

JOINT COMMITTEE ON OFFICES OF PROFIT

(FIFTH LOK SABHA)

FOURTH REPORT

(Presented on the 22nd December, 1972)



**LOK SABHA SECRETARIAT
NEW DELHI**

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**JOINT COMMITTEE ON OFFICES OF PROFIT
(Fifth Lok Sabha)**

COMPOSITION OF THE JOINT COMMITTEE

Shri Dharnidhar Basumatari—*Chairman*

MEMBERS

Lok Sabha

2. Shri Chandrika Prasad
3. Shri Somnath Chatterjee
4. Shri Jagannathrao Joshi
5. Shri Z. M. Kahandole
6. Shri Pratap Singh
7. Shri Ramji Ram
8. Shri S. B. P. Pattabhi Rama Rao
9. Shri Arjun Sethi
10. Shri Ramavatar Shastri

Rajya Sabha

- *11. Shri Vithal Gadgil
12. Shri S. A. Khaja Mohideen
13. Shri Sanda Narayanappa
14. Shri Venigalla Satyanarayana
- *15. Shri Yogendra Sharma

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary.*

Shri H. G. Paranjpe—*Deputy Secretary.*

*Elected by Rajya Sabha on the 22nd May, 1972, *vice* Dr. (Mrs.) Mangladevi Talwar and Shri M. V. Bhadram ceased to be members of the Joint Committee on their retirement from that House.

REPORT OF THE JOINT COMMITTEE

I. INTRODUCTION

1. 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 Fourth Report of the Committee.

2. The Committee held a sitting on the 4th October, 1972. Minutes of the sitting form part of the Report and are at Appendix.

3. The Committee considered 14 Memoranda regarding the composition, character, functions, etc. of the Committees/Boards/Corporations, etc. constituted by the Central and State Governments and the emoluments and allowances payable to their members.

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

5. The Committee considered and adopted the Report on the 21st December, 1972.

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

II. COMMITTEES/BOARDS/CORPORATIONS ETC. CONSTITUTED BY CENTRAL AND STATE GOVERNMENTS

(i) *Board of Rehabilitation.*

(ii) *National Commission on Agriculture.*

7. The Board of Rehabilitation consists of 9 members, of whom 3 are officials, and the remaining 6 (including the Chairman) are non-officials. Non-official members are entitled to a daily allowance at the rate of Rs. 60 per day whenever they are engaged on the work of the Board. However, a Member of Parliament serving on the

Board is allowed T.A. and D.A. at the rate he is entitled to draw as a Member of Parliament.

8. The National Commission on Agriculture consists of 18 members, of whom 4 are full-time members, 11 are part-time members, one member-secretary, a Vice-Chairman and a Chairman. There are three Members of Parliament on the Commission. Members of Parliament serving on the Commission are entitled to draw T.A. and D.A. for journeys performed in connection with the work of the Commission as per the provisions of the Salaries and Allowances of Members of Parliament Act, 1954, as amended from time to time and rules made thereunder. Similarly an M.L.A. is entitled to draw T.A. and D.A. as admissible to him as M.L.A. for attending the sittings of the concerned State Legislature. The other part-time members are entitled to draw T.A. and D.A. as admissible to Central Government officers of the highest grade for journeys performed in connection with the work of the Commission. They also draw an allowance of Rs. 75 per diem whenever they are engaged on the work of the Commission.

9. The Committee note that in both the above cases, while non-official/part-time members who are also M.Ps/M.L.As do not get more than 'compensatory allowance', other non-official part-time members get more than such allowance. In this connection, the Committee considered the following questions:

- (i) Whether it was proper that while M.Ps/M.L.As serving on the above bodies were entitled to get D.A. equal to only the 'compensatory allowance', other non-official members of the Board/Commission should get more.
- (ii) Whether it was proper that while M.Ps/M.L.As should be allowed to be members of the above bodies without incurring disqualification on the ground of 'compensatory allowance', other non-official/part-time members should incur disqualification on this ground.

10. The Committee considered the matter at same length and came to the following conclusions:

- (i) Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959 restricts compensatory allowance payable to the holder of an office by way of daily allowance to the amount of daily allowance to which a Member of Parliament is entitled under the Salaries and Allowances of Members of Parliament Act, 1954. The Members of

Parliament cannot be given more than the aforesaid compensatory allowance. However, there is no such bar to other non-official members getting more.

- (ii) As regards other non-official/part-time members incurring disqualification on account of getting higher allowances, the Committee feel that no discrimination is involved as they can resign from such body in order to be a Member of Parliament.

11. The Committee, therefore, feel that while Members of Parliament/State Legislatures serving on the Board of Rehabilitation and the National Commission on Agriculture who are not entitled to get more than the 'compensatory allowance' ought not to disqualify, other non-official/part-time members who get more than the 'compensatory allowance' ought to.

12. The Committee also note that the office of the Chairman of the National Commission on Agriculture is vacant at present. The previous Chairman who functioned on part-time basis was entitled to draw daily allowance at the rate of Rs. 50 at Delhi where the headquarters of the Commission are located and at the rate of Rs. 90 when he was outside the headquarters. In addition to the daily allowance, he was entitled to free residential accommodation in New Delhi, free travel by highest class and incidental expenses for such journeys on the same terms as apply to a Minister of Cabinet rank. The Committee feel that in case the terms and conditions of the previous Chairman of the National Commission on Agriculture are made applicable to the new Chairman, when appointed, he ought also not to be exempted from disqualification.

Cantonment Boards

13. On the 7th April, 1972, the Ministry of Defence enquired whether the Joint Committee on Offices of Profit would be interested in the examination of Cantonment Boards which are set up under the Cantonments Act, 1924. In their letter, the Ministry of Defence stated that the Cantonment Boards consisted of both nominated and elected members, and no honoraria, fees, allowances or any other perquisites were allowed to the elected members.

14. The Committee note that under the provisions of the Cantonments Act the nominated members are all officials. As regards the elected members, the Committee note that they are not appointed by Government. Nor are any honoraria, fees, allowances or any other perquisites allowed to them. As such, the Committee feel that the

elected members of Cantonment Boards do not hold an office of profit under the Government. The Ministry of Defence, therefore, need not furnish information in respect of the members of Cantonment Boards.

Board of Directors of the India Tourism Development Corporation Ltd.

15. The Committee note that at present the number of Directors of the Corporation including the Chairman-cum-Managing Director is eight of whom two are officials and the rest are non-officials. The non-official Directors are entitled to an amount of Rs. 50 per day as incidentals for attending each meeting of the Board (which is less than the 'compensatory allowance'. However, the members of the Board of Directors are entitled to a single room free accommodation in Ashoka and Janpath Hotels with meals upto a maximum period of two days. Taking this into account, the aggregate benefits available to a non-official member of the Board, if expressed in monetary terms, would exceed the amount of the 'compensatory allowance', as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959. Besides, the Board of Directors exercises executive and financial powers. As such, the Committee feel that the Directorship of the Company ought to disqualify.

Board of Directors of the Handicrafts and Handlooms Exports Corporation of India Ltd.

16. The Committee note that the Board of Directors comprises 6 Directors, of whom 3 (including the Chairman) are non-officials and 3 officials. During halt, the non-official Directors are entitled to actual lodging and boarding expenses subject to a maximum of Rs. 50 for each period of 24 hours from the date of arrival. They are also entitled to contingent charges like postage, telegram and taxi hire etc. The total amount admissible to the non-official Directors may thus exceed the 'compensatory allowance'. The Chairman is also entitled to T.A. and D.A. in addition to certain perquisites such as use of official car and free residential accommodation, the total value of which, if expressed in monetary terms, would be more than the 'compensatory allowance'. Also, the Board of Directors exercises financial powers. As such, the Committee feel that the Directorship (including the Chairmanship) of the Corporation ought to disqualify.

Board of Directors of the State Trading Corporation of India Ltd.

17. The Committee note that at present the Board comprises 9 Directors, of whom 3 (including the Chairman) are non-officials. The

Chairman is entitled to a pay of Rs. 4,000 per mensem and other non-official Directors to a pay of Rs. 3,000 per mensem, in addition to other allowances. The non-official Directors (including the Chairman) are thus entitled to remuneration other than 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959. Besides, the Board of Directors exercises executive and financial powers. As such, the Committee feel that the Directorship (including the Chairmanship) of the Corporation ought to disqualify.

Maharashtra State Warehousing Corporation

18. The Committee note that the Corporation consists of 11 Directors, of whom 7 (including the Chairman) are officials and 4 non-officials. Non-official Directors who are not members of the Maharashtra State Legislature are entitled to T.A. and D.A. at the rate prescribed for Grade I Government Officers of the State, and a sitting fee of Rs. 20 for every meeting which they attend. Non-official Directors who are members of the State Legislature are entitled to draw T.A. and D.A. at the rate admissible to them for attending the sittings of the State Legislature. The amount admissible to non-official Directors thus does not exceed the 'compensatory allowance', as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959. However, the Committee note that the Board of Directors exercises executive and financial powers and are in a position to wield influence and patronage. As such, the Committee feel that the Directorship of the Corporation ought to disqualify.

Andhra Pradesh Housing Board

19. The Committee note that the Board consists of 9 members, of whom 6 (including the Chairman) are non-officials and 3 are officials. The Chairman gets monthly remuneration i.e. remuneration other than the 'compensatory allowance'. He is also entitled to a sitting fee of Rs. 25 for attending the meetings of the Board and D.A. if the meetings are held outside Hyderabad. The other non-official members are also entitled to an allowance of Rs. 25 for attending the meetings of the Board. The Board also exercises executive and financial powers and is in a position to wield influence and power. As such, the Committee feel that even membership including Chairmanship of the Board ought to disqualify.

20. In regard to the following bodies, the Committee note that the non-official members thereof are entitled to T.A. and D.A. which is less than the 'compensatory allowance'. Besides, the functions of these bodies are mainly advisory in nature. As such, the Committee

feel that the membership of these bodies ought to be exempted from disqualification:—

- (i) Exports Inspection Council (Ministry of Foreign Trade).
- (ii) State Wild Life Advisory Board (Government of Maharashtra).
- (iii) Advisory Committee for Central Jail (Goa, Daman & Diu).
- (iv) Board of Visitors (Goa, Daman & Diu).
- (v) National Advisory Board on Youth (Ministry of Education and Social Welfare).

Implementation of Recommendations of the Committee

21. In their successive Reports, the Committee have been urging that having regard to the expanding activities of the State in various spheres, the concept of office of profit should be defined and a comprehensive Bill, based on the recommendations of the Committee from time to time, introduced at an early date. In July, 1971, the Ministry of Law and Justice forwarded to the Lok Sabha Secretariat the Draft Parliament (Prevention of Disqualification) Bill, 1971. The Bill was considered by the Committee. The Report of the Committee on the Bill was presented to the House on the 31st May, 1972.

The Committee are constrained to note that the Bill to give effect to their recommendations has not yet been brought before the House. The Committee would emphasise that the proposed legislation should be introduced in Parliament without any further delay.

NEW DELHI;
The 21st December, 1972.

DHARNIDHAR BASUMATARI,
Chairman,
Joint Committee on Offices of Profit.

APPENDIX

MINUTES OF THE JOINT COMMITTEE ON OFFICES OF PROFIT

I

Eleventh Sitting

The Committee met on Wednesday, the 4th October, 1972 from 15.00 to 16.00 hours.

PRESENT

Shri Dharnidhar Basumatari—*Chairman*

MEMBERS

Lok Sabha

2. Shri Chandrika Prasad
3. Shri Jagannathrao Joshi
4. Shri Z. M. Kahandole
5. Shri Pratap Singh
6. Shri Ramji Ram
7. Shri S. B. P. Pattabhi Rama Rao
8. Shri Arjun Sethi
9. Shri Ramavatar Shastri

Rajya Sabha

10. Shri Vithal Gaagil
11. Shri S. A. Khaja Mohideen
12. Shri Sanda Narayanappa
13. Shri Venigalla Satyanarayana

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee took up for consideration Memoranda Nos. 44 to 57 relating to Committees/Boards/Corporations, etc. constituted by the Central and State Governments.

3. As regards Memorandum No. 45 relating to the Maharashtra State Warehousing Corporation, the Committee noted that the non-official Directors were entitled to T.A. and D.A. at the rate prescribed for Grade I Government officers and a sitting fee of Rs. 20 for every meeting. However, the Board of Directors exercised executive and financial powers and were in a position to wield influence and patronage.

As such, the Committee felt that the Directorship of the Corporation ought to disqualify.

4. In regard to the Board of Directors of the India Tourism Development Corporation Ltd. (Memorandum No. 47), the Committee noted that the non-official Directors were entitled to Rs. 50 per day as incidentals for the meetings of the Board which was less than the 'compensatory allowance'. However, the members were entitled to free accommodation in Ashoka and Janpath Hotels in a single room with meals upto a maximum period of two days. Taking this into account, the aggregate benefits available to a non-official member, if expressed in monetary terms would exceed the 'compensatory allowance', as defined in section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959. Besides, the Board of Directors exercised executive and financial powers. As such, the Committee felt that the Directorship of the Company ought to disqualify.

5. As regards Memorandum No. 48 relating to Tariff Commission, Bombay, the Committee noted that except Secretary who was an official, the other office bearers viz. the Members/Chairman could be officials as well as non-officials. The members of the Commission were entitled to salary and allowances. The salary of the Chairman was equivalent to an Additional Secretary and that of a member was equal to a Joint Secretary of the Government of India. The Committee also noted that the Commission's office worked as a full-fledged Government Department. Normally, in the case of such non-officials, the question of disqualification under article 102(1)(a) of the Constitution would have arisen. But the Committee noted that the Tariff Commission Act, 1951 under which the Commission was constituted, itself prohibited an M.P. or M.L.A. to become a member of the Commission. As such, the Committee did not consider it necessary to express their opinion in the matter.

6. The Committee then took up for consideration Memorandum No. 51 which dealt with the examination of a point whether membership of the Board of Rehabilitation and National Commission on Agriculture by an M.P./M.L.A. who was not entitled to draw more than

'compensatory allowance' ought or ought not to disqualify. Three points were raised in this connection:—

- (i) Whether it would not be discriminatory against an M.P./M.L.A. that he should get D.A. equal only to the compensatory allowance, as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959 when other non-official members on these bodies were entitled to get more.
- (ii) Whether it was proper that while M.Ps./M.L.As. serving on these bodies were entitled to get D.A. only equal to the compensatory allowance, other non-official members on these bodies should get more.
- (iii) Was it proper that an M.P./M.L.A. should be allowed to be a Member of these bodies by drawing daily allowance equal to the compensatory allowance (although the membership carried higher allowance) whereas other non-official members on account of their drawing the D.A. admissible under the *Resolutions should incur disqualification.

The Committee discussed the matter at great length and came to the conclusion that since the Parliament (Prevention of Disqualification) Act, 1959 restricted compensatory allowance payable to the holder of an office by way of daily allowance to the amount of daily allowance to which a Member of Parliament is entitled under the Salaries and Allowances of Members of Parliament Act, 1954, the Members of Parliament could not be given more than the aforesaid compensatory allowance. However, there was no such bar to other non-official members getting more.

As regards other non-official members incurring disqualification on account of getting higher allowances, the Committee felt that no discrimination was involved as they could resign from such body in order to be a Member of Parliament.

The Committee ultimately came to the conclusion that since the Members of Parliament/State Legislatures serving on the Board of Rehabilitation and the National Commission on Agriculture were not entitled to get more than 'compensatory allowance' they ought not

*Ministry of Labour, Employment and Rehabilitation Resolution No. 3 (5)/67-RH-V dt. 30.1.68 and Ministry of Food, Agriculture, Community Development and Co-operation Resolution No. 25-13/68-Gen. Coord; dt. 29.8.70.

to disqualify whereas, other non-official members, by virtue of getting more than compensatory allowance, ought not to be exempted from disqualification.

7. As regards Memorandum No. 52 relating to the examination of Cantonment Boards, the Committee noted that while nominated members of Cantonment Boards were all officials, the elected members were neither appointed by Government nor allowed any honorarium, fee, allowances or other perquisites. As such, they apparently did not hold an office of profit.

In this connection, the Committee also referred to two parallel cases decided by the Election Tribunals, namely, (i) Harnam Singh V. Jwala Prasad and others, and (ii) Shibban Lal Saksena V. Harishankar Prasad and others. In the former case, the Chairman of a Municipality did not receive any allowances or remuneration. As such, according to Election Tribunal, Ajmer he did not hold an office of profit within the meaning of article 102(1)(a) of the Constitution (1953 ELR Vol. VIII P. 332). In the latter case the Election Tribunal, Gorakhpur held that the Chairman of a District Board did not hold an office under the Government and was not, therefore, disqualified for being chosen as a member of the Legislature of a State even though he received a monthly allowance in lieu of cost of petrol and other expenses for touring through the District to perform duties as Chairman of the Board. (1954 E.L.R. Vol. IX p. 403). In view of the foregoing, the Committee decided that it was not necessary for the Ministry of Defence to furnish the requisite information in respect of the members of Cantonment Boards.

8. The Committee took up for consideration Memorandum No. 53 relating to the National Advisory Board on Youth which had been deferred at their sitting held on the 23rd June, 1972 pending receipt of further information regarding functions of the Board from the Government.

The Committee noted that the non-official members of the Board were entitled to a daily allowance of Rs. 30 and local non-official members got conveyance allowance to a maximum of Rs. 10 which was less than 'compensatory allowance'. Besides, the functions of the Board were mainly advisory in nature. As such, the Committee felt that the membership of the Board ought to be exempted from disqualification.

9. In regard to Maharashtra Board of Ayurvedic and Unani Systems of Medicine (Memo No. 54), the Committee noted that the

Board was empowered to appoint such officers and servants as it deemed necessary for carrying out its duties and performing its functions under the Maharashtra Medical Practitioners' Act, 1961. The Board also exercised quasi-judicial powers. However, the Committee desired to know detailed information on the following points in respect of the Board:

- (a) whether it carries executive, legislative or judicial power; or
- (b) confers powers of disbursement of funds, allotment of lands, issue of licences etc.; or
- (c) gives powers of appointment, grant of scholarship etc. and the amount upto which it can sanction the scholarship.

The Committee, therefore, deferred consideration of the Memorandum pending receipt of the aforesaid information from the Government of Maharashtra.

10. As regards Memorandum No. 55 relating to the Board of Directors of the Handicrafts and Handlooms Exports Corporation of India Ltd., the Committee noted that the non-official Directors were entitled to T.A. and D.A. which might exceed the compensatory allowance. The Chairman was also entitled to T.A. and D.A. in addition to certain perquisites such as use of official car and free residential accommodation, the total value of which, if expressed in monetary terms would be more than 'compensatory allowance'. Besides, the Board of Directors also exercised financial powers. As such, the Committee felt that the Directorship including the Chairmanship of the Corporation ought to disqualify.

11. In regard to the Board of Directors of the State Trading Corporation of India Ltd. (Memo. No. 56), the Committee noted that the non-official Directors including the Chairman were entitled to remuneration other than the 'compensatory allowance', as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959. Besides, the Board of Directors exercised executive and financial powers. As such, the Committee felt that the directorship (including the Chairmanship) of the Corporation ought to disqualify.

12. As regards Memorandum No. 57 relating to the Andhra Pradesh Housing Board, the Committee noted that the Chairman got monthly remuneration—other than compensatory allowance, as defined in section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959. He was also entitled to sitting fee of Rs. 25 for attending Board meetings and D.A. if the meetings were held outside

Hyderabad. The non-official members were also entitled to an allowance of Rs. 25 for attending any meeting of the Board.

The Board also exercised executive and financial powers and was in a position to wield influence and power. As such, even membership (including Chairmanship) of the Board ought to disqualify.

13. In regard to the following bodies, the Committee noted that the non-official members thereof were entitled to T.A. and D.A. which was less than the 'compensatory allowance'. Besides, the functions of these bodies were mainly advisory in nature. As such, the Committee felt that the membership of these bodies ought to be exempted from disqualification:—

- (i) Exports Inspection Council (Ministry of Foreign Trade)—Memo. No. 44.
 - (ii) State Wild Life Advisory Board (Government of Maharashtra)—Memo. No. 46.
 - (iii) Advisory Committee for Central Jail (Goa, Daman & Diu)—Memo. No. 49.
 - (iv) Board of Visitors (Goa, Daman & Diu)—Memo. No. 50.
14. *The Committee then adjourned.*

II

Twelfth Sitting

The Committee met on Thursday, the 21st December, 1972 from 10.00 to 10.35 hours.

PRESENT

Shri Dharnidhar Basumatari—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Chandrika Prasad
3. Shri Somnath Chatterjee
4. Shri Jagannathrao Joshi
5. Shri Z. M. Kahandole
6. Shri Pratap Singh
7. Shri S. B. P. Pattabhi Rama Rao
8. Shri Arjun Sethi
9. Shri Ramavatar Shastri

Rajya Sabha

10. Shri Vithal Gadgil
11. Shri S. A. Khaja Mohideen
12. Shri Sanda Narayanappa
13. Shri Yogendra Sharma

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee considered their draft Fourth Report. They were concerned over the delay in the implementation of their recommendations. They noted that in their Second Report (Fifth Lok Sabha) on the Draft Parliament (Prevention of Disqualification) Amendment Bill, 1971, presented to the House on 31st May, 1972, the Committee had urged Government to bring the Bill, as revised in the light of their observations, before Parliament at an early date. They

regretted to note that this had not yet been done. The Committee decided to comment upon the matter in the Report under consideration. They also desired that the Chairman should write a letter to the Minister of Law and Justice urging him to introduce the proposed legislation at an early date.

3. The Committee adopted the Draft Report, subject to the following addition:—

"IMPLEMENTATION OF RECOMMENDATIONS OF THE COMMITTEE

21. In their successive Reports, the Committee have been urging that having regard to the expanding activities of the State in various spheres, the concept of office of profit should be defined and a comprehensive Bill, based on the recommendations of the Committee from time to time, introduced at an early date. In July 1971, the Ministry of Law and Justice forwarded to the Lok Sabha Secretariat the Draft Parliament (Prevention of Disqualification) Bill, 1971. The Bill was considered by the Committee. The Report of the Committee on the Bill was presented to the House on the 31st May, 1972.

The Committee are constrained to note that the Bill to give effect to their recommendations has not yet been brought before the House. The Committee would emphasise that the proposed legislation should be introduced in Parliament without any further delay."

4. The Committee decided that the Report might be presented to Lok Sabha on the 22nd December, 1972 and laid on the Table of Rajya Sabha on the same day.

5. The Committee authorised the Chairman and in his absence, Shri Jagannath Rao Joshi to present the Report to Lok Sabha on their behalf.

6. The Committee authorised Shri Sanda Narayanappa and, in his absence, Shri Vithal Gadgil to lay the Report on the Table of Rajya Sabha.

7. The Committee then adjourned to meet again on Monday, the 29th January, 1973.