

CONFIDENTIAL

CB-II No.

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

SEVENTH REPORT

Presented to Lok Sabha on 22.10.2008
Laid in Rajya Sabha on 22.10.2008

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**LOK SABHA SECRETARIAT
NEW DELHI**

**September, 2008/Asvina, 1930 (Saka)
Price:**

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JOINT COMMITTEE ON OFFICES OF PROFIT

Lok Sabha

- Shri Chandra Bhushan Singh - Chairman**
2. Shri Ananth Kumar
 3. Shri Ashok Argal
 - #4. Shri Rajiv Ranjan 'Lalan' Singh
 5. Shri Mohan Jena
 6. Shri S.K. Kharventhan
 7. Shri G. Nizamoddin
 8. Shri Nikhilananda Sar
 9. Shri Bharatsinh M. Solanki
 10. Shri Sita Ram Yadav

Rajya Sabha

11. Shri Silvius Condpan
- *12. Dr. Abhishek Manu Singhvi
- *13. Shri Arun Jaitley
- &14. Shri P.R. Rajan
15. Vacant

Secretariat

- Shri P.K. Grover - Joint Secretary
Shri R.S. Misra - Director
Shri K. Sarkar - Deputy Secretary - II

* Elected by Rajya Sabha on 28.7.2006 vice Sarvashri Manoj Bhattacharya, Ram Nath Kovind and K. Rama Mohana Rao who retired w.e.f. 2.4.2006 and Shri Saif-ud-din-Soz resigned on 29.1.2006 consequent upon his appointment as Union Minister.

& Elected to the Committee on 4.5.2007 vice Shri Chittabrata Majumdar passed away on 20.2.2007.

Elected to the Committee on 31-8-2007 vice Shri Ajit Kumar Singh passed away on 1-8-2007

INTRODUCTION

I, the Chairman of the Joint Committee on Offices of Profit, having been authorised by the Committee to present the Report on their behalf, present this Seventh Report of the Committee.

2. The matters covered in the Report were considered by the Joint Committee on Offices of Profit at their sitting held on 24 April, 2008. The Minutes of the sitting form part of the Report and is at Appendix I.

3. The Committee examined the composition, character, functions etc. of three bodies, namely World Food Programme (WFP) Trust, Coconut Development Board (CDB) and National Security Advisory Board (NSAB) with a view to considering whether sponsoring of the trust and the holders of the offices of membership in other two bodies would incur disqualification under Article 102 of the Constitution.

4. The detailed information regarding the composition, character, functions, emoluments and allowances payable to the members of these bodies was furnished by the Ministry of Agriculture (Department of Agriculture and Co-operation) and National Security Advisory Board Secretariat. The Committee wish to express their thanks to the Ministry of Agriculture and National Security Advisory Board Secretariat for furnishing the information desired by the Committee.

5. The Committee considered and adopted this Report at their sitting held on 3.10.2008.

6. The observations/recommendations of the Committee in respect of the matters considered by them are given in the respective Chapters of this Report. The recommendations of the Committee will, however, remain advisory in nature and as such can not give any protection from disqualification under the law until the recommendations are given statutory effect by the Government by suitably amending the Parliament (Prevention of Disqualification) Act, 1959.

NEW DELHI;

September, 2008
Asvina, 1930 (Saka)

CHANDRA BHUSHAN SINGH,
Chairman,
Joint Committee on Offices of Profit

CHAPTER-I

REPORT

Query as to whether sponsoring of the W.F.P Trust for India by a member of Parliament constitutes an 'office of profit.'

Rajya Sabha Secretariat forwarded on 12 March, 2008 a request received by them from Prof. M.S. Swaminathan, M.P. (Rajya Sabha) for consideration and opinion/recommendation of Joint Committee on Offices of Profit as to whether sponsoring of the W.F.P. Trust of India by Prof. M.S. Swaminathan would in any way render him liable for disqualification for being a member of Parliament. It was stated by them that he has known the World Food Programme for a very long time both in his official capacity in Government and as an independent Chairman of the F.A.O. Council during 1981-85. It has further been stated that a request has been made to him that he may sponsor the Trust named W.F.P. Trust for India to take advantage of Commitments of the private sector under their corporate social responsibility Programme.

1.2 In this connection, it is stated that the functioning of Joint Committee on Offices of Profit is based on Article 102 (1) (a) of the Constitution which reads as follows:

“102 (1) 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.”

It is also stated that in **Sivadas Menon Vs. Sunna Sahib (AIR 1977 Kerala 187)** the Kerala High Court observed that as far as Article 102 (1) (a) of the Constitution is concerned, to attract disqualification the office must be one 'under government.'

It is further stated that one of the criteria followed by Joint Committee on Offices of Profit for determining whether an office ought or ought not to disqualify the holder thereof for being chosen as, and for being, a member of Parliament is to see whether Government exercise control over the appointment to and removal from the office and over the performance and functions of the Office.

1.3 As regards provision in the Parliament (Prevention of Disqualification) Act, 1959 (amended in 2006) clause (l) of Section 3 of the Act provides for exemption from disqualification of the member holding the office of Chairperson or trustees in the Trust, whether public or private.

1.4 The Joint Committee on Offices of Profit considered the matter at their sitting held on 24 April, 2008 (Appendix – I).

1.5 The Committee note from information contained in the letter from Prof. M.S. Swaminathan that sponsoring of the trust does not constitute an office under the Government since the Government do not appear to exercise control over the appointment to and removal from the office of Chairperson or Trustee and over the performance and functions of the office. The office under the Government is an essential feature of Article 102 (1) (a) of the Constitution. The Committee feel that sponsoring of the Trust does not constitute an office under the Government if ‘sponsoring’ means that Prof. Swaminathan is a ‘settler’ of the Trust. The Committee also note that the Parliament (Prevention of Disqualification) Amendment Act, 2006 has also exempted from disqualification the Chairperson or trustees in a Trust, whether public or private.

1.6 The Committee therefore, feel that the member of Parliament (Prof. M.S. Swaminathan, M.P.) does not seem to attract disqualification for sponsoring the W.F.P. Trust for India from the angle of ‘office of profit’ under Article 102 (1) (a) of the Constitution.

- two members to be appointed by Central Government to represent the Ministries of the Central Government dealing with –
 - (i) Revenue; and
 - (ii) Civil Supplies and Cooperation
- three members to be appointed by the Central Government one each to represent the Governments of the States of Kerala, Tamilnadu and Karnataka, being the States wherein coconut is grown on a large scale;
- five members to be appointed by the Central Government by rotation in the alphabetical order to represent the States of Andhra Pradesh, Assam, Maharashtra, Orissa and West Bengal and the Union Territories of the Andaman and Nicobar Islands, Goa, Daman and Diu, Lakshadweep and Pondicherry;
- four members to be appointed by the Central Government, two to represent the coconut growers of the State of Kerala and one each to represent the coconut growers of the States of Tamilnadu and Karnataka;
- one member to be appointed by the Central Government to represent the coconut processing industry;
- two members to be appointed by the Central Government to represent such other interests connected with the coconut industry as, in the opinion of that Government, ought to be represented.

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It has also been stated that the Central Government may remove any member from the office on the following grounds:-

- (a) if he is of unsound mind and stands so declared by a competent court; or

- (b) if he is an undischarged insolvent; or
- (c) if he is convicted of an offence involving moral turpitude; or
- (d) if without the leave of the Chairman, he fails to attend three consecutive meetings of the Board.

TERM

- (i) A member shall hold office for a period not exceeding three years from the date of his appointment
- (ii) A member appointed under sub-section (4) of Section 4 shall cease to be a member of the Board if he ceases to be a member of the House of Parliament by which he was so elected, or cease to represent the category/interest from which he was so appointed.

Provided that a member shall be eligible for re-appointment

- (2) A person appointed to fill a casual vacancy under sub-rule (2) of Rule 3 shall hold office so long as the member whose place he fills would have been entitled to hold office, if the vacancy had not occurred.

REMUNERATION:-

It has been stated that no pay, sitting fee, House Rent Allowance, Compensatory Allowance and Honorarium are paid to any Member of Parliament who is a member of the Board. However, actual expenditure incurred for travelling to attend any meeting of the Board or any Committees of the Board is reimbursed to the Hon'ble Member as per the provisions of FRS Part (2) with a particular reference to the Ministry of Finance O.M.NO.F.6(26)/Act/E4/59 dated 5th September, 1960 and as amended from time to time.

POWERS AND FUNCTIONS:-

The main function of the Board is to promote, by such measures as it thinks fit, the development under the control of the Central Government of the coconut industry. In order to meet the provisions of the aforesaid objective, the Coconut Development Board Act, 1979 provide for the following measures-

- (a) adopting measures for the development of coconut industry so that farmers, particularly small farmers, may become participants in and beneficiaries of, the development and growth of coconut industry;
- (b) recommending measures for improving the marketing of coconut and its products in India;
- (c) imparting technical advice to any person who is engaged in the cultivation of coconut or the processing or marketing of coconut and its precuts;
- (d) providing financial or other assistance for the development of high yielding coconut hybrids, adoption of improved methods of cultivation of coconut, modern technology for processing of coconut and extension of areas under coconut cultivation (including replanting) with a view to improving the growth of coconut industry;
- (e) adopting such measures as may be practicable for assisting coconut growers to get incentive prices including recommending, as and when necessary, minimum and maximum prices for coconut and its products;
- (f) recommending measures for regulating import and export of coconut and its products;
- (g) collecting statistics from growers of coconut, dealers in coconut, manufacturers of coconut products and such other persons and institutions as may be prescribed, on any matter relating to coconut industry and publishing the statistics so collected or portions thereof or extracts therefrom.

- (h) fixing grades, specifications and standards for coconut and its products;
- (i) financing suitable schemes in consultation with the Central Government and the Government of the States where coconut is grown on a large scale, so as to increase the production of coconut and to improve its quality and yield; and for this purpose evolving schemes for award of prizes or grant of incentives to growers of coconut and the manufacturers of its products and for providing marketing facilities for coconut and its products;
- (j) assisting, encouraging, promoting or financing agricultural, technological, industrial or economic research on coconut and its products in such manner as the Board may deem fit by making use of available institutions;
- (k) undertaking such publicity and publishing such periodicals, books or bulletins, on the research and development of coconut and its products, as may be found necessary;
- (l) setting up of regional offices and other agencies for the promotion and development of production, grading and marketing of coconut and its products in coconut growing States and Union Territories for the efficient discharge of the functions and objectives of the Board;
- (m) such other measures as may, having regard to the purposes of this Act, be prescribed by the Central Government in consultation with the Government of the States where coconut is grown on a large scale.

It has also been stated by the Ministry that the Board directly undertakes the above functions in addition to the advisory functions. The Board also confers powers of disbursement of funds.

It has further been stated that the Board may enter into any contract for the discharge of the functions entrusted to it under the Act provided that:-

- (a) Every contract which extends over a period of more than three years or involve an expenditure in excess of Rupees one lakh and

(b) Every agreement or contract for technical collaboration or consultation services with firms or foreign Governments shall require the previous sanction of the Central Government.

2.3 The Joint Committee on Offices of Profit considered the matter at their sitting held on 24 April, 2008 (Appendix-I).

2.4 The Committee note from the information furnished by the Ministry of Agriculture (Department of Agriculture and Co-operation) that since the Central Government has powers in the appointment and removal of the members and also the Government exercises control over the performance and functions of the Board, the office of membership in Coconut Development Board becomes an ‘ Office under the Government’. The Committee also note that the non-official member of the Coconut Development Board is not given any remuneration. The payment of TA/DA etc. to the Member of Parliament is regulated as admissible to him under Salary, allowances and pension of Members of Parliament Act, 1954 which falls under the Compensatory Allowance as defined in Section 2 (a) of Parliament (Prevention of Disqualification) Act, 1959. The Committee also note that the Board neither has any powers of appointment/removal nor would it wield influence or power by way of patronage.

2.5 The Committee, therefore feel that the membership of Coconut Development Board does not seem to entail disqualification for being chosen as, or for being, a member of Parliament under Article 102 of the Constitution.

CHAPTER-III

Appointment of Dr. K. Kasturirangan, Member, Rajya Sabha as a member of the National Security Advisory Board (NSAB).

The Rajya Sabha Secretariat vide their Note No.RSS.I.D.12(1)/2003-Coord. dated 18 February, 2008 forwarded a request received by them from Deputy National Security Advisor & Secretary, National Security Council Secretariat to Lok Sabha Secretariat for placing the matter regarding appointment of Dr. K. Kasturirangan, member, Rajya Sabha as a member of the National Security Advisory Board (NSAB) before Joint Committee on Offices of Profit for its consideration. It was stated in the request that the Prime Minister had approved the appointment of Dr. K. Kasturirangan, Member of Parliament, Rajya Sabha as a Member of the NSAB for a period of two years.

3.2 As the information regarding the abovesaid Board was not sufficient to examine the matter from the angle of office of profit, the National Security Council Secretariat were requested again to furnish the detailed information on points such as remuneration, powers and functions etc. of the Board. The National Security Council Secretariat furnished the requisite information vide their letters No.C.172/1/2008-NSAB dated 3 and 18 March, 2008 extracts of which are reproduced below:

REMUNERATION

The Member of Parliament would receive no salary. Details of sitting fee, TA/DA and other facilities would be:

Sitting Fee: NSAB Members would be paid a sitting fee of Rs.1000/- for each plenary meeting. Members of the sub-groups attending various meetings will be entitled to a sitting fee of Rs.1000/- for each meeting of the sub-group.

TA/DA: (a) Executive Class airfare from the city of residence to New Delhi and back.

(b) Rs.500/- as Conveyance Allowance (taxi charges).

(c) Accommodation not costing more than a single room in a Five Star Hotel + the certified telephone calls and food.

Daily Allowance: Daily Allowance as admissible to members of any National Commission of Government of India. However, this will be admissible only to those members who prefer to make their own arrangements for boarding and lodging. Such members would be entitled to Daily Allowance @ 90% ordinary rates of DA admissible to the highest grade of Civil Servants for boarding purposes. The present rate is Rs.335/- per day (90% of which is Rs.302/-). Members who avail of boarding and lodging at Government expenses will not be entitled to any daily allowance.

No other allowances or honorarium are payable.

POWERS AND FUNCTIONS:

The National Security Advisory Board is a purely advisory body to the National Security Council. The functions of the Board are to advise the National Security Council (NSC) on issues relating to national security which may be referred to it by the Council, provide long-term prognoses and analyses and recommend solutions and policy options to the issues. The Board's advice is conveyed to the National Security Council through the National Security Adviser (NSA) institutionally and not on the basis of the views of individual Board members.

It has also been stated by them that the Board does not exercise executive, legislative or judicial powers and the functions of the Board are purely advisory in nature. It has further been stated by them that the Board does not confer powers of disbursement of funds, allotment of lands etc. and also the Board would neither have powers of appointment/removal nor would it wield influence or power by way of patronage.

3.3 The Joint Committee on Offices of Profit considered the matter at their sitting held on 24 April, 2008 (Appendix-I).

3.4 The Committee note from the information furnished by the National Security Advisory Board that since the appointment is made by the Government, the office of membership of NSAB becomes an office under the Government. The Committee further note the observation made by the Supreme Court in Shibu Soren Vs. Dayanand Sahay case that the amount received per day for attending meeting of the Jharkhand Area Autonomous Council was intended to meet out of pocket expenses and was in the nature of compensatory allowance and was not a

source of profit. The Committee also note that the Board does not exercise executive, legislative or judicial powers. The functions of the Board are purely advisory. The Committee further observe that the Board neither confers powers of disbursement of funds, allotment of lands, etc. nor wields influence or power by way of patronage.

3.5 The Committee therefore, feel that the appointment of the member of Parliament (Dr. K. Kasturirangan, M.P) as a member of the National Security Advisory Board (NSAB) would not entail disqualification for being chosen as, or for being, a member of Parliament under Article 102 (1) (a) of the Constitution.

NEW DELHI;

September, 2008
Asvina, 1930 (Saka)

CHANDRA BHUSHAN SINGH,
Chairman,
Joint Committee on Offices of Profit

APPENDIX - I

(Vide paras 1.4, 2.3 and 3.3 of Chapters I, II and III respectively)

**MINUTES OF THE SEVENTEENTH SITTING OF THE
JOINT COMMITTEE ON OFFICES OF PROFIT
(FOURTEENTH LOK SABHA)**

The Committee sat on Thursday, 24 April, 2008 from 1500 hrs. to 1540 hrs in Chairman's Room No.136, First Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Chandra Bhushan Singh - Chairman

MEMBER (LOK SABHA)

2. Shri Mohan Jena
3. Shri G. Nizamoddin
4. Shri Nikhilananda Sar

MEMBERS (RAJYA SABHA)

5. Dr. Abhishek Manu Singhvi
6. Shri P.R. Rajan

SECRETARIAT

Shri P.K. Grover - Joint Secretary

Shri Kusal Sarkar - Deputy Secretary

2. At the outset, the Chairman welcomed the members to the sitting of the Committee.

3. Thereafter, the Committee considered Memorandum No.18 relating to a query from Prof. M.S. Swaminathan, M.P. (Rajya Sabha) as to whether sponsoring of the W.F.P. Trust for India constitutes an 'office of profit'. The Committee observed that a request had been made to Prof. Swaminathan to sponsor the Trust as he had known the World Food Programme from a very long time (both in his official capacity in Government and as an independent Chairman of the F.A.O. Council during 1981-85). The Committee noted that the Government do not exercise control over the appointment to and removal from the office and over the performance and functions of the office. Therefore, the Committee felt that sponsoring of the trust does not constitute an office under the Government if 'sponsoring' meant that Prof. Swaminathan was a 'settler' of the Trust. The Committee further observed that the Parliament (Prevention of Disqualification) Amendment Act, 2006 has also exempted from disqualification the Chairpersons or trustees in a trust, whether public or private.

The Committee therefore, felt that the member of Parliament (Prof. M.S. Swaminathan, M.P.) would not attract disqualification for sponsoring the W.F.P. Trust for India from the angle of 'office of profit'.

4. Thereafter, the Committee considered Memorandum No.19 regarding the clarification as to whether the office of member of Coconut Development Board would attract disqualification under Article 102 of the Constitution. The Committee noted that the non-official members of the Board were not given any remuneration. The Committee also noted that the payment of TA/DA etc. to the Member of Parliament were regulated as admissible to him under Salary, Allowances and pension of Members of Parliament Act, 1954 which falls under the Compensatory Allowance as defined in Section 2 (a) of Parliament (Prevention of Disqualification) Act, 1959. The Committee further noted that the Board neither wields influence or power by way of patronage nor has any powers of appointment/removal.

The Committee therefore felt that the holder of membership of Coconut Development Board would not entail disqualification for being chosen as, or for being, a member of Parliament.

5. The Committee then considered Memorandum No.20 regarding appointment of Dr. K. Kasturirangan, member, Rajya Sabha as a member of the National Security Advisory Board (NSAB). The Committee noted that member of Parliament would receive no salary but would be paid a sitting fee of Rs.1000/- for each plenary meeting. The Committee noted the observation made by Supreme Court in Shibu Soren Vs. Dayananad Sahay case that the amount received per day for attending meeting of the Jharkhand Area Autonomous Council was intended to meet out of pocket expenses and was in the nature of compensatory allowance and was not a source of profit. The Committee further noted that the board does not exercise executive, legislative or judicial powers and its functions are purely advisory in nature. The Committee also noted that the Board neither confers powers of disbursement of funds, allotment of lands etc. nor would wield influence or power by way of patronage.

The Committee therefore felt that the said appointment of the member of Parliament (Dr. K. Kasturirangan, M.P.) as a member of the National Security Advisory Board would not entail disqualification for being chosen as, or for being, a member of Parliament.

The Committee then adjourned.

APPENDIX-II

XIX

EXTRACTS OF THE NINETEENTH SITTING OF THE
JOINT COMMITTEE ON OFFICES OF PROFIT
(FOURTEENTH LOK SABHA)

The Committee sat on Friday, 3 October, 2008, from 1500 hrs. to 1610 hrs in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Chandra Bhushan Singh - Chairman

MEMBER (LOK SABHA)

2. Shri Ashok Argal
3. Shri Rajiv Ranjan 'Lalan' Singh
4. Shri Mohan Jena
5. Shri S. K. Kharventhan
6. Shri G. Nizamoddin
7. Shri Nikhilananda Sar

MEMBER (RAJYA SABHA)

8. Shri Silvius Condpan

SECRETARIAT

Shri R.S. Misra - Director

Shri Kusal Sarkar - Deputy Secretary-II

2. At the outset, the Chairman welcomed the members to the sitting of the Committee.

9. The Committee, then took up the draft Seventh and Eighth Reports for consideration and adopted the same without any modification. Thereafter, the Committee authorized the Chairman to present the same to Parliament.

The Committee then adjourned.