

**JOINT COMMITTEE ON OFFICES
OF PROFIT**

(FIFTH LOK SABHA)

EIGHTEENTH REPORT

(Presented on the 26th May, 1976)



सत्यमेव जयते

**LOK SABHA SECRETARIAT
NEW DELHI**

May, 1976 / Jyaishta 1898 (Saka)

Price : 55 Paise

CORRIGENDA TO THE 18TH REPORT OF THE
JOINT COMMITTEE ON OFFICES OF PROFIT
(FIFTH LOK SABHA) PRESENTED TO THE
HOUSE ON THE 26TH MAY, 1976.

<u>Page</u>	<u>Line</u>	<u>for</u>	<u>read</u>
4	1	fee Rs.40/-	fee of Rs.40/-
6	11	renumeration	enumeration
10	8	those	these
	(Para 26)		
12	5	(Fifth-Fourth Sitting)	(Fifty-Fourth Sitting)
15	11	<u>insert</u> after (a) and (b)	
	(Para 10)	"of Articles of Association of the company"	
	Heading (Para 12)	VOR/TROR	VOR/TVOR
	2 (Para 12)	VOR/TROR	VOR/TVOR
16	11 (Para 13)	Visitors Balamandirs	Visitors of Balamandirs
23	10 (from bottom)	Act, 1939,	Act, 1959,

CONTENTS

	PAGE
COMPOSITION OF THE JOINT COMMITTEE	(iii)
REPORT	
I. Introduction	I
II. Committees/Boards/Corporations, etc. constituted by the central and State Governments and Union Territory Administrations	I
APPENDIX—I. Minutes of the sittings of the Joint Committee	12
APPENDIX—II. Government of Himachal Pradesh (Transport Department) letter no. 4-11/69-TPT dt. 17-4-76	18

PERSONNEL OF THE JOINT COMMITTEE
ON OFFICES OF PROFIT

(FIFTH LOK SABHA)

LOK SABHA

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

RAJYA SABHA

- £11. Shri N. M. Kamble
**12. Shri Kameshwar Singh
**13. Shrimati Maimoona Sultan
£14. Shri A. K. Refaye
@15. Shri Yogendra Sharma.

SECRETARIAT

Shri P. K. Patnaik—*Additional Secretary.*

Shri Y. Sahai—*Chief Legislative Committee Officer.*

%Elected by Lok Sabha on the 7th March, 1975, *vice* Shri Pratap Singh died.

*Elected by Lok Sabha on the 6th December, 1973. *vice* Shri Dharindhar Basumatari resigned from the Committee.

£Elected by Rajya Sabha on the 8th May, 1974.

**Elected by Rajya Sabha on the 21st May, 1976 *vice* Shri Vithal Gadgil resigned from the Joint Committee w.e.f. 23rd February, 1976 and Shri Venigalla Satyanarayanna ceased to be Member on the retirement from Rajya Sabha w.e.f. 22nd April, 1976.

@Elected by Rajya Sabha on the 22nd May, 1972.

REPORT OF THE JOINT COMMITTEE

I

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 Eighteenth Report of the Committee.

2. The Committee held three sittings—on the 27th April and 18th and 24th May, 1976. Minutes of these sittings form part of the Report and are at Appendix—I.

3. The Committee considered the composition, character, functions, etc. of 55 Committees|Boards|Corporations, etc. constituted by the Central and State Governments and Union Territory Administrations 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 Government and the State Governments and the Union Territory Administrations on a request made by the Lok Sabha Secretariat.

5. The Committee considered and adopted the Report on the 24th May, 1976.

6. The observations|recommendations of the Committee in respect of the matters considered by them are given in the succeeding paragraphs.

II

Committees|Boards|Corporations, etc. constituted by the Central and State Governments and Union Territory Administrations.

Steering Committee for VOR|TVOR and DME (Department of Electronics)

7. The Committee note that the non-official members of the Steering Committee for VOR|TVOR and DME who are not residents of the place where the meeting is held, are entitled to an

allowance at the rate of Rs. 75|- per day when they actually attend the meeting, along with TA|DA as admissible to Grade I officers of Central Government. The amount payable to them may thus exceed the 'compensatory allowance'. As such, the Committee feel that the membership of the Committee ought not to be exempt from disqualification.

Board of Directors of the Kerala State Warehousing Corporation

8. The Committee note that the payment admissible to the non-official members of the Kerala State Warehousing Corporation is generally less than the 'compensatory allowance', though it might sometimes exceed such amount. However, as the Board exercises executive and financial powers, the Committee feel that its membership in so far as it is an office of profit under the Government ought not to be exempt from disqualification.

Managing Committee for Welfare Institutions, Kerala.

9. The Committee note that the payment admissible to the non-official members of the Managing Committee for Welfare Institutions, Kerala is less than the 'compensatory allowance'. However, the Managing Committee exercises executive and financial powers. *Inter alia*, it has the power to make appointments. As such, the Committee feel that the membership of the Managing Committee ought not to be exempt from disqualification.

*Board of Directors of the Kerala State Financial Enterprises Limited,
Trichur*

10. The Committee note that an honorarium of Rs. 500|- p.m. is admissible to the Chairman of the Kerala State Financial Enterprises Limited, Trichur, which does not come within the ambit of 'compensatory allowance'. The other Directors are entitled to a sitting fee of Rs. 50|- for attending the meetings of the Board of Directors and/or any Committee thereof. They are also paid TA|DA at Government rates. It is not clear from the material furnished by the State Government whether both sitting fee and DA are admissible for the same day. If they are, the amount payable to the non-official Directors will exceed the 'compensatory allowance'. If not, it will be marginally less than the 'compensatory allowance'. However, as the functions of the company are financial in nature, the Committee feel that the Directorship of the company ought not to be exempt from disqualification.

Kerala State Electricity Board

11. The Committee note that the non-official members of the Kerala State Electricity Board are entitled to a sitting fee of Rs. 50|- and DA of Rs. 25|- per day of the sittings of the Board. The payment thus admissible to the non-official members of the Board exceeds the 'compensatory allowance'. Also, the functions of the Board are executive and financial in nature. As such, the Committee feel that the membership of the Board ought not to be exempt from disqualification.

Board of Directors of the Kerala Agro Industries Corporation Limited.

12. The Committee note that the Chairman of the Kerala Agro Industries Corporation Ltd. is paid a monthly honorarium of Rs. 500|- which does not come within the ambit of 'compensatory allowance'. The other Directors are entitled to a sitting fee of Rs. 50|- for every meeting of the Board or a Committee thereof. They are also eligible for T.A. and DA at the rates applicable to a Grade I Officer of the Corporation. It is not clear from the material furnished by the State Government whether both sitting fee and DA are admissible for the same days. If they are, the payment admissible to the non-official Directors will exceed the 'compensatory allowance'. If they are not, the payment admissible to the non-official Directors will be marginally less than the 'compensatory allowance'. However, as the Board of Directors exercises executive and financial powers, the Committee feel that the Directorship of the Corporation ought not to be exempt from disqualification.

Board of Directors of the Maharashtra State Farming Corporation

13. The Committee note that the payment admissible to the non-official Directors of the Maharashtra State Farming Corporation does not exceed the 'compensatory allowance'. But as the Board of Directors exercises executive and financial powers, the Committee feel that the Directorship of the Corporation ought not to be exempt from disqualification.

Board of Directors of the Maharashtra Agricultural Development and Fertiliser Promotion Corporation Limited (MAFCO)

14. The Committee note that the whole-time Director of the Maharashtra Agricultural Development and Fertiliser Promotion Corporation Limited is entitled to a pay and allowances of over Rs. 1600|- per mensem, which does not come within the ambit of 'compensatory allowance'. The Chairman and the other non-official

Directors are entitled to a sitting fee Rs. 40|- per meeting of the Board of Directors. In addition, they are entitled to travelling expenses up to a limit of Rs. 200|- for attending a meeting or when they are travelling in connection with the business of the Company. They are further entitled to special remuneration under Articles 137 and 138(a) and (b) of Articles of Association of the Company. The payment thus admissible to the non-official Directors may exceed the 'compensatory allowance'. Also, the Board of Directors exercises executive and financial powers. As such, the Committee feel that the Directorship of the Corporation, in so far as it is an office of profit under the Government, ought not to be exempt from disqualification for Membership of Parliament.

Board of Directors of the Maharashtra Agro-Industries Development Corporation Limited.

15. The Committee note that according to the State Government, no remuneration, sitting fee or TA/DA is being paid to the non-official Directors of the Maharashtra Agro-Industries Development Corporation, but under Article 79(2) of the Articles of Association of the Company, the Managing Director, who is the only non-official Director at present, will be paid such salary and allowances as may be fixed by the Governor. Also, the Board of Directors exercises executive and financial powers. As such, the Committee feel that the Directorship of the Corporation ought not to be exempt from disqualification for membership of Parliament.

Honorary Offices held in bodies carrying executive, financial, judicial or quasi-judicial powers with special reference to the State Transport Authority, Chandigarh.

While considering the character, composition etc. of the State Transport Authority, Chandigarh, the Joint Committee on Offices of profit at their sitting held on the 10th December, 1973 had noted that even though the members of the Authority did not get any remuneration, they were in a position to wield influence by virtue of their power to issue permits for contract carriages and for private and public carriers.

At their sitting held on the 16th April, 1974, the Committee again considered the matter and noted that, while interpreting Articles 102 and 191 of the Constitution, the Indian Election Tribunals/Courts had construed 'pecuniary gain' to be an essential ingredient of profit. The Committee felt that though the Membership of such bodies did not strictly constitute an 'office of profit' within the meaning of

Article 102(1) (a) of the Constitution as no pecuniary gain accrued, the creation of a large number of such bodies by the Executive could defeat the very object underlying Article 102 (1) (a) of the Constitution, viz., to keep the Legislatures free from the influence of the Executive. If members of such bodies, who might feel beholden to the Executive for the positions of influence and patronage held by them, were freely allowed to become members of Legislatures, there was a risk that they may not have the independence of thought and action expected of members of Legislatures.

To consider the matter further, the Committee asked the Ministry of Law to advise as to how the object underlying Article 102(1) (a) of the Constitution was not circumvented in such cases.

17. In their reply, the Ministry of Law have stated as follows:

“The main point raised.....appears to be that it would be anomalous not to disqualify persons who hold offices involving influence and patronage. The argument seems to be that the same mischief against which disqualification on grounds of holding of office of profit is aimed at can take place even in regard to offices which do not involve pecuniary profit but which involve influence and patronage.

Where an office involves influence and prestige and also some pecuniary benefit (however small such pecuniary benefit may be), article 102(1) (a) of the Constitution will apply and the office can be regarded as an office of profit. Having regard to the nature of the influence and patronage involved, we can deny to any such office the benefit of the Parliament (Prevention of Disqualification) Act, 1959.

Where an office does not involve any pecuniary profit, as rightly pointed out....article 102(1) (a) of the Constitution can have no application and the matter cannot be dealt with under the Parliament (Prevention of Disqualification) Act as the object of the Act is not to create a disqualification but to prevent a disqualification.

It will, however, be possible to frame a law relatable to article 102 (1) (e) of the Constitution for disqualifying holders of offices involving influence and patronage for being chosen as, and for being, a member of either House of Parliament. Any such law will have to spell out clearly the criteria on the basis of which an office may be regarded as an office involving influence or patronage. Such a clear cut spelling out of the criteria is necessary not

only for protecting the legislation from challenge under article 14 of the Constitution, but also to enable Members of Parliament and others desirous of contesting elections to Parliament to determine for themselves whether an office which they are holding or which they want to take up would be of a nature which would disqualify them. The device of enumerating particular offices as offices involving influence or patronage would be conducive to greater clarity but might be open to objection on Constitutional and other grounds. In the first place, if all offices of the same nature or category are not covered by the remuneration, the law may be held to be discriminatory. In the second place, the incidence of an office will be regulated by the law or rules under which an office is created and these can vary from time to time, e.g., some restrictions may be placed by an amendment of the rules under which an office is created so as to render the holder of the office incapable of exercising any influence or patronage. The attributes of an office which account for the influence and patronage involved in the office may be altered by the rules or orders under which an office is created. In the third place, a person has to undergo a lot of financial expenditure and other difficulties in the process of his election and if he suddenly becomes disqualified by reason of a general provision, such as seems to be the only course possible, there would be considerable hardship."

18. The Committee considered the above opinion of the Ministry of Law at their sitting held on the 26th February, 1976 and desired that each case of an honorary office carrying executive, financial, judicial or quasi-judicial powers where no remuneration was payable to the holder but which enabled him to wield influence and possess power of patronage, should be brought to their notice so that the Committee could determine whether it was a fit case for recommending disqualification under Article 102(1)(e) of the Constitution.

19. At their sittings held on the 27th April and 18th May, 1976, the Committee considered the cases of several honorary offices held in bodies carrying executive, financial or quasi-judicial powers (including the State Transport Authority, Chandigarh).

20. The Committee note that no remuneration is payable to the non-official members of the State Transport Authority, Chandigarh, and as 'pecuniary gain' has been held to be an essential element of

W. J. Singh

'profit', the membership of the said Authority is not an 'office of profit' within the meaning of Article 102(1)(a) of the Constitution. The Committee, however, note that the said Authority has the power to issue permits for contract carriages and private and public carriers, and it is, therefore, in a position to wield influence. The Committee also note that in para 35 of their Thirteenth Report (Fifth Lok Sabha) presented to the House on the 30th April, 1975, the Joint Committee on Offices of Profit have recommended that not only the Chairmanship and Secretaryship but even ordinary membership of all the State and Regional Transport Authorities mentioned in para 31 of the said Report ought not to be exempt from disqualification for membership of Parliament, as these Authorities possess the power to issue permits and are in a position to wield influence. In view of the foregoing, the Committee feel that the membership of the State Transport Authority, Chandigarh (including Chairmanship) ought also to disqualify. As the membership of the said Authority does not attract Article 102(1)(a) of the Constitution, the Committee will like the Ministry of Law, Justice and Company Affairs (Legislative Department) to examine the feasibility of amending the existing law, or framing a new law, for disqualifying the membership (including Chairmanship) of the said Authority under Article 102(1)(e) of the Constitution. d
u

21. In addition to the State Transport Authority, Chandigarh, the Committee have considered cases of honorary membership of the following 16 bodies:—

1. Board of Industries, Chandigarh.
2. Managing Committee for the Management of Special Fund for Reconstruction and Rehabilitation of Ex-servicemen, Chandigarh.
3. Tamil Nadu Slum Clearance Board.
4. Slum Clearance Committee, Pondicherry.
5. Selection Committee, Pondicherry.
6. Watch Dog Committee, Pondicherry.
7. State Managing Committee of the Special Fund for Reconstruction and Rehabilitation of Ex-servicemen of Union Territory of Pondicherry.
8. Managing Committee for Administration of the Special Services Fund for reconstruction and rehabilitation of ex-servicemen (Tripura).

9. Committee of Administration of the Tripura State Ex-Servicemen's Benevolent Fund.
10. Housing Advisory Boards for West, North and South (Tripura).
11. Committee of Administration of the Post-war Services Reconstruction Fund (Tripura).
12. State Working Committee for the Administration of the National Foundation for Teachers' Welfare, Andamans.
13. Committee for Selection of NCC Officer, Senior (Andamans).
14. Labour Welfare Board, Chandigarh.
15. State Aid to Industries Advisory Board (Dadra and Nagar Haveli).
16. State Advisory Committee for Cooperative Sugar Factories (Maharashtra).

22. The Committee note that no remuneration is payable to the non-official members of the above bodies, and as such, they do not hold an office of profit within the meaning of Article 102(1) (a) of the Constitution. It is true that a majority of the above bodies carries executive or financial powers; and even where the bodies are Advisory, their members are in a position to wield influence. But the question is whether the nature and extent of the influence that may be wielded by the members of these bodies is such as to call for their disqualification under Article 102(1)(e) of the Constitution.

After giving a careful thought to the character, composition, etc. of each of the above bodies, the Committee have come to the conclusion that membership of none of the above bodies need be disqualified under Article 102(1)(e) of the Constitution.

Representation for review of recommendation of Joint Committee on Offices of Profit regarding State Transport Authority, Himachal Pradesh contained in para 9 of their Sixteenth Report (Fifth Lok Sabha).

23. The Joint Committee on Offices of Profit (Fifth Lok Sabha), in para 9 of their Sixteenth Report, had recommended non-exemption of membership of the State Transport Authority, Himachal Pradesh from disqualification for membership of Parliament. In this connection, the Committee had observed that although the payment admissible to the non-official members of the said Transport

Authority was less than the 'compensatory allowance', the Authority possessed power to issue permits and was in a position to wield influence. It could also exercise quasi-judicial powers.

Shri J. N. Bhardwaj, Member, Rajya Sabha, had in this regard, in his letter dated 5-4-1976 represented as follows:

"I have noted from the 16th Report of your Committee that membership of Himachal Pradesh State Transport Authority is a disqualification for being a member of Parliament. After that I made enquiries at Simla and came to know that the State Government does not consider it a disqualification. In this connection, I was told that in 1971 the State Government had passed a Bill. If so, I would request you to kindly advise me whether your Committee will be in a position to consider the matter.

Personally I think that the members of the Himachal State Transport Authority do not have any *quasi-judicial* and *executive* powers. They only attend the meetings hardly thrice or four times a year. The executive powers are with the Secretary and the members are only a sort of casual advisers.

In view of the above I would request you to kindly get full facts from the Himachal Pradesh Government and thereafter kindly to re-consider the matter."

24. On 30-4-1976, Shri Bhardwaj addressed another letter to the Chairman, Joint Committee on Offices of Profit. While forwarding a copy of a letter of the Himachal Pradesh Government setting forth the opinion of the Law Department of the State Government, in the matter as at Appendix II, Shri Bhardwaj *inter alia* urged as follows:

"As I have to give my consent, or otherwise to remain a member of the Himachal State Transport Authority, I would request you to kindly get this matter considered by your Committee in the light of my earlier letter (*vide* para 23 above) and the copy of Himachal Pradesh Government letter" (Appendix II).

25. The Committee have given a careful thought to the representation of Shri Bhardwaj. They note that all the State Transport Authorities (including the State Transport Authority, Himachal Pradesh) have been set up under the Motor Vehicles Act, 1939—a Central Act. In para 35 of their Thirteenth Report (Fifth Lok Sabha),

presented to the House on 30-4-1975, the Joint Committee have recommended non-exemption of not only Chairmanship and Secretaryship but even ordinary membership of State/Regional Transport Authorities of 13 States/Union Territories mentioned in para 31 of the said Report. The functions and powers of the State Transport Authority, Himachal Pradesh are in no way different from those of the other Transport Authorities mentioned above. In view of this, the Committee feel that no change in their earlier recommendation made in para 9 of their 16th Report (Fifth Lok Sabha) is called for.

Offices recommended for exemption from disqualification

26. In regard to the following bodies, the Committee note that the non-official members thereof are either not entitled to any remuneration or are entitled to TA and DA which is less than the 'compensatory allowance'. Besides, the functions of these bodies are mainly advisory in nature or their character, composition etc. are such that their membership ought to be exempt from disqualification. The Committee, accordingly, recommend exemption of membership of those bodies from disqualification for membership of Parliament:

- (1) Kerala State Haj Committee.
- (2) State Probation Advisory Committee (Kerala).
- (3) District Probation Advisory Committees (Kerala).
- (4) Advisory Committee for the Welfare of the Handicapped (Kerala).
- (5) Kerala State Electricity Consultative Council.
- (6) Kerala Land Development Board.
- (7) District Land Development Committee (Kerala).
- (8) Committee of Visitors of Jails (Kerala).
- (9) Advisory Board of Central Jails (Kerala).
- (10) Visiting Committee of Borstal School (Kerala).
- (11) Committee of Visitors of Balamandirs (Certified School—Kerala).
- (12) Advisory Committee for Dapchari Dairy Project (Maharashtra).
- (13) State Level Crop Competition Committee (Maharashtra).
- (14) Maharashtra State Fruit and Vegetable Committee.
- (15) State Cotton and Oilseeds Committee (Maharashtra).
- (16) State Sugarcane Committee (Maharashtra).

- (17) Appellate Board under the Seeds Act, 1966 (Maharashtra)
- (18) Maharashtra State Organising Committee for State Level Fruit Growing Competition
- (19) Consultative Committee for implementation of Dry Farming Schemes in the State Sector at Akola and Sholapur (Maharashtra)
- (20) Maharashtra State Forest Advisory Committee
- (21) District Food and Civil Supplies Advisory Committee (Maharashtra)
- (22) District Supervision and Implementation Committee (Maharashtra)
- (23) Maharashtra State Soldiers', Sailors' and Airmen's Board
- (24) District Soldiers', Sailors' and Airmen's Boards (Maharashtra)
- (25) State Organising Committee for Nehru Yuvak Kendra, Port Blair (Andamans)
- (26) Gazetteer Advisory Committee (Andamans)
- (27) Regional Computer Centre at Delhi—Study Projects (Department of Electronics)

S. B. P. PATTABHI RAMA RAO,
Chairman,

NEW DELHI;
24th May, 1976.

Joint Committee on Offices of Profit.

APPENDIX I

(Vide para 2 of the Report)

MINUTES OF THE JOINT COMMITTEE ON OFFICES OF PROFIT

I

(Fifth-Fourth Sitting)

The Committee sat on Tuesday, the 27th April, 1976 from 10.30 to 10.55 hours.

PRESENT

Shri S. B. P. Pattabhi Rama Rao—*Chairman*

MEMBERS

Lok Sabha

2. Shri S. M. Siddayya

3. Shri Arjun Sethi

4. Shri Ramavatar Shastri

5. Shri Ram Shekhar Prasad Singh

Rajya Sabha

6. Shri A. K. Refaye

7. Shri Yogendra Sharma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee took up for consideration Memoranda Nos. 1024 to 1058 relating to certain Committees|Boards|Corporations, etc. constituted by the Government of India and State Governments.

Kerala State Warehousing Corporation (Memorandum No. 1024)

3. The Committee noted that the payment admissible to the non-official members of the Kerala State Warehousing Corporation was generally less than the 'compensatory allowance', though it might

sometimes exceed such amount. However, as the Board exercised executive and financial powers, the Committee felt that its membership in so far as it was an office of profit under the Government ought not to be exempt from disqualification.

Managing Committee for Welfare Institutions, Kerala—(Memorandum No. 1026)

4. The Committee noted that the payment admissible to the non-official members of the Managing Committee for Welfare Institutions, Kerala was less than the 'compensatory allowance'. However, the Managing Committee exercised executive and financial powers. *Inter alia*, it had the power to make appointments. As such, the Committee felt that the non-official Members of the Managing Committee ought not to be exempt from disqualification.

Board of Directors of the Kerala State Financial Enterprises Limited, Trichur (Memorandum No. 1030)

5. The Committee noted that an honorarium of Rs. 500|-p.m. was admissible to the Chairman of the Kerala State Financial Enterprises Limited, Trichur, which did not come within the ambit of 'compensatory allowance'. The other Directors were entitled to a sitting fee of Rs. 50|- for attending the meetings of the Board of Directors and/or any committee thereof. They were also paid TA|DA at Government rates. It was not clear from the material furnished by the State Government whether both sitting fee and DA were admissible for the same day. If they were, the amount payable to the non-official directors would exceed the 'compensatory allowance'. If not it would be marginally less than the 'compensatory allowance'. However, as the functions of the company were financial in nature, the Committee felt that the Directorship of the company ought not to be exempt from disqualification.

Kerala State Electricity Board (Memorandum No. 1031)

6. The Committee noted that the non-official members of the Kerala State Electricity Board were entitled to a sitting fee of Rs. 50|- and DA of Rs. 25|- per day of the sittings of the Board. The payment thus admissible to the non-official members of the Board exceeded the 'compensatory allowance'. Also, the functions of the Board were executive and financial in nature. As such, the Committee felt that the membership of the Board ought not to be exempt from disqualification.

*Board of Directors of the Kerala Agro Industries Corporation Ltd.
(Memorandum No. 1033)*

7. The Committee noted that the Chairman of the Kerala Agro Industries Corporation Ltd., was paid a monthly honorarium of Rs. 500|-, which did not come within the ambit of 'compensatory allowance'. The other Directors were entitled to a sitting fee of Rs. 50|- for every meeting of the Board or a Committee thereof. They were also eligible for TA and DA at the rates applicable to a Grade I Officer of the Corporation. It was not clear from the material furnished by the State Government whether both sitting fee and DA were admissible for the same days. If they were, the payment admissible to the non-official Directors exceeded the 'compensatory allowance'. If they were not, the payment admissible to the non-official Directors would be marginally less than the 'compensatory allowance'. However, as the Board of Directors exercised executive and financial powers, the Committee felt that the Directorship of the Corporation ought not to be exempt from disqualification.

*State Advisory Committee for Cooperative Sugar Factories,
Maharashtra (Memorandum No. 1040)*

8. The Committee noted that no remuneration was admissible to the non-official members of the State Advisory Committee for Cooperative Sugar Factories. Also, according to the State Government, the Committee did not exercise any financial powers. But inasmuch as the said Committee called for tenders for purchase of plant and machinery for new cooperative sugar factories and negotiated with the suppliers for purchase of machinery, apparently it was in a position to wield influence. However, as pecuniary gain had been held by courts to be an essential element of 'profit', membership of the Committee apparently did not constitute an office of profit within the meaning of article 102(1) (a) of the Constitution. In view of this, the Committee decided not to take any further action in the matter.

*Board of Directors of the Maharashtra State Farming Corporation
(Memorandum No. 1041)*

9. The Committee noted that the payment admissible to the non-official Directors of the Maharashtra State Farming Corporation did not exceed the 'compensatory allowance'. But as the Board of Directors exercised executive and financial powers, the Committee felt that the Directorship of the Corporation ought not to be exempt from disqualification.

Board of Directors of the Maharashtra Agricultural Development and Fertiliser Promotion Corporation Limited (MAFCO)
(Memorandum No. 1042)

10. The Committee noted that the whole-time Director of the Maharashtra Agricultural Development and Fertiliser Promotion Corporation Limited was entitled to a pay and allowances of over Rs. 1600/- per mensem, which did not come within the ambit of 'compensatory allowance'. The Chairman and the other non-official Directors were entitled to a sitting fee of Rs. 40/- per meeting of the Board of Directors. In addition, they were entitled to travelling expenses up to a limit of Rs. 200/- for attending a meeting or when they were travelling in connection with the business of the Company. They were further entitled to special remuneration under Articles 137 and 138(a) and (b). The payment thus admissible to the non-official directors might exceed the compensatory allowance. Also, the Board of Directors exercised executive and financial powers. As such, the Committee felt that the Directorship of the Corporation, in so far as it was an office of profit under the Government, ought not to be exempt from disqualification for Membership of Parliament.

Board of Directors of the Maharashtra Agro-Industries Development Corporation Ltd. (Memorandum No. 1051)

11. The Committee noted that according to the State Government, no remuneration, sitting fee or TA/DA was being paid to the non-official Directors of the Corporation, but under Article 79(2) of the Articles of Association of the Company, the Managing Director, who was the only non-official Director at present, would be paid such salary and allowances as might be fixed by the Governor. Also, the Board of Directors exercised executive and financial powers. As such, the Committee felt that the Directorship of the Corporation ought not to be exempt from disqualification for membership of Parliament so long as any payment whatsoever was admissible to the non-official Directors.

Steering Committee for VOR/TROR and DME (Department of Electronics) (Memorandum No. 1058)

12. The Committee noted that the non-official members of the Steering Committee for VOR/TROR and DME who were not residents of the place where the meeting was held, were entitled to an allowance at the rate of Rs. 75/- per day when they actually attended the meeting along with TA/DA as admissible to Grade I officers of Central Government. The amount payable to them might thus exceed the 'compensatory allowance'. As such, the Committee felt

that the membership of the Committee ought not to be exempt from disqualification.

13. In regard to the following bodies, the Committee noted that the non-official members thereof were either not entitled to any remuneration or were entitled to TA and DA which was less than the 'compensatory allowance'. Besides, the functions of these bodies were mainly advisory in nature or their character, composition etc., were such that their membership ought to be exempt from disqualification. The Committee, accordingly, decided to recommend exemption of membership of these bodies from disqualification for membership of Parliament:

- (1) Kerala State Haj Committee (Memorandum No. 1025).
- (2) State Probation Advisory Committee (Kerala) (Memorandum No. 1027).
- (3) District Probation Advisory Committees (Kerala) (Memorandum No. 1028).
- (4) Advisory Committee for the Welfare of the Handicapped (Kerala) (Memorandum No. 1029).
- (5) Kerala State Electricity Consultative Council (Memorandum No. 1032).
- (6) Kerala Land Development Board (Memorandum No. 1034).
- (7) District Land Development Committee (Kerala) (Memorandum No. 1035).
- (8) Committee of Visitors of Jails (Kerala) (Memorandum No. 1036).
- (9) Advisory Board of Central Jails (Kerala) (Memorandum No. 1037).
- (10) Visiting Committee of Borstal School (Kerala) (Memorandum No. 1038).
- (11) Committee of Visitors Balamandirs (Certified School—Kerala) (Memorandum No. 1039).
- (12) Advisory Committee for Dapchari Dairy Project (Maharashtra) (Memorandum No. 1043).
- (13) State Level Crop Competition Committee (Maharashtra) (Memorandum No. 1044).

- (14) Maharashtra State Fruit and Vegetable Committee (Memorandum No. 1045).
- (15) State Cotton and Oilseeds Committee (Maharashtra) (Memorandum No. 1046).
- (16) State Sugarcane Committee (Maharashtra) (Memorandum No. 1047).
- (17) Appellate Board under the Seeds Act, 1966 (Maharashtra) (Memorandum No. 1048).
- (18) Maharashtra State Organising Committee for State Level Fruit Growing Competition (Memorandum No. 1049).
- (19) Consultative Committee for implementation of Dry Farming Schemes in the State Sector at Akola and Sholapur (Maharashtra) (Memorandum No. 1050).
- (20) Maharashtra State Forest Advisory Committee (Memorandum No. 1052).
- (21) District Food and Civil Supplies Advisory Committee (Maharashtra) (Memorandum No. 1053).
- (22) District Supervision and Implementation Committee (Maharashtra) (Memorandum No. 1054).
- (23) Maharashtra State Soldiers', Sailors' and Airmen's Board (Memorandum No. 1055).
- (24) District Soldiers', Sailors' and Airmen's Board (Maharashtra) (Memorandum No. 1056).
- (25) Regional Computer Centre at Delhi—Study Projects (Department of Electronics) (Memorandum No. 1057).

14. The Committee then adjourned to meet again on Friday, the 14th May, 1976.

II

Fifty-Sixth Sitting

The Committee sat on Tuesday, the 18th May, 1976 from 10.30 to 11.00 hours.

PRESENT

Shri S. B. P. Pattabhi Rama Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Somnath Chatterjee
3. Shri Ramavatar Shastri.

Rajya Sabha

4. Shri N. M. Kamble
5. Shri Yogendra Sharma.

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee took up for consideration memoranda Nos. 1059—1078 relating to certain Committees, Boards, etc. constituted by the State Governments and Union Territory Administrations.

Examination of honorary offices held in bodies carrying executive, financial, judicial or quasi-judicial powers with special reference to the State Transport Authority, Chandigarh (Memorandum No. 1059)

3. The Committee noted that the members of the State Transport Authority, Chandigarh did not get any remuneration. They were, however, in a position to wield influence by virtue of their power to issue permits for contract carriages and for private and public carriers.

The Committee felt that as 'pecuniary gain' has been held by Indian Election Tribunals and Courts to be an essential ingredient for an office of profit, membership of the State Transport Authority, Chandigarh would not strictly constitute an 'office of profit' within the meaning of Article 102(1) (a) of the Constitution.

However, as the State Transport Authority, Chandigarh was in a position to wield influence and patronage, the Committee felt that in keeping with the general principle with regard to such bodies, membership of this body ought to disqualify under article 102(1) (e) of the Constitution.

4. In regard to the following bodies the Committee noted that the members thereof did not get any remuneration or 'pecuniary gain' which has been held by Election Tribunals and Courts to be an essential ingredient for an 'office of profit' under Article 102(1) (a) of the Constitution. Although, they were in a position to wield influence, the nature and the extent of the influence that might be wielded by them was not such as to call for their disqualification under article 102(1) (e) of the Constitution:

- (i) Board of Industries, Chandigarh (Memo. No. 1061).
- (ii) Managing Committee for the Management of Special Fund for reconstruction and rehabilitation of ex-servicemen (Chandigarh) (Memo. No. 1062).
- (iii) Tamil Nadu Slum Clearance Board (Memo. No. 1063).
- (iv) Slum Clearance Committee, Pondicherry (Memo. No. 1064).
- (v) Selection Committee, Pondicherry (Memo. No. 1065).
- (vi) Watch Dog Committee, Pondicherry (Memo. No. 1066).
- (vii) State Managing Committee of the Special Fund for Reconstruction and Rehabilitation of Ex-servicemen of Union Territory of Pondicherry (Memo. No. 1067).
- (viii) Managing Committee for administration of the Special Services Fund for reconstruction and rehabilitation of ex-servicemen, Tripura (Memo. No. 1068).
- (ix) Committee of Administration by the Tripura State Ex-servicemen's benevolent fund (Memo. No. 1069).
- (x) Housing Advisory Boards for West, North and South (Tripura) (Memo. No. 1070).
- (xi) Committee of Administration of the Post-war Services Reconstruction Fund, Tripura (Memo. No. 1071).
- (xii) State Working Committee for the Administration of the National Foundation for Teachers' Welfare (Andaman) (Memo. No. 1074).

- (xiii) Committee for Selection of N.C.C. Officer, Senior (Andaman) (Memo. No. 1075).
- (xiv) Labour Welfare Board, Chandigarh (Memo. No. 1076).
- (xv) State Aid to Industries Advisory Board (Dadra and Nagar Haveli) (Memo. No. 1077).

5. The Committee noted that the non-official members of the following Committees, were not entitled to any remuneration. Besides, the functions of these Committees were mainly advisory in nature. The Committee accordingly, recommended exemption of membership of these Committees from disqualification for membership of Parliament:

- (i) State Organising Committee for Nehru Yuvak Kendra, Port Blair (Andaman) (Memo. No. 1072).
- (ii) Gazetteer Advisory Committee (Andaman) (Memo. No. 1073).

Delhi Sikh Gurudwaras Board (Memo. No. 1060).

6. The Committee noted that the Delhi Sikh Gurudwaras Board had become defunct and its functions and powers taken over by the Delhi Sikh Gurudwara Management Committee, established under Delhi Sikh Gurudwaras Act, 1971. The Committee further noted that the members of the Management Committee were either elected or co-opted and the Government had no power to appoint any member on the Committee or remove him in their discretion. As such, membership of the Committee would not constitute an office of profit under the Government within the meaning of Article 102(1) (a) of the Constitution.

The Committee also noted that all the expenses incurred by the Committee were made from the Gurudwara Fund which was not a Government fund. In view of the foregoing, the Committee felt that the matter might be dropped.

Recommendation of Joint Committee on Offices of Profit regarding State Transport Authority, Himachal Pradesh contained in para 9 of their Sixteenth Report (Fifth Lok Sabha)—Representation by Shri J. N. Bhardwaj, Member, Rajya Sabha for review (Memorandum No. 1078).

7. The Committee considered the Memorandum in all its perspective. The Committee noted that all the State Transport Authorities including the State Transport Authority, Himachal Pradesh had been set up under the Motor Vehicles Act, 1939—a Central Act, and pos-

sessed power to issue permits. These bodies also exercised executive and quasi-judicial powers.

The Committee, therefore, decided to reiterate their earlier recommendation in respect of the State Transport Authority, Himachal Pradesh *viz.* the membership of the State Transport Authority, Himachal Pradesh ought not to be exempt from disqualification.

8. During the course of consideration of the above Memorandum, the Committee desired that in future references to the State Governments in respect of bodies constituted by them information might also be called for from them regarding the number of sittings held per year by these bodies to facilitate their work.

9. The Committee then adjourned to meet again on Monday, the 24th May, 1976 to consider their draft Eighteenth Report.

III

Fifty-seventh Sitting

The Committee sat on Monday, the 24th May, 1976 from 10.30 to 11.00 hours.

PRESENT

Shri S. B. P. Pattabhi Rama Rao—*Chairman*

MEMBERS

Lok Sabha

2. Shri Ram Shekhar Prasad Singh

Rajya Sabha

3. Shri Kameshwar Singh

4. Shrimati Maimoona Sultan

5. Shri Yogendra Sharma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

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

3. The Committee decided that the Eighteenth Report might be presented to Lok Sabha on the 26th May, 1976. The Committee also

decided that the Report may be laid on the Table of Rajya Sabha on the same day.

4. The Committee authorised the Chairman, and, in his absence, Shri Ram Shekhar Prasad Singh to present the Report to Lok Sabha on their behalf.

5. The Committee authorised Shri Yogendra Sharma and, in his absence, Shri Kameshwar Singh to lay the Report on the Table of Rajya Sabha.

6. The Committee then adjourned.

APPENDIX II

No. 4-11|69-Tpt.

Government of Himachal Pradesh
Transport Department

From

The Deputy Secretary (Transport)
to the Government of Himachal Pradesh.

To

Shri J. N. Bhardwaj,
Member of Parliament (Rajya Sabha),
Village and P.O. Charatgarh,
Distt. Una (Himachal Pradesh).

Dated Simla-171002, the 17th April, 1976.

Dear Sir,

I am directed to refer to your letter dated the 15th January, 1976, on the above subject, addressed to the Chairman, State Transport Authority, Himachal Pradesh, Simla, and to say whether the membership of State Transport Authority Himachal Pradesh exempts a member of Parliament from disqualification or not has been examined in consultation with the Law Department. The opinion of the Law Department is reproduced below:—

“The State Transport Authority constituted under the provision of the Motor Vehicles Act, 1939, is a statutory body. By virtue of the provisions of Section 3(i) of the Parliament (Prevention of Disqualification) Act, 1939, in the case of Members of Parliament, the holder of the office of the member of such a body is not disqualified for being chosen as, or being a member of Parliament, provided he is not entitled in such capacity to any remuneration other than compensatory allowance. The term compensatory allowance with regards to the Members of Parliament means any sum payable to the holder of an office by way of daily allowance (such a allowance to which a member of Parliament is entitled under the Salaries and Allow-

ances of Members of Parliament Act, 1954) any conveyance allowance, house rent allowance, travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office."

In the light of this, the membership of the State Transport Authority does not disqualify a member from the membership of the Parliament.

You are, therefore, requested to intimate whether you would like to continue as a member of the State Transport Authority, Himachal Pradesh, or not.

Jai Hind.

Yours faithfully,

(Sd.) *Deputy Secretary (Tpt)*
to the Govt. of Himachal Pradesh.