

CONFIDENTIAL

CB-II No.

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

THIRD REPORT

Presented to Lok Sabha on 24 AUG 2006
Laid in Rajya Sabha on 24 AUG 2006

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**LOK SABHA SECRETARIAT
NEW DELHI**

August, 2006/Bhadrapada, 1928 (Saka)
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COMPOSITION OF THE JOINT COMMITTEE ON OFFICES OF PROFIT
(FOURTEENTH LOK SABHA)

Shri Chandra Bhushan Singh - Chairman

MEMBERS
LOK SABHA

2. Shri Ananth Kumar
3. Shri Ashok Argal
- # 4. Shri Ajit Kumar Singh
5. Shri Mohan Jena
6. Shri S.K. Kharventhan
7. Shri G. Nizamoddin
8. Shri Nikhilananda Sar
9. Shri Bharatsinh M. Solanki
10. Shri Sita Ram Yadav

RAJYA SABHA

11. Shri Silvius Condpan
- *12. Dr. Abhishek Manu Singhvi
- *13. Shri Arun Jaitley
- *14. Shri Chittabrata Majumdar
- *15. Shri P.G. Narayanan

SECRETARIAT

| | |
|-------------------------|------------------|
| 1. Shri R.C. Ahuja | Joint Secretary |
| 2. Shri A. Louis Martin | Director |
| 3. Shri R.K. Bajaj | Deputy Secretary |
| 4. Shri K. Jena | Under Secretary |

* Elected by Rajya Sabha on 28.7.2006 vice Sarvashri Manoj Bhattacharya, Ram Nath Kovind and K. Rama Mohana Rao who retired w.e.f. 2.4.2006 and Shri Saif-ud-din-Soz resigned on 29.1.2006 consequent upon his appointment as Union Minister.

Elected to the Committee on 8.8.2006 vice Shri Shivraj Singh Chauhan resigned from Lok Sabha on 10 May, 2006.

INTRODUCTION

1. 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 matters covered in the Report were considered by the Joint Committee on Offices of Profit at their sittings held on 15 March, 19 September, 2005 and 24 January, 2006. The Minutes of the sittings form part of the Report and are at Appendices-I&III.

3. The Committee examined the composition, character, functions etc. of Advisory Committee on Discretionary Allotments of dealerships/ distributorships of Petroleum Products constituted by the Ministry of Petroleum and Natural Gas and the Water Sector Reform Committee for Jaipur City of Rajasthan and the emoluments and allowances payable to their non-official Chairman/Members with a view to considering whether the holders of the offices of these bodies would incur disqualification under Article 102 of the Constitution of India.

4. The detailed information regarding the composition, character, functions, emoluments and allowances payable to the members of these bodies was furnished by the Ministry of Petroleum and Natural Gas and the State Government of Rajasthan. The Committee wish to express their thanks to the Ministry and the State Government for furnishing the information desired by them.

5. The Committee considered and adopted this Report at their sitting held on 22 March, 2006 (Appendix-IV).

6. The observations/recommendations of the Committee in respect of the matters considered by them are given in the respective Chapters of this Report. 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;

**CHANDRA BHUSHAN SINGH,
Chairman,
Joint Committee on Offices of Profit**

August, 2006

Bhadrapada, 1928 (Saka)

REPORT

CHAPTER -I

Nomination of a Member of Parliament to Advisory Committee on Discretionary Allotments of dealerships/distributorships of petroleum products.

The Ministry of Petroleum & Natural Gas had proposed nomination of a member of Rajya Sabha (Shri Shankar Roy Chowdhury*) as Chairman of the Advisory Committee on Discretionary Allotments of dealerships/distributorships of petroleum products.

1.2 The details of the powers and functions of the Committee and the office of Chairman of the Committee as furnished by the Ministry of Petroleum and Natural Gas vide their D.O.No.19015/2/2004-IOC dated 29.11.2004 and O.M. dated 28.12.2004 and O.M. dated 24.1.2005 are as follows:-

A. The functions and composition of the Advisory Committee:-

- The Government of India in the Ministry of Petroleum & Natural Gas has a scheme for allotment of retail outlet dealerships (petrol pumps)/LPG distributorships (Gas Agency)/SKO-LDO dealerships, under its discretionary powers, on genuine compassionate grounds to deserving persons in the following two categories:

(a) Dependents of Defence/Paramilitary/Police personnel, who are killed in action or persons permanently disabled while performing their duties and have not been suitably rehabilitated.

*Retired from Rajya Sabha on 18 August, 2005.

(b) **Dependents of Central/State Government employees, who are killed or permanently disabled while performing their duties and have not been suitably rehabilitated.**

A set of guidelines on the subject was laid down by the Government in April, 2001.

The number of such discretionary allotments in a year shall not exceed 10% of the average annual marketing plan.

As per the scheme, eligible candidates under the above two categories would make an application in the prescribed format, along with relevant certificates/affidavit, etc. After the applications are processed and submitted to the Minister of Petroleum & Natural Gas, the Minister will personally decide each case and his order should be a speaking order.

- The concept of an Advisory Committee to assist the Minister of Petroleum & Natural Gas, who is required to decide each case personally by way of a speaking order, has been adopted recently. As per the new procedure being followed for processing the applications for discretionary allotments, all the applications will be forwarded to the parent organizations of the persons concerned and upon receipt of their recommendations, the applications will further be considered by the proposed Advisory Committee. After consideration, the Advisory Committee will forward their recommendation, etc., based on which the Minister of Petroleum & Natural Gas take a decision on each case.

- The Advisory Committee, comprises non-official members selected from among prominent public figures, retired senior civil servants, representative of non-Government organizations, etc. The Committee comprises four members other than the Chairman. The nature of the Committee will be that of a standing committee so long as the scheme of discretionary allotments continues. Its composition may undergo change, if need arises in future.

B. Powers of the Committee.

The Chairman, will preside over the meetings of the Advisory Committee and on behalf of the Committee, will forward the recommendations etc. to the Minister of Petroleum & Natural Gas. As per the scheme of things, neither will there be any scope nor the Committee will be expected to wield any influence or power by way of patronage. The Committee will basically be guided by the recommendations of the parent organizations. The collective recommendation of the Committee will then be considered and decided upon by the Minister of Petroleum & Natural Gas. The Committee have no powers for any appointment/ allotment of dealerships/distributorships.

C. Mode of appointment

There are no laid down guidelines regarding mode of appointment, removal of the Chairman and non-official members. However, Chairman/Members are nominated keeping in view their reputation and social status.

D. Remuneration

- The travel/stay arrangements for the Chairman and other Members of the proposed committee, as also secretarial assistance to the Committee will be arranged by the Ministry of Petroleum & Natural Gas through the oil companies, etc. These arrangements will depend, among others, on the venue of the meetings. However, efforts will be made to match the arrangements befitting the status of the Chairman/Members.
- Apart from the travel/stay arrangements, no other remuneration, in any form, is proposed to be made to the Chairman/Members

1.3 It may be mentioned in this connection that the Joint Committee on Offices of Profit, in the context of the request of the Ministry of Human Resource Development (Department of Education) for nomination of a member of Parliament (Shri Viren J. Shah, M.P., Rajya Sabha) as Chairman, Board of Apprenticeship Training, Western Region, Bombay had noted that the functions of the Board were purely advisory in nature and held the view that nomination of a member of Parliament in no way comes within the purview of 'office of profit' and should be exempted from disqualification (1st Report, 10th Lok Sabha).

1.4 Similarly, in another case, the Joint Committee on Offices of Profit, in the context of the request of the Ministry of Environment & Forests regarding nomination of a member of Parliament (Shri Ranganath Misra, Member, Rajya Sabha) as Chairman of Committee on Plastic Wastes Disposal observed that the functions of the Committee were advisory in nature and recommended that the members of Parliament on the Committee

on Plastic Wastes Disposal as non-official Chairman/Members, (if nominated) might be exempted from disqualification for being chosen as, or for being, Members of Parliament (4th Report, 13th Lok Sabha).

1.5 The Committee considered the matter at their sitting held on 15 March, 2005. **(APPENDIX-I)**

1.6 Considering the advisory nature of the functions of the Committee and the remuneration proposed to be paid to Chairman/Members of the Committee being within the Compensatory Allowance, the Joint Committee on Offices of Profit decided to recommend that the office of the Chairman or Membership of the Advisory Committee on Discretionary Allotments of dealership/distributorship of petroleum products might be exempted from disqualification for being chosen as, and for being a member of Parliament.

1.7 However, subsequently the Joint Committee on Offices of Profit while considering the report on the said subject at their sitting held on 19 September, 2005 **(Appendix-II)** took the view that power of the Advisory Committee to consider the applications of the eligible candidates and make recommendations to the Minister might involve an element of influence or power by way of patronage as the number of eligible applicants at any given point of time would be more than the number of dealerships to be allotted. The Committee also took into consideration the fact that according to one of the criteria adopted by the Committee, an office which enables the holder of it to wield influence or power by way of patronage would attract disqualification. The Committee, therefore, decided to obtain the opinion of the Ministry of Law & Justice in the matter.

1.8 On a reference made to the Ministry of Law and Justice in this regard, the Ministry furnished their opinion in the matter vide their U.O. Note dated 3.10.2005 (Annexure). The conclusive part of the opinion of the Ministry on the issue is as under:-

“.....the question raised for our consideration is answered in the negative. Mere influence or power which the Chairman or a member of the Advisory Committee on Discretionary Allotments of dealerships/distributorships of Petroleum Products may wield, will not fall within the ambit of the expression “Office of Profit” under article 102 (1) (a) of the Constitution.”

1.9 The Committee considered the matter again at their sitting held on 24.1.2006 (APPENDIX-III)

1.10 The Committee note from the information furnished by the Ministry of Petroleum and Natural Gas that the Advisory Committee on Discretionary Allotments of dealerships/distributorships of petroleum products does not exercise any executive, legislative or judicial powers nor does it enable the holder of office in the Committee to wield influence or power by way of patronage. The Committee also note that the Advisory Committee will make recommendation on the basis of available information and no remuneration, in any form, is proposed to be made to the Chairman/members of the Committee. The Committee further note that the travel/stay arrangements as well as secretarial assistance are proposed to be made by the Ministry through oil companies. In this connection, the Committee also note the cases of nomination of members of Parliament to the Board of Apprenticeship Training, Western Region, Bombay and the Committee on Plastic Wastes Disposal in respect of which the Committee had recommended in similar circumstances, exemption from disqualification for being chosen as, or for being, a member of Parliament. The Committee also note the opinion of the Ministry of Law and

Justice according to which mere influence or power which the Chairman or a member of the Advisory Committee on Discretionary Allotments of dealerships/distributorships of Petroleum Products may wield, will not fall within the ambit of the expression "Office of Profit" under article 102 (1) (a) of the Constitution. The Committee feel that the office of Chairman or member of the Advisory Committee on Discretionary Allotments of dealerships/distributorships of petroleum products will not come within the purview of 'office of profit' and it will not attract the rigours of article 102 (1) (a) of the Constitution.

1.11. Having considered all aspects of the matter, the Committee recommend that a person holding the office of the Chairman or Member of the Advisory Committee on Discretionary Allotments of dealerships/distributorships of Petroleum Products should be exempted from disqualification for being chosen as, and for being a member of Parliament.

Ministry of Law & Justice
Department of Legal Affairs

Lok Sabha Secretariat has sought our opinion as to whether the holder of the Office of Chairman of the Advisory Committee on Discretionary Allotments of dealerships/distributorships of Petroleum Products would wield influence or power by way of patronage to come within the meaning of 'Office of Profit' under article 102(1)(a) of the Constitution.

2. Article 102(1)(a) of the Constitution provides that a person shall be disqualified for being chosen as, and for being a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder. Article 191 of the Constitution contains corresponding provisions for disqualification for membership of the Legislative Assembly or the Legislative Council of a State.

3. Parliament has passed the Parliament (Prevention of Disqualification) Act, 1959. Section 3 of the Act declares certain Offices of Profit not to disqualify. Clauses (h) and (i) of Section 3 reads as under:

"(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;

(i) the office of chairman, director or member of any statutory or non-statutory body other than any such body as is referred to in clause (h), if the holder of such office is not entitled to any remuneration other than compensatory allowance, but excluding (i) the office of chairman of any statutory or non-statutory body specified in Part I of the Schedule and (ii) the office of chairman or secretary or any statutory or non-statutory body specified in Part II of the Schedule."

4. The Chairman of the Advisory Committee on Discretionary Allotments of dealerships/distributorships of petroleum products is not included in Part I of the Schedule to the Act.

5. In view of the aforesaid, if a person is not entitled to any remuneration other than compensatory allowance as defined in Section 2(a) of the Act, he will not incur disqualification for receiving that allowance/remuneration. Clause (a) of Section 2 of the said Act defining the terms "compensatory allowance", reads as under:

"(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, 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;"

6. In *Shibu Soren v. Dayanand Sahi* (AJR 2001 SC 2583), the Supreme Court, *inter alia*, made the following pertinent observations, namely:

"The expression "Office of Profit" has not been defined either in the Constitution or in the representation of the People Act. In common parlance, the expression 'profit' connotes an idea of some pecuniary gain. If there is really some gain, its label - 'honorarium' - 'remuneration' - 'salary' is not material - it is the substance and not the form which matters and even the quantum or amount of "pecuniary gain" is not relevant - what needs to be found out is whether the amount of money receivable by the concerned person in connection with the office he holds, gives to him some "pecuniary gain, other than as 'compensation' to defray his out of pocket expenses, which may have the possibility to bring that person under the influence of the executive, which is conferring that benefit on him." (at p.2592)

"The word 'profit' for the purpose of article 102(1)(a) or article 191 "connotes an idea of pecuniary gain", though neither the label under which it is paid nor the quantum of the amount may always be material to determine the issue." (at p.2597)

7. The emoluments attached to an Office may be in the nature of pay, salary, honorarium, fees, daily allowances, traveling allowances. Where salary is attached to an office it immediately and undisputedly makes the office an Office or Post (Bhargava Committee 1955 Part I page 11).

8. The mere influence which one gains by virtue of his position as a member of a Committee which has no remuneration attached to it is not profit within the meaning of article 191 of the Constitution, and the member of such a Committee would suffer no disqualification by being a member thereof. (*Chandernath vs. Jaswant Singh & others* ELRL Vol.3 p.147).

9. In view of the aforesaid, the question raised for our consideration is answered in the negative. Mere influence or power which the Chairman or a member of the Advisory Committee on Discretionary Allotments of dealerships/distributorships of Petroleum Products may wield, will not fall within the ambit of the expression "Office of Profit" under article 102(1)(a) of the Constitution.


(Dr D.P. SHARMA)
Additional Secretary
3.10.05

Office of MOS (L&J)
Dy No. 813
Date 5/11/80

Law Secretary

Almeida

CHAPTER-II

Nomination of a Member of Parliament to the Water Sector Reform Committee (WSRC) for Jaipur city of Rajasthan.

The Secretary, Public Health Engineering and Ground Water Department (PHED), Government of Rajasthan vide his letter (No.1062 dt. 5 February, 2005) has requested for approval of Hon'ble Speaker, Lok Sabha for nominating the sitting M.P. from Jaipur constituency to Water Sector Reform Committee (WSRC). He has stated that a Water Sector Reform Committee for Jaipur City with the Minister, PHED, as its Chairman and Secretaries of the concerned Departments as its Members is being constituted in the State of Rajasthan for providing overall guidance and supervising the reform process in Water and Sanitation Sector in adherence to the principles of 74th Constitution Amendment Act. It is also proposed to provide representation to the public representatives viz. M.P., Mayor and M.L.A from Jaipur in the Committee.

2.2 The State Government of Rajasthan has also informed that the WSRC is proposed to be constituted on the recommendation of Administrative Department under the rules of business. It has been further informed that a loan amount of Rs.343 crore has been taken by the State Government from Japan Bank for International Assistance (JBIC) to implement the Bisalpur-Jaipur Water Supply Project (Transfer part), agreement of which was signed on 31 March, 2004 between the Government of India and JBIC. A special study was also conducted by JBIC named SAPI (Special Assistance for Project Implementation) and on its recommendation the State Government decided to constitute WSRC.

2.3 A copy of circular dated 2.12.1995 from Personnel & Administrative Reform Department under which the Committee is being constituted is enclosed at Annexure.

2.4 As the information furnished by the State Government of Rajasthan on the subject was not sufficient to place the matter before the Joint Committee on Offices of Profit for their consideration, they were requested to furnish further information. The Government of Rajasthan furnished their requisite information vide their letter Nos.F33/EE(BSL)WSRC/2005-06/41 and 979 dated 7.4.2005 and 14.11.2005 respectively as brought out below:-

| S. No | Query | Reply |
|-------|---|---|
| 1 | Whether the proposed induction of a member of Parliament is in pursuance of any law made by the state under Article 243S or 243ZD or Article 243 ZE of the Constitution | The induction of MP is suggested by the State Cabinet Minister in lieu of participation of Public Representative and thus in line of Administrative & Reform Department of State Government circular dated 2-12-95. Case is being moved for seeking necessary approval for induction of MP in the proposed WSRC |
| 2. | Please state whether the Water Sector Reform Committee is a Standing Committee or Ad-hoc Committee? If Ad-hoc, please specify the terms of the Committee. | The proposed WSRC will be Standing Committee and shall regularly implement the reform process for Jaipur Water Supply for its better management. |
| 3. | Details of Composition of the Committee indicating the number of officials and non-officials in the Committee. Please also indicate whether the Chairman and Secretary are officials or non officials. | Proposed composition of Committee is as follows:- <ul style="list-style-type: none">a. Minister, PHED, Chairmanb. Chief Secretary, Govt. of Rajasthanc. Principal Secretary, Finance, GoRd. Secretary, Irrigation, GoRe. Secretary, Planning, GoRf. Secretary, Local Self Government, GoRg. Secretary, Public Health Engineering Department, GoRh. Secretary, Urban Development, GoRi. Mayor of Jaipur Municipal Councilj. Member of Parliament, Jaipurk. MLA, Sanganer Constituency, Jaipurl. MLA, Johari Bazar Constituency, Jaipurm. MLA, Kishanpole Constituency, Jaipurn. MLA, Banipark Constituency, Jaipur |

- o. MLA, Amer Constituency, Jaipur
- p. MLA, Hawamahal Constituency, Jaipur
- q. MLA, Jaipur (Rural) Constituency, Jaipur

The Minister, PHED will hold the charge of Chairman of WSRC in his non official capacity.

4. Please furnish details with respect to following:

A The term of office of Member of Parliament as non-official member of the Committee. Till the period WSRC exists

B The mode of appointment and removal By the State Government

C Qualification for membership No qualification

5. Please specify whether the Government has any role in appointment and removal of non official members of the Committee. Full powers with State Government.

6. Please indicate the remuneration payable to the Member of Parliament as non-official member of the Committee specifying the actual rates of payment with break-up of pay, sitting fee, daily allowance, traveling allowance, house rent allowance, compensatory allowance etc. -Nil-

7. Please give in detail the powers and functions of the proposed Committee. The Committee is proposed to be set up for undertaking following activities:

- a. Draw up the detailed blueprint, organizing round tables and consultations with all stakeholders, consensus building, and highlighting relevant issues at the State Government level
- b. Interface with various agencies and other government department/

agencies for synergizing effort towards achieving a common objective

- c. Form sub committees in various areas viz institutional reforms, tariffs and accounting, organizational, JMC to facilitate implementation of the reform program
- d. Facilitate coordination and procurement of various studies and activities under the reform process
- e. Facilitate prior approval and clearances from relevant authorities
- f. Monitor through feedback from consumer, NGO's

8. Please give specific reply to each of the following

| | |
|--|----|
| (i) Whether the Committee exercises executive, legislative or judicial powers? | No |
| (ii) Whether the Committee confers powers of disbursement of funds, allotment of land etc. | No |
| (iii) Whether it would have powers of appointment; and | No |
| (iv) Whether the Committee would wield influence or power by way of patronage. | No |

9. The constitution, composition and functions of the proposed Water Sector Reforms Committee (WSRC) for Jaipur City do not appear to be governed by the principles laid down in Articles 243 P to 243 PZ of the Constitution which were inserted by the Constitution (74th Amendment) Act, 1992. Please clarify how is WSRC stated to be in

The constitution, composition and functions of proposed WSRC will not be governed by relevant Articles inserted by 74th Constitution Amendment Act. The WSRC will facilitate constitution of Jaipur Water Supply & Sewerage Company (JWSSC) to carry out the Operation & Maintenance operations for water supply and sewerage system of Jaipur City. It is proposed that Board of Directors of JWSSC will have representation of Jaipur

accordance with the principles of the Constitution (74th Amendment Act)

Municipal Council (JMC) i.e. Local Bodies. This representation from JMC will ensure participation of Local Bodies in Management of Water Supply in Jaipur which will be in line with 74th Constitutional Amendment Act.

10. The Circular from Personnel and Administrative Reforms Department dated 2.12.1995 under which the WSRC is proposed to be set up does not have any statutory backing as required by the Articles 243 P to 243 PZ of the Constitution. The guidelines contained in the Circular appear to be administrative instructions only. How these instructions are being quoted in the context of articles 243 P to 243 PZ of the Constitution.

The WSRC is proposed to be constituted under general administrative rules and not under the provisions of Articles 243P to 243PZ. It will be in accordance with 74th constitutional amendment act to the extent that it will ensure participation of local bodies in O&M of water supply in Jaipur city which is in line with this act.

11. The powers of 'guidance' and 'supervising the reform process' proposed to be vested in WSRC and the powers of the sub-Committees of WSRC to oversee/finalise tariffs and facilitate prior approvals and clearances from competent authorities and also implementation of the reform programme etc. are in the nature of executive and financial powers which may attract disqualification.

The WSRC is not proposed to have any executive and/or financial powers. The nature of activities will be to ensure coordination among various departments and government agencies and of monitoring and guiding the reform process and to make suitable recommendations to State Government. The implementation of Executive and Financial decision will be made by State Government.

What are your comments in this regard?

12. Please state whether the MLAs of Rajasthan from Jaipur City who are proposed to be made members of the WSRC have been granted exemption from disqualification under provisions of any law passed by the State Legislature. If so, please furnish a copy of the said Act.

The matter regarding nomination of MLA's of Rajasthan as members of WSRC is under consideration of Rajasthan Vidhan Sabha Secretariat.

2.5 The Committee considered the matter at their sitting held on 24 January, 2006 (Appendix-III).

2.6 The Committee note that the Water Sector Reform Committee has been conferred neither with executive, legislative and judicial powers nor with powers of disbursement of funds. It does not have the power of allotment of lands also. The Committee further note that the non-official holder of the office of member of the Reform Committee is not entitled to any remuneration. The Committee also note that membership of the Reform Committee does not enable its members to wield influence or power by way of patronage. The Committee, therefore, feel that the member of Parliament, if nominated to the said Committee, will not entail disqualification for being chosen as or for being a member of Parliament.

NEW DELHI;

CHANDRA BHUSHAN SINGH,
Chairman,
Joint Committee on Offices of Profit

August, 2006

Bhadrapada, 1928 (Saka)

GOVERNMENT OF RAJASTHAN

DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS
ADMINISTRATIVE REFORMS (SECTION - 3)

Sl.No.P.6(4)A.R./Sec.3/93

Jaipur, Dated: 2.12.95

CIRCULAR

Sub: State Level and District Level Committees.

According to the Rules of Procedure, the orders regarding constitution of State Level and District Level Committees/Extending the term of office of the Committees/alteration/augmentation in the Membership of the Committees and the dissolution of the Committees are issued by this Department on the recommendations of the Administrative Departments. In this connection, in supersession of this Department's circular No.P.6(4)A.R./Sec -3/93, dated 25.1.93, the proposals in future shall be forwarded to this department after completing the following formalities:

Constitution of the Committees

1. **Constitution of the Departmental Committees:**

(a) . The Departmental Committees having all the members of the committee from the same Department and no Non-official members or no officials from other Departments shall be constituted by the concerned administrative department itself

2 If there is a proposal to have officials from other Departments on the Committee, the permission of the Chief Secretary and the Minister in charge

shall be obtained on the proposed membership of the committee and the relevant correspondence shall thereafter be forwarded to the Administrative Reforms Department for issuing the orders regarding the constitution of the Committee. After the Committee is constituted the proposal regarding alteration/augmentation in the nomination of the official members shall be forwarded to the Administrative Department after obtaining the approval of the Chief Secretary.

3. In case there is any non-official member on the Committee, the permission of the Chief Minister shall be taken for the constitution of the Committee. In case of any vacancy or increase in the membership of non-official member, the non-official member shall be nominated after obtaining the permission of the Minister incharge/Chief Minister again.

4. The time for the presentation of the Report by the Committee shall be rational and practical. It has been observed that though original correspondence relating to the constitution of the Committee, is forwarded to the Department of Administrative Reforms, but authenticated orders relating to the constitution of the committee are not enclosed therewith. In future instead of forwarding the original correspondence to the Department of Administrative Reforms, the concerned Department shall forward the photocopy of the proposal regarding the constitution of the committee to the Department of Administrative Reforms, approval for which has been obtained at the required level in which the orders regarding the draft constitution of the committee has been authenticated by a competent authority. The term of the committee shall be clearly mentioned in the proposed orders and if the constitution of the committee is on permanent

basis it should accordingly be mentioned in the Departmental draft. The names of the Members should appear according to their seniority in the constitution of the committee.

5. In case the honourable Members of Parliament/Members of Legislative Assemblies are to be nominated to the Committees, the concerned Departments shall obtain the prior permission of the hon. Speaker of the Lok Sabha or the Chairman of the Rajya Sabha or the Speaker of the Rajasthan Legislative Assembly before the constitution of the committee as the case may be.

6. It has been observed that every Department constitutes several committees for various purposes at their own level, leading to increased number of committees in every Department. In view of the problems relating to the various functions of the Departments and the constitution of the committees for various matters, it should be ensured in future that if other subjects are also to be included in the committee, the concerned department should take action for the reconstitution of the committees at their own level and if non-official members are to be nominated then the proposal should be forwarded to the Department of Administrative Reforms.

7. It has been observed that in many cases several committees have been constituted by a department presently at the district level. The concerned departments should therefore reconstitute their various departmentally related committees so that the number of committees at the district level could be brought down.

8. The ~~committees~~ which have completed their terms of office and their tenure have not been extended shall be deemed to have been dissolved at the end of their fixed tenure.

9. It is necessary for the Administrative Department of a committee to send information regarding the necessity of the Departmental committees to the Department of Administrative reforms every two years.

10. In future, all the Departments should forward their correspondence regarding the formation of departmental committees to the department of Administrative Reforms, only after completing the above mentioned formalities, so that there is no delay in issuing orders regarding the constitution of the committees.

Sd/-
M.L. Mehta
Chief Secretary
Dated: 2.12.95

Sl. No. P.6(4)A R./Sec-3/93

Copy forwarded for information and necessary action to the following:

1. Secretary to the Hon. Governor, Jaipur, Rajasthan.
2. Secretary to the Chief Minister, Jaipur, Rajasthan.
3. All Principal Secretaries, Secretaries/Special Secretaries/Deputy Secretaries.
4. Private Secretary to the Chief Secretary, Jaipur, Rajasthan.
5. All Divisional Commissioners, Rajasthan
6. All District Collectors, Rajasthan
7. All Heads of the Department.
8. All the Sections of the Government Secretariat

Sd/-
(T.S. Verma)
Secretary to the Government

APPENDIX-I
(vide para 1.5 of Chapter-I)

III

EXTRACTS OF THE MINUTES OF THE THIRD SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (FOURTEENTH LOK SABHA)

The Committee sat on Tuesday, 15 March, 2005 from 1500 hrs. to 1530 hrs in Committee Room 'E', Parliament House Annex, New Delhi.

PRESENT

Shri Nikhilananda Sar - **In the Chair**

MEMBERS (LOK SABHA)

2. Shri Ananth Kumar
3. Shri S.K. Kharventhan
4. Shri G. Nizamoddin
5. Shri Sita Ram Yadav

MEMBERS (RAJYA SABHA)

6. Shri Silvius Condpan
7. Shri Manoj Bhattacharya

SECRETARIAT

| | | |
|----------------------|---|-----------------|
| Shri A. Louis Martin | - | Director |
| Shri Ashok Balwani | - | Under Secretary |

2. In the absence of Chairman, the Committee chose Shri Nikhilananda Sar, M.P. to act as Chairman for the sitting under Rule 258 (3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

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4. The Committee then took up for consideration **Memoranda No.3** regarding nomination of a Member of Parliament (Shri Shankar Roy Chowdhury, M.P. Rajya Sabha) to the Advisory Committee on Discretionary Allotments of dealerships/distributorships of petroleum products. The Committee observed that the Advisory Committee on Discretionary Allotments of dealerships/distributorships of petroleum products would not exercise any executive, legislative or judicial powers nor would it enable the holder of office in the Committee to wield influence or power by way of patronage. The Advisory Committee would make recommendation on the basis of available information. No remuneration, in any form was proposed to be made to the Chairman/members of the Committee. Travel/stay arrangements as well as Secretariat assistance were proposed to be made by the Ministry through oil companies.

In this connection, the Committee also noted the cases of nomination of Members of Parliament to the Board of Apprenticeship Training, Western Region, Bombay and the Committee on Plastic Wastes Disposal in respect of which the Committee had recommended in similar circumstances, exemption from disqualification for being chosen as, or for being, a member of Parliament (1st Report, 10th Lok Sabha and 4th Report, 13th Lok Sabha). The Committee felt that the office of Chairmanship or membership of the Advisory Committee on Discretionary Allotments of dealerships/distributorships of petroleum products would not come within the purview of 'office of profit' and it would not attract the rigours of article 102 (1) (a) of the Constitution. In view of this, and in

view of the past cases, the Committee decided to recommend that the office of the Chairmanship or Membership of the Advisory Committee on Discretionary Allotments of dealership/distributorship of Petroleum Products might be exempted from disqualification for being chosen as, and for being a member of Parliament.

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The Committee then adjourned.

APPENDIX-II
(vide para 1.7 of Chapter-I)

VI

EXTRACTS OF THE MINUTES OF THE SIXTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (FOURTEENTH LOK SABHA)

The Committee sat on Monday, 19 September, 2005 from 1500 hrs. to 1630 hrs in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Chandra Bhushan Singh - Chairman

LOK SABHA

2. Shri Ananth Kumar
3. Shri Ashok Argal
4. Shri Shivraj Singh Chauhan
5. Shri Mohan Jena
6. Shri Nikhilananda Sar
7. Shri Bharatsinh M. Solanki
8. Shri Sita Ram Yadav

RAJYA SABHA

9. Prof. Saif-ud-Din Soz
10. Shri Silvius Condpan
11. Shri Manoj Bhattacharya

SECRETARIAT

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|-------------------|---|------------------|
| Shri R.K. Bajaj | - | Deputy Secretary |
| Shri J.V.G. Reddy | - | Under Secretary |

2. At the outset, the Chairman welcomed the Members including Prof. Saif-ud-Din Soz, who has been elected to be a member of the Committee w.e.f. 22 August, 2005 vice Shri Eduardo Faliero retired from Rajya Sabha.

3. The Committee then took up for consideration the draft First Report which consisted of the following three chapters:-

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|--------------------|---|
| CHAPTER-I | Nomination of Member of Parliament to Advisory Committee on Discretionary Allotments of dealerships/distributorships of petroleum products. |
| CHAPTER-II | Nomination of Members of Parliament to the National Monitoring Committee for Minorities Education. |
| CHAPTER-III | Query whether the position of Chancellor of Tilak University, Pune or any other University is an Office of Profit. |

4. While considering the Chapter-I of the Report, the Committee noted that the Ministry of Petroleum & Natural Gas made a proposal to set up an Advisory Committee under the Chairmanship of Shri Shankar Roy Chowdhury, MP (RS) to assist the Minister of Petroleum & Natural Gas to decide on each case relating to allotment of dealerships/distributorships of petroleum products under the scheme of Minister's discretionary quota to the dependents of Defence/Paramilitary/Police personnel or Central Government Employees, killed in action or permanently disabled while performing their duties. The Committee also noted that earlier all the applications from the eligible candidates under the scheme were processed in the Ministry and decisions regarding allotments of dealerships were to be made by the Minister personally. The Committee also noted that according to the new procedure, the Advisory Committee would consider all the applications alongwith the recommendations thereon received from the Organizations/offices concerned and forward their recommendations to the

Minister of Petroleum & Natural Gas to enable him to take a decision on each case. The Committee further noted that according to the Ministry of Petroleum & Natural Gas, the Advisory Committee would not wield any influence or power by way of patronage in the matter of their recommendations to the Minister. The Committee noted that while considering the memorandum on the subject on 15.3.2005, they had earlier agreed with that view point of the Ministry and decided to recommend that the office of Chairmanship or membership of the Advisory Committee might be exempted from disqualification. However, on reconsideration, the Committee had felt that the power of the Advisory Committee to consider the applications of the eligible candidates and make recommendations to the Minister might involve an element of influence or power by way of patronage as the number of eligible applicants at any given point of time would be more than the number of dealerships to be allotted under the Scheme. The Committee also took into consideration the fact that according to one of the criteria adopted by the Committee, an office which enables the holder of it to wield influence or power by way of patronage would attract disqualification. The Committee, therefore, felt that the Chairmanship/membership of the proposed Advisory Committee appears to be an Office of Profit. The Committee decided that the opinion of the Ministry of Law & Justice might be obtained in the matter and placed before them for further consideration.

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The Committee then adjourned.

APPENDIX-III
(vide paras 1.9 and 2.5 of Chapters I & II respectively)

VIII

**MINUTES OF THE EIGHTH SITTING OF THE JOINT COMMITTEE ON
OFFICES OF PROFIT (FOURTEENTH LOK SABHA)**

The Committee sat on Tuesday, 24 January, 2006 from 1500 hrs. to 1530 hrs in Room No.62, Parliament House, New Delhi.

PRESENT

Shri Chandra Bhushan Singh - **Chairman**

MEMBERS (LOK SABHA)

2. Shri Ashok Argal
3. Shri Mohan Jena
4. Shri G. Nizamoddin
5. Shri Nikhilananda Sar
6. Shri Bharatsinh M. Solanki
7. Shri Sita Ram Yadav

MEMBERS (RAJYA SABHA)

8. Prof. Saif-ud-Din Soz
9. Shri Silvius Condpan
10. Shri Manoj Bhattacharya
11. Shri K. Rama Mohana Rao

SECRETARIAT

Shri R.K. Bajaj - **Deputy Secretary**
Shri J.V.G. Reddy - **Under Secretary**

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

3. Thereafter, the Committee took up for consideration **Memorandum No. 6** regarding nomination of a member of Parliament (Shri Shankar Roy Chowdhury*, M.P., Rajya Sabha) to the Advisory Committee on Discretionary Allotments of dealerships/distributorships of petroleum products. The Committee felt that the functions of the Advisory Committee are advisory in nature and the remuneration proposed to be paid to Chairman/Members of the Advisory Committee falls within the Compensatory Allowance defined in Section 2(a) of Parliament (Prevention of Disqualification) Act, 1959. The Committee also noted the opinion of the Ministry of Law & Justice according to which mere influence or power which the Chairman or a member of the Advisory Committee on Discretionary Allotments of dealerships/distributorships of Petroleum Products might wield, would not fall within the ambit of the expression "Office of Profit" under article 102 (1) (a) of the Constitution.

4. Based on the information furnished by the Ministry of Petroleum and Natural Gas and the opinion given by the Ministry of Law & Justice, the Committee felt that the office of Chairman or Membership of the said Advisory Committee might be exempted from disqualification.

5. Thereafter, the Committee took up for consideration **Memorandum No. 7** regarding nomination of member of Parliament from Jaipur City to the Water Sector Reform Committee for Jaipur City of Rajasthan. The Committee noted that the Water Sector Reform Committee had not been conferred with executive, legislative or judicial powers and powers of disbursement of funds or allotment of lands etc. The Committee further noted that the non-official holder of office of the membership of the Reform

* Since retired from Rajya Sabha w.e.f. 18 August, 2005.

Committee was not entitled to any remuneration. The Committee also noted that Reform Committee did not enable the holder of its membership to wield influence or power by way of patronage. The Committee therefore felt that the member of Parliament, if nominated to the said Committee, would not entail disqualification for being chosen as or for being a member of Parliament.

The Committee then adjourned.

APPENDIX-IV

IX

**EXTRACTS OF THE MINUTES OF THE NINTH SITTING OF THE
JOINT COMMITTEE ON OFFICES OF PROFIT
(FOURTEENTH LOK SABHA)**

The Committee sat on Wednesday, 22 March, 2006 from 1500 hrs. to 1600 hrs in Committee Room No. 'D'. Parliament House Annexe, New Delhi.

PRESENT

Shri Chandra Bhushan Singh - Chairman

MEMBERS(LOK SABHA)

2. Shri Ashok Argal
3. Shri Mohan Jena
4. Shri S.K. Kharventhan
5. Shri G. Nizamoddin
6. Shri Bharatsinh M. Solanki
7. Shri Sita Ram Yadav

MEMBERS(RAJYA SABHA)

8. Shri Manoj Bhattacharya
9. Shri K. Rama Mohana Rao

SECRETARIAT

Shri R.K. Bajaj - Deputy Secretary
Shri K. Jena - Under Secretary

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

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3. The Committee then took up the draft Third Report for consideration and adopted the same and authorized the Chairman to present it to the House. The Committee noted that their recommendations were of advisory nature and as such could not give any protection to the members from disqualification under the law until and unless they were given statutory effect by the Government by amending the Parliament (Prevention of Disqualification) Act, 1959 suitably. To clear any doubts on this account, the Committee decided that henceforth a para to this effect be added in the introduction to each of their reports.

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The Committee then adjourned.