, 1959, which provides as under:—

“2 (a) ‘Compensatory allowance’ means any sum of money payable to the holder of an office by way of daily allowance [such allowance not exceeding the amount of daily allowance to which a member of Parliament is entitled under the Salary, Allowances and Pension of Members of Parliament Act, 1954 (30 of 1954), any conveyance allowance, house rent allowance or travelling allowance, for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions, of that office.”

2. *Nomination of Shri K.D. Sultanpuri, MP as Chairman and Shri Sushil Barongpa, MP, Rajya Sabha as member of the Tourism Development and Monitoring Committee of Himachal Pradesh.*
(Memorandum No. 98).

4. The Committee then resumed consideration in regard to nominations of Shri K.D. Sultanpuri, MP as Chairman and Shri Sushil Barongpa, MP Rajya Sabha as member of the Tourism Development and Monitoring Committee of Himachal Pradesh, on the basis of further information furnished by the Govt. of Himachal Pradesh. The Committee noted that Sarvashri K.D. Sultanpuri and Sushil Barongpa, MPs would be provided with Government vehicles, Secretarial assistance, space for office with telephone facilities at Shimla, besides TA/DA as admissible to them under the rules. No salary or special allowance will, however, be paid to them for performing the work of the Committee. The Committee further noted that the functions performed by the said Committee are executive in nature as stated by the Govt. of Himachal Pradesh. The Committee, therefore, felt that Chairman and Members associated or proposed to be nominated as member in the said Committee *should not be exempted* from disqualification for being chosen as or for being, Members of Parliament.

3. *Ex-post-facto approval in regard to nomination of Sarvashri Narain Singh, Dharam Pal Singh Malik, Tara Singh and Chiranjit Lal Sharma, Members, Lok Sabha as members in the State Level Committee to celebrate the 125th anniversary celebrations of Mahatma Gandhi.*
(Memorandum. No. 99).

While considering Memorandum No. 99, Shri Chiranjit Lal Sharma, Chairman of the Committee did not participate in the deliberations of the Committee since he was associated as member in the said Committee.

The Committee noted that non-official members of the Committee to celebrate 125th Anniversary celebrations of Mahatma Gandhi were provided TA/DA admissible to them as members of the said Committee in respect of journeys performed by rail as is admissible to the members of the State Legislature appointed in an *ex-officio* capacity less one 1st. Class fare for journeys by rail to and fro. The payment of TA/DA was covered by ‘Compensatory allowance’ as defined in Section 2(a) of the Parliament

(Prevention of Disqualification) Act, 1959. The main functions of the Committee were to chalk out programmes for organising the 125th Anniversary of Mahatma Gandhi at the State Level (Haryana). Hence the functioning performed by the said Committee were advisory in nature. In this connection, the attention of the Committee was drawn to the relevant part of section 3(h) of the Parliament (Prevention of Disqualification) Act, 1959 which declared certain offices of profit which should not disqualify holder thereof for being chosen as, or for being a member of Parliament, provides as under:—

“the office of Chairman or member of a Committee (whether consisting of one or more members), set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an enquiry into, or collecting statistics in respect of, any such matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance.”

Keeping in view the above, the Committee recommended that non-official members (Members of Parliament, if nominated) of the said Committee may be exempted from disqualification for being chosen as or for being, Members of Parliament, subject to the condition that TA/DA which was provided to the Members of Parliament should not exceed ‘compensatory allowance’ as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

4. *Proposal to nominate Members of Parliament in the Bureau of Indian Standards (Ministry of Civil Supplies, Consumer Affairs and Public Distribution).* (Memorandum No. 100).

6. The Committee resumed consideration in regard to nomination of five Members of Parliament in the Bureau of Indian Standards, on the basis of further information furnished by the Ministry of Civil Supplies, Consumer Affairs and Public Distribution. The Committee noted that during the Inter-Session, Member of Parliament being a member of the said Bureau, would not be entitled to any allowances other than compensatory allowance as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959, which was covered under compensatory allowance defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

The Committee further noted that as per Chapter IV, section 10 of the Bureau of Indian Standards Act, 1959, the Bureau have power to grant, renew, suspend or cancel a licence for use of standard mark and to levy fees for the grant or renewal of any licences. The Committee also noted that Bureau have also power of inspection, establish branch offices and to appoint agents in India and outside India for the inspection etc. Thus the Bureau of Indian Standards enjoy executive and financial powers. In their reply, the Ministry of Civil Supplies, Consumer Affairs and Public

Distribution had stated that functions performed by BIS are both technical as well as executive in nature.

The Committee took in view the recommendations made by JCOP in their Tenth Report (Seventh Lok Sabha) presented to Lok Sabha on 7 May, 1984, in which Committee had recommended that if the body in which office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, allotment of lands, issue of licences etc. or gives powers of appointment, grant of scholarship etc. then office in question will entail disqualification. The Committee accordingly recommended that the Members of Parliament proposed to be appointed as non-official Members in the BIS *should not be exempted* from disqualification for being chosen as, or for being, Members of Parliament.

The Committee then adjourned.

MINUTES OF THE FORTY-FIFTH SITTING OF THE JOINT
COMMITTEE ON OFFICES OF PROFIT
(TENTH LOK SABHA)

The Committee met on Tuesday, 17 January, 1995 from 15.00 to 15.30 hours in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Chiranjeevi — *Chairman*

MEMBERS

2. Shri D.K. Naikar
3. Shri Roshan Lal
4. Shri E. Balanandan
5. Shri Makhan Lal Fotedar

SECRETARIAT

1. Shri Ram Autar Ram — *Deputy Secretary*
2. Shri J.P. Jain — *Under Secretary*

2. At the outset the Committee considered their draft Seventh Report and adopted it. The Committee authorised the Chairman to present the Report on their behalf.

* * * *

The Committee then adjourned.

* Omitted portions of the minutes are not covered by this Report.

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