

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

**TWENTY SIXTH REPORT**

**Presented to Lok Sabha on 08.02.2018**

**Laid in Rajya Sabha on 08.02.2018**



सत्यमेव जयते

**LOK SABHA SECRETARIAT**

**NEW DELHI**

**February, 2018/ Magha, 1939 (Saka)**

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**MEMBERS  
LOK SABHA**

## INTRODUCTION

I, the Chairperson of the Joint Committee on Offices of Profit, having been authorized by the Committee to present the Report on their behalf, present this Twenty Sixth Report of the Committee.

2. At their sitting held on 04 May, 2017 the Committee examined the term, composition, character, functions, etc., of the District Public Grievances-cum-vigilance Committees in each district of the State of Rajasthan with a view to consider as to whether the nomination of Members of Lok Sabha to the District Public Grievances-cum-Vigilance Committees would attract disqualification from the angle of 'Offices of Profit' under Article 102 (1) (a) of the Constitution of India.

3. The Committee considered and adopted this Report at their sitting held on 31 January, 2018.

4. The Committee wish to express their thanks to the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) for furnishing the information desired by the Committee for detailed examination of the issues involved in the matter.

5. The Observations/Recommendations made by the Committee in respect of the matter considered by them are given at the end of this Report in bold letters.

NEW DELHI:

**06 February, 2018**

**17 Magha, 1939 (Saka)**

**SHRI KALRAJ MISHRA**

**Chairperson,**

**Joint Committee on Offices of Profit**

## REPORT

### **Election / Nomination of Member of Parliament to District Public Grievances-cum-Vigilance Committees in each district of the State of Rajasthan.**

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On receipt of a reference from the State Government of Rajasthan (Department of Parliamentary Affairs), Jaipur seeking consent of the Hon'ble Speaker, Lok Sabha for the nomination of the Hon'ble Members of Parliament to the District Level Committees (Public Grievances and Vigilance Committee) in each district of the State of Rajasthan, the Joint Committee on Offices of Profit examined the matter in detail.

2. Article 102(1) (a) of the Constitution of India reads as under:

" A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament -

If he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder".

3. The Parliament (Prevention of Disqualification) Act, 1959 (**Annexure-I**) provides for offices which would not disqualify holders thereof from the membership of Parliament. Briefly, this Act provides that if a member/director of a statutory or non-statutory body/company is not entitled to any remuneration other than the compensatory allowance, she/he would not incur disqualification for receiving those allowances. Under Section 2(a) of the said Act, "compensatory allowance" has been defined as any sum of "money payable to the holder of an office by way of daily allowance (such allowance not exceeding the amount of daily allowance to which a member of Parliament is entitled under the Salary, Allowance and Pension of Members of Parliament Act, 1954) any conveyance allowance, house-rent allowance or travelling allowance for the purpose of enabling her/him to recoup any expenditure incurred by her/him in performing the functions of that office".

4. The expression "holds any office of profit under the Government" occurring in Article 102 (1) (a) has nowhere been defined precisely. However, in order to determine whether an office held by a person is an office of profit under the Government, the Joint

Committee on Office of Profit, in their Tenth Report (7<sup>th</sup> Lok Sabha), presented to Lok Sabha on 7<sup>th</sup> May, 1984 (**Annexure-II**), observed the following:

*"The broad criteria for the determination of the question whether an office held by a person is an office of profit have been laid down in judicial pronouncements. If the Government exercises control over the appointment to and dismissal from the office and over the performance and functions of the office and in case the remuneration or pecuniary gain, either tangible or intangible in nature, flows from such office irrespective of whether the holder for the time being receives such remuneration or gain or not, the office should be held to be an office of profit under the Government. Otherwise, the object of imposition of the disqualifications as envisaged in the Constitution will become frustrated. This first basic principle should be the guiding factor in offering positions to a member of the Legislature."*

5. Keeping the above position in view, the Joint Committee on Office of Profit have been following the undernoted criteria to test the Committees, Commissions, etc., for deciding the question as to which of the offices should disqualify and which should not disqualify a person for being chosen as, and for being a Member of Parliament: -

- (i) whether 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, like sitting fee, honorarium, salary, etc. i.e. any remuneration other than the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959;

(The Principle thus is that if a member draws not more than what is required to cover the actual out of Pocket expenses and does not give him pecuniary benefit, it will not act as a disqualification).

- (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 licences, etc., or gives powers of appointment, grant of scholarship, etc.; and
- (iv) Whether the body in which an office is held wields influence or power by way of patronage.

If reply to any of the above criteria is in affirmative then the office in question will entail disqualification.

6. As per the information furnished by the Government of Rajasthan, the District Public Grievance-cum-Vigilance Committees are constituted in each district of the State

since 1983 under orders of the Government of Rajasthan (Department of Personnel and Administrative Reforms). The Committee is of permanent nature. The mode of appointment and removal of Members of the Committee is by the orders of the State Government of Rajasthan.

7. The Committee is chaired by the concerned District Collector. All the Members of Parliament of the District are nominated as Members of the Committee alongwith Members from other fields (copies of Orders provided by the State Government of Rajasthan at **Annexure-III, IV & V**).

8. While the Government of Rajasthan, informed that these Committees do not perform any executive, legislative or judicial functions, on examination of their orders Dated 20 October, 1983, the Legislative Department, Ministry of Law and Justice vide OM No. F. No17(7)/2017-Leg.III dated 21<sup>st</sup> April, 2017 (**Annexure-VI**) has given the following observation :-

..." On going through the documents received from the State Government, it appears that the nature of the Committee is permanent and it consists of Chairman, Members and Member-Secretary. It is further seen that all the Members of Parliament and Members of Legislative Assembly of the concerned District shall be Members of the Committee. However, the enclosures did not contain the list of points which is usually being forwarded by the Committee. Along with the documents received from the State Government of Rajasthan, *vide* Appendix I, against point number 6, it is stated that the members are entitled only for travelling allowance as per the State Government TA rules. However, a copy of the same is not found enclosed to verify as to whether the same falls within the compensatory allowance as defined in clause (a) of section 2 of the Parliament (Prevention of Disqualification) Act, 1959 (10 of 1959). Further, against point number 9, it is stated that the Committee does not exercise any legislative, executive, judicial or financial functions. Against point number 7, it is stated that the mode of appointment / removal of the Members are made by Government orders.

It is noteworthy to mention that as per paragraph 4 of the Order of the Government of Rajasthan dated the 20<sup>th</sup> October, 1983 constituting the Committee, the functions of this Committee shall be to deal with complaints relating to corruption and public grievances such as delays in sanctioning of power connections, registration of criminal cases, registration of mutations, irregularities in distribution of water, alleged use of transport by the investigating authorities and irregularities in the grant of execution of contracts in various Departments etc. The list is not exhaustive and therefore the Committee at its discretion may examine all other cases in which delay, corruption etc. are involved.

Further, as per paragraph 5, the Committee shall be competent to look into complaints where there is specific allegation of delay in the removal of individual or public grievances etc. It also provides that the Committee is competent to examine records of District Level Officer and shall also be competent to investigate any specific complaint entrusted to it by the State Government / State Vigilance Commission / Department of Removal of public grievances and will report its finding thereon.

In the light of the functions described at paragraph 6 and 7 above, it appears that the Committee exercises executive functions. The powers of the Committee to investigate any specific complaint entrusted to it by the Government may pave way for bringing the factor of 'wielding influence by way of patronage' which is one of the criteria for incurring disqualification laid down by the Joint Committee on Offices of Profit in their Tenth Report (Seventh Lok Sabha).

As regards the question whether any pecuniary gain is attached to the Office or not, the same can be examined only after the rules governing Travelling Allowances and Dearness Allowances are made available by the State Government."

9. Further, the Ministry of Law and Justice (Legislative Department) *vide* OM No.17(2)/2017 - Leg.III dated 01<sup>st</sup> August, 2017 (**Annexure-VII**) have furnished the following additional comments



2. *On a perusal of the copy of the Rajasthan Travelling Allowance Rules, 1971, forwarded by the State Government of Rajasthan, it is seen that rule 32 provides for the travelling allowance of Members of Parliament. As per the said rule, a Member of Parliament who is appointed to serve on Committee / Commission / Board etc., convened by the State Government shall be regulated inter alia, by the travelling allowances applicable to the Member of Parliament. The said rules are silent on the daily allowance payable to a Member of Parliament. However, in Appendix-I, forwarded earlier to this Department, against point number 6, it is stated that Members of District Public Grievances-cum-Vigilance Committees are entitled only travelling allowances as per State Government travelling allowance rules. The Legislative Department reiterates their earlier comments provided vide O.M. No. 17(2)/2017-Leg.III dated 21.04.2017.*

10. In this connection, the Joint Committee on Offices of Profit called the representatives of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) for oral evidence on Thursday, 04<sup>th</sup> May, 2017. During the evidence, the representatives of the Ministry of Law and Justice (Legislative Department) stated

"As the nomenclature of this Committee, District Redressal and Vigilance Committee, everything is impregnable in the title itself. So, they will deal with matters relating to redressal, complaints and then vigilance activities regarding corruption of officials, misuse of vehicle, etc. So, this is nothing but executive function in the State Government."

11. The Ministry of Law and Justice (Department of Legal Affairs) vide their note No. F.No. 269436/LS/2017 dated 06<sup>th</sup> June, 2017 (**Annexure-VIII**) have stated that

"As per the documents received from Lok Sabha Secretariat, it is seen that the District Public Grievances-cum-Vigilance Committee was constituted by the Government of Rajasthan vide its order dated

20<sup>th</sup> October, 1983 and subsequently *vide* order dated 24<sup>th</sup> October, 1983 and the 7<sup>th</sup> May, 2001 certain members have been included in the said committee.

It is understood that the scope of Article 102(1) is restricted to those cases where a member of Parliament holds an office of profit not exempted by Parliament by law as required by Article 102(1)(a) of the Constitution of India. It further seeks to examine the propriety of the action of the Parliament in retrospectively exempting "office(s) of profit" by giving retrospective effect to law enacted by it under Article 102(1)(a).

A Constitution Bench of the Supreme Court in *Guru Gobind Basu vs Sankari Prasad Ghosal & others* (AIR 1964 SC 254) ruled that the decisive test for determining whether a person holds any office of profit under the Government is the test of appointment. There are several factors that enter into the determination of this question such as: appointing authority; the authority vested with the power to terminate the appointment; the authority that determines the remuneration; the source from which the remuneration is paid; the authority vested with the power to control the manner in which the duties of the office are discharged and to give protection on that behalf. Though, it is not necessary that all these factors must co-exist.

Besides, as per Sec. 3(i) of the Parliament (Prevention of Disqualification) Act, 1959, the office of Chairman, Director or Member of any statutory or non-statutory body other than body covered under clause (h), is not disqualified from being a Member of Parliament, if the holder of such office is not entitled to any remuneration other than compensatory allowance. Thus, nature of government control, functions of Council and allowance receivable by Member is to be seen.

It may be seen in column No. 6 of the Appendix-I enclosed with the reference, that only travelling allowance as per State Government's TA rules is payable to the Member of the Committee. However, it is

not clear as to whether such travelling allowance falls within the compensatory allowance as defined in clause (a) of Section 2 of the Parliament (Prevention of Disqualification) Act, 1959.

Further, as per the functions described in the order of the State Government; the District Public Grievances-cum-Vigilance Committee is a 'Vigilance Committee' and is competent to examine the records of District Level Officer and shall also be competent to investigate any specific complaint entrusted to it. It appears that such power to investigate empowers the Committee to exercise executive functions and may pave way for bringing the factor of 'wielding influence by way of patronage' which is one of the criteria for incurring disqualification laid down by the Joint Committee on the Office of Profit in their 10<sup>th</sup> Report (Seven Lok Sabha).

In view of above, the nomination of Hon'ble member of Parliament to District Public Grievances-cum-Vigilance Committee in each district of the State of Rajasthan may be considered as an 'office of profit' and the question regarding any pecuniary gain attached to the office can be examined only in the light of rules governing Travelling Allowance of the State Government which is not available in the file."

### **Observations/Recommendations**

12. The Committee note that the District Public Grievance-cum-Vigilance Committees are constituted in each district of the State since 1983 under the orders of Department of Administrative Reforms, State Government of Rajasthan. The Committee is of permanent nature. All the MPs of concerned district are nominated in the aforesaid Committee as Members. The appointment and removal of Members of the Committee is made as per the orders of the State Government of Rajasthan. The Committee is chaired by the District Collector and includes Members from other fields. It has also been informed to the Committee that only Travelling Allowance is being paid to the Members of the Committee as per State Government TA Rules.

13. While the State Government of Rajasthan informed that the Committee do not perform any executive, legislative or judicial functions, on examination of the orders dated 20 October, 1983 of the Government of Rajasthan, the Ministry of Law and Justice (Legislative Department) observed that the functions of the District Public Grievance-cum-Vigilance Committees shall be to deal with complaints relating to corruption and public grievances such as delays in sanctioning of power connections, registration of criminal cases, registration of mutations, irregularities in distribution of water, alleged use of transport by the investigating authorities and irregularities in the grant of execution of contracts in various Departments etc. The Committee shall be competent to look into the complaints where there is specific allegation of delay in the removal of individual or public grievances etc. as also to examine records of District Level Officer and to investigate any specific complaint entrusted to it by the State Government / State Vigilance Commission / Department of Removal of public grievances and to report its finding thereon. In the light of these functions, as per the Legislative Department, it appears that the Committee exercises executive functions. The powers of the Committee to investigate any specific complaint entrusted to it by the Government may pave way for bringing the factor of 'wielding influence by way of patronage" which is one of the criteria for incurring disqualification laid

down by the Joint Committee on Offices of Profit in their Tenth Report (Seventh Lok Sabha).

14. As per the opinion expressed by the Ministry of Law and Justice (Department of Legal Affairs) that the District Public Grievance-cum-Vigilance Committee is a 'Vigilance Committee' and is competent to examine the records of District Level Officer and shall also be competent to investigate any specific complaint entrusted to it. It appears that such power to investigate, empowers the Committee to exercise executive functions and may pave way for bringing the factor of 'wielding influence by way of patronage' which is one of the criteria for incurring disqualification laid down by the Joint Committee on the Office of Profit in their 10<sup>th</sup> Report (Seventh Lok Sabha).

15. While deliberating upon the above matter, the Committee took cognizance of the fact that the Ministry of Rural Development, Government of India has since formed 'District Development Coordination and Monitoring Committee (Disha)' under the Chairpersonship of the Member of Parliament (Lok Sabha) elected from the district, with a view to fulfilling the objective of ensuring a better coordination among all the elected representatives in Parliament, State Legislatures and Local Governments (Panchayati Raj Institutions/Municipal). The Member Secretary of the Disha should be the District Collector / District Magistrate/ Deputy Commissioner except in cases where specific exemption has been given by the Union Government. Disha will cover all non-statutory schemes of Government of India that are administered in general. A suggestive list of Schemes covered under Disha includes 28 flagship programmes of the Union Government. DISHA will supercede the District Vigilance and Monitoring Committee currently mandated by Ministry of Rural Development As per the guidelines (Annexure-IX), the mandate of Disha inter-alia include the following:

“to look into complaints/alleged irregularities received in respect of the implementation of the programmes, including complaints of wrong selection of beneficiaries, mis-appropriation / diversion of funds and recommend follow-up action. The Committee should have the authority to

summon and inspect any record for this purpose. The Committee may refer any matter for enquiry to the District Collector/CEO of the Zilla Panchayat/Project Director of DRDA (or Poverty Alleviation Unit) or suggest suitable action to be taken in accordance with the rules which should be acted upon by him within 30 days.

Closely review the flow of funds including the funds allocated, funds released by both Centre and the State, utilization and unspent balances under each Scheme.”

16. The mandate of the District Public Grievance-cum-Vigilance Committee also include similar functions as that of Disha referred to above. The Committee would therefore also suggest that the State Government should look into the need and rationale for continuing with the District Public Grievance-cum-Vigilance Committee under the Chairmanship of District Collector when a District level Committee i.e. Disha having overlapping functions already exists under the Chairperson of the Member of Parliament (Lok Sabha) elected from the district with the District Collector / District Magistrate/ Deputy Commissioner as the Member Secretary.

17. The Committee felt that it would not be appropriate for a Member of Parliament to work as Member in the Committee under the Chairmanship of the District Collector.

New Delhi  
31 January, 2018  
11 Magha, 1939 (Saka)

KALRAJ MISHRA  
Chairperson,  
Joint Committee on Offices of Profit