

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

TWENTY FOURTH 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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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 Fourth Report of the Committee.

2. At their sitting held on 24 January, 2017 the Committee examined the term, composition, character, functions, etc., of the Council of the School of Planning and Architecture with a view to consider as to whether the appointment/nomination of a Member of Rajya Sabha to the Council of the School of Planning and Architecture (SPA) established under 'the School of Planning and Architecture Act, 2014" 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 Human Resource 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

Subject: Appointment/nomination of a Member of Rajya Sabha to the Council of the School of Planning and Architecture (SPA) established under 'the School of Planning and Architecture Act, 2014.'

The request of the Ministry of Human Resource Development for consideration and recommendation of the Joint Committee on Offices of Profit as to whether nomination of a Member of Parliament to the Council of SPA would entail disqualification from the Membership of the House on the ground of holding an 'office of profit' (Annexure-I) was received through the Rajya Sabha Secretariat.

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-II) 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-III**) 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. The Council of SPA is a Standing body established under Section 33 (1) of School of Planning and Architecture (SPA) Act, 2014 (**Annexure-IV**). This is an Act to declare and establish Schools of Planning and Architecture as Institutions of national importance in order to promote education and research in architectural studies including planning of human settlements. As provided in the Act, the Board of Governors of each School shall be the principal executive body. Composition of the Board of Governors is provided in Section 13 (2) of the SPA Act, 2014. The Senate shall be the principal academic body of that school. As per section 33 (1) of the SPA Act, there shall be established for all schools specified in column (3) of the schedule, a central body called Council, which shall consist of the following members:-

(a) the Minister in charge of the Ministry of Department of the Central Government having administrative control of the technical education, ex officio, as Chairperson;

(b) two Members of the Parliament of India (one Member to be nominated by the Speaker of Lok Sabha and one member to be nominated by the Chairman of Rajya Sabha), ex officio;

(c) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government having administrative control of the technical education, ex officio, as Vice-Chairperson;

(d) the Chairperson of every Board, ex officio;

(e) the Director of every School, ex officio;

(f) the Chairman, University Grants Commission, ex officio;

(g) the President, Council of Architecture, New Delhi, ex officio;

(h) the President, Institute of Town Planners, India, ex officio;

(i) the Chairman, Indian Institute of Architects, ex officio;

(j) the President, Institution of Surveyors of India, ex officio;

(k) two Secretaries to the Government of India to represent the Ministries or Departments of the Central Government dealing with Urban Development and Defence, ex officio;

(l) the Chairman, All India Council for Technical Education, ex officio;

(m) three persons to be nominated by the Visitor, at least one of whom shall be a woman, having special knowledge or practical experience in respect of Architecture or Landscape Architecture or Urban Design and one from Urban and Regional Planning, ex officio;

(n) two Secretaries to the State Government, from amongst the Ministries or Departments of that Government dealing with technical education where the Schools are located, ex officio;

(o) Financial Advisor, dealing with the Ministry of Human Resource Development, Department of the Central Government, ex officio; and

(p) one officer not below the rank of Joint Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the Technical Education, ex officio, as Member Secretary.

6. As per Section 34 of SPA Act, 2014, the term of office of a Member of Parliament nominated under clause (b) of sub-section (2) of section 33 shall expire as soon as he ceases to be Member of the House, which elected him. The members of the Council shall be entitled to such travelling and other allowances, as may be prescribed, for attending meetings of the Council or the Committees thereof.

7. As per Section 35 (1) of the SPA Act, the general duty of the Council is to co-ordinate the activities of all the Schools. Without prejudice to these provisions, the Council shall perform the following functions as per Section 35 (2) of the SPA Act:

(a) to advise on policy matters relating to the duration of the courses, the degrees and other academic distinctions to be conferred by the Schools, admission standards and other academic matters;

(b) to recommend to the Central Government, proposals for establishment of new Schools of Planning and Architecture;

(c) to deliberate on such matters of common interest to Schools as may be referred to it by any School;

(d) to lay down policy regarding cadres, methods of recruitment and conditions of service of employees, institution of scholarships and freeships, levying of fees and other matters of common interest;

(e) to examine the development plans of each School and to approve such of them as are considered necessary and also to indicate broadly the financial implications of such approved plans;

(f) to advise the Visitor, if so required, in respect of any function to be performed by him under this Act; and

(g) to perform such other functions as may be referred to it by the Central Government:

However, nothing in this Section shall derogate the powers and functions vested in the Board or Senate or other authorities of a School

8. The Ministry of Human Resource Development (Department of Higher Education) vide O.M. dated 11.09.2015 addressed to Rajya Sabha Secretariat **(Annexure-V)** have informed that membership of the Council is purely on honorary basis and the members will be paid only actual TA/DA for attending the meeting of SPA Council. No other payment will be made to the members.

9. As regards the role of MP as member of the Council, the Ministry of Human Resource Development (Department of Higher Education) in their written submission dated 12.01.2016, referred to the functions of the council under Section 35 of the SPA Act, 2014 and opined that the functions of the SPA Council are advisory as well as executive in nature. As per Section 34 Sub Section 6, members of the Council are entitled to travelling and such other allowances, as may be prescribed, for attending meetings of the Council or the Committees thereof. The Ministry of Human Resource Development informed that except TA/DA, no other facility is given to the Member of Parliament as a member of the Council.

10. During the oral evidence undertaken by the Committee on 24.01.2017, the Secretary, Ministry of Human Resource Development (Department of Higher Education) briefed the Committee as under:-

“The Council of the School of Planning and Architecture is a standing body. The Council functions in an advisory capacity as well as in an executive capacity. It performs both kinds of functions. Therefore, the role of the hon. member of Parliament who would be nominated to the Council would also be both advisory and executive. There is no explicit provision in the Act for exemption from attracting the angle of office of profit of a Member of Parliament nominated under the Act. The rules on expenses, that is TA and DA to be paid, are yet to be framed but except for TA and DA, there is no other facility that has to be given to the Member of Parliament as a Member of the Council”.

11. On the query of the Committee about the kind of executive function performed by the Council, the Secretary, Ministry of Human Resource Development (Department of Higher Education) stated as follows:-

"Sir, I will turn to the Act itself. The Council perform the following function, to advise on policy matters relating to the duration of the courses, the degrees and other academic distinctions. To recommend to the Government of India proposals for establishment of new Schools of Planning and Architecture. To deliberate on such matters of common interest as may be referred to it by any School of Planning of and Architecture. To lay down policy regarding cadres, methods of recruitment and service conditions, scholarships and freeships, fees. To examine the development plans of each School of Planning and Architecture and to approve such of them as are considered necessary and to indicate broadly the financial implications of such approved plans. To advise the Visitor, if so required, in respect of any function to be performed by him under this Act. These are the functions of the Council.

12. On being further asked about the rules regarding details of expenses payable to the MPs and Members of the Council specifying actual rates of payment with breakup of sitting fee, daily allowance, Travelling allowance, House Rent Allowance, Compensatory allowance, the representative of the Ministry of Law and Justice (Legislative Department) replied as under:-

"Sir. as the Act provides the Constitution Council is a multi-member body and consists of 23 members as provided in section 33. As far as functions of the Council are concerned, they are given in section 35. Regarding TA and DA which is crucial in determining the disqualification, section 34 sub-section (6) provides that members of the Council shall be entitled to such travelling and other allowances as may be prescribed and I came to know that the rules are not been made for prescribing these travelling and other allowance. I think after the rules are published, then only it can be decided whether the travelling and other allowances fall within the definition of compensatory allowances as provided in this Act of 1959. Otherwise, it may not be possible to comment on this".

13. The representatives of the Ministry of Human Resource Development (Department of Higher Education) was advised by the Committee that while framing the rules regarding TA and DA etc., it should be kept in mind that the allowances provided to the Members of Parliament as a member of the Council of SPA cannot be more than daily allowance admissible to them (i.e. Rs.2000/-) as Members of Parliament.

14. The legal opinion given in the instant case by the Ministry of Law and Justice (Department of Legal Affairs) in its written submission dated 15.12.2016, are as under:-

3. *Attention is drawn towards Article 102 (1) of 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.*

4. *The essential ingredients for attracting the disqualification, as settled by the Supreme Court in number of cases, are that there must be (i) an office of profit (ii) such office must be an office of profit, it must be under the Government of India or the Government of State and such office must not be excluded from the operation of this sub-clause by a law made by the Parliament.*

5. 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. Thus, nature of government control, functions of Council and allowances receivable by Member are to be seen.

6. With respect to issues relating to allowances and 'office of profit', the Ministry in its point wise reply indicate that for details of expenses payable to Member of Parliament, no rules have been framed and except TA/DA, there is no other facility to be given. Thus the details of allowances payable to Member as made available indicate that the same are in consonance with the Compensatory allowance as defined in Section 2 (a) of 1959 Act and same may not amount to office of profit.

7. The issue as to whether the office in question is an office under the Government of India has been examined by the Supreme Court in the matters of:

(i) *Satrucharla Chandrasekhar Raju Vs. Vyricherala Pradeep Kumar Dev*, 1992 (4)SCC 404,

(ii) *Shibu Soren Vs. Dayanand Sahay* (2001) 7 SCC 425.

8. In the instant matter, School of Planning and Architecture (SPA) has been termed as a standing body and its composition is explained in Section 3 (2) of the 2014 Act. Its functions as enumerated in Section 35 indicate that it shall be general duty of the Council to co-ordinate the activities of Schools. Section 35 (2) of Act provides that the Council shall advise on policy matters, deliberating on issues of common interest in respect of Schools, examine development plans. The functions so enumerated indicate that the Council is primarily a recommendatory and advisory body. There appears to be no government control over such body and body is an advisory body.

entrusted with functions relating to development plans and proposals for establishment of new schools.

9. *The present case of SPA may be distinguished from ratio of law laid down in Shibu Soren case with respect to limited control exercised by the Government and powers and functions of Council, which in present case appear to be only recommendatory and advisory. Thus there does not appear to be any material to attract Article 102 (1) (a) of the Constitution of India.*

10. *In view of the above, nomination of Member of Rajya Sabha to the Council of SPA may not be considered as an 'office of profit' under the Government of India and Member may not incur any disqualification under Article 102 (1) (a) of the Constitution of India."*

15. As mentioned above, the Committee was informed during the oral evidence taken on 24.01.2017 that the rules had not been framed for prescribing travelling and other allowance to the MPs. However, the Ministry of Human Resource Development (Department of Higher Education), while furnishing the corrected copy of the verbatim proceedings of the sitting of the Committee held on 24.01.2017 (sent to them on 01.02.2017 for confirmation and for correcting inaccuracies which may have occurred in the process of reporting) informed that rules on Travelling and Daily allowances had already been framed and notified on 28.01.2016, and laid on the Table of Lok Sabha on 14.03.2016 and on the Table of Rajya Sabha on 28.04.2016. As per Rule 4 (2) of SPA Rules, 2016, Members of Parliament (MPs) shall be entitled to TA and DA as admissible to MPs appointed to committees and commission set up by the Government of India (**Annexure-VI**)

OBSERVATIONS/RECOMMENDATION

16. The Committee note that the Council of School of Planning and Architecture is a Standing Body established under Section 33 (1) of the SPA Act, 2014. As per Section 33 (2) (a) of the Act, the Minister in charge of the Ministry of Department of the Central Government having administrative control of the technical education, ex-officio, as Chairperson of the Council. Two Members of Parliament (one Member to be nominated by the Speaker of Lok Sabha and one member to be nominated by the Chairman of Rajya Sabha) are ex-officio members of the Council. The term of office of a member of the Council, other than an ex-officio member, is for a period of three years from the date of notification. However, the term of office of an ex-officio Member continue so long as he holds office by virtue of which he is a Member.

17. During the course of evidence, the Secretary of the Ministry of Human Resource Development (Department of Higher Education) had expressed the opinion that the role of the hon'ble. Member of Parliament who would be nominated to the Council would be both advisory and executive and that there is no explicit provision in the Act for exemption from attracting the angle of office of profit of a Member of Parliament nominated under the Act.

18. The Committee noted with displeasure over the incorrect/incomplete information provided to them by the representative of the Ministry of Human Resource Development (Department of Higher Education) during the oral evidence held on 24.01.2017 that the Rules on expenses, i.e. TA and DA to be paid were yet to be framed as such Rules on Travelling and Daily allowances had already been framed was factually not correct and notified on 28.01.2016, and laid on the Tables of Lok Sabha and Rajya Sabha on 14.03.2016 and 28.04.2016 respectively. The Committee observed that utmost care must be taken by the Ministry in future to ensure correctness of the information while making written and oral submissions before the Parliamentary Committee.

19. According to the Ministry of Law and Justice (Department of Legal Affairs), the essential ingredients for attracting the disqualifications, as settled by the Supreme Court in number of cases, are that there must be (i) an office of profit (ii) such office must be an office of profit, it must be under the

Government of India or the Government of a State and such office must not be excluded from the operation of a Law made by Parliament. The School of Planning and Architecture (SPA) has been termed as a Standing body and there appears to be no government control over such body and body is an advisory body entrusted with functions relating to development plans and proposals for establishment of new Schools. 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. Under sub-rule (2) of Rule 4 of the School of Planning and Architecture (Council) Rules, 2016, the members if nominated, would be entitled to travelling and daily allowances which would be regulated under Salary, Allowances and Pension of Members of Parliament, Act, 1954. Thus, the payment would not exceed the 'Compensatory Allowance' as defined in Clause (a) of Section 2 of the Parliament (Prevention of Disqualification) Act, 1959. According to the Ministry of Law and Justice (Department of Legal Affairs), there does not appear to be any material to attract Article 102 (1) (a) of the Constitution and therefore, the nomination of Member of Rajya Sabha to the Council of SPA may not be considered as an 'Office of Profit' under the Parliament (Prevention of Disqualification) Act, 1959.

20. The Committee also agrees with the views of the Ministry of Law and Justice (Department of Legal Affairs), that the functions of the Council are advisory and recommendatory in nature and that there is no Government control over this body. The Lok Sabha & Rajya Sabha Members are to be nominated by the Speaker of Lok Sabha and the Chairman of Rajya Sabha and the SPA Act 2014, itself provides for their membership in the Council.

21. The Committee also note that the Council of SPA would also get covered under Section 3 (i) of the Act, if the member is not entitled to any remuneration other than compensatory allowance. In terms of sub-rule (2) of Rule 4 of the School of Planning and Architecture (Council) Rules, 2016, the members if nominated, would be entitled to travelling and daily allowances as

are admissible to them as Members of Parliament appointed to Committee and Commissions set up by the Government of India.

22. In view of the foregoing, the Committee are of the considered opinion that the nomination of Member of Rajya Sabha to the Council of the School of Planning and Architecture 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

31 January, 2018

11 Magha, 1939 (Saka)

SHRI KALRAJ MISHRA
Chairperson,
Joint Committee on Offices of Profit