JOINT COMMITTEE ON OFFICES OF PROFIT (SIXTEENTH LOK SABHA)

EIGHTEENTH REPORT

Presented to Lok Sabha on 03.02.2017

Laid in Rajya Sabha on 03.02.2017



LOK SABHA SECRETARIAT NEW DELHI

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

\$ Dr. Satya Pal Singh Chairperson

MEMBERS

LOK SABHA

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- 3. Adv. Sharad Bansode
- 4. Smt. Meenakshi Lekhi
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- 11. Shri Naresh Agrawal
- 12. Shri C.P. Narayanan
- 13. Shri Dilipbhai Pandya
- 14. Shri Sukhendu Sekhar Roy
- Shri Sharad Yadav 15.

SECRETARIAT

1.	Shri U.B.S. Negi	Joint Secretary
2.	Smt Rita Jailkhani	Director
3.	Smt. Maya Lingi	Additional Director
4.	Shri T.R. Nauriyal	Deputy Secretary
5.	Smt. Seema Sharma	Committee Assistant

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 Sharad Yadav nominated as Member of the Committee vide Bulletin Part-II dated 02.08.2016 (Para No.3952).

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 Eighteenth Report of the Committee.

- 2. At their sittings held on 04 October, 2016 the Committee examined the term, composition, character, functions, etc., of the Institute of Constitutional and Parliamentary Studies with a view to consider as to whether the nomination of one Member of Parliament to the Institute of Constitutional and Parliamentary Studies 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 Wednesday, 24 January, 2017.
- 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:

DR. SATYAPAL SINGH
Chairperson,
Joint Committee on Offices of Profit

31 January, 2017 11 Magha, 1938 Saka

REPORT

Nomination of Member of Parliament to the Executive Council of the Institute of Constitutional & Parliamentary Studies (ICPS).

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Institute of Constitutional and Parliamentary Studies (ICPS) has requested that one Member of Rajya Sabha may be nominated by the Hon'ble Chairman, Rajya Sabha to the Executive Council of the said Institute. In this regard, Rajya Sabha Secretariat have requested Lok Sabha Secretariat to clarify as to whether the Executive Council of ICPS is exempted from the angle of Offices of Profit and the nomination of one Member of Rajya Sabha to the aforesaid Institute could be considered as a disqualification from being a Member of Parliament.

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 –

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. 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"
- 4. 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."

- 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 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.

6. ICPS is a Registered Society under Societies Registration Act XXI of 1860 (Punjab Amendment) Act, 1957 as extended to the U.T. of Delhi. Under the Rules 17(1) (ii) and 18(4) of ICPS (Annexure-III), one member of the Rajya Sabha is to be nominated by Chairman, Rajya Sabha and two members of Lok Sabha to be nominated by the Speaker, Lok Sabha. Further, the elected or nominated members of the Executive Council shall hold office for a term of two years from the date of

their election or nomination subject to rule 37A save and except that any person who is a member of the Executive Council by virtue of the position / office held by him shall *ipso facto* cease to be member on his vacating such position / office.

- 7. Clause 3(m) of the Parliament (Prevention of Disqualification) Act, 1959 states 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:
 - xx (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 (21 of 1860) or under any other law relating to registration of societies, not being a body specified in the Schedule."
- 8. In its comments, the Ministry of Law and Justice (Legislative Department) *vide* OM No. F.No. 17(11)/2016-Leg.III dated 8th December, 2016 **(Annexure-IV)** *inter alia stated* as under :
 - "4. On examination of the documents forwarded by the Director of the Institute to the Secretary General, Rajya Sabha, the Institute was registered under the Societies Registration Act, 1860 (Punjab Amendment) Act, 1957, as extended to the Union territory of India. As per the Memorandum of Association, objects of the Society are as follows:-
 - to promote and provide for constitutional and parliamentary studies with special reference to comparative studies in constitutional systems of various countries and working of the Indian Constitution and parliamentary and government institutions in their various aspects;
 - (ii) to undertake study of courses and fundamental research relating to developments in constitutional law, conventions and practices, parliamentary procedure, legislative drafting trends in judicial interpretation and allied matters;
 - (iii) to organise conferences, lectures and seminars and set up study groups and training programmes in constitutional problems and matters of current parliamentary interest and to undertake case studies of legislative enactments;
 - (iv) to set up a legislative research and reference service for the benefit

- of all interested members of the Union Parliament and State Legislatures irrespective of their party affiliations;
- (v) to undertake and provide for the publication of a journal and of research papers and of books and brochures with a view to disseminate democratic values and to foster broad based civic education and awareness, and in particular, to promote study of constitutional and parliamentary affairs;
- (vi) to establish and maintain libraries and information services to facilitate the study of constitutional and parliamentary subjects and spread information in regard thereto;
- (vii) to constitute or cause to be constituted Regional Branches at convenient centres in India to promote the objects of the Society;
- (viii) to cooperate with approved institutions and bodies for the purpose of helping the cause of study and research in the fields of Law and Political Science:
- (ix) to invite as and when feasible, scholars who may or may not be members of the Society, to take advantage of the facilities offered by the Society and to benefit the Society by their knowledge and experience;
- (x) to institute appropriate fellowships, offer prizes and arrange scholarships and stipends in furtherance of the objects of the society;
- (xi) to issue appeals and applications for money/funds in furtherance of the said objects and accept gifts, donations and subscriptions of cash and securities and of any property either movable or immovable:
- (xii) to invest and deal with funds and moneys of the Society;
- (xiii) to acquire, purchase or otherwise own or take on lease or hire in the Union Territory of Delhi or outside, temporarily or permanently, any movable property necessary or convenient for the furtherance of the objects of Society;
- (xiv) to sell, mortgage, lease, exchange and otherwise transfer or dispose of all or any property, movable or immovable, of the Society for the furtherance of the objects of the Society;
- (xv) to construct, maintain, alter, improve or develop any building or works necessary or donation;
- (xvi) to undertake and accept the management of any endowment or trust fund or convenient for the purpose of the Society;
- (xvii) to raise loans, from Commercial Banks/Financial Institutions other organisations and secure the same as may be necessary for attainment of its objects;

- (xviii) to establish a pension provident fund for the benefit of the employees of the Society; and
- (xix) to do all such other lawful things as are conducive or incidental to the attainment of the above objects and furthering the growth of the institute.

Further rule 22 of the Rules of the Institute of Constitutional and Parliamentary Studies provide for the powers and functions of the Executive Council. The said rule reads as follows:-

- "22. Powers and functions of the Executive Council.-(1) Subject to the general control and direction of the General Body, the Executive Council shall be responsible for the management and administration of the affairs of the Institute in accordance with these rules and the byelaws if any made there under for the furtherance of its objects, and shall have all powers which may be necessary or expedient for the purpose.
- (2) Without prejudice to the generality of the powers conferred by the foregoing sub-rule, the Executive Council shall have the power:
- (i) to take decisions on applications for membership;
- (ii) to prepare and execute detailed plans and programmes for the furtherance of the objects of the Institute;
- (iii) to receive, to have custody of and to expend the funds of the Institute and to manage the properties of the Institute;
- (iv) to appoint and control such staff as may be required for efficient management of the affairs of the Institute and to regulate their recruitment and condition of services;
- (v) to enter into agreement for and on behalf of the Institute;
- (vi) to sue and defend all legal proceedings on behalf of the Institute;
- (vii) to appoint committees for disposal of any business of the Institute or for advice in any matter pertaining to the Institute;
- (viii) to make, adopt and vary from time-to-time bye-laws for the regulation of and for any purpose connected with the management and

administration of the affairs of this Institute and for furtherance of its objects, in particular to make, adopt and vary from time to time byelaws for conducting the branches, the local branches and the committees to be appointed by it for regulating the right and privileges of Associate Members for delegation of its powers for fixing the quorum and for co-option;

- (xi) Borrowing Powers: "to borrow from Commercial Banks/Financial Institutions/other organisations such sums as may be considered necessary for the furtherance of the objects of the Institute";
- (x) Additional Functions: "to perform such additional functions and to carry out such duties as may from time-to-time be assigned to".
- 5. Sub-clause (a) of clause (1) of article 102 of the Constitutional provide that 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 be disqualify its holder;
- 6. The Parliament (Prevention of Disqualification) Act, 1959 (10 of 1059), has been enacted by the Parliament under sub-clause (a) of clause (1) of article 102 of the Constitution to declare that certain offices of profit under the Government as specified therein shall not disqualify the holders thereof for being chosen as, or for being, a Member of Parliament. Section 3 of the said Act declares that none of offices of profit under the Government of India or under any State Government as specified in that section shall disqualify the holders for being chosen as, or for being a Member of Parliament. Clauses (a) to (q) of section 3 of the said Act enumerates twenty one categories of offices of profit (under fifteen clauses) the holding of which would not disqualify the holders thereof, for being chosen as, and for being, a member of Parliament. Clause (m) of the said Act exempts the office of Chairman, President, Vice-President or Principle Secretary or Secretary of the Governing Body of any society registered under the Societies Registration Act, 1860 or under any other law. In the case on hand, the Hon'ble Member is being nominated as member of the Council and he is not being exempted under the said Act. In this regard, it is noteworthy to mention that for determining such question, which has come up before the Supreme Court in umpteen cases, the Apex

Court has laid down the following tests in the case of Shivamurthy Swami Inamdar Vs. Sanganna Andanappa (1971) 3 SCC 870 (Annexure-A):-

- (a) Whether the Government makes the appointment;
- (b) Whether the Government has the right to remove or dismiss the holder;
- (c) Whether the Government pays the remuneration;
- (d) Whether the functions of the holder are and does he perform them for the Government; and
- (e) Whether the Government exercises any control over the performance of those functions.

The above tests have been reiterated by the Supreme Court in series of cases decided by it subsequently.

7. Thus, the question as to whether the member is holding an office under the Government is therefore, to be determined by applying the above tests laid down by the Supreme Court. Before proceeding to answer the said questions, it is noteworthy to cite that the Supreme Court in the case of Tekraj Vasandi alias K.L. Basandhi Vs. Union of India and Others, while considering the question whether the Institute is 'State' or not, held that the said Society is not a 'State' under article 12 of the Constitution. (1988 A.I.R. 469) (Annexure-B). The Apex Court while considering whether the Institute is 'State' within the meaning of article 12 or not, keeping in view the scope and object of the Society, held as follows:-

"We have several cases of Societies registered under Societies Registration Act which have been treated as 'State' but in each of those cases it would appear on analysis that either governmental business had been undertaken by the Society or what was expected to be the public obligation of the 'State' had been undertaken to be performed as a part of the Society's function. In a Welfare State, as has been pointed out on more than one occasion by this Court, governmental control is very pervasive and in fact touches all aspects of social existence. In the absence of a fair application of the tests to be made, there is possibility of turning every non-governmental society into an agency or instrumentality of the State. That obviously would not serve the purpose and may be far from reality. A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the

realities and human experiences in view so as to reach a reasonable conclusion. Having given our anxious consideration to the facts of the case, we are not in a position to hold that ICPS is either an agency or instrumentality of the State so as to come within the purview of 'other authorities' in Article 12 of the Constitution. We must say that ICPS is a case of its type - typical in many ways and the normal tests may perhaps not properly apply to test its character".

- 8. A person comes under the ambit of sub-clause (a) of clause (1) of article 102 of the Constitution, if he holds any offices of profit under the Government of India or the Government of any State. As the 'Institute' is not found to be an authority within the ambit of article 12 of the Constitution, obviously nomination of a member of Rajya Sabha to Executive Council of the Institute of Constitutional and Parliamentary Studies may not incur disqualification under sub-clause (a) of clause (1) of article 102 of the Constitution."
- 9. The Ministry of Law and Justice (Department of Legal Affairs) *vide* UO Note dated 15th December, 2016 (Annexure-V) has also *inter alia stated* as under:
 - "4. It is noted that the composition of the Executive Council of ICPS, interalia, includes one Member of the Rajya Sabha to be nominated by the Chairman, Rajya Sabha and two Member of the Lok Sabha to be nominated by the Speaker of the Lok Sabha, Secretary-General, Rajya Sabha Secretariat and Secretary-General, Lok Sabha Secretariat (ex-officio), one nominee of the Ministry of Law and Justice and one expert in financial matters to be nominated by Ministry of Finance. Elected or nominated Members have a fixed term of two years from the date of their election or nomination. The powers and functions of the Council, inter-alia, include preparing the executing detailed plans and programs for the furtherance of the objects of the institute, to receive and expend the funds of the Council, to appoint and control such staff as may be required for efficient management of the Institute, to enter into agreements for and on behalf of the Institute, to sue and defend all legal proceedings for the Institute, to make, adopt and vary bye-laws for the regulation of management of the Institute, borrowing powers and to perform additional functions as may be assigned to it.
 - 5. 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 India or 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 that 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.

- 6. In pursuance of the said Article, Parliament enacted the Parliament (Prevention of Disqualification) Act, 1959 (the Act), exempting certain offices of profit from incurring disqualification for being chosen as, or from being a Member of Parliament. As per section 3(m) of the Act, 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, is not disqualified for being chosen as, or from being a Member of Parliament.
- 7. In the present matter, the IPCS is a Society registered under the Societies Registration Act, 1860. There appears to be certain limited Government control on the Executive Council of ICPS vis-a-vis the appointment of the Members of the Council as Government nominees and as the society also receives grants-in-aid from Department of Legal Affairs, Ministry of Law. However, it may be pointed out that nomination of Member of Rajya Sabha is made by Chairman, Rajya Sabha over which the Government cannot be said to have any control. No specific written information with respect to the allowances payable to the Member of the Executive Council of ICPS has been made available, though we were verbally informed that no allowances are payable to the Members to make the said office an 'office of profit'.
- 8. With respect to the nature of ICPS, attention is drawn to the case of Tekraj Vasandi V. Union of India, (1988) 1 SCC 236, wherein, the Court discussed the various features of ICPS and observed as under:

"The objects of the Society were not governmental business but were certainly the aspects which were expected to equip Members of Parliament

and the State legislatures with the requisite knowledge and experience for better functioning. Many of the objects adopted by the Society were not confined to the two Houses of Parliament and were intended to have an impact on society at large

....... In a Welfare State, as has been pointed out on more than one occasion by this Court, governmental control is very pervasive and in fact touches all aspects of social existence. In the absence of a fair application of the tests to be made, there is possibility of turning every non-governmental society into an agency or instrumentality of the State. That obviously would not serve the purpose and may be far from reality. A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion. Having given our anxious consideration to the facts of this case, we are not in a position to hold that ICPS is either an agency or instrumentality of the State so as to come within the purview of "other authorities" in Article 12 of the Constitution. We must say that ICPS is a case of its type - typical in many ways and the normal tests may perhaps not properly apply to test its character."

Rationale of the aforesaid judgment has also been followed in case of Pradeep Kumar Biswas v. Institute of Chemical Biology, (2002) 5 SCC 111.

9. As IPCS has been held to be not under the Government or 'an agency or instrumentality of the State so as to come within the purview of "other

authorities" in Article 12 of the Constitution' by the Apex Court and is stated to be a case of its type, typical in many ways, to which the normal tests may perhaps not properly apply to test its character, membership of the same may not incur disqualification under Article 102 of the Constitution. Further, as per section 3(m) of the Parliament (Prevention of Disqualification) Act, 1959, the office of Chairman, President, Vice-President or Principal Secretary or Secretary of the Governing Body of the Institute is also exempted from disqualifications in terms of the Act.

10. In view of the above legal position and on the basis of the documents made available to this Department, we are of the view that the nomination of a Member of Rajya Sabha to the Council of ICPS may not be considered as an 'office of profit' under the Government."

Observations/Recommendations

10. The Committee note that the Institute of Constitutional and Parliamentary Studies (ICPS) is a Registered Society under Societies Registration Act XXI of 1860 (Punjab Amendment) Act, 1957 as extended to the U.T. of Delhi. Subject to the general control and direction of the General Body. the Executive council is responsible for the management and administration of the affairs of the Institute in accordance with the Rules and the bye-laws of the Institution for the furtherance of its objects, and has all powers which may be necessary or expedient for the purpose. Under the rules 17(1) and 18(4) of ICPS, one Member of Rajya Sabha is to be nominated by Chairman, Rajya Sabha and two members of Lok Sabha to be nominated by the Speaker, Lok Sabha. The Committee also note that the elected or nominated members of the Executive Council hold office for a term of two years from the date of their election or nomination subject to Rule 37A. The powers and functions of the Council, inter-alia, include to prepare and execute detailed plans and programs for the furtherance of the objects of the institute, to receive and expend the funds of the Council, to appoint and control such staff as may be required for efficient management of the Institute, to enter into agreements for and on behalf of the Institute, to sue and defend all legal proceedings for the Institute, to make, adopt and vary bye-laws for the regulation of management and administration of the affairs of the Institute, borrowing powers and to perform additional functions as may be assigned to it.

- 11. According to the Ministry of Law and Justice (Legislative Department), clause (m) of the Parliament (Prevention of Disqualification) Act of 1959 exempts 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. In the instant case, a Member of Parliament is being nominated as member of the Council and under the Act of 1959, there is no member. The Legislative Department has referred to exemption for the judgement of the Supreme Court in the case of Tekraj Vasandi alias K.L. Basandi vs. Union of India and others. While considering the question whether the Institute is State or not, the Apex Court held that ICPS is neither an agency nor instrumentality of the State so as to come within the purview of 'other authorities' in Article 12 of the Constitution. The Legislative Department is, therefore, of the view that a person comes under the ambit of Article 102 (1)(2) of the Constitution, if he holds any Offices of Profit under the Government of India or the Government of any State. As the 'Institute' is not found to be an authority within the ambit of Article 12 of the Constitution, obviously nomination of a member of Rajya Sabha to Executive Council of the ICPS may not incur disqualification under Article 102 (1)(a) of the Constitution. Similar views have also been expressed by the Ministry of Law and Justice (Department of Legal Affairs) and according to them, the nomination of a Member of Rajya Sabha to the Council of ICPS may not be considered as an 'office of profit' under the Government.
- 12. In view of the foregoing, the Committee are, therefore, of the considered opinion that nomination of Member of Parliament to the Executive Council of ICPS may not incur disqualification for being chosen as and for being a Member of Parliament under Article 102 (1) (a) of the Constitution of India.

New Delhi

DR. SATYA PAL SINGH

24 January, 2017 04 Magha, 1938 (Saka) Chairperson,
Joint Committee on Offices of Profit