

JOINT COMMITTEE ON OFFICES OF PROFIT

(TENTH LOK SABHA)

SIXTH REPORT



*Presented to Lok Sabha on 23 December, 1994
Laid in Rajya Sabha on 23 December, 1994*

**LOK SABHA SECRETARIAT
NEW DELHI**

December, 1994/Agrahayana, 1916 (Saka)

Price : Rs. 12.00

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JOINT COMMITTEE ON OFFICES OF PROFIT (Tenth Lok Sabha)

COMPOSITION OF THE COMMITTEE

Shri Chiranji 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. Kuppaswamy 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 Sixth Report.

2. The matters covered by the Report were considered by the Committee at their sittings held on 22 November, 1993, 14 February, 24 May, 23 June, 5 July and 23 August, 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 8 Committees/Bodies etc. constituted by the State Governments 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.

4. The detailed information regarding the composition, character, functions, emoluments and allowances payable to the members of these bodies was furnished by the concerned State Governments. The Committee wish to express their thanks to the State Governments who have furnished information desired by the Committee.

5. The Committee considered and adopted the Report at their sitting held on 20 December, 1994.

NEW DELHI;
20 December, 1994

29 Agrahayana, 1916 (Saka)

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

CHAPTER I

NOMINATION OF MEMBERS OF PARLIAMENT ON THE BOARDS OF TRUSTEES FOR THE PORTS UNDER THE MAJOR PORT TRUSTS ACT, 1963

1.1 Shri Pravat Kumar Samantaray, M.P. (Rajya Sabha) has sent a representation dated 6 September, 1993, requesting the Joint Committee on Offices of Profit to reconsider and rescind the recommendation of the Committee made in para 10 of their Fourth Report (Fourth Lok Sabha), presented to the House on 17 March, 1969. The recommendation relating to appointment of Member of Parliament to the Board of Trustees for the Paradip and Mormugao Ports reads as under:—

“10. In regard to the character and composition of the Boards of Trustees for the Ports of Paradip and Mormugao, the Committee are of the view that as these Boards exercise executive and financial powers and also possess powers of appointment to certain posts, even membership of the Boards ought to disqualify.”

1.2 Shri Pravat Kumar Samantaray, M.P. has sought reconsideration and rescinding of the aforesaid recommendation of the Committee on the following grounds:—

- (a) The said recommendation is discriminatory inasmuch as it has been made applicable to Paradip and Mormugao Ports, leaving out a host of other ports like Bombay, Madras, Calcutta, etc. established under the same Major Port Trusts Act, 1963.
- (b) The office in this case is not an office under the Government and the office is also not an office of profit as there is no remuneration payable to the Member of the Board of Trustees except a paltry amount of Rs. 25/- in the form of fee.
- (c) The decision of the Joint Committee is discriminatory and contradictory to the recommendation made in the report of the Bhargava Committee on Offices of Profit.
- (d) The Committee on Subordinate Legislation of Rajya Sabha, in the case of Advisory Board of the Central Board of Film Certification, has insisted for suitably amending the rules so as to associate the Members of Parliament on the Board. The Committee expressed the view that in case a Member of Parliament is entitled to draw allowances as admissible

under the Salary, allowances and pension of Members of Parliament Act, 1954, the question of disqualification should not arise. The recommendation was later accepted by Government.

1.3 The points raised by the Member in his representation are dealt with in the succeeding paragraphs.

In their Fourth Report (Fourth Lok Sabha), presented on 17 March, 1969, the Committee scrutinized the Boards of Trustees for the Ports of Paradip and Mormugao only. Therefore, the observations of the Committee were in reference to these two ports only. However, the possibility of nomination of Members of Parliament on the Boards of Trustees of other ports under the Major Ports Trust Act cannot be ruled out. Probably, one reason could be that no such cases have come before the Committee and the Committee do not have a machinery to examine cases *suo-moto* in their Report under reference, the Committee felt that these Boards exercise executive and financial powers including power of appointment to certain posts. Hence, the Committee felt that even membership of the Boards ought to disqualify.

1.4 The Committee note the observations made by the Bhargava Committee in para 81 (Page 37) of their Report as follows:

"The Committee note that *on some of the Committees* certain sectional interests, such as employers, employees, consumers, etc. are allowed to *nominate or elect* their representatives and some of these representatives happen to be Members of Parliament. The Committee feel that when the power of an appointment rests with the sectional interests which are independent of the Government, the question of patronage or holding office under the Government does not arise on such an appointment. Therefore, such members ought not to incur disqualification."

1.5 The above observations of the Bhargava Committee are quite significant as a consideration or allowance has to be made when the powers of nomination or election rest with the sectional interests which are independent of the Government.

1.6 The Committee also note that under the Major Port Trusts Act, 1963, there are two categories of trustees which are appointed on the Boards of Trustees representing sectional interests. First, under Section 3(c) (i), the Central Government appoint persons representing labour, Mercantile Marine Department, Customs Department, State Government concerned, Defence Services, Indian Railways etc. Secondly, under Section 3(c) (ii), specified number of persons may be elected by the sectional interests representing ship owners, owners of sailing vessels, shippers, and other interests so necessary in the opinion of the Central Government with the proviso that if such body is an undertaking owned or controlled by the Government, the person so elected shall be appointed by the Central Government.

1.7 Apparently, the recommendation of the Bhargava Committee may cover cases falling under Section 3(c) (ii) of the Act where there is no involvement of Government in the matter of their election and not cases falling under Section 3(c) (i) where the Government have powers of selection and appointment of some representatives. The representatives of labour fall under this category. The method of selection of these representatives is not known. If such representatives are also elected by the labourers, there could probably be no objection to treat them at par with those falling under Section 3(c) (ii) of the Act *ibid*.

1.8 In his representations before the Committee, the Member has referred to Unstarred Question No. 1287 answered in Rajya Sabha on 5 August, 1988. According to the Member, the Ministry of Surface Transport, Government of India, does not hold any authority of its own to appoint a trustee representing labour unless otherwise the verified strength of the Union confirms the position of the concerned union. Only thereafter the Union choose its representative and nominate their names to Ministry of Surface Transport for notification and in this case rather the Union has the authority to withdraw the names or change the names of the representatives at any time. The Ministry of Surface Transport has no choice of their own to accept or reject any name sponsored by the Union having majority representation in the verified strength which again conducted through the labour machinery of Chief Labour Commission. However, the contention as expressed by the Member, is not fully borne out by the reply to USQ 1287 answered on 5 August, 1988 in Rajya Sabha. Before arriving at any final decision in this regard, it is essential that the facts are duly got confirmed from the concerned Ministry of Surface Transport.

1.9 The Member has also referred to the recommendation of the Committee on Subordinate Legislation of Rajya Sabha with regard to associating the Members of Parliament to the membership of the Advisory Panel of the Central Board of Film Certification by suitably amending the relevant rules. In consequence, the concerned Ministry restricted the remuneration payable to the Member of Parliament as admissible under the Salary, Allowances and Pension of Members of Parliament Act, 1954. Since it is an Advisory Body its membership could be exempted from disqualification. However, the functions and powers of the Boards of Trustees under the Major Port Trusts Act are both executive and financial in nature and also possess powers of appointment to certain posts, as concluded by the Joint Committee in the recommendation on the Ports of Paradip and Mormugao. As such, the holders of office of the membership of the Port Trust cannot be equated with that of the Advisory Committee of the Central Board of Film Certification.

1.10 In view of the foregoing paragraphs, the matter in regard to nomination of the interests of the Labour on the various major ports including Paradip and Mormugao was referred to the concerned Ministry

of Surface Transport for ascertaining the actual process of holding elections, verifying the strength of the labour unions and the discretion being exercised by the Government in the matter of nominating/appointing a labour representative or withdrawing membership of such a representative if so considered necessary.

1.11 The Committee note from the information furnished by the Ministry of Surface Transport that no Member of Parliament has been appointed/nominated as a trustee on any of the present Major Port Trust Boards. With regard to the method of selection and appointment of Labour trustees on the Boards of various Port Trusts, the Committee further note that the names of two representatives in order of preference are obtained from each of the unions functioning in the concerned Port and representatives of such unions are appointed as trustees representing labour on the Board of concerned Port Trusts. However, the Committee note that Board of Trustees exercise huge financial and executive powers such as administrative control and management of entire port under such authorities and the matters concerned therewith, power to create and make appointments to certain posts, to make regulations, to undertake and execute certain works, to levy charges/rates/fees, to raise loans or overdraft, to borrow money from International Banks or from their foreign institution and writing off of losses etc.

1.12 The Committee, therefore, conclude that as the Board of Trustees under the Major Port trusts Act exercise executive and financial powers of high magnitude and also possess powers of appointment to certain posts, even the membership of these Boards ought to disqualify a person for being chosen as, and for being, a member of either House of Parliament. The Committee, therefore, decline to revise their recommendation made in para 10 of their Fourth Report (Fourth Lok Sabha) regarding the Ports of Paradip and Mormugao.

CHAPTER II

APPOINTMENT OF MEMBER OF PARLIAMENT AS CHAIRMAN AND MANAGING DIRECTOR IN A PRIVATE COMPANY REGISTERED UNDER THE COMPANIES ACT.

2.1 Dr. Naunihal Singh, Member, Rajya Sabha in his letter dated June 8, 1994 addressed to the Chairman, Joint Committee on Offices of Profit stated as follows:

"It is proposed to flat a Private/Public Limited Company to be registered under the Companies Act for the purpose of generation, distribution of energy from non-conventional sources: in this case the ocean thermal power. Since I have done a pioneering work in this field, the sponsors of the Company desire me to become the Chairman and Managing Director of the said Company. The Company will be purely a private/public body and Government does not have any share therein. The Corpus of the Company will be built out of the foreign exchange made available freely to India not as a debt and without any interest. Only the energy generated will be sold to the Tamil Nadu Electricity Board. The Head Office of the Company is likely to be at Madras and the Corporate Office may be at New Delhi.

I, therefore, request you to kindly advise me whether holding the post of Chairmanship or Managing Directorship of the said Company will entail any disability for me to continue as a Member of Parliament. In other words, I would like to be advised as to whether I can, while I am a Member of Parliament, hold the Chairmanship of the Board of Directors of the Company and or the Managing Directorship thereof."

2.2 In that connection, relevant Clause (1) of Article 102 of the Constitution read as under:—

"102. Disqualification for membership

- (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—
 - (a) 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;"

2.3 Besides the relevant provisions in the Constitution of India and the Parliament (Prevention of Disqualification) Act, 1959, attention of the Committee was drawn to the following provision in Section 9A of the Representation of the People Act, 1951:—

“A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.”

2.4 The Committee took oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) on 5 July, 1994 for eliciting their opinion in the matter.

2.5 The representative of the Ministry stated that the following are the three elements of Article 102 (1) (a) of the Constitution of India:—

- (i) It must be an office;
- (ii) The office must be under the Government of India or Government of any State; and
- (iii) It must be an office of profit.

The representative stated that if these three elements are present in an office, then the person who holds that office would incur disqualification for being chosen as, or for being, a member of either House of Parliament unless such an office is declared by Parliament by law that it is not an office of profit. He was of the opinion that the office under reference in the letter addressed to the Committee by Dr. Naunihal Singh, M.P. was not an office of profit.

2.6 After hearing the representative of the Department of Legal Affairs, the Committee come to the conclusion that the post of Chairman and Managing Director of the proposed private/public limited company which would supply power to Tamil Nadu Electricity Board is not an office of Profit.

2.7 The Committee further decide that it may not give any opinion to the Member as regards provisions of disqualification contained in the Constitution or Acts other than Article 102 (1) (a) of the Constitution and the Parliament (Prevention of Disqualification) Act, 1959.

CHAPTER III

NOMINATION OF MEMBERS OF PARLIAMENT ON STATE BODIES

- (1) *State Council for Training in Vocational Trades being re-named as State Council for Vocational Training—Proposal to nominate Shri S. Muthumani, MP (Rajya Sabha) as a member thereof.*

3.1 The State Government of Tamil Nadu *vide* their letter dated 16 July, 1993 sought the approval of the Chairman, Rajya Sabha for nomination of Shri S. Muthumani, MP (Rajya Sabha) as a workers' representative in the "State Council for Vocational Training".

3.2 The Committee note from the information furnished by the Government of Tamil Nadu that the non-official members of the Council are eligible to draw travelling allowance and daily allowance. The State Council for Vocational Training is affiliated to the National Council for Vocational Training under the Director General of Employment and Training, New Delhi. Hence, the name of the Act, Resolutions, Rules etc. are not applicable to the Council. The main functions of the Council are to implement the decisions and carrying out the policy laid down by the National Council for Vocational Training and to Co-ordinate the Vocational Training Programmes throughout the State. The functions of the said Council are thus executive in nature.

3.3 The Committee, therefore, recommend that non-official members of the State Council for Vocational Training should not be exempted from disqualification for being chosen as, or for being, a Member of Parliament. Rajya Sabha Secretariat from whom the reference was received, might be informed accordingly.

- (2) *Ex-post facto approval of Honourable Speaker, Lok Sabha for nomination of Shri K.D. Sultanpuri, MP on State Level National Integration Committee, Himachal Pradesh.*

3.4 The Government of Himachal Pradesh, in a communication dated 24 June, 1994 stated as under:—

"....that Shri K.D. Sultanpuri, MP has been appointed by the Government of Himachal Pradesh as a non-official member of the State Level National Integration Committee for the next two years. It is regretted that your prior formal approval for the same could not be obtained due to the urgency and importance of the work. Therefore, I request you kindly to obtain the consent/approval of the Hon'ble Speaker with regard to the nomination of the said Member as a non-official member of the State Level National Integration Committee

and apprise the department of the same at the earliest so that further necessary action can be taken."

3.5 The Committee note that the non-official members of the State Level National Integration Committee are entitled to TA/DA on the same scale as is admissible to him under the Salary, Allowances and Pension of Members of Parliament Act, 1954 and rules made thereunder from time to time and the functions performed by the Committee are to promote policies of National Integration. The Committee further note that the office of non-official member of the said Committee has not been included in Parts I and II of the Schedule to the Parliament (Prevention of Disqualification), Act, 1959.

3.6 The Committee, therefore, recommend that Shri K.D. Sultanpuri, nominated as a non-official member of the State Level National Integration Committee, Himachal Pradesh, should be exempted from disqualification for being chosen as, or for being, a Member of Parliament.

(3) (i) *Himachal Pradesh State Planning Board, and*

(ii) *Himachal Pradesh State Level Planning Development and 20 Point Programme Review Committee — Proposal to nominate the following Members of Parliament as members thereof—*

Lok Sabha

1. Shri K.D. Sultanpuri
2. Shri D.D. Khanoria
3. Shri Sukhram, Minister of State of the Ministry of Communications
4. Prof. Prem Kumar Dhumal

Rajya Sabha

1. Shri K.L. Sharma
2. Shri Sushil Barongpa
3. Shri Maheshwar Singh

3.7 The Committee considered the request of the Government of Himachal Pradesh seeking approval of the Speaker, Lok Sabha for nomination of Sarvashri K.D. Sultanpuri, D.D. Khanoria, Sukhram and Prof. Prem Kumar Dhumal, and the approval of the Chariman, Rajya Sabha for nomination of Sarvashri K.L. Sharma, Sushil Barongpa and Maheshwar Singh as members of the

(i) Himachal Pradesh State Planning Board, and

(ii) Himachal Pradesh State Level Planning Development and 20 Point Programme Review Committee.

3.8 The Committee note from the information furnished by the State Government of Himachal Pradesh that the non-official members of the Himachal Pradesh State Planning Board and Himachal Pradesh State Level Planning Development and 20 Point Review Committee are provided TA/DA for which terms and conditions will be decided later on. The Committee note that the main functions of the Board/Committee is to

determine the plan priorities for State in the light of over all National objectives. Thus, the functions of the Board and Committee are advisory in nature.

3.9 The Committee therefore, recommend that the non-official members (including Members of Parliament, if nominated) of the said Board/Committee may be exempted from disqualification for being chosen as, or for being, Members of Parliament, subject to the condition that TA/DA, which will be decided later on, should not exceed the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

3.10 As regards the nomination of Shri Sukh Ram, Minister of State of the Ministry of Communications, the Committee note the relevant part of Section 3(a) of the Parliament (Prevention of Disqualification) Act, 1959 which has declared certain offices of profit not to disqualify. Section 3(a) provides as under:—

"3. It is hereby declared that none of the following offices in so far as it is an office of profit under the Government of India or the Government of any State, shall disqualify the holder thereof for being chosen as, or for being, a Member of Parliament, namely:—

(a) any office held by a Minister, Minister of State or Deputy Minister for the Union or for any State, whether ex-officio or by name;"

Accordingly, the Committee decide that since any office held by a Minister of State do not constitute as an office of profit, the membership of the Board/Committee in question does not disqualify the Minister for being chosen as, or for being, a Member of Parliament.

(4) Committee for Implementation and Co-ordination of 20-Point Programme at District Level in District Nagore (Rajasthan)—Proposal to nominate Shri Nathu Ram Mirdha, Member, Lok Sabha as non-official member thereof

3.11 The Committee considered the request of the Government of Rajasthan, seeking approval of the Speaker, Lok Sabha for nomination of Shri Nathu Ram Mirdha, Member, Lok Sabha as member of the Committee for Implementation and Co-ordination of 20-Point Programme at District Level in District Nagore, Rajasthan.

3.12 The Committee note that non-official members of this Committee are not paid any remuneration. No executive, legislative or judicial functions are carried out by the Committee, and it has no financial powers. The Committee feel that it is an advisory body. The Committee, therefore, recommend that the non-official member (Member of Parliament) of the said Committee should be exempted from disqualification for being chosen as or for being a Member of Parliament.

(5) The Committee for Implementation and Co-ordination of 20-Point Programme at District Level in District Ajmer (Rajasthan)—Proposal to nominate Shri Rasa Singh Rawat, MP as non-official member thereof

3.13 The Committee note that the non-official member of the Committee for Implementation and Co-ordination of 20-Point Programme at district level are not paid any remuneration. No Executive, Legislative or Judicial work are carried out by the Committee and it has no financial powers. The Committee feel that it is an advisory body. The Committee, therefore, recommend that the non-official member (Member of Parliament) of the said Committee should be exempted from disqualification for being chosen as, or for being, a Member of Parliament.

(6) District Planning and Development-cum-20 Point Programme Review Committee, Himachal Pradesh—Proposal to nominate following members from Lok Sabha:—

1. Prof. Prem Kumar Dhumal, MP, District Bilaspur and Hamirpur.
2. Maj. D.D. Khanoria, MP Districts Chamba and Kangra.
3. Shri K.D. Sultanpuri, MP, District Shimla.

3.14 The State Government of Himachal Pradesh proposed to nominate Prof. Prem Kumar Dhumal, Maj. D.D. Khanoria and Shri K.D. Sultanpuri, Members of Lok Sabha, as non-official members of the District Planning and Development-cum-20 Point Programme Review Committee and requested for permission of the Hon'ble Speaker in the matter.

3.15 From the information received from the State Government, the Committee note that non-official members of the District Planning and Development-cum-20 Point Programme Review Committee will be provided TA/DA for which terms and conditions will be decided later on.

3.16 The Review Committee, as the Policy Planning Council at district level, will give directions to the administrative and technical personnel besides overseeing the implementation in terms of monitoring and review. After review of the Plan Schemes at district level, the Review Committee will send recommendations/advice to the concerned Heads of Departments and the Planning Department to the Government of Himachal Pradesh. Thus, the functions of the Committee are advisory in nature.

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

for being, Members of Parliament, subject to the condition that TA/DA, which would be decided later on, should not exceed the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

NEW DELHI;
20 December, 1994

29 Agrahayana, 1916 (Saka)

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

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APPENDIX

(Vide para 2 of the Report)

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

The Committee met on Monday, 22 November, 1993 from 1500 to 1535 hours.

PRESENT

Shri Chiranji Lal Sharma — *Chairman*

MEMBERS

2. Shri Dau Dayal Joshi
3. Shri Ram Chandra Rath
4. Shri E. Balanandan
5. Shri Sarada Mohanty
6. Shri S.K.T. Ramachandran

SECRETARIAT

Shri Ram Kumar — *Under Secretary*

Representation from Shri Pravat Kumar Samantaray, M.P. (Rajya Sabha) for review of recommendation of the Joint Committee on Offices of Profit made in their Fourth Report (Fourth Lok Sabha) in respect of Ports of Paradip and Mormugao — (Memorandum No. 76).

The Committee took up for consideration of Memorandum No. 76 regarding representation received from Shri Pravat Kumar Samantaray, M.P. (Rajya Sabha) for review of recommendation of the Joint Committee on Offices of Profit made in their Fourth Report (Fourth Lok Sabha) in respect of Ports of Paradip and Mormugao. The Committee noted from the information furnished by the Ministry of Surface Transport that no Member of Parliament had been appointed/nominated as a Trustee on any of the present Major Port Trust Boards. With regard to the method of selection and appointment of the labour trustees on the Boards of various Port Trusts, the Committee further noted the names of two representatives in order of preference were obtained from each of the unions functioning in the concerned Port and the representatives of such unions were appointed as trustees representing labour on the Board of concerned Port Trusts. However, the Committee noted that Board of Trustees exercised huge financial and executive powers such as administrative control and management of entire port under such authorities and the matters concerned therewith, power to create and make appointment to certain posts, to make regulations, to undertake and execute certain works, to levy,

charges/rates/fees, to raise loans or overdraft, to borrow money from International Banks or from their foreign institution and writing off of losses etc.

The Committee, therefore, concluded that the Board of Trustees exercised executive and financial powers of high magnitude and also possess powers of appointment to certain posts, even membership of the Boards ought to disqualify. The Committee, therefore, declined to revise their recommendation made in para 10 of their Fourth Report (Fourth Lok Sabha) regarding the Ports of Paradip and Mormugao.

The Committee then adjourned.

XXXII

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

The Committee met on Monday, 14 February, 1994 from 1100 to 1145 hours.

PRESENT

Shri Chiranji Lal Sharma — *Chairman*

MEMBERS

2. Shri Harisinh Pratapsinh Chavda
3. Shri D.K. Naikar
4. Shri Ram Chandra Rath
5. Shri Roshan Lal
6. Shri S.B. Thorat
7. Shri Sarada Mohanty
8. Shri S.K.T. Ramachandran

SECRETARIAT

Shri R.K. Chatterjee — *Deputy Secretary*

The Committee reconsidered the Memorandum updated in the light of the information received from Tamil Nadu regarding proposal to nominate Shri S. Muthumani, M.P. (Rajya Sabha) as a member in the State Council for training in Vocational Trades being re-named as State Council for Vocational Training. The Committee noted that the non-official members of the Council were eligible to draw travelling allowance and daily allowance as admissible to the first Class Committee members. Other than this no facilities were provided. The main functions of the Council were to implement the decision and carrying out the policy laid down by the National Council for Vocational-Training and to coordinate the vocational training programmes throughout the State. The functions of the said Council were executive in nature. The Committee, therefore, recommended that non-official member of the State Council for vocational training *should not be exempted* from disqualification. Rajya Sabha Secretariat from whom the reference was received might be informed accordingly.

* * * * *

The Committee then adjourned.

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

XXXIII

MINUTES OF THE THIRTY-THIRD SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT

The Committee met on Tuesday, 24 May, 1994 from 1500 hours to 1540 hours.

PRESENT

Shri Chiranji Lal Sharma — *Chairman*

MEMBERS

2. Prof. Susanta Chakraborty
3. Shri Harisinh Pratapsinh Chavda
4. Shri Dau Dayal Joshi
5. Shri D.K. Naikar
6. Shri Ram Chandra Rath
7. Shri Roshan Lal
8. Shri E. Balanandan
9. Shri Makhan Lal Fotedar

SECRETARIAT

1. Shri S.C. Gupta — *Joint Secretary*
2. Shri R.K. Chatterjee — *Deputy Secretary*
3. Shri Ram Kumar — *Under Secretary*
4. Shri R. Kothandaraman — *Assistant Director*

2. The Committee considered Memorandum No. 79 regarding request received from the Government of Rajasthan seeking prior approval of the Honourable Speaker, Lok Sabha and Honourable Chairman, Rajya Sabha, as the case may be, to the proposed nomination of the following five members of Parliament as non-official members of the Rajasthan State Planning Board:—

- (1) Smt. Vasundhara Rajc Scindia (Lok Sabha)
- (2) Shri Guman Mal Lodha (Lok Sabha)
- (3) Shri Shiv Charan Mathur (Lok Sabha)
- (4) Shri Jaswant Singh (Lok Sabha)
- (5) Shri Satish Agarwal (Rajya Sabha)

3. The Committee noted that non-official members of the State Planning Board would be paid TA and were not entitled to any daily allowance.

4. The Committee also noted that the functions of the Board did not involve exercise of financial or executive powers and it would only act as an advisory body for formulation of State Plans.

5. The Committee, accordingly, held the view that the office of non-official member of the Rajasthan State Planning Board was *not* an office of profit.

The Committee then adjourned.

XXXV

MINUTES OF THE THIRTY-FIFTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT

The Committee met on Thursday, 23 June, 1994 from 1500 to 1545 hours in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Shri Chiranji Lal Sharma — *Chairman*

MEMBERS

2. Prof. Susanta Chakraborty
3. Shri Dau Dayal Joshi
4. Shri Ram Chandra Rath
5. Shri Roshan Lal
6. Shri E. Balanandan
7. Shri Makhan Lal Fotedar
8. Shri Sarada Mohanty
9. Shri S.K.T. Ramachandran
10. Shri Digvijay Singh

SECRETARIAT

1. Shri S.C. Gupta — *Joint Secretary*
2. Shri R. Kothandaraman — *Assistant Director*

2. The Committee considered Memorandum No. 80 regarding the request received from Dr. Naunihal Singh, Member, Rajya Sabha seeking the advice of the Committee on the question whether he would entail any disability to continue as a Member of Parliament, if he becomes the Chairman and Managing Director of a proposed private/public company registered under the Companies Act which would sell energy to Tamil Nadu State Electricity Board.

3. Besides the relevant provisions in the Constitution of India and the Parliament (Prevention of Disqualification) Act, 1959, attention of the Committee was drawn to the following provision in section 9A of the Representation of the People Act, 1951:

"A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government."

4. After some discussion, the Committee decided to call the representatives of the Department of Legal Affairs, Ministry of Law, Justice and Company Affairs, for eliciting their opinion in the matter.

The Committee then adjourned.

MINUTES OF THE THIRTY SIXTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT

The Committee met on Tuesday, 5 July, 1994 from 1500 to 1600 hours in Committee Room 'B', Parliament House Annex, New Delhi.

PRESENT

Shri Chiranji Lal Sharma—*Chairman*

MEMBERS

2. Shri Dau Dayal Joshi
3. Shri Ram Chandra Rath
4. Shri Roshan Lal
5. Shri Thota Subba Rao
6. Shri Makhan Lal Fotedar
7. Shri S.K.T. Ramachandran

SECRETARIAT

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| 1. Shri S.C. Gupta | — <i>Joint Secretary</i> |
| 2. Shri R.K. Chatterjee | — <i>Deputy Secretary</i> |
| 3. Shri R. Kothandaraman | — <i>Assistant Director</i> |

2. At the outset, the Chairman welcomed the representative of the Department of Legal Affairs, Ministry of Law, Justice and Company Affairs and drew his attention to the provisions of Direction 58 of the Directions by the Speaker.

3. The Chairman asked the representative of the Department of Legal Affairs to give his views on the points raised in Memorandum No. 80 regarding the request received from Dr. Naunihal Singh, Member, Rajya Sabha seeking the advice of the Committee on the question whether he would entail any disability to continue as a Member of Parliament if he becomes the Chairman and Managing Director of the proposed private/public limited company registered under the Companies Act which would sell energy to Tamil Nadu State Electricity Board.

4. The representative of the Department of Legal Affairs stated that the following are the three elements of article 102(1)(a) of the Constitution of India:—

- (i) It must be an office;
- (ii) The office must be under the Government of India or Government of any State; and
- (iii) It must be an office of profit.

5. The representative stated that if these three elements are present in an office, then the person who holds that office would incur disqualification for being chosen as, or from being, a Member of either House of Parliament unless such an office is declared by Parliament by law that it is not an office of profit. He was of the opinion that the office under reference in the letter addressed to the Committee by Dr. Naunihal Singh, M.P. was not an office of profit.

6. As regards the disqualification of the Member under various other provisions of the Constitution and other laws, the representative drew the attention of the Committee to Section 9A of the Representation of the People Act, 1951 which reads as under:—

"A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government."

He explained that the terms "appropriate Government" used in that provision mean Central Government in the case of a Member of Parliament and State Government in the case of a Member of a State Legislature. He explained that in the instant case the proposed private/public company of which the Member desires to become the Chairman and Managing Director, would supply power only to a State Electricity Board and not to the Central Government.

7. The representative further explained that the term "person" used in the above mentioned provision did not include the Chairman and Managing Director of a Company and quoted the following Supreme Court Judgement to endorse his view point:—

"a contract of supply of electricity by an electric supply company with the Government does not become a contract entered into by a person in the course of his trade or business by reason of the fact that he happened to be the Chairman of Board of Directors at the relevant time."

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8. The representative thereafter drew the attention of the Committee to Section 10 of the Representation of the People Act, 1951 and explained that under that provision a Government company means a company in which the appropriate Government has not less than 25% share. He stated that in the case of the proposed company in which Dr. Naunihal Singh desires to hold an office, the Government is not going to hold any share.

9. The representative was, therefore, of the view that Dr. Naunihal Singh, Member of Parliament might not incur disqualification under the provisions of the Representation of People Act, 1951 also, as long as the company remains purely a private company and the Government does not subscribe to it.

10. After hearing the representative of the Department of Legal Affairs, the Committee came to the conclusion that Dr. Naunihal Singh might be informed that the post of Chairman and Managing Director of the proposed private/public limited company which would supply power to Tamil Nadu Electricity Board was *not* an office of Profit.

11. The Committee further decided that it might not give any opinion to the Member as regards provisions of disqualification contained in the Constitution or Acts other than article 102(1)(a) of the Constitution and the Parliament (Prevention of Disqualification) Act, 1959.

The Committee then adjourned.

XXXVII

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

The Committee met on Tuesday, 23 August, 1994 from 1530 to 1630 hours in the Chairman's Room No. 145, Parliament House, New Delhi.

PRESENT

Shri Chiranji Lal Sharma—*Chairman* *

MEMBERS

2. Prof. Susanta Chakraborty
3. Shri D.K. Naikar
4. Shri Roshan Lal
5. Shri S.B. Thorat
6. Shri Sarada Mohanty

SECRETARIAT

1. Shri Murari Lal — *Joint Secretary*
2. Shri M.R. Khosla — *Director*
3. Shri Ram Autar Ram — *Under Secretary*

2. The Committee took up for consideration Memoranda Nos. 81 to 84 regarding certain Committees/Bodies etc. constituted by State Governments as follows:

- (i) *Ex-post-facto approval of Honourable Speaker, Lok Sabha for nomination of Shri K.D. Sultanpuri, MP on State Level National Integration Committee, Himachal Pradesh—(Memorandum No. 81).*

The Committee noted that the non-official members of the State Level National Integration Committee were entitled to TA/DA on the same scale as was admissible to him under the Salary, Allowances, Pension of Members of Parliament Act, 1954 and Rules made thereunder from time to time and the functions performed by the Committee were to promote policies of national integration. The Committee further noted that the office of non-official Member of the said Committee had not been included in Parts I and II of the Schedule to the Act. The Committee, therefore, recommended that the non-official members (Member of Parliament) of the State Level National Integration Committee Himachal Pradesh *should be exempted* from disqualification for being chosen as or for being Member of Parliament.

- (ii) *Proposal to nominate Sarvashri K.D. Sultanpuri, D.D. Khanoria, Sukh Ram, Minister of State for Communications, Prof. Prem Kumar Dhumal, Members, Lok Sabha and Sarvashri K.L. Sharma, Sushil Barongpa, Maheshwar Singh, Members Rajya Sabha as non-official members in the Himachal Pradesh State Planning Board and Himachal Pradesh State Level Planning Development and 20-Point Programme Review Committee—(Memorandum No. 82).*

The Committee noted that the non-official members of the Himachal Pradesh State Planning Board and Himachal Pradesh State Level Planning Development and 20-Point Programme Review Committee were provided TADA for which terms and conditions would be decided later on. The Committee further noted that the main functions of the Board/Committee was to determine the plan priorities for State in the light of over all National Objectives. Thus, the functions of the Board and Committee were advisory in nature. The Committee therefore, recommended that the non-official members (including Members of Parliament, if nominated) of the said Board/Committee *might be exempted* from disqualification for being chosen as, or for being, a member of Parliament, subject to the condition that TADA which would be decided later on, should not exceed from 'compensatory allowance' as defined in Section 2 (a) of the Parliament (Prevention of disqualification) Act, 1959. As regards the nomination of Shri Sukh Ram, Minister of State of the Ministry of Communications, the Committee drew their attention to the relevant part of Section 3 (a) of the Parliament (Prevention of Disqualification) Act, 1959 which declared certain offices of Profit not to disqualify, as under:

"any office held by a Minister, Minister of State or Deputy Minister for the Union or for any State, whether *ex-officio* or by name;"

Accordingly, the Committee decided that any office held by a Minister of State did not come under the purview of office of profit.

- (iii) *Proposal to nominate Shri Nathu Ram Mirdha, Member, Lok Sabha as non-official member thereof in the Committee for Implementation and Co-ordination of 20-Point Programme at District Level in District Nagore (Rajasthan) — (Memorandum No. 83).*

The Committee noted that non-official members of the Committee for Implementation and Co-ordination of 20-Point Programme at district level were not paid any remuneration. No executive, legislative or judicial functions were carried out by the Committee, and it had no financial powers. The Committee felt that it was 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.

- (iv) *Proposal to nominate Shri Rasa Singh Rawat, MP as non-official member in the Committee for Implementation and Co-ordination of 20-Point Programme at District Level in District Ajmer (Rajasthan) — (Memorandum No. 84).*

The Committee noted that the non-official members of the Committee for implementation and co-ordination of 20-Point Programme at district level were not paid any remuneration. No executive, legislative or judicial work is carried out by the Committee and it had no financial powers. The Committee felt that it was 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.

The Committee then adjourned.

XLIII

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

The Committee met on Tuesday, 20 December, 1994 from 1530 to 1630 hours in Room No. 145, Parliament House.

PRESENT

Shri Chiranji Lal Sharma — *Chairman*

MEMBERS

2. Prof. Susanta Chakraborty
3. Shri Harisinh Pratapsinh Chavda
4. Shri Dau Dayal Joshi
5. Shri Roshan Lal
6. Shri S.B. Thorat
7. Shri S.K.T. Ramachandran

SECRETARIAT

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

2. The Committee considered their draft Sixth Report and adopted it.

3. The Committee authorised the Chairman to present the Report to Lok Sabha on their behalf. The Committee also authorised the Chairman to arrange for laying of the Report in Rajya Sabha simultaneously.

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The Committee then adjourned.

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

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Published under Rule 382 of the Rules of Procedure and conduct of
Business in Lok Sabha (Seventh Edition) and printed by the Manager,
P.L. Unit, Govt. of India Press, Minto Road, New Delhi.
