

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

TWENTY FIFTH 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)

Price: -----

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JOINT COMMITTEE ON OFFICES OF PROFIT
(SIXTEENTH LOK SABHA)

\$ Shri Kalraj Mishra - Chairperson

**MEMBERS
LOK SABHA**

2. Shri T.G. Venkatesh Babu
3. Adv. Sharad Bansode
4. Smt. Meenakshi Lekhi
5. Shri Bhagwant Maan
6. Shri M.K. Raghavan
7. Prof. Saugata Roy
8. Smt. Supriya Sule
- # 9. Kunwar Pushpendra Singh Chandel
- #10. Shri Janardan Mishra

RAJYA SABHA

11. Shri Naresh Agrawal
12. Shri C.P. Narayanan
- *13. Shri Mahesh Poddar
- *14. Shri Manas Ranjan Bhunia
15. Vacant

SECRETARIAT

- | | | |
|--------------------------|---|----------------------|
| 1. Dr. Preeti Srivastava | - | Joint Secretary |
| 2. Smt. Rita Jaiikhani | - | Director |
| 3. Smt. Maya Lingi | - | Additional Director |
| 4. Ms. Vandana | - | Sr. Committee Asstt. |

\$ Appointed as Chairperson vide Bulletin Part-II dated 08.01.2018 (Para 6262) vice Dr. Satyapal Singh resigned from membership and Chairpersonship of the Committee w.e.f. 04.09.2017.

Elected as Members of the Committee vide Bulletin Part-II dated 02.08.2016 (Para No.3952) vice Shri P.P. Chaudhary and Shri Arjun Ram Meghwal resigned from the membership of the Committee consequent upon their appointment as Minister w.e.f 05.07.2016.

* Elected as Members of the Committee vide Bulletin Part-II (Rajya Sabha) dated 22.12.2017 (Para No.57264) and Bulletin Part-I (Lok Sabha) dated 27.12.2017 (Para No.4) vice Shri Dilipbhai Pandya and Shri Sukhendu Sekhar Roy retired from Rajya Sabha w.e.f. 18 August, 2017.

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 Fifth Report of the Committee.

2. At their sitting held on 23 March, 2017 the Committee examined the term, composition, character, functions, etc., of the Central Social Welfare Board with a view to consider as to whether the appointment/nomination of Member of Rajya Sabha to the General Body of the Central Social Welfare Board (CSWB) 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 Women and Child Development and 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:

SHRI KALRAJ MISHRA
Chairperson,

Joint Committee on Offices of Profit

06 February, 2018
17 Magha, 1939 (Saka)

REPORT

Nomination of Member of Rajya Sabha to the General Body of the Central Social Welfare Board (CSWB).

On receipt of a reference from the Rajya Sabha Secretariat, requesting to examine the nomination of a Member of Rajya Sabha to the General Body of the Central Social Welfare Board (CSWB) as to whether the same could be considered as a disqualification for being a Member of the House, the Joint Committee on Office of Profit examined the matter in detail.

2. As per the provision of Article 102 (1) of the Constitution of India

“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**) lays down which offices would not disqualify holders thereof from the membership of Parliament. This Act also provides that if a chairman or director or member of any statutory or non-statutory body is not entitled to any remuneration other than the compensatory allowance, he would not incur disqualification for being chosen as , or for being, a member of Parliament. 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, Allowances and Pension of Members of Parliament Act, 1954), any conveyance allowance, house-rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by 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 (7th Lok Sabha), presented to Lok Sabha on 7 May, 1984, **(Annexure-II)** laid down the following guiding principles:-

“10.3 The Committee feel that the basic principle underlying the imposition of disqualification under article 102 (1) (a) and 191 (1) (a) of the Constitution is that a member of the Legislature should not be indebted to Government by accepting an 'Office of Profit' under the Government and thus compromise his independence. The Legislature should be kept independent of the executive so that the members should be free to carry out fearlessly their duties to their electorate to be influenced by any consideration of personal gain. They should not to be in the risk of conflict between duty and self-interest.

10.4 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 actually 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 disqualification 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

10.5 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.

5. As per the written statement dated 09/09/2015 submitted by CSWB, the Central Social Welfare Board registered as a non profitable, charitable company under section 25 of the Companies Act 1956 is functioning under the aegis of the Ministry of Women and Child Development. The copies of the Memorandum and Article of Association of the CSWB as amended upto 21st September, 1987 and copy of the Notification regarding re-constitution of the general body of CSWB, issued by the Ministry of Women and Child Development on 17/01/2013 are placed at **Annexure III & IV** respectively.

6. As per clause 3 A. of the Memorandum of Association of CSWB, the main objects of the Board are as follows:

- (a) *To take over as agreed upon the assets and liabilities of the Central Social Welfare Board as created by the Government of India in*

Resolution No.F.2/6/53-D,II dated the 12th August, 1953 and having its office at New Delhi as on the date of registration of this Company.

- (b) *To study the needs and requirements of Social Welfare Organizations from time to time through surveys, research and evaluation in such manner as may be considered necessary.*
- (c) *To evaluate the programmes and projects of the aided agencies;*
- (d) *To co-ordinate assistance extended to Social Welfare activities by various Ministries in Central and State Governments in the programmes entrusted to the Central Social Welfare Board.*
- (e) *To promote the setting up of Social Welfare Organizations on a voluntary basis in places where no such organisations exist and to promote additional organizations wherever necessary;*
- (f) *To render technical and financial aid, when necessary to deserving institutions or organizations including Panchayati Raj Institutions in accordance with the Schemes/Principles approved by Government of India.*
- (g) *To promote Social Welfare Activities intended for the general welfare of the public such as Welfare of the Family, women, children and the handicapped and assistance in cases of un-employment.*
- (h) *To organise or promote programmes of Training in Social Workers and when required and also to organise and work pilot projects whenever necessary; and*
- (i) *To organise through its machinery emergency relief in cases of calamity, national, natural or otherwise, wherever deemed fit or necessary.*

7. As per clause 3 b of the Memorandum of Association, the objects incidental or ancillary to the attainment of the main objects for which the Company is established are as follows -

To take all such steps as are necessary for fulfilment of any or all of the aforesaid objects, without prejudice to the generality of the premises:-

- i) *To purchase, take on lease or otherwise acquire, held, manage, let sale, exchange, mortgage, or otherwise dispose of real and personal property of any tenure and for any interest and to act as trustees to hold and to mortgage and land and buildings belonging to the Central Social Welfare Board and its organisations, if any and to*

apply the money raised by means of such mortgage for the purpose of the Company;

- (ii) To enter into any arrangements with the Government of India or with any State Governments or with authorities local municipal or otherwise in pursuance of the object of this Company and to obtain from any such Government or authority all rights and concessions and privileges that may seem conducive to the objects or any of them;*
- (iii) To construct, maintain and run any buildings or works necessary or convenient for the purpose of the Company.*
- (iv) To sell, improve, manage, develop, exchange, loan, sublet, mortgage, dispose of, turn of accounts, or otherwise deal with all or any part of the property of the Company;*
- (v) To enter into contract for carrying out objects of the Company;*
- (vi) To receive grants, loans, advances or other moneys or deposits or otherwise from State or Central Government subject to the conditions imposed by such Government besides Companies, Trust or Institutions or individuals with or without allowances or interests thereon;*
- (vii) To draw, make, accept, endorse, discount and execute negotiable instruments;*
- (viii) To act as Trustees of the Provident Fund of the Employees of the Company and its organisations;*
- (ix) To deposit and/or invest the money of the Company in any securities approved in this behalf by the Indian Government;*
- (x) To borrow and raise money in such manner as the Company may think fit;*
- (xi) To create any depreciation, reserve, sinking and Insurance of any special or other fund and to transfer any such fund or part thereof to any of the other funds;*
- (xii) To accept any subscription of donation in cash or kind and take any gift of property whether subject to any special trust or not for promoting any one or more of the objects of the Company;*
- (xiii) To undertake and execute any trust which may seem directly or indirectly conducive to any of the objectives of the Company;*
- (xiv) To subscribe to any local or any other charity and grant donation for any public purposes other than donations or contributions to any political party or for political purposes as may be decided by the Board;*
- (xv) To collect, disseminate and utilise statistical and other information pertaining to the activities of the Company;*
- (xvi) To hold or participate in any Seminar, Conference and such other meetings for dissemination or discussions on subjects pertaining to the activities of the Company;*
- (xvii) To promote or join the promoting or conduct, undertake, or participant in national and international exhibitions, Museums, Seminars, Conferences and Conventions;*
- (xviii) To subscribe to become a member of or otherwise cooperate with any other Association or Company whether incorporated or not whose*

- subjects are either wholly or to part similar to those of the Company or which would promote the interest of the Company*
- (xix) *To have power to establish, regulate or discontinue branches, offices, or agencies within India or appointing representatives or agents or Advisory Committees consisting among other representatives of the State Governments/Union Territories there in order to carry out objects of the Company:*
 - (xx) *To manage or superintend the management of all estates and hereditaments which the Board shall become seized or possessed of, or entitled to and erect, pull-down reconstruct, repair and maintain houses or other buildings, thereon, and to collect premia, rents, or dues and where necessary, to evict tenants from the lands or buildings belonging to the Board;*
 - (xxi) *To execute and to do all such assurances and things as may be requisite to project or complete any instrument or documents whatsoever and to register the same and to authorise any office or officers of the Company to execute and register all assurances and documents in this behalf, and*
 - (xxii) *Generally to do all such other lawful things as are incidental or conducive to the attainment of the above objects provided that the Company shall not support with its funds or endeavour to impose on or procure to be observed by its members or others and make it a Trade Union.*

8. As per the Notification No. 1-19/2008-CSWB, dated 17.01.2013 issued by the Ministry of Women and Child Development (MWCD), CSWB comprises 56 Members in total including one Chairperson and 55 Members (Ref: Annexure IV). The Members include inter-alia, 02 MPs of Lok Sabha and 01 MP of Rajya Sabha. The Members are appointed by the Ministry of Women and Child Development. Clause 7 of Article of Association also provides for termination of membership by the Central Government.

9. The powers of the CSWB rests with the General Body and Executive Committee. The General Body of CSWB is constituted for a period of three years or until further orders. As per the communication dated 09.09.2015 of the MWCD, the General Body considers and approves accounts, balance sheet and the report of the executive committee and auditors. MWCD also informed that the body does not exercise executive, legislative or judicial powers and that it has powers for disbursement of funds as per Memorandum of Articles of Association. As regards expenses payable to MPs the CSWB informed that no sitting fee is paid. T.A. DA reimbursement is paid as per Rules. From the written submissions made to the

Committee, it was not clear whether DA admissible to member of the Board was within the definition of 'Compensatory Allowance' as defined under Section 2 (a) of the Act of 1959.

10. For further clarification, the officers of MWCD and that of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) were called to tender their oral evidence before the Committee on 23.03.2017.

11. Just before the commencement of the oral evidence, the MWCD, vide their O.M. No.CSWB-11/25/2015-CSWB dated 17.03.2017 (**Annexure V**) furnished revised inputs related to the CSWB, which were at variance on a number of points from the information submitted earlier by the Ministry vide their O.M. dated 09.09.2015. In the reply dated 09.09.2015, it has been mentioned that the CSWB has powers for disbursement of funds and powers of appointment/removal, in the revised reply dated 17.03.2017, it has been stated that Committee has no such powers. It is however seen that the objects of the CSWB as given in clause 3 A of the Memorandum of association include rendering technical and financial aid, when necessary to deserving institutions or organizations including Panchayati Raj Institutions in accordance with the Schemes/Principles approved by the Government of India. It has also been made clear in the revised reply, that the allowances payable to the MP as a member of the Committee/body, are **not** covered under the Compensatory Allowance defined in Section 2(a) of Parliament (Prevention of Disqualification) Act, 1959.

12. The Committee also took note of the fact that the issue of nomination of Member of Parliament as Chairman of CSWB was earlier examined by the Joint Committee on Offices of Profit during the Fourth Lok Sabha (Fifth Report) (**Annexure-VI**) presented to House on 27.04.1970. The Committee had then recommended that,

" While considering Memorandum NO.135A regarding composition and functions of the Central Social Welfare Board, the Committee examined the Chairman, Central Social Welfare Board (Shrimati Neera Dogra) and the Additional Secretary, Department of Social Welfare (Shri P.P.I. Vaidyanathan) in the context of new set-up of the Board a Government Company with effect from the 1st April.1969. On the basis of information

furnished by the Department to Social Welfare and further elucidation given by the Chairman, Central Social Welfare Board and the Additional Secretary, Department of Social Welfare, the Committee are led to the conclusion that the Central Social Welfare Board exercises all the powers of the Company-both executive and financial.

The Committee note that all the executive powers are vested in the Executive Committee of the Board. Under Clause 12 (j) of the Articles of Association, the Executive Committee of the Board can also delegate to the various officers such administrative and financial powers as it may deem fit.

The Committee further note that under the same clause, the Chairman of the Board, being the principal officer has been delegated with all the powers-both executive and financial.

The Committee feel that as things exist at present, the Chairman of the Board is a non-official and drawing a salary of Rs.2,500 per month, which is more than Compensatory Allowance as defined in Clause 2 (a) of the Parliament (Prevention of Disqualification) Act, 1959. As such, the Chairman of the Central Social Welfare Board is subject to disqualification and this office would be included in Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959.

The Committee recommend that any non-official member whosoever is delegated with any executive and financial powers at a subsequent date ought also to disqualify."

13. On being asked to furnish details of material change if any, that has taken place in the constitution, character/composition or remuneration paid to the Members of CSWB, the CSWB vide letter No.F.1-4/2010/Coord/244, dated 17 November, 2016 had intimated that there has been no material change in the Constitution(Memorandum of Articles of Association) of the CSWB since last examination during Fourth Lok Sabha by the Joint Committee on Offices of Profit.

14.. The Legislative Department, Ministry of Law and Justice in the written submission to the Committee expressed the following:

"5. Rule 7 of the Article of Association provides for termination of Membership as under:

"Termination of Membership any member of the Company desirous of retiring/resigning from the Company shall give notice in writing of at least one month to the Executive Director of the Company of his intention to do so and the same shall be effective from the day it has been accepted by the Chairperson of the Company or any member of the Company will cease to be so if his membership is terminated by Government. Any vacancy caused by the resignation or termination shall be filled up as indicated in clause 4 above."

9. As the power of appointment and removal of the members vest with the Government, it may fall under the test laid down by the Supreme Court of India in the case of Shivmurthy Swamy Vs. Agadi Sanganna Andnappa [1971 (3) SCC 870].

10. In the light of the observations made above, the nomination of a member to the General Body of the Central Social Welfare Board may incur disqualification for being a member of Parliament under article 102(1)(a) of the Constitution of India."

15. The Committee noted that the Memorandum of Association of CSWB have provisions relating to payment of money and money's worth etc. to the Member subject to prior approval of Central Government Clause 5 (iii) and (iv) of the Memorandum of Association are reproduced below:

""(iii) Except with the previous approval of Central Government, no remuneration or other benefits in money or money's worth shall be given by the Company to any of its members whether or not they are officers or servants of the Company except payments, of our-of-pockets expenses reasonable and proper interest on rent on premises let to the Company, and

(iv) Except with the previous approval of Central Government, no member shall be appointed to any office under the company which is remunerated by salary, fees or any other manner not excepted by sub-clause (iii). Nothing in this clause shall prevent the payment by the company in good faith of reasonable remuneration to any of its officers or servants (not being member) or to any other person (not being member) in return for any service actually rendered by them to the company."

16. During the oral evidence before the Committee on 23.03.2017, the representatives of the Legislative Department also referred to the above provision in clause 5 (iii) of the Memorandum of Association and opined that

"What it says is that with previous approval of the Government, they can be given some remuneration or other benefits. This, as per the Jaya Bachan's case held by the Supreme Court, is capable of yielding pecuniary gain or profit. So, this is the issue to be considered and clarified."

17. On being asked as to whether there is any need to amend the Article of Association, as the same do not specifically mentioned about this, the representative from the Legislative Department, Ministry of Law and Justice stated as under:-

"Yes, Sir clause 5(3) is coming in the way".

18. The representative further added:-

"It looks like as though the earlier Committee had not taken this under consideration It might have escaped their attention. That is what we feel.

It is an office under the Government. That is very clear because it meets with all the tests that are laid down by the Supreme Court in the Shivamurthy versus Andanappa case. There is a power of appointment and termination vested with the Government very clearly. Then, clause 5(iii) discloses that remuneration is also with the Government. The functions which they have stated of the company and which have been with the General Body are also of such nature."

Observations/Recommendations

19. The Committee note that Central Social welfare Board (CSWB) was registered as a non profitable charitable Company under Section 25 of the Companies Act 1956. The General Body of CSWB consists of 56 Members including inter-alia the Chairperson, 02 MPs of Lok Sabha, 01 MP of Rajya Sabha and other members belonging to different field of experience. It is constituted for a period of three years or until further orders. The members of CSWB are appointed by the Central Government and their membership can also be terminated by the Government.

20. According to the Ministry of Woman and child Development (WCD), the Committee do not exercise any executive, legislative and judicial powers. The role of the Members is only advisory to provide guidelines for the future road map of the board. The General Body considers and approves accounts, balance sheet and the report of the executive committee and auditors. The Ministry has further stated that Members do not receive any sitting fee, house rent allowance, compensatory allowance, honorarium etc. However, the Travel allowance and dearness allowance is being reimbursed and paid as per rules, to the Member of Parliament for attending the meeting, but the same do not get covered under the compensatory allowances as defined in section 2(a) of Parliament (Prevention of disqualification) Act.

21. The Committee expresses its displeasure over the contradictions and lack of clarity in MWCD's submissions as pointed out in para 11 of the Report. The Committee observed that utmost care must be taken by the Ministry to ensure correctness of the information furnished to the Parliamentary Committee in future. The Committee also feel that there is a need for certainty in the Rules pertaining to payments of remunerations and other benefits to the Members of Parliament nominated to any Government body, as the obscurity of the same could result in their undue disqualification.

22. The Committee took note of the opinion of the Ministry of Law and Justice (Legislative Department) in their written submission that as the Central Government exercises control over the appointment and removal of the Member, the Committee may fall under the test laid down by the Supreme Court of India in the case of *Shivmurthy Swamy Vs. Agadi Sanganna Andnappa* [1971 (3) SCC 870].

23. The Committee took note of the observation of the Ministry of Law and Justice (Legislative Department) that the provision of remuneration under para 5 (iii) of the Memorandum of Association may attract the ratio laid down by the Supreme Court of India in the case of *Jaya Bachan Vs. UOI & Ors.* [2006 (5) SCC 266] and so nomination of a member to the General Body of the Central Social Welfare Board may incur disqualification for being a member of Parliament under Article 102(1)(a) of the Constitution of India.

24. The Committee is also aware that the issue of nomination of Member of Parliament as Chairman of CSWB was examined by the Joint Committee on Offices of Profit during the Fourth Lok Sabha (Fifth Report) and the Committee had then recommended that the Chairman of CSWB should be included in Part II of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. The Committee had also recommended then that any non-official members whosoever is delegated with any executive and financial powers on a subsequent date ought also to disqualify.

25. The Committee note that CSWB registered as Charitable Company appears to qualify the test of being a Government body as Central Government exercises control over appointment and removal of members by virtue of Clause 7 of Article of Association. As regards the remunerations being received by the Member of Parliament, the Ministry of WCD had informed that the same do not get covered under the compensatory allowances as defined in section 2(a) of Parliament (Prevention of disqualification) Act, 1959. Moreover, clause 5(iii) also provides for payment of remuneration or other benefits in money or money's worth to the Members of the Company with the prior approval of the Central Government which may attract disqualification for

being chosen as and for being a Member of Parliament under Article 102(1)(a) of the Constitution of India.

In view of the aforesaid, the Committee unanimously accepted the views of the Ministry of Law and Justice (Legislative Department) that the nomination of a member to the General Body of the Central Social Welfare Board may incur disqualification for being a member of Parliament under Article 102(1)(a) of the Constitution of India."

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

SHRI KALRAJ MISHRA
Chairperson,
Joint Committee on Offices of Profit