

CB-II (JCOP) No.

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

**FIFTEENTH REPORT**

Presented to Lok Sabha on 30.11.2016

Laid in Rajya Sabha on 30.11.2016



**LOK SABHA SECRETARIAT  
NEW DELHI**

**November, 2016/Agrahayana, 1938(Saka)**

**Price : \_\_\_\_\_**

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**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 Dilipbhai Pandya
14. Shri Sukhendu Sekhar Roy
- \*15. Vacant

**SECRETARIAT**

- |    |                    |   |                            |
|----|--------------------|---|----------------------------|
| 1. | Shri U.B.S. Negi   | - | Joint Secretary            |
| 2. | Smt Rita Jaikhani  | - | Director                   |
| 3. | Smt. Maya Lingi    | - | Additional Director        |
| 4. | Shri T.R. Nauriyal | - | Deputy Secretary           |
| 5. | Ms. Vandana        | - | Senior Committee Assistant |

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\$ Appointed as Chairperson vide Bulletin Part-II dated 19.07.2016 (Para No.3780) vice Shri P.P. Chaudhary resigned from the Chairpersonship of the Committee w.e.f. 05.07. 2016

# Nominated as Member 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.

\* Shri K.C. Tyagi ceased to be the member of the Committee consequent upon expiration of his term of Rajya Sabha on 07.07.2016.

## 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 Fifteenth Report of the Committee.

2. At their sittings held on 4 and 21 November, 2016, the Committee examined the term, composition, character, functions, etc., of the Inter-State Water Dispute Cell of Government of Rajasthan with a view to consider as to whether the Nomination of Shri Nihalchand M.P (Lok Sabha) as Chairman, Inter-State Water Dispute Cell by Government of Rajasthan would attract disqualification from the angle of 'office 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 25 November, 2016.

4. The Committee wish to express their thanks to the State Government of Rajasthan; 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:**

**28 November, 2016**

**07 Agrahayana, 1938 Saka**

**DR. SATYAPAL SINGH**

**Chairperson,**

**Joint Committee on Offices of Profit**

## REPORT

### **Nomination of Shri Nihalchand M.P (Lok Sabha) as Chairman, Inter-State Water Dispute Cell by Government of Rajasthan.**

Parliamentary Works Department, Government of Rajasthan vide fax letter dated 22.09.2016 has stated that there is a proposal to nominate Shri Nihalchand M.P (Lok Sabha) as Chairman, Inter-State Water Dispute Cell by Government of Rajasthan. They have requested that the matter may be placed before the Hon. Speaker for approval of his nomination to the Inter -State Water Dispute Cell.

2. The issue under consideration is as to whether the nomination of Shri Nihalchand M.P (Lok Sabha) as Chairman, Inter-State Water Dispute Cell by Government of Rajasthan would cause disqualification from the angle of the „office of profit“.

3. Article 102 (i) 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”

4. Parliament has passed a law, namely the Parliament (Prevention of Disqualification) Act, 1959 (**Annexure-I**) laying 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”

5. The expression “holds any office of profit under the Government” occurring in Article 102 (1)(a) and 191(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: -

"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 an 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."

6. 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 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).

- (ii) 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
- (iii) 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.

7. As per the information furnished by the Department of Parliamentary Affairs, Government of Rajasthan, the Inter State Water Dispute Cell is a non statutory body constituted under an executive order dated 06.08.2004. The term of the Member of Parliament is three years as non-official Chairman and Government exercises control over the appointment to and removal from the office and over the functions of the office.

8. The functions of the Cell are periodical review of the status of the Inter-State water issues and advise the State Government for resolving water disputes in respect of the following:-

(i) Matter relating to Ravi-Beas-Sutlej waters as well as Yamuna, Chambal Mahi and Ghaggar waters, including the following issues:

- (a) Restoration of 0.60 MAG of water from Punjab.
- (b) Transfer of control of headworks viz. Ropar, Harike and Ferozpur from Punjab to BBMB.
- (c) Pursuing Haryana for signing MoU for Yamuna Waters.
- (d) Taking up matters of unauthorised construction in the catchment area of Gandhisagar Dam with M.P.

(ii) Interlinking of Parbati-Kalisindh-Chambal rivers as well as other interlinking projects having bearing on Rajasthan's interest.

(iii) To Monitor the progress of various court cases in respect of above problems pending in Courts/Tribunals and suggestions for appropriate decisions.

9. According to Government of Rajasthan, the Cell does not exercise any executive, legislative or judicial power and its functions are only advisory. No allowance except TA and DA is payable to the Member of Parliament as Chairman of the Cell. The allowances payable to the Member of Parliament as Chairman of the Cell are covered under the Compensatory Allowance as defined under Section 2 (a) of the Act of 1959.

10. Interstate Water Dispute Cell does not find any express mention in the list of Offices/Bodies mentioned in the Schedule of the Parliament (Prevention of Disqualification) Act, 1959. However, under Section 3(i) of the Act of 1959, the office of Chairman, Director and Member of any statutory and non-statutory Bodies shall not incur disqualification, provided the remuneration received in consideration of their services do not exceed the compensatory allowance as defined in Section 2(a) of the Act of 1959. The relevant Sections 3 (i) reads as follows:-

***"Section 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 :-***

xx                      xx                      xx                      xx

*(i) the office of chairman, director or member of any statutory or non-statutory body other than any such 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, (ii) the office of chairman or secretary of any statutory or non-statutory body specified in Part II of the Schedule;"*

11. In their sitting held on 04.11.2016, the Joint Committee on Offices of Profit while examining the issue had desired that at the first instance the written opinion of the Ministry of Law and Justice (Department of Legal Affairs and Legislative Department) may be sought on the issue. Accordingly, the Ministry of Law and Justice vide this Secretariat OM No. 21/6/(2)/2016/CII, dated 07.11.2016 were requested to furnish their written opinion on the issue.



12. In their written submission the Ministry of Law and Justice (Legislative Department) vide their O.M. dated 09.11.2016 has stated as under:-

"..... On a perusal of the documents provided by the State Government of Rajasthan, it appears that the Inter-State Water Dispute Cell is a non statutory body constituted by an executive order on 06.08.2004 with a member of State Legislative Assembly as Chairman.

4. As per the point wise reply received from the State Government of Rajasthan, the Inter-State Water Dispute Cell has been constituted to review problems relating to Inter-State water issues and the term of the Cell is for three years. It is further stated that the functions of the Cell are as follows:-

Periodical review of the status of the Inter-State water issues and advise the State Government for action to be taken in respect of the following:-

(i) Matter relating to Ravi-Beas-Sutlej waters as well as Yamuna, Chambal Mahi and Ghajjar waters, including the following issues:

- (a) restoration of 0.60 MAF of water from Punjab;
- (b) transfer of control of headworks viz Ropar, Harike and Ferozepur from Punjab to BBMB;
- (c) pursuing Haryana signing MoU for Yamuna waters;
- (d) taking up matters of unauthorized construction in the catchment area of Gandhi Sagar Dam with M.P.

(ii) interlinking of ParbatiKalisindh Chambal rivers as well as other interlinking projects having bearing on Rajasthan's interest;

(iii) to monitor the progress of various court cases in respect of above problems pending in Courts/Tribunals and suggestion for appropriate decisions.

5. With regard to the point wise query by the Lok Sabha Secretariat, it is stated by the State Government of Rajasthan in the point wise reply that,-

- (i) member is not entitled to any allowance except daily allowance, conveyance/travelling allowance;
- (ii) no remuneration is paid and the allowances payable would not exceed the „compensatory allowance“ as defined in clause (a) of section 2 of the Parliament (Prevention of Disqualification) Act, 1959 (10 of 1959);
- (iii) the functions of the Inter-State Water Dispute Cell are advisory and the Cell does not exercise any executive, legislative or judicial powers, and the member would not wield influence by way of patronage.

6. In the light of the point wise reply furnished to this Department, it appears that the functions of the Inter-State Water Dispute Cell is of advisory in nature. In this regard, it is noteworthy to point out that if the trends of judicial decisions were to be followed, the holding of an office of profit is generally equated as profit in terms of money or pecuniary gain. This has been upheld by the Hon<sup>ble</sup> Supreme Court in the case of U.C.Raman Vs. P.T.A Rahim and Others reported in (2014) 8 SCC 934 (Annexure –III).

7. In view of the above and on the basis of the material furnished to it, this Department is of the opinion that nomination of Shri Nihal Chand as Chairman to the „Inter-State Water Dispute Cell“ may not entail disqualification for being a member of Parliament."

13. The Ministry of Law and Justice (Department of Legal Affairs) vide their written reply dated 11.11.2016 opined as under:

"Attention is drawn towards Article 102 (1) in the Constitution of India, which provides that a person shall be disqualified for being chosen as, and for being, a Member of either House of Parliament (a) if he holds any office of profit under the Government of any State, other than an office declared by Parliament by law not to disqualify its holder. The essential ingredients for attracting the said article, as settled by numerous cases, are there must be an office, such office must be an office of 'profit', it must be under the Government of India or the Government of a State, such office must not be excluded from the operation of this sub-clause by a law made by Parliament.

As per section 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. To decide the issue, therefore, it is imperative to examine the nature of Government control of functions of the Non-Statutory Water Dispute Cell.

The issue whether the office in question is an office of profit under the Government has been examined in the light of observation of Apex Court in the matters of:

- (i) Shivamurthy Swami Inamdhar Vs. Agadi Sanganna Andanappa, (1971) 3 SCC 870.
- (ii) Joti Prasad Upadhyaya V. Kalka Prasad Bhatnagar, 1961 SCC Online All 123.
- (iii) Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev, (1992) 4 SCC 404.
- (iv) Shibu Soren Vs. Dayanand Sahay, (2001) 7 SCC 425.

In the present matter the Inter-State Dispute Cell is a non-statutory body and the term of Member of Parliament as Chairman is three years. The Government exercises control over the appointment to and removal from the office and over the performance and functions of the office. The role of the Member of Parliament as Chairman of the Cell is to review the status of the Inter-State issues and advise State Governments. No allowance except D.A., conveyance/travelling allowances is paid. The allowance payable to the Members of Parliament as a Chairman of the Cell in respect of Inter-State issues are covered under the compensatory allowance defined in Section 2 (a) of Parliament (Prevention of Disqualification) Act, 1959.

In view of the above, we are of the view that the nomination of Members of Parliament to Inter-State Water Dispute Cell may not be considered as an office of profit under the Government."

### Observations/Recommendations

14. The Committee note that the Government of Rajasthan propose to nominate Shri Nihal Chand, MP (Lok Sabha) as Chairman of the Inter-State Water Dispute Cell. From the information furnished by the Department of Parliamentary Affairs, Government of Rajasthan, the Committee also note that the Inter State Water Dispute Cell is a non statutory body constituted under an executive order dated 06.08.2004. The term of the Member of Parliament is three years as non-official Chairman and Government exercises control over the appointment to and removal from the office and over the functions of the office. The functions of the Cell are to periodically review the status of the Inter-State water issues and advise the State Government for resolving water disputes in respect of the following:-

(i) Matter relating to Ravi-Beas-Sutlej waters as well as Yamuna, Chambal Mahi and Ghaggar waters, including the following issues:

- (a) Restoration of 0.60 MAG of water from Punjab.
- (b) Transfer of control of headworks viz. Ropar, Harike and Ferozepur from Punjab to BBMB.
- (c) Pursuing Haryana for signing MoU for Yamuna Waters.
- (d) Taking up matters of unauthorised construction in the catchment area of Gandhisagar Dam with M.P.

(ii) Interlinking of Parbati-Kalisindh-Chambal rivers as well as other interlinking projects having bearing on Rajasthan's interest.

(iii) To Monitor the progress of various court cases in respect of above problems pending in Courts/Tribunals and suggestions for appropriate decisions.

The Cell does not exercise any executive, legislative or judicial power and its functions are purely advisory.

15. According to the Ministry of Law and Justice (Legislative Department), the functions of the Inter-State Water Dispute Cell appears to be of advisory in nature. In this context, they have pointed out that holding of an office of profit

is generally equated as profit in form of money or pecuniary gain . This has been upheld by the Hon'ble Supreme Court in the case of U.C. Raman Vs. P.T.A Rahim and other reported in 2014. The Department has opined that nomination of Shri Nihalchand as Chairman to the aforesaid Cell may not entail disqualification for being a Member of Parliament. The Ministry of Law and Justice (Department of Legal Affairs) has also examined the issue in the light of observation of Apex Court in certain matters and they were of the view that the nomination of Member of Parliament to Inter-State Water Dispute Cell may not be considered as an office of profit under the Government.

16. The Committee note that as per Section 3 (i) of Parliament (Prevention of Disqualification) Act, 1959, the office of Chairman ,Director and Member of any statutory and non-statutory Bodies shall not incur disqualification, if the holder of such office is not entitled to any remuneration other than compensatory allowance as defined in Section 2(a) of the Act of 1959. In the instant case no allowance except TA and DA is payable to the Member of Parliament as Chairman of the Cell. The allowances payable to the Member of Parliament as Chairman of the Cell are covered by the definition of 28 Compensatory Allowance as defined under Section 2 (a) of the Act of 1959.

17. In view of the foregoing, the Committee are, therefore, of the considered opinion that the nomination of Shri Nihalchand, M.P., Lok Sabha as Chairman, Inter-State Water Dispute Cell may not attract office of profit incurring disqualification for being chosen as and for being a Member of the House of the Parliament under Article 102 (1) (a) of the Constitution of India.

New Delhi

DR. SATYA PAL SINGH  
Chairperson,  
Joint Committee on Offices of Profit

28 November, 2016  
07 Agrahayana, 1938 (Saka)

