

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

NINTH REPORT

Presented to Lok Sabha on 02 May, 2013
Laid in Rajya Sabha on 02 May, 2013



**LOK SABHA SECRETARIAT
NEW DELHI**

May, 2013/Vaisakha, 1935(Saka)

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COMPOSITION OF THE JOINT COMMITTEE ON OFFICES OF PROFIT
(FIFTEENTH LOK SABHA)

Shri Rewati Raman Singh - **Chairman**

MEMBERS
Lok Sabha

2. Shri P.C. Chacko
3. Shri Dara Singh Chauhan
4. Shri Sanjay Dhotre
5. Shri Prataprao Ganpatrao Jadhav
6. Shri Vishwa Mohan Kumar
7. Shri Rajendrasinh Rana
8. Shri Ashok Tanwar
9. Shri Pradeep Majhi
10. Shri Gopal Singh Shekhawat*

Rajya Sabha

11. Dr. Bharatkumar Raut
12. Smt. Mohsina Kidwai
13. Shri Janardan Dwivedi
14. Shri Ravi Shankar Prasad
15. Dr. (Smt.) T.N. Seema

SECRETARIAT

1. Shri R.S. Kambo- Joint Secretary
2. Shri Shiv Kumar - Director
3. Smt. Maya Lingi - Deputy Secretary

*Elected to the Committee on 14.03.2013 vice Shri Sarvey Sathyanarayana resigned w.e.f. 06.12.2012 consequent upon his appointment as Minister of State.

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 Ninth Report of the Committee.

2. The matter covered in the Report was considered by the Committee at their sittings held on 17 January, 07 February and 18 February, 2013 . The Minutes of the sittings form part of the Report and are given at Appendices I, II, III, IV & V.

3. The Committee examined the term, composition, character, functions etc. of the Board of Governors of National Institute of Pharmaceutical Education and Research (NIPER), Patron in the Institution of Military Engineers (IME) and Hindi Salahakar Samiti of the Ministry of Minority Affairs with a view to consider as to whether the nomination/appointment of a Member of Parliament as a Member to the Board of Governors of NIPER, to the position of Patron in the IME and to the Hindi Salahakar Samiti of the Ministry of Minority Affairs would attract disqualification from the angle of „office of profit“ under Article 102 (1)(a) of the Constitution of India.

4. The detailed information regarding the composition, character, functions, emoluments and allowances payable to the Members of these bodies was furnished by the Ministry of Chemicals and Fertilizers (Department of Pharmaceuticals), Ministry of Defence and Ministry of Minority Affairs .

5. The Committee considered and adopted this Report at their sitting held on 15 April, 2013.

6. The Committee wish to express their thanks to the Ministry of Chemicals and Fertilizers (Department of Pharmaceuticals), Ministry of Defence and Ministry of Minority Affairs for furnishing the information desired by the Committee.

7. The observations/recommendations made by the Committee in respect of the matters considered by them are given at the end of this Report in bold letters. The recommendations of the Committee will, however, remain advisory in nature and as such can not give any protection from disqualification under the law until the recommendations are given Statutory effect by the Government by suitably amending the Parliament (Prevention of Disqualification) Act, 1959.

NEW DELHI;

30 April, 2013
10 Vaisakha, 1935 (Saka)

REWATI RAMAN SINGH,
Chairman,
Joint Committee on Offices of Profit

REPORT

CHAPTER I

NOMINATION OF MEMBERS OF PARLIAMENT ON THE BOARD OF GOVERNORS OF NATIONAL INSTITUTE OF PHARMACEUTICAL EDUCATION AND RESEARCH (NIPER) – HOLDER OF OFFICE AS OFFICE OF PROFIT OR OTHERWISE.

1.1 Rajya Sabha Secretariat vide their note R.S.S.I.D.No.8(8)/2011-Coord dated 15 July, 2011 had forwarded a letter dated 27 September, 2010 from the Ministry of Chemicals and Fertilisers (Department of Pharmaceuticals) regarding: Nomination of MPs to the Board of Governors of the National Institutes of Pharmaceutical Education and Research (NIPER), under the NIPER Act, 1998 and desired that the matter be placed before the Joint Committee on Offices of Profit (JCOP) for their consideration. The advise rendered by the Ministry of Law and Justice (Department of Legal Affairs) was also enclosed therewith and is placed at Annexure-I .

1.2 As the information received was not found sufficient to examine the matter from the angle of „office of profit“, the Ministry of Chemicals and Fertilisers (Department of Pharmaceuticals) were requested to furnish some additional inputs. The Ministry, accordingly, furnished the requisite information vide O.M.No.52/14/2006-NIPER dated 26.09.2011 and 08.10.2012, the extracts of which are reproduced below:

Term of Office:

The terms of the Office of the Chairperson and Governors other than ex-officio Governors shall be three years.

Composition of Board of Governors:

Board of Governors of NIPER have the following persons, namely:-

- (a) a Chairperson, who shall be an eminent academician, scientist or technologist or professional, to be nominated by the Visitor;
- (b) The Director of the Institute , ex officio;

- (c) The Joint Secretary, incharge of Pharmaceutical Industries in the concerned Ministry or Department of the Government of India, ex officio;
- (d) The Secretary, Technical Education, Government of the State within which the Institute is situated ex officio;
- (e) The Financial Adviser of the Ministry or Department of the Government of India dealing with the Pharmaceutical industries, ex officio;
- (f) The Drug Controller General of India, Ministry of Health and Family Welfare of the Government of India, ex officio;
- (g) The Member Secretary, All India Council for Technical Education, ex-officio;
- (h) The Director of any one of the national laboratories of the Council for Scientific and Industrial Research to be nominated by the Director General of Council of Scientific and Industrial Research, New Delhi;
- (i) The Director of either the All-India Institute of Medical Sciences, New Delhi or the Post-Graduate Institute of Medical Education and Research, Chandigarh, to be nominated by rotation by the Ministry of Health and Family Welfare of the Government of India, ex officio;
- (j) The President, Indian Drugs manufacturers' Association, ex officio;
- (ja) A representative of the Pharmacy Council of India;
- (k) The President, Organisation of Pharmaceutical Producers of India, ex officio;
- (l) three eminent pharmaceutical experts, one of whom shall be an educationist, a research scientist and a biotechnologist, to be nominated by the Central Government;
- (m) three eminent public persons or social workers one of whom shall be either from the Scheduled Castes or the Scheduled Tribes to be nominated by the Visitor out of a panel prepared by the Central Government;
- (n) two pharmaceutical industrialists to be nominated by the visitor out of a panel prepared by the Central Government;
- (o) three Members of Parliament, two from Lok Sabha to be nominated by the Speaker of Lok Sabha and one from Rajya Sabha to be nominated by the Chairman of Rajya Sabha.

Functions of Board of Governors

- The functions of the Board of Governors in the Institute are not purely advisory. The Board shall have the power to appoint such Committees as it considers necessary for the exercise of its powers and the performance of its duties under the NIPER Act, 1998.
- The Board of Governors in the Institute exercises executive and partly legislative powers.
- The Board does not have powers of disbursement of funds, allotment of land, etc.
- The Board of Governors in the Institute have powers of appointment/removal.
- The Board of Governors in the Institute would not influence or power by way of patronage.

Remuneration paid to Governors

- No Daily Allowance is paid to members of the Board of Governors (BoG) of NIPER. The Chairman and Members of Board of Governors are entitled to Travelling (includes Airfare and local travel by taxi), Boarding, lodging expenses besides a sitting fee of Rs.1000/- for attending the Board meeting.

1.3 The Joint Committee on Offices of Profit have laid down the following criteria for determining as to whether an office ought or ought not to disqualify the holder thereof for being chosen as, and for being a Member of Parliament:-

- (i) Whether the Government exercise control over the appointment to and removal from the office and over the performance and functions of the office;
- (ii) Whether the holder draws any remuneration other than the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959;
- (iii) Whether the body in which an office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, allotment of lands, issue of licenses, etc., or gives powers of appointment, grant of scholarships, etc; and
- (iv) Whether the body in which an office is held enables the holder to wield influence or power by way of patronage.

1.4 As regards the nomination of Members of Parliament to the Committees by the Speaker, Lok Sabha and the Chairman, Rajya Sabha, the Committee on Offices of Profit under the Chairmanship of Pandit Thakurdas Bhargava, M.P. had made an observation, which is reproduced under :

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“The Speaker of Lok Sabha and Chairman of Rajya Sabha are independent of the executive Government and, therefore, the nomination by them cannot be said to affect the independence of the Members. Hence, the Membership so acquired cannot be said to be an office of profit, but in order to remove doubt, the Committee feel that they may be saved from incurring disqualification specifically.”

1.5 Section 3 of the Parliament (Prevention of Disqualification) Act, 1959; inter-alia provide as under :

3. Certain offices of profit not to disqualify – 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) to (g) xx xx xx

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

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

1.6 The Joint Committee on Offices of Profit considered the matter at their sitting held on 17 January, 2013. (APPENDIX-I)

1.7 The Committee considered at length various provisions of NIPER Act, 1998 and amendments made thereto with respect to nomination of MPs on Board of Governors, advice rendered by the Ministry of Law on the subject and laid down criteria by the Joint Committee on Offices of Profit - in relation to the post for qualifying a holder of post as „office of profit“ or otherwise. The Committee took note of the fact that a sitting fee of Rs.1000/- is payable to the Members, for attending the Board of Governors (BoG) meetings. Further, BoG exercises executive and partly legislative powers and have powers of appointment/removal. The Committee also took note of recent judicial pronouncements by the Supreme Court, on the subject, whereunder “holding an office of profit discussed in detail. It has been observed by the Court that “An Office of Profit, is one which is capable of yielding a profit or pecuniary gain. The nature of payment must be considered as a matter of substance rather than of form. Nomenclature is not important. In fact, mere use of word “honorarium” cannot take the payment out of the purview of profit, if there is pecuniary gain for the recipient. If the pecuniary gain is receivable, in connection with office, then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not. Providing “Pecuniary gain” may have the possibility to bring that person under the influence of the executive which is conferring that benefit to him/her.”

After considering all the issues, in totality the Committee concurred with the views of Ministry of Law and Justice. The Committee come to conclusion that unless NIPER is exempted from disqualification under the Parliament (Prevention of Disqualification) Act, 1959, no exemption can be granted to the Members, who are proposed to be nominated on Board of Governors and as such, the nomination to the Board of Governors attracts disqualification on the ground of holding an office of profit.

1.8 The Committee are further of the considered view that there should be an express provision either in the Act - requiring nomination/election of Members of Parliament for appointment to the Government body or in the Parliament (Prevention of Disqualification) Act, 1959, exempting them from disqualification under Article 102(1) (a) of the Constitution.

CHAPTER II

NOMINATION OF A MINISTER/MEMBER OF PARLIAMENT TO THE POSITION OF PATRON IN THE INSTITUTION OF MILITARY ENGINEERS (IME) – HOLDER OF POST, OFFICE OF PROFIT OR OTHERWISE.

2.1 The Ministry of Defence *vide* their O.M.No.367/D(Coord.)/2011 dated 9 November, 2011 sought opinion of the Joint Committee on Offices of Profit as to whether holding the position of Patron in the Institution of Military Engineers (IME) by then Minister of State (Shri M.M. Pallam Raju) in the Ministry of Defence would attract disqualification from the angle of „office of profit“.

2.2 As the aforesaid request was not accompanied by the adequate details, the Ministry of Defence were requested to furnish information on some points such as powers, functions, remuneration, term etc of the Patron in the Institution of Military Engineers. The Ministry furnished the requisite information alongwith the Bye-Laws of the Institution (placed at Annexure-II) *vide* their O.MNo.H-11023/1/2011/D(Parl.) dated 3 July, 2012, the extracts of which are reproduced below:

- The position of Patron in the Institution of Military Engineers is permanent in nature and lifelong.
- Patron, being a purely honorary post, no remuneration is paid.
- The role of Member of Parliament as Patron is to provide broad guidance and direction to the Organisation.
- The functions of the Institution of Military Engineers (IME) are purely advisory in nature.

2.3 The functions of IME as seen from their Bye - Laws seem to confer financial and executive powers upon holder such as custodian and administration of the funds which may from time to time be instituted and entrusted to the Institution, to obtain and accept Government funding, donations and subscriptions from various individuals, Institutions/bodies and to accept gifts, donations, contribution and subscription of cash, security, properties within guidelines issued by the Society.

2.4 The Joint Committee on Offices of Profit consider the following criteria for determining as to whether an office ought or ought not to disqualify the holder thereof for being chosen as, and for being a Member of Parliament:-

- (i) Whether the Government exercise control over the appointment to and removal from the office and over the performance and functions of the office;
- (ii) Whether the holder draws any remuneration other than the "compensatory allowance" as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959;
- (iii) Whether the body in which an office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, allotment of lands, issue of licenses, etc., or gives powers of appointment, grant of scholarships, etc; and
- (iv) Whether the body in which an office is held enables the holder to wield influence or power by way of patronage.

2.5 Clause(a) and (m) of Section 3 of the Parliament (Prevention of Disqualification) Act, 1959 inter-alia provide as under:-

"3. Certain offices of profit not to disqualify - 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;

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- (m) the office of Chairman, President, Vice-President or Principal Secretary or Secretary of the Governing Body of any Society registered under the Societies Registration Act, 1860 or under any other law relating to registration of societies, not being a body specified in the Schedule."

2.6 During evidence, the Committee observed that the opinion furnished by the Ministry of Law and Justice (Department of Legal Affairs) in the matter were not complete and satisfactory and as such didn't not help in clearing the doubts of the Committee in the matter. Subsequently, the Committee raised certain issues which were germane to the examination of the issue in its proper perspective such as:-

- The Institution of Military Engineers (IME) is a very old registered Society under the Registrar of Societies Act, 1860 and its functions are purely advisory in nature, why as of now no Patron was appointed in the past;
- The role and powers of the Patron have not been defined in the Bye Laws of Institution. However, Council and Executive Committee are vested with enormous power. Patron, being part of the Council and Executive Committee, will naturally exercise enormous influence over the activities and decisions of the Institution;
- Patron, even being an honorary post, if appointed is lifelong and permanent. What is the rationale/justification of making the post of Patron, lifelong? Unlike Patron, the tenure of Member of Parliament/Minister, is fixed. The Patron will exercise influence over the functioning of the Institution and as such may also develop vested interest;
- The provisions of the Bye Laws are not clear as to who can be appointed as the Patron. It is not stated that only a Minister or Member of Parliament is to be appointed as Patron. Bye Laws, in its present form is prone to misuse by any vested interest.
- The appointment of Patron in this case seems to grant favour or oblige a particular individual; etc

2.7 The Joint Committee on Offices of Profit considered the matter at their sitting held on 17 January, 2013. (APPENDIX-II) At their sittings held on 07 February, 2013 and 18 February, 2013, the Committee took evidence of the representatives of the Ministry of Law and Justice (Department of Legal Affairs) in the matter. (APPENDIX III & IV)

2.8 Taking note of Section 3 (a) of the Parliament (Prevention of Disqualification) Act, 1959, Shri M.M. Pallam Raju, the then Minister of State in the Ministry of Defence, does not attract disqualification from the angle of „office of profit“, if he holds the position of Patron in the Institute of Military Engineers (IME) *ex-officio* or by name for being a Minister of State. However, position of an M.P. assumes different connotation, so far as nomination as Patron to IME is concerned.

2.9 The Committee took note of certain fundamental issues, germane and crucial to the examination of the subject, referred to above in Para 6. The Committee is of the view that in the absence of specific information and inputs, on these issues, it would not be appropriate for them to pass their judgement on the issue. Prima facie, the Committee find that the Bye - Laws of the IME under reference lacks clarity. Further the role, functions, tenure, etc. of the Patron have not been clearly defined and the scope for ambiguity in interpretation cannot be ruled out. The representatives of Ministry of Law and Justice (Deptt. of Legal Affairs) during evidence, also agreed to the deficiencies pointed out in the Bye-laws of IME.

2.10 The Committee therefore recommends that Ministry of Defence (MoD) should carry out amendments in the Bye-Laws of IME, within three months“ time in the light of reservations expressed by them and till then the proposal of nomination of Patron to IME be held in abeyance.

CHAPTER III

NOMINATION OF MEMBER OF PARLIAMENT TO THE HINDI SALAHAKAR SAMITI OF THE MINISTRY OF MINORITY AFFAIRS.

* * *

3.1 Rajya Sabha Secretariat (Committee Co-ordination Section) vide their I.D. No. 12(3)/2008-Coord. dated 04 January, 2012 had requested to place the matter regarding: Nomination of Shri Shreegopal Vyas, Member, Rajya Sabha to the Hindi Salahakar Samiti of Ministry of Minority Affairs before the Joint Committee on Offices of Profit for their consideration and recommendation.

3.2 As the information forwarded was not found sufficient to examine the matter from the angle of „office of profit“, the Ministry of Minority Affairs were requested to furnish some additional inputs. The Ministry furnished the information vide O.M.No.E-11011/7/2008-H dated 06.03.2012, the extracts of which are reproduced below:

- Ministry of Minority Affairs has constituted Hindi Salahakar Samiti vide Resolution No.E-11011/7/2008-Hindi dated 29.11.2011.
- The tenure of the Hindi Salahakar Samiti in the Ministry is generally 3 years from the date of its constitution.
- The tenure of the Members of Parliament to be nominated on the Hindi Salahakar Samiti will cease when they are no longer Members of Parliament.
- The number of non-official members on the Samiti is 15 and that of Government members is 13.
- The nominated Member of Parliament as a Member of the Samiti would be paid following remuneration (in accordance with the rates at which it is provided in other departments).

Air fare	:	1 fare+1/4 th of it.
Rail Fare	:	1 first class +1 second class
D.A.	:	Rs.2000/- per day
Sitting fee	:	Rs.2000/- per day.
Taxi fare	:	Rs.16 @ per kilometer.

- In regard to powers and functions of the Samiti, the function of the Samiti is to give advice for implementation of provisions made in the Constitution, Official Language Act and rules and decisions of the Central Hindi Advisory Committee and directions/instructions issued by the Department of Official Language and to promote progressive use of Hindi in the Ministry of Minority Affairs.
- The functions of the Samiti are purely advisory.
- The Hindi Salahakar Samiti of the Ministry of Minority Affairs exercises executive powers.
- The Samiti does not confer powers of disbursement of funds, allotment of land etc.
- The Samiti does not have powers of appointment/removal.
- The Samiti does not wield influence or power by way of patronage.

3.3 The Joint Committee on Offices of Profit consider the following criteria for determining as to whether an office ought or ought not to disqualify the holder thereof for being chosen as, and for being a Member of Parliament:-

- (i) Whether the Government exercise control over the appointment to and removal from the office and over the performance and functions of the office;
- (ii) Whether the holder draws any remuneration other than the "compensatory allowance" as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959;
- (iii) Whether the body in which an office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, allotment of lands, issue of licenses, etc., or gives powers of appointment, grant of scholarships, etc; and
- (iv) Whether the body in which an office is held enables the holder to wield influence or power by way of patronage.

3.4 The Joint Committee on Offices of Profit considered the matter at their sitting held on 7 February, 2013. (APPENDIX-V)

3.5 The Committee note from the information furnished by the Ministry of Minority Affairs that the Hindi Salahakar Samiti render advice with regard to implementation of provisions made in the Constitution, Official languages Acts and Rules and decisions of the Central Hindi Advisory Committee and directions/instructions issued by the Department of Official Language and promotes progressive use of Hindi in the Ministry of Minority Affairs. The Committee also note that the functions of Samiti are purely advisory in nature. The nomination as a Member to the Hindi Advisory Committee does not confer powers of disbursement of funds, allotment of land etc. and as such the Member of this Committee can not wield any influence by way of patronage even. The Committee further note that the nominated Member of Parliament, as a Member of the Samiti, would be paid D.A. and sitting fee Rs. 2,000/- per day which falls under the definition of „Compensatory Allowance” as defined in Section 2(a) of Parliament (Prevention of Disqualification) Act, 1959.

3.6 In view of the foregoings, the Committee observe that a Member of Parliament, if nominated to the Hindi Salahakar Samiti constituted by the Ministry of Minority Affairs may not attract disqualification for being chosen as, or for being, a Member of Parliament.

NEW DELHI;

**May, 2013
Vaisakha, 1935 (Saka)**

**REWATI RAMAN SINGH,
Chairman,
Joint Committee on Offices of Profit**

At the outset, the Chairman welcomed the Members to the sitting of the Committee and apprised them about the agenda of the sitting.

2. Thereafter, the Committee took up for consideration Memorandum No.24 regarding: Nomination of Members of Parliament to the Board of Governors of National Institute of Pharmaceutical Education and Research (NIPER).

3. The Committee took note of various provisions of NIPER Act, 1998 and amendments made thereto with respect to nomination of MPs on Board of Governors, advice rendered by Ministry of Law on the subject and laid down criteria by the Joint Committee on Offices of Profit in relation to the post for qualifying a holder of post as „office of profit“ or otherwise. After some discussion, the Committee concurring with the views of Ministry of Law and Justice and came to conclusion that “unless NIPER is exempted from disqualification under the Parliament (Prevention of Disqualification) Act, 1959 no exemption can be granted to the members, who are proposed to be nominated on Board of Governors and it attracts disqualification on the ground of holding an office of profit.

4. The Committee also observed that “there should be an express provision either in the Act requiring election of Members of Parliament for appointment to the Government body or in the Parliament (Prevention of Disqualification) Act, 1959 exempting them from disqualification under Article 102(1) (a) of the Constitution.

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The Committee then adjourned.

APPENDIX II
(Vide para 2.7 of Chapter II of the Report)

**EXTRACTS OF THE MINUTES OF THE TWENTY THIRD SITTING OF THE
JOINT COMMITTEE ON OFFICES OF PROFIT (FIFTEENTH LOK SABHA)
HELD ON 17 JANUARY, 2013**

The Committee met on Thursday, 17 January, 2013 from 1200 hrs to 1240 hrs in Committee Room No. "53", First Floor, Parliament House, New Delhi.

PRESENT

Shri Rewati Raman Singh - Chairman

MEMBERS
LOK SABHA

2. Shri P.C. Chacko
3. Shri Sanjay Dhotre
4. Shri Prataprao Ganpatrao Jadhav
5. Shri Vishwa Mohan Kumar

RAJYA SABHA

6. Shri Janardan Dwivedi
7. Dr. Bharatkumar Raut
8. Smt. Mohsina Kidwai

SECRETARIAT

1. Shri R.S.Kambo - Joint Secretary
2. Shri Shiv Kumar - Director
3. Smt. Maya Lingi - Deputy Secretary

At the outset, the Chairman welcomed the Members to the sitting of the Committee and apprised them about the agenda of the sitting.

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5. The Committee then took up for consideration Memorandum No:25 regarding Nomination of a Member of Parliament to the position of Patron in the Institution of Military Engineers (IME) – Holder of Post, Office of Profit or otherwise. The Committee took note of the provision made in the Parliament (Prevention of Disqualification) Act, 1959 that Shri M.M. Pallam Raju the then Minister of State in the Ministry of Defence would not attract disqualification from the angle of „office of profit“, if he holds the position of Patron in the IME *ex-officio* or by name as per Section 3 (a) of Parliament (Prevention of Disqualification) Act, 1959 for being a Minister of State. However, seen in a different context, his position as an M.P. and not being a Minister assumes different dimensions.

6. The Committee then discussed the matter in terms of the criteria laid down by the Joint Committee on Offices of Profit (JCOP) for determining as to whether an office ought or ought not to disqualify the holder thereof for being chosen as, and for being a Member of Parliament. In this context, the Committee observed that IME is a registered Society under the Registrar of Societies Act, 1860. The position of Patron therein is lifelong and permanent and the role of Member of Parliament as Patron is to provide broad guidance and direction to the Organization. Further, IME exercises both executive and financial powers viz., to collect money and raise the funds for and also to invest the money and raise the funds for the objects of the Institution also to invest the money and funds of the Institution and from time to time realize and vary the investments. As such the functions of IME as provided in bye Laws suggest that the Institute enjoys both the financial and executive powers. Going thereby, the Committee felt that an inference can be drawn that the Patron thereof may wield influence or power by way of patronage over the major activities of the Institution for his/her being associated with the Council of the Institute of Military Engineering (India) – albeit the specific functions of the Patron have not been clearly enumerated in the bye-laws of the Institution.

7. *Prima facie* the Committee felt that Members of Parliament if nominated to the position of Patron in the IME may not be exempted from disqualification for being chosen as, or for being, a Member of Parliament. However, for the sake of clarity, the Committee decided to take evidence of Ministry of Law in the matter on 07 February, 2013.

The Committee then adjourned.

APPENDIX III
(Vide para 2.7 of Chapter II of the Report)

EXTRACTS OF THE MINUTES OF THE TWENTY FOURTH SITTING OF THE
JOINT COMMITTEE ON OFFICES OF PROFIT (FIFTEENTH LOK SABHA)
HELD ON 07 FEBRUARY, 2013

The Committee met on Thursday, 07 February, 2013 from 1130 hrs to 1230 hrs in Committee Room No. "53", First Floor, Parliament House, New Delhi.

PRESENT

Shri Rewati Raman Singh - Chairman

MEMBERS
LOK SABHA

2. Shri Sanjay Dhotre
3. Shri Prataprao Ganpatrao Jadhav
4. Shri Vishwa Mohan Kumar

RAJYA SABHA

5. Shri Janardan Dwivedi
6. Smt. Mohsina Kidwai
7. Dr.(Smt.) T.N. Seema

REPRESENTATIVE OF THE
MINISTRY OF LAW AND JUSTICE (DEPARTMENT OF LEGAL AFFAIRS)

Shri M.K. Sharma Additional Secretary

SECRETARIAT

1. Shri R.S.Kambo - Joint Secretary
2. Shri Shiv Kumar - Director

At the outset, the Chairman welcomed the Members to the sitting of the Committee and apprised them about the agenda of the sitting.

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5. Then, the Committee took up for consideration Memorandum No.25 regarding Nomination of a Minister/Member of Parliament to the Position of Patron in the Institution of Military Engineers (IME)- Holder of Post, Office of Profit or otherwise. The representatives of the Ministry of Law and Justice (Department of Legal Affairs) were then called in for oral evidence.

6. The Committee then discussed the matter in terms of the criteria laid down by the Joint Committee on Offices of Profit (JCOP) for determining as to whether an office ought or ought not to disqualify the holder thereof for being chosen as, and for being a Member of Parliament. In this context, the Committee observed that IME is a registered Society under the Registrar of Societies Act, 1860. The position of Patron therein is lifelong and permanent one. The Committee, further, observed that the IME exercises both executive and financial powers viz., to collect money and raise the funds for and also to invest the money and raise the funds for the objects of the Institution also to invest the money and funds of the Institution and from time to time realize and vary the investments. As such the functions of IME as provided in bye Laws suggest that the Institute enjoys both the financial and executive powers. Going thereby, the Committee felt that an inference can be drawn that the Patron thereof may wield influence or power by way of patronage over the major activities of the Institution for his/her being associated with the Council of the Institute of Military Engineering (India) – albeit the specific functions of the Patron have not been clearly enumerated in the bye-laws of the Institution.

7. The Committee raised few pointed queries which were utmost necessary to examine the issue in its proper perspective. Barring some of those the others could not be properly and satisfactorily replied to by the witness for the want of information on those points.

8. In view thereof, the Committee then decided to seek further clarification on certain specific points and also to take further oral evidence of the Ministry of Law and Justice (Department of Legal Affairs) in the matter on 18 February, 2013.

9. The witnesses then withdrew.

10. A copy of the verbatim proceedings of the sitting of the Committee has been kept on record.

The Committee then adjourned.

APPENDIX IV
(Vide para 2.7 of Chapter II of the Report)

EXTRACTS OF THE MINUTES OF THE TWENTY FIFTH SITTING OF THE
JOINT COMMITTEE ON OFFICES OF PROFIT (FIFTEENTH LOK SABHA)
HELD ON 18 FEBRUARY, 2013

The Committee met on Monday, 18 February, 2013 from 1200 hrs to 1250 hrs in Committee Room No."53", First Floor, Parliament House, New Delhi.

PRESENT

Shri Rewati Raman Singh - Chairman

MEMBERS
LOK SABHA

2. Shri Sanjay Dhotre
3. Shri Vishwa Mohan Kumar

RAJYA SABHA

4. Shri Janardan Dwivedi
5. Dr. Bharatkumar Raut
6. Dr.(Smt.) T.N. Seema

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

1. Shri M.K. Sharma Additional Secretary
2. Shri R.S. Shukla Additional Legal Advisor

SECRETARIAT

1. Shri R.S.Kambo - Joint Secretary
2. Shri Shiv Kumar - Director

At the outset, the Chairman welcomed the Members to the sitting of the Committee and apprised them about the agenda of the sitting.

2. Thereafter, the Committee took up for consideration Memorandum No.25 regarding Nomination of a Minister/Member of Parliament to the Position of Patron in the Institution of Military Engineers (IME)- Holder of Post, Office of Profit or otherwise. The representatives of the Ministry of Law and Justice (Department of Legal Affairs) were called in to tender oral evidence before the Committee.

3. The Committee then discussed the matter in terms of the criteria laid down by the Joint Committee on Offices of Profit (JCOP) for determining as to whether an office ought or ought not to disqualify the holder thereof for being chosen as, and for being a Member of Parliament. The Committee observed that the opinion furnished by the Ministry Law and Justice (Department of Legal Affairs) in reference to the queries raised by the Committee on the issue under examination are not complete and satisfactory and as such do not help in clearing the doubts of the Committee in the matter.

4 The Committee then raised certain issues which were germane to the examination of the issue in its proper perspective such as:-

- The Institution of Military Engineers (IME) is a very old registered Society under the Registrar of Societies Act, 1860 and its functions are purely advisory in nature, why as of now no Patron was appointed in the past;
- The role and powers of the Patron have not been defined in the Bye Laws of Institution. However, Council and Executive Committee are vested with enormous power. Patron, being part of the Council and Executive Committee, will naturally exercise enormous influence over the activities and decisions of the Institution;
- Patron, even being an honorary post, if appointed is lifelong and permanent. What is the rationale/justification of making the post of Patron, lifelong? Unlike Patron, the tenure of Member of Parliament/Minister, is fixed. The Patron will exercise influence over the functioning of the Institution and as such may also develop vested interest;

- The provisions of the Bye Laws are not clear as to who can be appointed as the Patron. It is not stated that only a Minister or Member of Parliament is to be appointed as Patron. Bye Laws, in its present form is prone to misuse by any vested interest.
- The appointment of Patron in this case seems to grant favour or oblige a particular individual; etc

5. In view of the above mentioned points, the Committee decided that the Ministry of Defence may be asked to carry out amendments in the provisions of the Bye Laws of the IME so that role, functions, tenure etc. of the Patron are clearly defined and there should be no scope for any kind of ambiguity to which representatives of the Ministry of Law and Justice (Department of Legal Affairs) also agreed.

6. The Committee further decided that the issue of nomination of Patron should be kept in abeyance till provision of the Bye Laws are amended and clarified

7. The witnesses then withdrew.

8. A copy of the verbatim proceedings of the sitting of the Committee has been kept on record.

The Committee then adjourned.

APPENDIX V
(Vide para 3.4 of Chapter III of the Report)

**EXTRACTS OF THE MINUTES OF THE TWENTY FOURTH SITTING OF THE
JOINT COMMITTEE ON OFFICES OF PROFIT (FIFTEENTH LOK SABHA)
HELD ON 07 FEBRUARY, 2013**

The Committee met on Thursday, 07 February, 2013 from 1130 hrs to 1230 hrs in Committee Room No. "53", First Floor, Parliament House, New Delhi.

PRESENT

Shri Rewati Raman Singh - Chairman

**MEMBERS
LOK SABHA**

2. Shri Sanjay Dhotre
3. Shri Prataprao Ganpatrao Jadhav
4. Shri Vishwa Mohan Kumar

RAJYA SABHA

5. Shri Janardan Dwivedi
6. Smt. Mohsina Kidwai
7. Dr.(Smt.) T.N. Seema

**REPRESENTATIVE OF THE
MINISTRY OF LAW AND JUSTICE (DEPARTMENT OF LEGAL AFFAIRS)**

Shri M.K. Sharma Additional Secretary

SECRETARIAT

1. Shri R.S.Kambo - Joint Secretary
2. Shri Shiv Kumar - Director

At the outset, the Chairman welcomed the Members to the sitting of the Committee and apprised them about the agenda of the sitting.

2. Thereafter, the Committee took up for consideration Memorandum No.26 regarding: Nomination of Member of Parliament to the Hindi Salahakar Samiti of the Ministry of Minority Affairs.

3. The Committee took note of the information furnished by the Ministry of Minority Affairs that the Hindi Salahakar Samiti render advice with regard to implementation of provisions made in the Constitution, Official languages Acts and Rules and decisions of the Central Hindi Advisory Committee and directions/instructions issued by the Department of Official Language and promotes progressive use of Hindi in the Ministry of Minority Affairs. The functions of Samiti are purely advisory in nature. The nomination as a Member to the Hindi Advisory does not confer powers of disbursement of funds, allotment of land, etc. and as such the Member of this Committee can not wield any influence by way of patronage even. The nominated Member of Parliament, as a Member of the Samiti, would be paid D.A. and sitting fee Rs. 2,000/- per day which falls under the definition of „Compensatory Allowance” as defined in Section 2(a) of Parliament (Prevention of Disqualification) Act, 1959.

4. In view of the above, the Committee observed that a Member of Parliament, if nominated to the Hindi Salahakar Samiti constituted by the Ministry of Minority Affairs may not attract disqualification for being chosen as, or for being, a Member of Parliament.

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The Committee then adjourned

APPENDIX VI

MINUTES OF THE TWENTY SIXTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (FIFTEENTH LOK SABHA) HELD ON 15 APRIL, 2013

The Committee met on Monday, 15 April, 2013 from 1130 hrs to 1215 hrs in Committee Room No."62", First Floor, Parliament House, New Delhi.

PRESENT

Shri Rewati Raman Singh - Chairman

MEMBERS LOK SABHA

2. Shri Sanjay Dhotre
3. Shri Prataprao Ganpatrao Jadhav
4. Shri Vishwa Mohan Kumar
5. Shri Ashok Tanwar
6. Shri Gopal Singh Shekhawat

RAJYA SABHA

7. Shri Janardan Dwivedi
8. Dr. Bharatkumar Raut
9. Dr. (Smt.) T.N. Seema

SECRETARIAT

1. Shri R.S. Kambo - Joint Secretary
2. Shri Shiv Kumar - Director
3. Smt. Maya Lingi - Deputy Secretary

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee. Subsequently, the Chairman also welcomed Shri Gopal Singh Shekhawat, the newly elected Member to the Committee.

3. Thereafter, the Committee took up for consideration the draft Ninth Report - consisting of following three Chapters:-

- CHAPTER-I** **Nomination of Members of Parliament on the Board of Governors of National Institute of Pharmaceutical Education and Research (NIPER) – Holder of Office as Office of Profit or otherwise;**
- CHAPTER-II** **Nomination of a Minister/ Member of Parliament to the position of Patron in the Institution of Military Engineers (IME) - Holder of Office as Office of Profit or otherwise; and**
- CHAPTER-III** **Nomination of Member of Parliament to the Hindi Salahakar Samiti of the Ministry of Minority Affairs.**

The Committee adopted the Chapter-I and Chapter-III without any modification and Chapter-II with a minor amendment.

4. The Committee also authorised the Chairman to finalise the Draft Report and present the same to Parliament.

The Committee then adjourned.