

CB-II No. _____

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

FOURTH REPORT

Presented to Lok Sabha on 30.8.2011
Laid in Rajya Sabha on 30.8.2011



**LOK SABHA SECRETARIAT
NEW DELHI**

August, 2011/Bhadrapada, 1933(Saka)

Price : _____

CONTENTS

	PAGE
COMPOSITION OF THE JOINT COMMITTEE ON OFFICES OF PROFIT	(iii)
INTRODUCTION.....	(v)

REPORT

Appointment of Members of Parliament as Members on the National Oilseeds and Vegetable Oils Development (NOVOD) Board.

APPENDICES

APPENDIX-I	Extracts of the Minutes of the sitting held on 20 October, 2010.
APPENDIX-II	Extracts of the Minutes of the sitting held on 4 January, 2011.
APPENDIX-III	Minutes of the sitting held on 24 August, 2011.

**COMPOSITION OF JOINT COMMITTEE ON OFFICES OF PROFIT
(FIFTEENTH LOK SABHA)**

Shri Rewati Raman Singh - **Chairman**

**MEMBERS
LOK SABHA**

2. Shri Vijay Bahuguna
3. Shri P.C. Chacko
4. Shri Dara Singh Chauhan
5. Shri Sanjay Dhotre
6. Shri Prataprao Ganpatrao Jadhav
7. Shri Vishwa Mohan Kumar
8. Shri Rajendrasinh Rana
9. Shri Sarvey Sathyanarayana
10. Shri Ashok Tanwar

RAJYA SABHA

11. Shri S.S. Ahluwalia
12. Shri Janardan Dwivedi
13. Dr. Bharatkumar Raut
14. Shri P.R. Ranjan
15. Smt. Mohsina Kidwai

SECRETARIAT

1. Shri Deepak Mahna - Joint Secretary
2. Shri Shiv Kumar - Director
3. Shrimati Maya Lingi - Deputy Secretary

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 Fourth Report of the Committee.

2. The matter covered in the Report was considered by the Committee at their sittings held on 20 October, 2010 and 4 January, 2011. The Minutes of the sitting form part of the Report and are at Appendix – I and II.

3. The Committee examined the composition, character, functions, etc. of the National Oilseeds and Vegetable Oils Development (NOVOD) Board with a view to consider as to whether the appointment of Members of Parliament as Members on the NOVOD Board would attract disqualification from the angle of ‘office of profit’ under Article 102 (1) (a) of the Constitution.

4. The detailed information regarding the composition, character, functions, emoluments and allowances payable to the Members of NOVOD Board was furnished by the Ministry of Agriculture (Department of Agriculture and Co-operation). The Committee took oral evidence of Ministry of Law and Justice (Department of Legal Affairs and Legislative Department) at their sitting held on 04 January, 2011.

5. The Committee considered and adopted this Report at their sitting held on 24 August, 2011(Appendix-III).

6. The Committee wish to express their thanks to the Ministry of Agriculture for furnishing the information desired by the Committee. They also wish to express their thanks to the Ministry of Law and Justice (Department of Legal Affairs and Legislative Department) for appearing before the Committee and placing their considered views in the matter.

7. The observations/recommendations of the Committee in respect of the matters considered by them are given at the end of the Report in bold words. 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;

August, 2011
Bhadrapada, 1933 (Saka)

REWATI RAMAN SINGH,
Chairman,
Joint Committee on Offices of Profit

REPORT

Appointment of Members of Parliament as Members on the National Oilseeds and Vegetable Oils Development (NOVOD) Board.

The Ministry of Agriculture (Department of Agriculture & Cooperation) vide their O.M. No.2-4/2009-CA VI dated 8 March, 2010 sought opinion of Joint Committee on Offices of Profit as to whether the appointment of two Members of Lok Sabha namely Sarvashri Dilip Kumar Mansukhlal Gandhi, M.P. and Suresh Kumar Shetkar, M.P. duly elected by Lok Sabha as Members of the NOVOD Board would attract disqualification from the angle of 'office of profit'.

1.2 As the aforesaid request was not accompanied by the adequate details, the Ministry of Agriculture (Department of Agriculture and Cooperation) were requested to furnish further information on some points such as functions, remuneration, term of Members, etc. The Ministry furnished the requisite information vide their O.M.No.2-4/2009-CA.VI dated 15 April, 2010, extracts of which are reproduced below:

- Section 4 (4) (e) of the NOVOD Act, 1983 provides that the NOVOD Board among others, shall consist of two members elected by the Lok Sabha and one member elected by the Rajya Sabha.
- Generally the tenure of Members of Parliament elected to be members of the NOVOD Board is for a period not exceeding 3 years. However, a Member of Parliament ceases to be Member of the Board, if he ceases to be a member of the House of the Parliament to which he/she belongs.
- The Members of Parliament as Members of the Board participate in the proceedings of the Board, as and when it meets.
- No remuneration is paid to the MPs separately. Their travelling and other allowances are regulated in accordance with the Salary, Allowances and Pension of Members of Parliament Act, 1954.
- The NOVOD Board Act, 1983 provides for the development under the control of the Union of the Oilseeds Industry and for matters connected therewith.
- The Board is vested with executive powers only

- The Board, confers the powers of disbursement of funds related to development of oilseeds in the country.

1.3 It may be mentioned in this connection that the Joint Committee on Offices of Profit of 1955, also known as Bhargava Committee, had felt (para 72 of the Report) that when Parliament itself elects one of its Members to serve on a body, the question of receiving patronage from the Government which will affect the independence of the Member does not arise and, therefore, recommended that such Members should be saved from disqualification.

1.4 In terms of section 3 (i) of the Parliament (Prevention of Disqualification) Act, 1959, the office of member of any Statutory body (other than those specified in the schedule and clause (h) of the Act) shall not, in so far as it is an office of profit under the Government of India or the Government of any State, disqualify the holder thereof for being chosen as, or for being, a Member of Parliament; if the holder of such office is not entitled to any remuneration other than 'compensatory allowance'.

1.5 The Committee considered the matter at their sitting held on 20 October, 2010 and 04 January, 2011 respectively (APPENDIX-I&II).

1.6 The Committee observe that the proposed appointment of the two Members of Lok Sabha namely Sarvashri Dilip Kumar Mansukhlal Gandhi and Suresh Kumar Shetkar to the NOVOD Board, a Statutory body, is in pursuance of their election by Lok Sabha to the Membership of the Board as per section 4 (4) (e) of the NOVOD Act, 1983. The Committee also discussed the matter in the light of section 3 (i) of the Parliament (Prevention of Disqualification) Act, 1959. The Committee, however, note that no remuneration is paid to the MPs separately and their travelling and other allowances are regulated in accordance with the Salary, Allowances and Pension of Members of Parliament Act, 1954.

As such, the allowances fall within the limit of 'Compensatory Allowance' defined under section 2 (a) of the Parliament (Prevention of Disqualification) Act, 1959. The Committee, feel that though the rigours of article 102 (1) (a) of the Constitution do not appear to be attracted in this case, however, there should be an express provision either in the Act requiring election of Members of Parliament for appointment to a Government body or in the Parliament (Prevention of Disqualification) Act, 1959 exempting from disqualification the members who are elected by Parliament for appointment as a member of body under the control of Government. The Committee feel that this would dispel apparent conflict in the provisions of some statutes requiring election of Members of Parliament for appointment to Government bodies vis-à-vis article 102 (1) (a) of the Constitution. The Committee also decided to obtain/hear the views of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) on this issue.

1.7 The Committee note from the views of the Secretary (Legal Affairs) expressed at the sitting of the Committee held on 04 January, 2011 that the office of member of NOVOD Board held by Member of Parliament cannot be termed as an Office of Profit for the purpose of article 102 (1) (a) in the light of the provisions of the NOVOD Act as he is not entitled to any monetary benefit other than TA or DA which will be in the nature of compensatory allowances. Further the Committee noted from the views of Secretary (Legislative Department) that the Members of Parliament if appointed as Members of the NOVOD Board would be holding an Office of Profit, unless otherwise specifically exempted, as the said office involves exercising of Financial and Legislative

functions. The Committee took note of the conflicting opinions given by the Secretary (Legal Affairs) and the Secretary (Legislative Department). In view thereof, the Committee reiterated the earlier stand taken by the Committee that there should be an express provision in the Parliament (Prevention of Disqualification) Act, 1959 exempting from disqualification the members who are elected by Parliament for appointment as a member of body under the control of Government. The matter regarding making of an express provision in the Parliament (Prevention of Disqualification) Act, 1959 for exempting members so elected is being examined by the Joint Committee on Offices of Profit separately.

REWATI RAMAN SINGH
Chairman
Joint Committee on Offices of Profit

NEW DELHI
August, 2011
Bhadrapada, 1933 (Saka)

APPENDIX-I

(vide para 1.5 of the Report)

**EXTRACTS OF THE MINUTES OF EIGHTH SITTING OF THE JOINT COMMITTEE
ON OFFICES OF PROFIT (FIFTEENTH LOK SABHA) HELD ON
20 OCTOBER, 2010**

The Committee sat on Wednesday, 20 October, 2010 from 1500 hrs to 1545 hrs in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Rewati Raman Singh - Chairman

**MEMBERS
LOK SABHA**

2. Shri Vijay Bahuguna
3. Shri P.C. Chacko
4. Shri Sanjay Dhotre
5. Shri Rajendrasinh Rana
6. Shri Sarvey Sathyanarayana

RAJYA SABHA

7. Shri S.S. Ahluwalia
8. Shri Bharkumar Raut

SECRETARIAT

1. Shri A. Louis Martin - Joint Secretary
2. Smt. Neera Singh - Director
3. Shri J.M. Baisakh - Additional Director
4. Smt. Maya Lingi - Deputy Secretary

2. At the outset, the Chairman welcomed the members to the sitting of the Committee and apprised them about the agenda of the sitting.

3. The Committee then took up for consideration Memorandum No.6 regarding appointment of Members of Parliament as members in the National Oilseeds and Vegetable Oils Development (NOVOD) Board. The Committee observed that the proposed appointment of the two members of Lok Sabha namely Sarvashri Dilip Kumar Mansikhlal Gandhi and Suresh Kumar Shetkar to the NOVOD Board, a statutory body, is in pursuance of their election by Lok Sabha to the membership of the Board as per Section 4 (4) (e) of the NOVOD Act, 1983. The Committee also

observed that in terms of Section 3 (i) of the Parliament (Prevention of Disqualification) Act, 1959 the office of member of any statutory body (other than those specified in the schedule and clause (h) of the Act) shall not, in so far as it is an office of profit under the Government of India or the Government of any State, disqualify the holder thereof for being chosen as, or for being, a member of Parliament, if the holder of such office is not entitled to any remuneration other than 'compensatory allowance'. The Committee further noted that no remuneration is paid to the MPs separately and their travelling and other allowances are regulated in accordance with the Salary, Allowances and Pension of Members of Parliament Act, 1954. As such, the allowances fall within the limit of 'Compensatory Allowance' defined under Section 2 (a) of the Parliament (Prevention of Disqualification) Act, 1959. The Committee felt that though the rigours of Article 102 (1) (a) of the Constitution did not appear to be attracted in this case, there should be an express provision either in the Act requiring election of members of Parliament for appointment to a Government body or in the Parliament (Prevention of Disqualification) Act 1959 exempting from disqualification, the members who are elected by Parliament for appointment as a member of body under the control of Government. The Committee felt that this would dispel apparent conflict in the provisions of some statutes requiring election of members of Parliament for appointment to Government bodies vis-à-vis article 102 (1) (a) of the Constitution. The Committee then decided to obtain/hear the views of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) on this issue.

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The Committee then adjourned.

APPENDIX-II

(Vide para 1.5 of the Report)

EXTRACTS OF THE MINUTES OF NINTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (FIFTEENTH LOK SABHA) HELD ON 4 JANUARY, 2011

The Committee sat on Tuesday, 04 January, 2011 from 1500 hrs to 1610 hrs in Committee Room No. '53', First Floor, Parliament House , New Delhi.

PRESENT

Shri Rewati Raman Singh - Chairman

MEMBERS LOK SABHA

2. Shri Vijay Bahuguna
3. Shri Sanjay Dhotre
4. Shri Prataprao Ganpatrao Jadhav
5. Shri Vishwa Mohan Kumar
6. Shri Sarvey Sathyanarayana
7. Shri Ashok Tanwar

RAJYA SABHA

8. Shri S.S. Ahluwalia
9. Shri Janardan Dwivedi
10. Shri Bharatkumar Raut

SECRETARIAT

1. Shri A. Louis Martin - Joint Secretary
2. Smt. Neera Singh - Director
3. Smt. Maya Lingi - Deputy Secretary

WITNESSES

Representatives of Ministry of Law & Justice

Department of Legal Affairs

1. Shri D.R. Meena, Law Secretary
2. Shri Satish Chandra, Joint Secretary

Legislative Department

1. Shri V.K. Bhasin, Legislative Secretary
2. Shri Sanjay Singh, Joint Secretary and Legislative Counsel

2. The Committee heard the views of the representatives of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) regarding the proposed appointment of Members of Parliament as members in the National Oilseeds and Vegetable Oils Development (NOVOD) Board.

3. According to the Secretary (Legal Affairs), the office of member of NOVOD Board held by Member of Parliament cannot be termed as an Office of Profit for the purpose of Article 102 (1) (a) in the light of the provisions of the NOVOD Act as he is not entitled to any monetary benefit other than TA or DA which will be in the nature of compensatory allowances. The Secretary (Legislative Department) was, however of the opinion that Members of Parliament if appointed as members of the NOVOD Board would be holding an Office of Profit, unless otherwise specifically exempted, as the said office involves exercising of Financial and Legislative functions. The Committee pointed out the conflicting opinions given by the Secretary (Legal Affairs) and the Secretary (Legislative Department) and stressed that there should be an express provision in the Parliament (Prevention of Disqualification) Act, 1959 exempting from disqualification, the members who are elected by Parliament for appointment as a member of body under the control of Government.

4. The Committee also desired the Ministry of Law & Justice to come out with an exhaustive list of offices in bodies/committees under the Government, which would not disqualify the holder thereof for being chosen as, or for being a Member of Parliament.

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The Committee then adjourned.

APPENDIX – III

MINUTES OF THE FIFTEENTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (FIFTEENTH LOK SABHA) HELD ON 24 AUGUST, 2011

The Committee met on Wednesday, 24 August, 2011 from 1500 hrs to 1530 hrs in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi. \

PRESENT

Shri Rewati Raman Singh - Chairman

MEMBERS LOK SABHA

2. Shri Vijay Bahuguna
3. Shri Sanjay Dhotre
4. Shri Ashok Tanwar

RAJYA SABHA

5. Dr. Bharatkumar Raut

SECRETARIAT

1. Shri Deepak Mahna - Joint Secretary
2. Shri Shiv Kumar - Director

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

3. The Committee, then took up the draft Second, Third and Fourth Reports for consideration and adopted the same without any modification. Thereafter, the Committee authorised the Chairman to present the same to Parliament.

The Committee then adjourned.

