

CB-II (JCOP) No.

JOINT COMMITTEE ON OFFICES OF PROFIT
(SIXTEENTH LOK SABHA)

TWENTY SEVENTH REPORT

Presented to Lok Sabha on *07.08.2018*

Laid in Rajya Sabha on *07.08.2018*



सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI

August, 2018 / Shravana, 1940 (Saka)

Price : _____

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

\$ Shri Kalraj Mishra - **Chairperson**

MEMBERS

LOK SABHA

2. Shri T.G. Venkatesh Babu
3. Adv. Sharad Bansode
4. Smt. Meenakshi Lekhi
5. Shri Bhagwant Maan
6. Shri M.K. Raghavan
7. Prof. Saugata Roy
8. Smt. Supriya Sule
- #9. Kunwar Pushpendra Singh Chandel
- #10. Shri Janardan Mishra

RAJYA SABHA

- *11. Shri Manas Ranjan Bhunia
- *12. Shri Mahesh Poddar
- &13. Vacant
- &14. Vacant
- &15. Vacant

SECRETARIAT

- | | | |
|----|-----------------------|---------------------|
| 1. | Dr. Preeti Srivastava | Joint Secretary |
| 2. | Smt Rita Jaikhani | Director |
| 3. | Smt. Maya Lingi | Additional Director |
| 4. | Smt. Seema Sharma | Committee Assistant |

\$ Appointed as Chairperson *vide* Bulletin Part-II dated 08.01.2018 (Para No.6262) *vice* Dr. Satyapal Singh resigned from the Chairpersonship of the Committee w.e.f. 04.09. 2017.

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.

***** Elected as Members of the Committee *vide* Bulletin Part-II (Rajya Sabha) dated 22.12.2017 (Para No.57264) and Bulletin Part-I (Lok Sabha) dated 27.12.2017 (para No.4) *vide* Shri Dilipbhai Pandya and Shri Sukhendu Sekhar Roy retired from Rajya Sabha w.e.f. 18 August, 2017.

& Shri Sharad Yadav ceased to be the Member of the Committee consequent upon his disqualification from membership of Rajya Sabha on 04 December, 2017; Shri Naresh Aggarwal ceased to be the Member of the Committee consequent upon expiration of his term of Rajya Sabha on 02 April, 2018 and Shri C.P. Narayanan ceased to be the Member of the Committee consequent upon expiration of his term of Rajya Sabha on 01 July, 2018.

INTRODUCTION

1. 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 Seventh Report of the Committee.

2. The Committee examined the term, composition, character, functions, etc., of the Board of Directors of the Andaman & Nicobar Islands Integrated Development Corporation (ANIIDCO) in detail with a view to consider as to whether the nomination of Member of Parliament (Lok Sabha) on the Board of Directors of the Andaman & Nicobar Islands Integrated Development Corporation (ANIIDCO) would attract disqualification from the angle of 'office of profit' or not under Article 102 (1) (a) of the Constitution of India. In this connection, oral evidence of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) was also taken in the Committee's sitting held on Wednesday, 25th April, 2018.

3. After detailed deliberations, the Committee considered and adopted this Report at their sitting held on Wednesday, 25th July, 2018.

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:
02 August, 2018
11 Shravana, 1940 (Saka)

SHRI KALRAJ MISHRA
Chairperson,
Joint Committee on Offices of Profit

REPORT

Nomination of Member of Parliament on the Board of Directors of Andaman & Nicobar Islands Integrated Development Corporation Ltd., (ANIIDCO).

.....

The Andaman and Nicobar Administration Secretariat *vide* its DO Letter No.2-344/ANIIDCO/PL/2008-09/PF-I/2456 dated 06th September, 2017 (Annexure-I) has requested to examine the issue of nomination of Shri Bishnu Pada Ray, Hon. Member of Parliament (Lok Sabha) on the Board of Directors of Andaman and Nicobar Islands Integrated Development Corporation Ltd., (ANIIDCO) from the angle of 'Office of Profit'.

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 -

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) has laid down which offices would not disqualify holders thereof from the membership of Parliament. The offices exempted from disqualification have been indicated in Section 3 of the said Act.

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 Offices of Profit, in their Tenth Report (07th Lok Sabha), presented to Lok Sabha on 07th May, 1984 (Annexure-III), have observed as under : -

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 in view the above position, the Joint Committee on Offices 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.

10.6 If reply to any of the above criteria is in affirmative then the office in question will entail disqualification."

5. 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".

6. As per the information furnished by the Director of Industries, Andaman and Nicobar Administration letter No.2-344/ANIIDCO/PL/2008-09/PF-I/2869 dated 13th October, 2017 (Annexure-IV), Port Blair, Andaman and Nicobar Islands Integrated Development Corporation Limited (ANIIDCO Ltd.) is incorporated under Section 617 of the Companies Act, 1956 as a Government Company. The Lt. Governor has the power to nominate the Board of Directors in the Board of ANIIDCO. The Board of Directors shall comprise not less than 03 members and not more than 12 members. The Lt. Governor may nominate for such period he may deem fit, the members of the Board from amongst officials of the Andaman and Nicobar

Administration, the Union of India, their agencies and Corporations and others. The proportion of non-officials, if appointed, shall not exceed one third of the total membership of the Board. As per the provisions of the Articles of Association of ANIIDCO, all the powers to run the Corporation is vested with the Board of Directors, however, the Board of Directors has delegated its powers to the Managing Director and other officials of the Corporation. As per the provisions of the Articles of Association, the Lt. Governor may nominate the Board of Directors on the Board of ANIIDCO or withdraw the nomination of Directors from the Board of ANIIDCO. The period of appointment of non-official Director is three years.

7. As per the information furnished by the UT Administration, the Member of the Board gets sitting fee of Rs. 5,000/- per meeting for attending the Board meeting. In addition, the Member of Board is also entitled for travelling expenses, accommodation etc. in actual for attending the Board Meeting. Apart from sitting fee, travelling expenses etc., the Members are also entitled to get 50% discount on food for personal consumption at Megapode Resort which is run by ANIIDCO. But no regular allowances are being paid to the member of the Board. The provisions relating to appointment of the Board of Directors and its powers and functions have been elaborated in Clauses 73-78 of the Articles of Association. The powers and functions of the Board of Directors are mentioned in clauses 77 and 78 of the Articles of Association of ANIIDCO (Annexure-V). The Board's power include power of appointment and removal of Officers also.

8. The Committee sought the opinion of Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) in this matter. The Legislative Department *vide* OM F. No. 17/(20)/2017-Leg. III (Annexure-VI) dated 21st December, 2017 have *inter-alia* opined as follows:-

“.....5. Constitution and powers of Board of Directors:-

5.1 On going through the Memorandum & Articles of Association, it has been noted that, articles 73 and 74 provides for the Number of Directors and appointment of Directors. Section 74(e) provides for the composition of Board. However, there is no specific provision for appointment of Members of Parliament as Members of Board of Directors and it simply says that the Lt. Governor may nominate for such periods he may deem fit, the members of the Board from amongst officials of the A & N Administration, the Union of India, their agencies and corporations and others.

5.2 Section 78 of the Memorandum and Articles of Association provides for the specific powers of the Board, which includes powers to acquire property, to authorise the undertaking of works of a capital nature, to pay for any property acquired, etc., to secure contracts by mortgage, to appoint officers, to remove or suspend them, to authorise endorsement of cheques etc. to appoint attorney etc. Hence it is felt that the Board of Directors, to which the Member of Parliament is a Member would be able to wield influence of power by way of patronage.

6. When a member holding an 'Office' is entitled to certain emoluments (like sitting fee, discount coupon etc.), it is also necessary to examine as to whether the remuneration is covered under "Compensatory Allowance" defined in Section 2(a) of Parliament (Prevention of Disqualification) Act, 1959. As per the documents provided in the present case, the member will be getting Rs. 5,000/- per sitting in addition to travelling and other allowances and apart from sitting fee, the member is also entitled to get 50% discount on food personal consumption, meaning thereby the remuneration receivable by a member of the Board of Directors is not covered under 'compensatory allowance'. Further, the power of appointment of member is with the Government, which has been considered as an important test by the Hon. Supreme Court in a catena of case involving office of profit issues.

7. Accordingly, existence of the factors mentioned in paragraphs 5 and 6 suggest the elements of "Office of Profit" and the same

may invite disqualification to the holder of the office of the Board of Directors of the ANIIDCO.

13. The Department of Legal Affairs had initially submitted their written opinion *vide* note dated 22nd December, 2017, which was different from and quite contradictory to the opinion given by the Legislative Department.

14. In view of the contradictory opinion furnished by the Legislative Department and Department of Legal Affairs in this matter, both these Departments of the Ministry of Law and Justice were called for oral evidence on Wednesday, 25th April, 2018. The Committee desired to have clarification and specific comments of the Department of Legal Affairs on certain points. However, the Department could not give any satisfactory explanation on the points raised by the Committee. The Committee, therefore desired that the matter may be re-examined by the DLA and their considered opinion be furnished. (Appendix-1)

15. Accordingly, the Ministry of Law and Justice (Department of Legal Affairs) *vide* note dated 19th June, 2018 (Annexure-VII) have furnished revised comments as follows :-

“.....8. In the present matter, in reply by ANIIDCO to query(s) raised by the Lok Sabha Secretariat it is mentioned that ANIIDCO is a Government company incorporated under Section 617 of the Companies Act, 1959 and the term of the Member of Parliament as a Public representative in the Board of Director will be as a non-official Director as nominated by Lt. Governor is three years. Further, as per the provisions of the Articles of Association the power to nominate and remove Board of Directors vests in the Lt. Governor of Andaman & Nicobar. As regards the powers of Board of Directors, it is stated that no executive, legislative or judicial powers are being exercised with any powers of disbursement of funds, allotment of lands etc. Further, Board of Directors does not

wield influence of power by way of patronage.

9. As regards allowances etc., the Member of Board is getting sitting fee of Rs.5,000/- (Rs. Five thousand only) per meeting for attending the Board meeting and in addition, the Member of Board is also entitled for travelling expenses, accommodation etc. on actual for attending the Board meeting. That, apart from sitting fee, the Member of Board is also entitled to get 50% discount on food for personal consumption which is run by ANIIDCO.
10. In view of the above position (particularly paras 8 & 9 above) the nomination of Member of Parliament in the Board of Directors of ANIIDCO may be considered to be an office of profit under the Government and the same may attract disqualification as mentioned under Article 102 (1)(a) of the Constitution of India.....”

16. As Andaman and Nicobar Islands Integrated Development Corporation Ltd. is a Government Company, the Committee also considered it important to take into account the Guidelines issued by the Government regarding MP's nomination to the Boards of Public Sector Undertakings. The relevant extract from the Report of the Krishna Menon Committee on State Undertakings and Government's decision thereon are reproduced as under:

42. Members of Parliament on Boards

A more difficult question to decide arises in the matter of Members of Parliament or Legislative Assemblies, and whether they should be members of Boards of Management. The overwhelming weight of Considerations must be against it. Such membership even if it carries no emoluments, carries much power and patronage. The Member of Parliament concerned is part of the organ of public control and is exponent of public criticism in Parliament. As a Director or part of a concern's administration he is responsible for the very conduct and affairs which Parliament, and therefore, he is called upon to examine, criticize and judge. Having specialized and inside knowledge, he can use it in Parliament and elsewhere, when he has disagreements with his colleagues on the Board and wishes to take a line apart from the team of which he is a Member. His colleagues who are not Members of Parliament like himself

cannot reply. They are 'officials' – employed in State Undertakings. His Parliamentary colleagues are also at a disadvantage because he purports to speak from expert and inside knowledge. The Minister finds himself in a very embarrassing position when the matter is debated in the House.

43. There is also the further consideration for whom does he speak?
 (1) If he speaks for the industry in Parliament he takes the place of the Minister; (2) if he speaks for the Board as Managing Director or Chairman, being one himself, then he has greater facilities which other MPs do not have; (3) if he turns critic, he places every one including the industry in an adverse position.
44. It will be understood that such a Member of Parliament, who is not a member of Government, cannot take over the functions and duties of a Minister. He cannot be a critic for the reasons stated above. Thus, he can neither defend nor criticize, for as Chairman or a Director of the Company concerned he has access to information which others do not have and which he should not use. Therefore, if a Member of Parliament is Chairman or even a Director, he would disqualify himself for participation in discussions in regard to the concern he is associated with, and there would be severe limitations in regard to his participation in debates on similar concerns or State concerns as a whole. On the other hand, he cannot be obliged to sit in Parliament unconcerned, when the debate is on matters of which he has knowledge. This, in effect, would prevent him from functioning fully as a Member of Parliament. If, on the other hand, he were to use his position and his knowledge, then he places the concern of which he is an active and responsible part and the Board at a great disadvantage as well as in a position of embarrassment. His colleagues and the concern are not represented in Parliament except through the Minister. Conflicts will arise as to whom the Minister represents. In the result, therefore, appointment of Members of Parliament in Corporations is altogether an unhealthy practice and is difficult to justify.

Government's Decision on the above Recommendation

"Members of Parliament should not be appointed to Boards of Directors".

17. Comments of the Department of Public Enterprises (DPE), Ministry of Heavy Industries and Public Enterprises were sought to ascertain applicability of these guidelines to ANIIDCO. The DPE vide OM F.No.1(27)/2014-Coord.(DPE) dated 18th April, 2018 (Annexure-VIII)-stated that in terms of provisions of DPE OM dated 13th October, 1972 and 20th April, 1982 sitting Members of Parliament should not be appointed to Boards of Directors of CPSEs. As regards the applicability of DPE guidelines, it is mentioned that DPE deals with matters relating to Central Public Sector Enterprises (CPSEs) and therefore, DPE guidelines are applicable only to CPSEs, which for the purpose of Public Enterprises Survey laid in the Parliament, are defined as Government Companies in which more than 50% equity is held by the Central Government. The subsidiaries (registered in India) of these companies in which any CPSE has more than 50% equity are also categorized as CPSEs. As per DPE, since ANIIDCO is not a CPSE as per above definition, DPE guidelines are not applicable in this case.

18. The Joint Committee on Offices of Profit took oral evidence of the Ministry of Heavy Industries and Public Enterprises (Department of Public Enterprises) also with the Ministry of Law and Justice (Legislative Department and the Department of Legal Affairs) on the issue, at their sitting held on Wednesday, 25th April, 2018. The Secretary, DPE reiterated the earlier submission and apprised the Committee that it is not a Central Public Sector Enterprises.

Observations/Recommendations

19. The Committee note that the Andaman and Nicobar Islands Integrated Development Corporation Ltd., (ANIIDCO) incorporated under Section 617 of the Companies Act, 1956 as a Government Company. The relevant provisions relating to appointment of the Board of Directors and its powers and functions are under Clauses 73-78 of the Memorandum and Articles of Association. Clauses 77 and 78 specifically deal with the powers and functions of the Board of Directors. As per these provisions all the powers to run the Corporation is vested with the Board of Directors. The Board also has power of appointment and removal of officers under Clause 78(e) of the Articles of Association. The Board of Directors shall comprise not less than 03 members and not more than 12 members. The Lt. Governor may nominate for such period he may deem fit, the members of the Board from amongst officials of the Andaman and Nicobar Administration, the Union of India, their agencies and Corporations and others. The period of appointment of non-official Director is three years. The Lt. Governor may also withdraw the nomination of Directors from the Board of ANIIDCO. Thus, the power of appointment of member is with the Government, which has been considered as an important test by the Hon. Supreme Court in a number of case involving office of profit issues and is one of the criteria followed by the Committee in determination of such cases.

20. The Committee further note that Member of the Board is entitled for a sitting fee of Rs. 5,000/- per meeting for attending the Board meeting. In addition, the Member of Board is also entitled for travelling

expenses, accommodation etc. as per actual for attending the Board Meeting. Apart from sitting fee, travelling expenses etc., the Members are also entitled to get 50% discount on food for personal consumption at Megapode Resort which is run by ANIIDCO. Thus, the remuneration receivable by a member of the Board of Directors is not covered under 'compensatory allowance defined under Sec. 2(a) the Parliament (Prevention of Disqualification) Act, 1959.

21. The Committee also take into account the submission of the Legislative Department that Section 78 of the Memorandum and Articles of Association of ANIIDCO provides for the specific powers of the Board, which includes power to acquire property, to authorise the undertaking of works of a capital nature, to pay for any property acquired, etc., to secure contracts by mortgage, to appoint officers, to remove or suspend them, to authorise endorsement of cheques etc. to appoint attorney etc. The Committee agrees with the views of the Legislative Department that as member of the Board of Directors, the Member of Parliament may be in a position to wield influence of power by way of patronage.

22. The Committee also note that as per Government's decisions on the recommendation of the Report of the Krishna Menon Committee on State Undertakings and Government's decision thereon, MPs should not be appointed on ^{the} Boards of CPSE. As per the information furnished by Andaman & Nicobar Administration and the DPE, ANIIDCO is not a CPSE. The Committee however, feel that the grounds on which the Krishna Menon Committee recommended that the overwhelming weight of Considerations must be against the membership of MPs in the boards of State Undertakings, would be relevant to State/UT public

sector undertakings as well. The Andaman & Nicobar Administration have also informed that for appointment of non-official Directors, DPE guidelines regarding qualification and experience are being followed.

23. In view of the foregoing as also the considered opinion of both the Departments of the Ministry of Law and Justice (Department of Legal Affairs & Legislative Department) the Committee are of the view that nomination of Member of Parliament in the Board of ANIIDCO may attract office of profit under Government and the same may incur disqualification under Article 102(1)(a) of Constitution of India.

New Delhi
25 July, 2018
03 Shravana, 1940 (Saka)

KALRAJ MISHRA
Chairperson,
Joint Committee on Offices of Profit

Rashmi Singh
Secretary (Ind)



PH. NO. 03192-233377(O)

FAX NO. 03192-240495

अंडमान और निकोबार प्रशासन

ANDAMAN & NICOBAR ADMINISTRATION

सचिवालय

SECRETARIAT

पोर्ट ब्लेयर

PORT BLAIR

ST/FS

D.O No. 2-344/ANIIDCO/PL/2008-09/PF-I/2456

Dated 14 Sept
5 August, 2017

Dear Sir,

I am to refer this Administration's letter No. 7-2/IEG/IND/2010-11/2732 dated 1st November, 2014 and letter No. 2-344/ANIIDCO/PL/2008-09/PF/907 dated 23rd April, 2015 (Copy enclosed for ready reference) from the Directorate of Industries, A&N Administration regarding nomination of Hon'ble Member of Parliament (Lok Sabha), Andaman & Nicobar Parliamentary Constituency on the Board of Director of Andaman & Nicobar Islands Integrated Development Corporation Ltd. (ANIIDCO Ltd.). The reply to this effect has not yet received.

Andaman and Nicobar Islands Integrated Development Corporation Ltd (ANIIDCO) is the wholly owned Public sector undertaking of A & N Administration engaged in trading, tourism etc. and registered under Companies Act, 1956. In ANIIDCO, the Directors are nominated by the Hon'ble Lt. Governor of A & N Islands from time to time in accordance with Article 74 (e) of the Articles of Association of ANIIDCO. The relevant provisions of Article 74 (e) are enclosed as Annexure 'A'. Shri Bishnu Pada Ray, Hon'ble Member of Parliament, A & N Islands has written several letters to the Hon'ble Prime Minister as well as this Administration to include Member of Parliament to the Board of Directors in ANIIDCO Ltd.

In this regard, kind attention is invited towards the letter No. 21/2/2(2)/2008/CII dated 12/05/2008 written by Director of Lok Sabha to the Chief Secretary, A & N Administration informing that the prior approval of the Speaker, Lok Sabha is recommended by the Joint Committee on office of profit before nominating any Member of Parliament in any Govt. committee set up by the State Govt. to various bodies, unless the act under which such committee had been set up provided for appointment of an MP.

It is therefore once again requested to kindly examine the issue of nomination of Hon'ble Member of Parliament on the Board of Director of Andaman and Nicobar Islands Integrated Development Corporation Ltd (ANIIDCO) and the decision may be intimated to us for taking further action in this regard.

With regards

Yours sincerely

R. Singh

(Rashmi Singh)

Dr. D. Bhalla
Secretary
Lok Sabha Secretariat
Room No. 21, Parliament House
New Delhi-110001.

J. Singh
13/9

IS (CS)

M. 14/9
Min (CS)

ANIIDCO (copy) mapl.
D. K. 17/9/17

Recd to Secy

Min
FST 17/9

D. (CS)

directed by A.D.
given to Secy
13/9/17

F.No. 7-2/IEG/IND/2010-11/ 2732

अंडमान तथा निकोबार प्रशासन

ANDAMAN & NICOBAR ADMINISTRATION

उद्योग निदेशालय

DIRECTORATE OF INDUSTRIES

Port Blair dated 1st Dec
November, 2014

To
The Director
Lok Sabha Secretariat
Parliament House
New Delhi- 110001.

Sub: Nomination of the Hon'ble Member of Parliament on the Board of Andaman & Nicobar Islands Integrated Development Corporation Ltd. (ANIIDCO)- reg.

Sir,


Andaman and Nicobar Islands Integrated Development Corporation Ltd.(ANIIDCO) is the wholly owned public sector undertaking of A&N Administration engaged in trading, tourism etc. and registered under Companies Act, 1956. In ANIIDCO, the directors are nominated by the Hon'ble Lt. Governor of A&N Islands from time to time in accordance with Article 74(e) of the Articles of Association of ANIIDCO. The relevant provisions of Article 74(e) are enclosed as Annexure "A". Shri Bishnu Pada Ray, Hon'ble Member of Parliament, A&N Islands has written to the Hon'ble Prime Minister on various issues including nomination of Member of Parliament to the Board of Director in ANIIDCO vide his letter dated 7.8.2014. Copy of the said letter dated 7.8.2014 addressed to Hon'ble Prime Minister is enclosed as Annexure "B".

We would like to draw your kind attention to the letter No.21/2/2(2)/2008/CII dated 12th May 2008 written by the Director of Lok Sabha to the Chief Secretary, A&N Administration informing that the prior approval of the Speaker, Lok Sabha is recommended by the Joint Committee on office of profit before nominating any Member of Parliament in any Government Committee set up by the State Government to various bodies, unless the Act under which such Committee had been set up provided for appointment of an M.P.

In view of the above, you are requested to kindly examine the issue of nomination of the Hon'ble Member of Parliament to the Board of Directors of the Corporation.

Yours faithfully

Encl: A/a

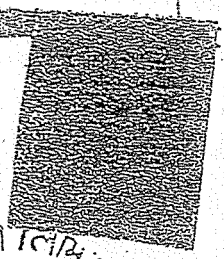

Joint Secretary & Director of Industries

Copy to:

1. The General Manager, ANIIDCO Ltd. for kind information.

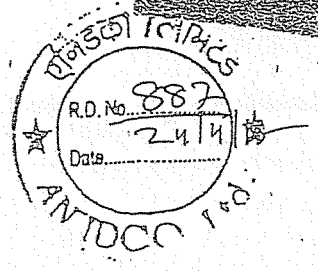

Joint Secretary & Director of Industries

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Handwritten notes:
- CTD
- 12.12.14
- W. S. J. O. / A
- u. kumar in
- PA

F.No. 2-344/ANIIDCO/PL/2008-09/PF/907
अंडमान तथा निकोबार प्रशासन
ANDAMAN & NICOBAR ADMINISTRATION
उद्योग निदेशालय
DIRECTORATE OF INDUSTRIES



Port Blair dated 23 April, 2015

To

The Director
Lok Sabha Secretariat
Parliament House
New Delhi -110001

Sub: Nomination of the Hon'ble Member of Parliament on the Board of Andaman & Nicobar Islands Integrated Development Corporation Ltd (ANIIDCO)-reg

Sir,

I am directed to invite your kind reference towards this Administration's letter No: 7-2/IEG/IND/2010-11/2732 dated 1.12.2014 on the captioned subject (Copy enclosed). The Deputy Secretary to Govt. of India , Ministry of Home Affairs is pressing hard for comments / action taken report with reference to the issue raised by Hon'ble Member of Parliament , A & N Islands.

It is therefore once again requested to kindly examine the issue of nomination of Hon'ble Member of Parliament on the Board of Director of Andaman & Nicobar Islands Integrated Development Corporation Ltd (ANIIDCO Ltd.).

Yours faithfully

Encl: A/A

Signature
Assistant Director (Tech)

Copy to

1. The General Manager, ANIIDCO Ltd. for kind information.

Signature
Assistant Director (Tech)

76 -
- 19 -

Annexure A

No member
entitled to vote
etc. while call
due to Company

72. No member shall be entitled to be present or to vote on any question either personally or by proxy at any general meeting or upon a poll, or be reckoned in quorum whilst any call or other sum shall be due and payable to the Company in respect of any of the shares of such members.

BOARD OF DIRECTORS

Number of
Directors

73. Until otherwise determined by the Company in a general meeting the number of Directors shall not be less than four and shall not exceed 12. The Directors are not required to hold any share qualification.

Appointment
of Directors

74. (a) The Board of Directors including Chairman and Managing Director may be paid sitting fees for attending the Board/Committee meeting as fixed by the Hon'ble Lt Governor of A & N Islands from time to time subject to the ceiling as fixed by the Govt. of India under the Companies Act.
- (b) The Directors may be paid all travelling, hotel and other expenses properly incurred by them :
- (i) in attending and returning from meetings of the Board of Directors any Committee thereof ; or
 - (ii) in connection with business of the Company according to the rates to be prescribed by the Company in General Meeting.
- (c) The Governor may determine the period for which the Chairman, the Managing Directors, the Director of Finance and any other full-time directors are to hold their respective offices.
- (d) The Governor shall have the right to fill any vacancy in the office of the Directors caused by removal, resignation, death or otherwise.

74 (a) Resolved that the composition of the Board as provided under Article 74 (e) of the Articles of Association of ANHDCO is substituted by the following provisions :

The Board of Directors shall comprise not less than 3 members and not more than 12 members.

- (i) The Lt Governor may nominate for such periods he may deem fit, the members of the Board from amongst officials of the A & N Administration, the Union of India, their Agencies and Corporations and others. The proportion of non-officials, if appointed, shall not exceed one third of the total membership of the Board.
- (ii) The Lt Governor may appoint amongst the official members of the Board a Chief Executive and a Chairman of the Corporation. The Chief Executive shall be designated as Managing Director. The Chairman shall preside over each meeting of the Board and each meeting of the General Body.
- (iii) The Managing Director and other full time Directors shall be paid such salary and allowances as may be fixed by the Lt. Governor from time to time in accordance with the guidelines of the Bureau of Public Enterprises.

44
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THE PARLIAMENT (PREVENTION OF DISQUALIFICATION) ACT, 1959
(10 OF 1959)

[4th April, 1959.]

An Act to declare that certain offices of profit under the Government shall not disqualify the holders thereof for being chosen as, or for being, members of Parliament.

BE it enacted by Parliament in the Tenth Year of the Republic of India as follows:—

1. Short title.—This Act may be called the Parliament (Prevention of Disqualification) Act, 1959.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "compensatory allowance" means 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 (30 of 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;

(b) "statutory body" means any corporation, committee, commission, council, board or other body of persons, whether incorporated or not, established by or under any law for the time being in force;

(c) "non-statutory body" means any body of persons other than a statutory body.

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:—

(a) any office held by a Minister, Minister of State or Deputy Minister for the Union or for any State, whether *ex officio* or by name;

² [(aa) the office of a Leader of the Opposition in Parliament;]

³ [(ab) the office of Deputy Chairman, Planning Commission;]

⁴ [(ac) the office of ⁵ [each leader and deputy leader] of a recognised party and recognised group in either House of Parliament;]

⁶ [(ad) the office of the Chairperson of the National Advisory Council constituted by the Government of India in the Cabinet Secretariat vide Order No. 631/2/1/2004-Cab., dated the 31st May, 2004;]

(b) the office of Chief Whip, Deputy Chief Whip or Whip in Parliament or of a Parliamentary Secretary;

⁷ [(ba) the office of Chairperson of—

(i) the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992 (19 of 1992);

(ii) the National Commission for the Scheduled Castes constituted under clause (1) of article 338 of the Constitution;

(iii) the National Commission for the Scheduled Tribes constituted under clause (1) of article 338A of the Constitution;

(iv) the National Commission for Women constituted under section 3 of the National Commission for Women Act, 1990 (20 of 1990);]

(c) the office of member of any force raised or maintained under the National Cadet Corps Act, 1948 (31 of 1948), the Territorial Army Act, 1948 (56 of 1948), or the Reserve and Auxiliary Air Forces Act, 1952 (62 of 1952);

(d) the office of a member of a Home Guard constituted under any law for the time being in force in any State;

(e) the office of sheriff in the city of Bombay, Calcutta or Madras;

1. Subs. by Act 54 of 1993, s. 2, for certain words (w.e.f. 27-8-1993).

2. Ins. by Act 33 of 1977, s. 12 (w.e.f. 1-11-1977).

3. Ins. by Act 54 of 1993, s. 3 (w.e.f. 19-7-1993).

4. Ins. by Act 5 of 1999, s. 5.

5. Subs. by Act 18 of 2000, s. 5, for certain words (w.e.f. 7-6-2000).

6. Ins. by Act 31 of 2006, s. 2 (w.e.f. 18-8-2006).

7. Ins. by Act 54 of 1993, s. 3 (w.e.f. 27-8-1993).

8. Subs. by Act 28 of 2013, s. 2 (w.e.f. 19-2-2014).

(f) the office of chairman or member of the syndicate, senate, executive committee, council or court of a university or any other body connected with a university;

(g) the office of a member of any delegation or mission sent outside India by the Government for any special purpose;

(h) the office of chairman or member of a committee (whether consisting of one or more members), set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into, or collecting statistics in respect of, any such matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance;

¹ [(i) the office of chairman, director or member of any statutory or non-statutory body other than any such body as is referred to in clause (h), if the holder of such office is not entitled to any remuneration other than compensatory allowance, but excluding (i) the office of chairman of any statutory or non-statutory body specified in Part I of the Schedule, (ii) the office of chairman or secretary of any statutory or non-statutory body specified in Part II of the Schedule;]

(j) the office of village revenue officer, whether called a lambardar, malguzar, patel, deshmukh or by any other name, whose duty is to collect land revenue and who is remunerated by a share of, or commission on, the amount of land revenue collected by him, but who does not discharge any police functions.

² [(k) the office of Chairman, Deputy Chairman, Secretary or Member (by whatever name called) in any statutory or non-statutory body specified in the Table;

(l) the office of Chairman or Trustee (by whatever name called) of any Trust, whether public or private, not being a body specified in the Schedule;

(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.]

³ [Explanation 1].—For the purposes of this section, the office of ⁴ [Chairman, Deputy Chairman or Secretary] shall include every office of that description by whatever name called.

⁵ [Explanation 2].—In clause (aa), the expression "Leader of the Opposition" shall have the meaning assigned to it in the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977 (33 of 1977).]

⁶ [Explanation 3.—In clause (ac), the expressions "recognised party" and "recognised group" shall have the meanings assigned to them in the Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1998 (5 of 1999).]

4. Temporary suspension of disqualification in certain cases.—If a person being a member of Parliament who immediately before the commencement of this Act held an office of profit declared by any law repealed by this Act not to disqualify the holder thereof for being such member, becomes so disqualified by reason of any of the provisions contained in this Act, such office shall not, if held by such person for any period not extending beyond a period of six months from the commencement of this Act disqualify him for being a member of Parliament.

5. Repeals.—The Parliament (Prevention of Disqualification) Act, 1950 (19 of 1950), the Parliament Prevention of Disqualification Act, 1951 (68 of 1951), the Prevention of Disqualification Act, 1953 (1 of 1954), and any provision in any other enactment which is inconsistent with this Act are hereby repealed.

1. Subs. by Act 54 of 1993, s. 3, for cl. (i) (w.e.f. 19-7-1993).

2. Ins. by Act 31 of 2006, s. 12 (w.e.f. 4-4-2006).

3. Explanation numbered as Explanation 1 thereof by Act 33 of 1977, s. 12 (w.e.f. 1-11-1977).

4. Subs. by Act 54 of 1993, s. 3, for certain words (w.e.f. 27-8-1993).

5. Ins. by Act 33 of 1977, s. 12 (w.e.f. 1-11-1977).

6. Ins. by Act 5 of 1999, s. 5.

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THE SCHEDULE

[See section 3(f)]

PART I

BODIES UNDER THE CENTRAL GOVERNMENT

Air India International Corporation established under section 3 of the Air Corporations Act, 1953 (27 of 1953).

Air Transport Council constituted under section 30 of the Air Corporations Act, 1953 (27 of 1953).

Board of Directors of the Export Risks Insurance Corporation¹ *** Limited.

Board of Directors of the Heavy Electrical¹ *** Limited.

Board of Directors of the Hindustan Cables¹ *** Limited.

Board of Directors of the Hindustan Insecticides¹ *** Limited.

Board of Directors of the Hindustan Machine Tools¹ *** Limited.

Board of Directors of the Hindustan Shipyard Limited.

Board of Directors of the² [Hindustan Chemicals and Fertilizers Limited].

Board of Directors of the National Coal Development Corporation (Private) Limited.

Board of Directors of the National³ [Industrial] Development Corporation¹ *** Limited.

Board of Directors of the National Instruments¹ *** Limited.

Board of Directors of the National Small Industries Corporation¹ *** Limited.

Board of Directors of the Neyveli Lignite Corporation (Private) Limited.

Board of Directors of the Sindri Fertilizers and Chemicals¹ *** Limited.

Board of Directors of the State Trading Corporation of India¹ *** Limited.

Central Warehousing Corporation established under section 17 of the Agricultural Produce (Development and Warehousing) Corporations Act, 1956 (28 of 1956).

Coal Board established under section 4 of the Coal Mines (Conservation and Safety) Act, 1952 (12 of 1952).

Coal Mines Labour Housing Board constituted under section 6 of the Coal Mines Labour Welfare Fund Act, 1947 (32 of 1947).

Commissioners for the Port of Calcutta.

Committee for the allotment of land in the township of Gandhidham.

Company Law Advisory Commission constituted under section 410 of the Companies Act, 1956 (1 of 1956).

Cotton Textiles Fund Committee constituted under the Textile Funds Ordinance, 1944 (Ord. 34 of 1944).

Dock Labour Board, Bombay, established under the Bombay Dock Workers (Regulation of Employment) Scheme, 1956, made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948).

Dock Labour Board, Calcutta, established under the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956, made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948).

Dock Labour Board, Madras, established under the Madras Dock Workers (Regulation of Employment) Scheme, 1956, made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948).

Forward Markets Commission established under section 3 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952).

Indian Airlines Corporation established under section 3 of the Air Corporations Act, 1953 (27 of 1953).

Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948).

1. The brackets and word "(Private)" omitted by Act 58 of 1960, s. 3 and the Second Schedule.

2. Subs. by Act 58 of 1960, s. 3 and the Second Schedule, for "Nangal Fertilizers and Chemicals (Private) Limited".

3. Ins. by s. 3 and the Second Schedule, *ibid.*

Licensing Committee constituted under rule 10 of the Registration and Licensing of Industrial Undertakings Rules, 1952, made under the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Mining Boards constituted under section 12 of the Mines Act, 1952 (35 of 1952).

National Co-operative Development and Warehousing Board established under section 3 of the Agricultural Produce (Development and Warehousing) Corporations Act, 1956 (28 of 1956).

Rehabilitation Finance Administration constituted under section 3 of the Rehabilitation Finance Administration Act, 1948 (12 of 1948).

Tariff Commission established under section 3 of the Tariff Commission Act, 1951 (50 of 1951).

Trustees of the Port of Bombay.

Trustees of the Port of Madras.

Trustees or Commissioners of any major port as defined in the Indian Ports Act, 1908 (15 of 1908), other than the Port of Calcutta, Bombay or Madras.

Bodies under State Governments

Andhra Pradesh

Agricultural Improvement Fund Committee constituted under section 3 of the Hyderabad Agricultural Improvement Act, 1952.

Co-operative Agricultural and Marketing Development Fund Committee.

Livestock purchasing Committee.

Assam

Adhi Conciliation Boards constituted under section 2A of the Assam Adhiars Protection and Regulation Act, 1948.

Assam Evacuee Property Management Committee constituted under section 12 of the Assam Evacuee Property Act, 1951.

Assam Text Book Committee.

Bihar

Mining Board for Coal Mines.

Text Book and Education Literature Committee.

Bombay

Allocation Committee (Allopathic) under the Employees' State Insurance Scheme.

Allocation Committee (Ayurvedic) under the Employees' State Insurance Scheme.

Board to conduct over-all supervision of the business and affairs of the *Narsinggiri* Mills, Sholapur.

Bombay Housing Board constituted under section 3 of the Bombay Housing Board Act, 1948.

Bombay State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948).

Bombay State Electricity Consultative Council constituted under section 16 of the Electricity (Supply) Act, 1948 (54 of 1948).

Medical Service Committee under the Employees' State Insurance Scheme.

Pharmaceutical Committee under the Employees' State Insurance Scheme.

Regional Transport Authority for Ahmedabad, Aurangabad, Bombay, Nagpur, Poona, Rajkot and Thana constituted under section 44 of the *Motor Vehicles Act, 1939 (4 of 1939).

Saurashtra Housing Board constituted under section 3 of the Saurashtra Housing Board Act, 1954.

State Transport Authority constituted under section 44 of the * Motor Vehicles Act, 1939 (4 of 1939).

Vidarbha Housing Board constituted under section 3 of the Madhya Pradesh Housing Act, 1950.

* Now see the relevant provisions of the Motor Vehicles Act, 1988 (59 of 1988).

Kerala

Board of Examiners appointed under rule 8 of the Travancore-Cochin Boiler Attendants Rules, 1954.
Panel of Assessors constituted under rule 63 of the Travancore-Cochin Boiler Attendants Rules, 1954.
Panel of Assessors constituted under the Travancore-Cochin Economiser Rules, 1956.

Madhya Pradesh

Madhya Pradesh Housing Board constituted under section 3 of the Madhya Pradesh Housing Board Act, 1950.
Mahakoshal Housing Board.

¹
[Tamil Nadu]

Committee to select Books for Study for S.S.L.C. Examination.
Landing and Shipping Fees Committees for Minor Ports.
Local Committees constituted under regulation 10A of the Employees' State Insurance (General) Regulations, 1950.

Madras Board of Transport.

²
[Tamil Nadu Electricity Board] constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948).

Madras State Electricity Consultative Council constituted under section 16 of the Electricity (Supply) Act, 1948 (54 of 1948).

Port Conservancy Boards.

Port Trust Boards of Minor Ports.

State Board of Communications.

Text Books Committee.

³
[Karnataka]

Board of Management, Mysore Iron and Steel Works, Bhadravaini.
Board of Management of Industrial Concerns.

Orissa

Appeal Committee under the Board of Secondary Education.

Orissa Board of Communications and Transport.

Regional Transport Authority constituted under section 44 of the *Motor Vehicles Act, 1939 (4 of 1939).

State Transport Authority constituted under section 44 of the *Motor Vehicles Act, 1939 (4 of 1939).

Punjab

Punjab State National Workers (Relief and Rehabilitation) Board.

Rajasthan

City Improvement Trust, Kota, constituted under the City of Kota Improvement Act, 1946.

Excise Appellate Board, Ajmer.

Rajasthan State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948).

Urban Improvement Board, Jaipur.

Uttar Pradesh

Government Cement Factory Board.

Local Committees for Agra, Kanpur, Lucknow and Saharanpur appointed under section 25 of the Employees' State Insurance Act, 1948 (34 of 1948).

Sub-Committee to select books for Educational Expansion Department.

U.P. Sugar and Power Alcohol and Labour Housing Board constituted under section 10 of the U.P. Sugar and Power Alcohol Industries Labour Welfare and Development Fund Act, 1950.

1. Subs. by the Madras State (Alteration of Name) (Adaptation of Laws on Union Subjects) Order, 1970, for "Madras" (w.e.f. 14-1-1969).

2. Subs., *ibid.*, for "Madras State Electricity Board".

3. Subs. by the Mysore State (Alteration of Name) (Adaptation of Laws on Union Subjects) Order, 1974, for "Mysore" (w.e.f. 1-11-1973).

* Now see the relevant provisions of the Motor Vehicles Act, 1988 (59 of 1988).

West Bengal

Licensing Board constituted under the regulations made under rule 45 of the Indian Electricity Rules, 1956.
West Bengal Housing Board constituted under the West Bengal Development Corporation Act, 1954.

BODIES IN UNION TERRITORIES

Delhi Development Authority constituted under section 3 of the Delhi Development Act, 1957 (61 of 1957).
Delhi Electricity Power Control Board constituted under section 5 of the Bombay Electricity (Special Powers) Act, 1946, as applied to Delhi.
Delhi State Electricity Council constituted under section 16 of the Electricity (Supply) Act, 1948 (54 of 1948).

PART II

BODIES UNDER THE CENTRAL GOVERNMENT

Advisory Committee for the Air-India International Corporation appointed under section 41 of the Air Corporations Act, 1953 (27 of 1953).

Advisory Committee for the Indian Airlines Corporation appointed under section 41 of the Air Corporations Act, 1953 (27 of 1953).

Central Silk Board constituted under section 4 of the Central Silk Board Act, 1948 (61 of 1948).

Coffee Board constituted under section 4 of the Coffee Act, 1942 (7 of 1942).

Coir Board constituted under section 4 of the Coir Industry Act, 1953 (45 of 1953).

Development Council for Acids and Fertilizers established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Alkalis and Allied Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Bicycles established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Drugs, Dyes and Intermediates established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Food Processing Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Heavy Electrical Engineering Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Internal Combustion Engines and Power Driven Pumps established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Light Electrical Engineering Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Machine Tools established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Non-ferrous Metals including alloys established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Oil-based and Plastic Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Sugar Industry established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Textiles made of artificial silk including artificial silk yarn established under section 6 of the Industries Development and Regulation Act, 1951 (65 of 1951).

Development Council for Textiles made of wool including woolen yarn, hosiery, carpets and druggest established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Durgah Committee, Ajmer, constituted under section 4 of the DurgahKhwajaSaheb Act, 1955 (36 of 1955).

Indian Central Arecanut Committee.

Indian Central Coconut Committee constituted under section 4 of the Indian Coconut Committee Act, 1944 (10 of 1944).

Indian Central Cotton Committee constituted under section 4 of the Indian Cotton Cess Act, 1923 (14 of 1923).

Indian Central Jute Committee.

Indian Central Oilseeds Committee constituted under section 4 of the Indian Oilseeds Committee Act, 1946 (9 of 1946).

Indian Central Sugarcane Committee.

Indian Central Tobacco Committee.

Indian Lac Cess Committee constituted under section 4 of the Indian Lac Cess Act, 1930 (24 of 1930).

Rubber Board constituted under section 4 of the Rubber Act, 1947 (24 of 1947).

Tea Board constituted under section 4 of the Tea Act, 1953 (29 of 1953).

BODIES UNDER STATE GOVERNMENTS

Andhra Pradesh

Market Committee constituted under section 4 of the Hyderabad Agricultural Market Act No. II of 1339 F.

Market Committee constituted under section 4A of the Madras Commercial Crops Markets Act, 1933.

Bihar

Bihar State Board of Religious Trusts.

Bihar SubaiMajlisAwqaf.

Both Gaya Temple Advisory Committee constituted under section 15 of the Both Gaya Temple Act, 1949.

Both Gaya Temple Management Committee constituted under section 3 of the Both Gaya Temple Act, 1949.

Kerala

Administration Committee for Coir Purchase Scheme.

Malabar Market Committee constituted under section 4A of the Madras Commercial Crops Markets Act, 1933.

Tapioca Market Expansion Board.

[Tamil Nadu]

Area Committee for Hindu Religious and Charitable Endowments constituted under section 12 of the Madras Hindu Religious and Charitable Endowments Act, 1951.

Madras State Wakf Board constituted under section 9 of the Wakf Act, 1954 (29 of 1954).

Punjab

State Marketing Board constituted under section 3 of the Patiala Agricultural Produce Markets Act, 2004.

³
[TABLE
[See section 3(k)]

S.No.	Name of the Body
(1)	(2)
1.	The Tripura Khadi and Village Industries Board, a body constituted under the Tripura Khadi and Village Industries Act, 1966.
2.	The Uttar Pradesh Development Council.
3.	The Irrigation and Flood Control Commission, Uttar Pradesh.

1. Subs. By the Madras State (Alteration of Name) (Adaptation of Laws on Union Subjects) Order, 1970, for "Madras" (w.e.f. 14.1.1969).
2. Part III omitted by Act 54 of 1993, S. 4 (w.e.f. 19.7.1993).
3. Ins. by Act 31 of 2006, s.3 (w.e.f. 4-4-1959).

(1)	(2)
4.	The Indian Statistical Institute, Calcutta.
5.	The West Bengal Handicrafts Development Corporation Limited.
6.	The West Bengal Small Industries Development Corporation Limited.
7.	The West Bengal Industrial Development Corporation Limited.
8.	The Sriniketan Santiniketan Development Authority, a body constituted under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Bengal Act No. 13 of 1979).
9.	The Haldia Development Authority, a body constituted under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Bengal Act No. 13 of 1979).
10.	The West Bengal Minorities Development and Finance Corporation, a body constituted under the West Bengal Minorities Development and Finance Corporation Act, 1995.
11.	The Hooghly River Bridge Commissioners, constituted under the Hooghly River Bridge Act, 1969 (West Bengal Act No. 36 of 1969).
12.	The Board of Wakf, West Bengal, a body constituted under the Wakf Act, 1995 (43 of 1995).
13.	The State Fisheries Development Corporation Limited, West Bengal.
14.	The West Bengal State Haj Committee, constituted under the Haj Committee Act, 2002 (35 of 2002).
15.	The Asansol Durgapur Development Authority, West Bengal, a body constituted under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Bengal Act No. 13 of 1979).
16.	The West Bengal Pharmaceutical and Phytochemical Development Corporation Limited.
17.	The West Bengal Handloom and Powerloom Development Corporation Limited.
18.	The West Bengal Khadi and Village Industry Board.
19.	The Society for Self-employment for Urban Youth, a society registered under the West Bengal Societies Registration Act, 1961 (West Bengal Act No. 26 of 1961).
20.	The Tirumala Tirupathi Devasthanams Board.
21.	The Agricultural and Processed Food Products Export Development Authority, an authority constituted under section 4 of the Agricultural and Processed Food Products Export Development Authority Act, 1985 (2 of 1986).
22.	The National Agricultural Co-operative Marketing Federation of India Limited (NAFED).
23.	The Indian Farmer Fertilizers Co-operative Limited (IFFCO).
24.	The Krishak Bharati Co-operative Limited (KRIBHCO).
25.	The National Co-operative Consumers Federation of India Limited (NCCF).
26.	The Auroville Foundation established under sub-section (1) of section 10 of the Auroville Foundation Act, 1988 (54 of 1988).
27.	The National Commission of Enterprises in the Unorganised Sector.
28.	The Planning Board (Asiatic Society) established under sub-section (1) of section 8 of the Asiatic Society Act, 1984 (5 of 1984).
29.	The Delhi Rural Development Board.
30.	The Maulana Azad Education Foundation.
31.	The Indira Gandhi National Centre for the Arts.
32.	The Dr. Ambedkar Foundation.
33.	The Bihar State Board of Religious Trust, a body constituted under the Bihar Hindu Religious Trust Act, 1950 (Bihar Act No. 1 of 1951).
34.	The Research and Information System for the Non-Aligned and Other Developing Countries.
35.	The Indian Institute of Psychometry.
36.	The Uttar Pradesh Film Development Council.
37.	The Uttar Pradesh Provincial Co-operative Federation.

38.	The Uttar Pradesh Co-operative Federation Limited.
39.	The National Co-operative Union of India.
40.	The Uttar Pradesh Krishi and Gram Vikas Bank.
41.	The Uttar Pradesh Co-operative Bank Limited.
42.	The Indian Council for Cultural Relations.
43.	The Board of Control—A.N. Sinha Institute of Social Studies, Patna.
44.	All India Council for Sports.
45.	The Howrah Improvement Trust.
46.	The Dalit Sena, 12, Janpath, New Delhi.
47.	The Social Justice Trust, 12, Janpath, New Delhi.
48.	The Bahujan Foundation (Charitable Trust), Lucknow, Uttar Pradesh.
49.	The BahujanPrerna Charitable Trust, Delhi.
50.	The Central Wakf Council established under section 9 of the Wakf Act, 1995 (43 of 1995).
51.	The Nehru Memorial Museum and Library (NMML).
52.	The JalianwalaBagh Memorial Trust.
53.	The Haj Committee of India constituted under section 3 of the Haj Committee Act, 2002 (35 of 2002).
54.	The MallickghatPhoolbazarParichalan Committee.
55.	The West Bengal Fisheries Corporation Limited.]

CB-II No. 344

JOINT COMMITTEE ON OFFICES
OF PROFIT

TENTH REPORT

(SEVENTH LOK SABHA)

ON

THE DRAFT PARLIAMENT (PREVENTION OF
DISQUALIFICATION) AMENDMENT BILL, 1983



Presented to Lok Sabha on 7th May, 1984

Laid in Rajya Sabha on 7th May, 1984

LOK SABHA SECRETARIAT
NEW DELHI

May, 1984 (Vaisakha, 1906 (Saka))

Price Rs. 5-20

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X

GENERAL RECOMMENDATIONS/GUIDELINES

10.1 The Joint Committee on Offices of Profit on 26th October, 1983 heard the views of representatives of the Ministry of Law, Justice and Company Affairs (Legislative Department as well as Department of Legal Affairs) on the question whether the principles followed by the Joint Committee on Offices of Profit for deciding various offices for granting exemption from disqualification or excluding them from such exemption, could be incorporated in the Parliament (Prevention of Disqualification) Act, 1959 through an amending Bill.

10.2 On being asked in that regard, the Secretary of the Department of Legal Affairs stated that it might not be permissible under Article 102 (1) (a) of the Constitution to enumerate the principles and the guidelines on the basis of which an office of profit was to be determined in the Act. However, technically it would be open to Parliament to lay down principles and guidelines by saying that "if a person is found to be holding an office which satisfies certain principles and guidelines, then the holder of that particular office will stand disqualified". But that might give rise to many practical complications and difficulties. First, that might open flood gates of disputes because the determination of the fact as to whether the holder of any particular office other than the office of profit would fall within the guidelines or principles, would itself be a point of dispute or form part of that dispute. Secondly, there would be an increase in the references under Article 103 of the Constitution virtually leading to an enormous rise in the election petitions to be decided by the President and Election Commission, because any number of election petitions could be filed then on the basis that a particular person was not disqualified as his case was not covered by the guidelines which were proposed to be laid down. The Secretary, Legislative Department also submitted that leaving aside the case of purely advisory bodies, there were bound to be some powers of an executive nature whenever a member became a member of the Executive Committee of a body however insignificant the nature of powers might be. If a provision to that effect was made in any Act it would tantamount to nullifying the exemption itself which was the

purpose behind enacting the workable, the task of de-disqualify a member, would very uncertain and would be the case with legislation. The exact type of such making the issue fairly clear the exemption of the as Committee on Offices of P had accepted an off disqualification. With re-disqualified if he held an or distribute patronage; it trend of judicial decisio assess in terms of pecuniis would not disqualify.

10.3. The Committeion of disqualification u Constitution is that a Government by acceptin compromise his independ of the executive so that their duties to their ele of personal gain. They self-interest.

10.4 The broad cri an office held by a pers pronouncements. If the and dismissal from the office and in case the intangible in nature, fi for the time being ac office should be held to the object of impositio tion will become fir the guiding factor in

10.5 Keeping the of Profit have been l Commissions, etc. 1

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GUIDELINES

On 26th October, 1983, the Ministry of Law, Justice and Department of Legal Services, as Department of Legal Services, for granting exemption from the exemption (Article 102 (1) (a) Act, 1959 through

Secretary of the Department of Law, Justice and Department of Legal Services under Article 102 (1) (a) of the Constitution on the basis of the guidelines on the basis of the Act. However, the low principles and guidelines for holding an office which give rise to many practical problems in the flood gates of disputes between the holder of any particular office and the holder of that particular office give rise to many practical problems in the flood gates of disputes between the holder of any particular office and the holder of that particular office. The guidelines which were laid down by the Legislative Department also advisory bodies, there were whenever a member became a member of the Government, however insignificant the effect was made in any exemption itself which was the

purpose behind enacting the 1959 Act. So, with a view to make the provision workable, the task of defining the type of executive power, which was to disqualify a member, would have to be taken up. The law would also become very uncertain and would lead to an increase of election petitions. Same would be the case with legislative, judicial and financial powers as in each case the exact type of such powers which would disqualify, had to be specified making the issue fairly cloudy. He also stated that the work of advice on the exemption of the nature of the office had been entrusted to the Joint Committee on Offices of Profit since a member was entitled to know before he had accepted an office as to whether acceptance of it would lead him to disqualification. With regard to the guidelines that a member would be disqualified, if he held an office where he was in a position to wield influence or distribute patronage, the representatives of the Ministry maintained that the trend of judicial decisions had been to equate profit in terms of money or assess in terms of pecuniary gain. Mere patronage under Article 102 (1) (a) would not disqualify.

10.3. The Committee feel that the basic principle underlying the imposition of disqualification under articles 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 would be free to carry out fearlessly their duties to their electorate and not to be influenced by any consideration of personal gain. They should not 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 disqualifications as envisaged in the Constitution will become frustrated. This first basic principle (para 10.3) 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 Offices of Profit have been following the undernoted criteria to test the Ministers, Commissioners, etc. for deciding the question as to which of the offices

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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-honarium, 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 scholarships, etc.; and

- (iii) Whether the body in which an office is held wields influence or power by way of patronage.

10.6 If reply to any of the above criteria is in affirmative then the offices in question will entail disqualification.

11.1 The Joint Com Government might revise (fication) Amendment Bill Committee as early as should be introduced before that the Bill so introduced Parliament as was the fa

NEW DELHI;
27th April, 1984
Vaisakha 7, 1906 (S

By Speed Post

F.No. 2-344/ANIIDCO/PL/2008-09/PF-I/2869
अंडमान तथा निकोबार प्रशासन
ANDAMAN AND NICOBAR ADMINISTRATION
उद्योग निदेशालय
DIRECTORATE OF INDUSTRIES
पोर्टब्लेयर
PORT BLAIR

Dated 13th October, 2017

To

Smt Rita Jaikhani
Director, Lok Sabha Secretariat
Committee Branch - II
G - 013, PHA Extn. New Buildg.
Parliament House Annex
New Delhi - 110001

Sub: Nomination of Member of Parliament as Board of Director of ANIIDCO- reg.


Madam,

I am to refer your letter No. 21/2/2(4)/2017/CII dated 18th September, 2017 on the captioned subject. As requested the point wise reply as per the List of Points appended are enclosed herewith for your kind information.

It is therefore requested to kindly examine the issue of Nomination of Hon'ble Member of Parliament, A & N Parliamentary Constituency in the Board of Director of ANIIDCO and decision may be intimated at the earliest please.

Encl: A/a

Yours faithfully


13/10/17
Director of Industries

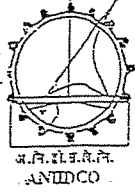
Copy to:

1. Sr. PS to Chief Secretary, A&N Administration for kind information of Chief Secretary.
2. Sr. PS to Secretary (Ind.), A&N Administration for kind information of Secretary(Ind.).

Director of Industries

Directorate of Industries, A & N Administration, Middle Point, Port Blair, A & N Islands -
744101 Phone No. 03192 - 232395, 03192 - 231517, 03192 - 232820, Fax No - 03192 - 230499

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Secretary
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3) ~~34~~ Annexure-IV
अण्डमान तथा निकोबार द्वीपसमूह समन्वित विकास निगम लिमिटेड
(सरकारी उपक्रम)

CIN: U74999AN1988SGC000028

ANDAMAN AND NICOBAR ISLANDS
INTEGRATED DEVELOPMENT CORPORATION LTD
(A Government undertaking)

F. No.1-1/ANIIDCO/PF/2017/2885

Dated the 4th October, 2017

To

The Director (Industries),
Directorate of Industries,
A&N Administration,
Port Blair.

DIRECTORATE OF INDUSTRIES
AD No. 7348
Date 04/10/17
Marked
Reply to be given by

Sub: Nomination of Shri Bishnu Pada Ray, Member of Parliament (Lok Sabha) on the Board of Directors of Andaman and Nicobar Islands Integrated Development Corporation Ltd.(ANIIDCO) - Reg.

Ref: Your letter No. 2-344/ANIIDCO/PL/2008-09/PF-1/2691 dated 22.9.2017

Sir,

This has reference to your letter on the subject captioned above, the details of information are furnished below:

1. Whether the Board of Director of Andaman and Nicobar Islands Integrated Development Corporation Limited (ANIIDCO Ltd.) is a Standing or an Adhoc body?

Reply: Andaman and Nicobar Islands Integrated Development Corporation Limited (ANIIDCO Ltd.) is incorporated under Section 617 of the Companies Act, 1956 as a Government Company. The funding and shareholding pattern of the Company is enclosed as Annex "A".

The Hubble Lt. Governor, Andaman and Nicobar Islands has the power to nominate the Board of Directors in the Board of ANIIDCO as per the provisions of Articles of Association of ANIIDCO.

2. Furnish details of the composition of the Board of Directors of ANIIDCO Ltd. indicating the number of officials and non-officials in the body.

Reply: The Board of Directors shall comprise not less than 3 members and not more than 12 members.

The Lt. Governor may nominate for such period he may deem fit, the members of the Board from amongst officials of the A&N Administration, the Union of India, their Agencies and Corporations and others. The proportion of non-officials, if appointed, shall not exceed one third of the total membership of the Board.

3. Give in detail the powers and functions of the Board of Directors of the Corporation.

Reply: The powers of the Board of Directors are specified under clause 77 & 78 of the Articles of Association of ANIIDCO. Copy of Articles of Association is enclosed as Annex "B".

Contd...2.

4. Whether the members of the Board of Directors of the Corporation are purely advisory in nature.

Reply: As per the provisions of the Articles of Association of ANIIDCO, all the powers to run the Corporation is vested with the Board of Directors however, the Board of Directors has delegated its powers to the Managing Director and other officials of the Corporation.

5. Furnish details with respect to the following :

- (i) The term of the Member of Parliament as non-official Member in the Board of Director of the Corporation

Reply: The period for appointment of non-official Director is three years.

- (ii) Whether the Government exercise control over the appointment to and removal from the office and over the performance and functions of the office.

Reply: As per the provisions of the Articles of Association, the Hon'ble Lt. Governor may nominate the Board of Directors on the Board of ANIIDCO or withdraw the nomination of Directors from the Board of ANIIDCO.

- (iii) The qualifications for Membership;

Reply: Although ANIIDCO is not a Central Public Sector Enterprises (CPSEs), but following DPE guidelines for appointment of Non-official Director. As per DPE guidelines, Qualification and Experience for appointment as Non-official Director is as follows:

Qualification: Minimum qualification for part-time non-official Directors would be graduate degree from a recognized university.

Experience : Not less than 10 years at the level of Joint Secretary and above in the Government; CMD/MD in Corporate Sector/ PSE; Professor level in an Academic Institution or professionals of repute like eminent Chartered Accountants/ Cost Accountants at the level of Directors of Institutes/Heads of Department; persons of eminence with proven track record from Industry, Business or Agriculture.

- (iv) The role of the Member of Parliament as a Member in the Board of Director of the Corporation.

Reply: A Public Representative.

6. Give specific reply to each of the following:

- (i) Whether the Board of Director of the Corporation exercise executive, legislative or judicial powers;

Reply: No.

- (ii) Whether the Board of Director of the Corporation confers powers of disbursement of funds, allotment of lands, etc.

Reply: No.

Contd...3

(iii) Whether it would have powers of appointment/ removal;
Reply: Yes.

(iv) Whether the Board of Director of the Corporation would wield influence of power by way of patronage.
Reply: No.

7. (i) Please indicate the details of expenses payable to the Member of Parliament as a Member of the Board of Director of the Corporation specifying the actual rates of payment and breakup of sitting fee, daily allowance, travelling allowance, house-rent allowance, compensatory allowance, honorarium etc.

Reply: In ANIIDCO, the member of Board is getting Sitting Fee of ₹ 5,000/- per meeting for attending the Board Meeting. In addition, the member of Board is also entitled for travelling expenses, accommodation etc. on actual for attending the Board Meeting.

(ii) Please specify the facilities, other than the remuneration given or proposed to be given to the Member of Parliament as a Member of the Board of Director of the Corporation.

Reply: Apart from sitting fee, the members of Board is also entitled to get 50% discount on food for personal consumption at Megapode Resort, which is run by ANIIDCO.

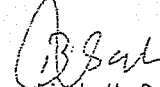
(iii) Please state whether the allowances payable to the Member of Parliament as a Member of the Board of Director of the Corporation are covered under the Compensatory Allowance defined in Section 2(a) of Parliament (Prevention of Disqualification) Act, 1959.

Reply: No regular allowances is paid to the member of the Board.

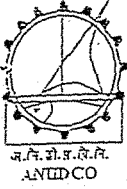
(iv) Please furnish any information which the Board of Director of the Corporation wish to furnish on the subject.

Reply: As per the provisions of the Articles, of Association of ANIIDCO, the Hon'ble Lt. Governor, A&N Islands is appointing official/non-official Directors' on the Board of ANIIDCO.

Yours faithfully,


(Basuki Nath Sah)

Company Secretary cum GM(A)



अण्डमान तथा निकोबार द्वीपसमूह समन्वित विकास निगम लिमिटेड
(सरकारी उपक्रम)

CIN: U74999AN19885GC000028

ANDAMAN AND NICOBAR ISLANDS.
INTEGRATED DEVELOPMENT CORPORATION LTD
(A Government undertaking)

Annexure - "A"

Funding and Shareholding pattern of ANIIDCO

Sl. No.	Name of Shareholder	No. of shares (₹ 100/- each)	Holding (%)	Funding from
1.	The President of India	9,33,348	85	(1) Industries Department A&N Administration (6,67,998 shares) (2) Fisheries Department A&N Administration (2,65,350 shares)
2.	The Lt. Governor	1,63,656	15	(1) Industries Department A&N Administration (1,29,000 shares) (2) Animal Husbandry Department A&N Administration (34,656 shares)
3.	Managing Director, ANIIDCO	1	0	Industries Department A&N Administration
4.	Director, ANIIDCO	1	0	Industries Department A&N Administration
Total		10,97,006	100	

Note: Dividend is paid to the respective Departments, from whom fund is received and the Industries Department, A&N Administration is Nodal Department.

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**Memorandum
and
Articles of Association
of**

**ANDAMAN
AND
NICOBAR ISLANDS
INTEGRATED DEVELOPMENT
CORPORATION LIMITED
(ANIDCO)**

No. 15/72/88 JL S/3212

OFFICE OF THE REGISTRAR OF COMPANIES
DISTRICT OF ANDAMANS

CERTIFICATE OF INCORPORATION

No. 28 of 1988

Dated 28th June, 1988

I hereby certify that "Andaman and Nicobar Islands Integrated Development Corporation Limited" is this day incorporated under the Companies Act, 1956 and that the company is limited.

Given under my hand at this 28th June, 1988.

(Seal)

Sd/-
(A. C. KHER)
Registrar of Companies
Andaman, Port Blair.

No member entitled to vote etc. while call due to Company

72. No member shall be entitled to be present or to vote on any question either personally or by proxy at any general meeting or upon a Poll, or be reckoned in quorum whilst any call or other sum shall be due and payable to the Company in respect of any of the shares of such members.

BOARD OF DIRECTORS

Number of Directors

73. Until otherwise determined by the Company in a general meeting the number of Directors shall not be less than four and shall not exceed 12. The Directors are not required to hold any share qualification.

Appointment of Directors

74. (a) The Board of Directors including Chairman and Managing Director may be paid sitting fees for attending the Board/Committee meetings as fixed by the Hon'ble Lt. Governor of A & N Islands from time to time subject to the ceiling as fixed by the Govt. of India under the Companies Act.
- (b) The Directors may be paid all travelling, hotel and other expenses properly incurred by them :
- (i) in attending and returning from meetings of the Board of Directors any Committee thereof ; or
 - (ii) in connection with business of the Company according to the rates to be prescribed by the Company in General Meeting.
- (c) The Governor may determine the period for which the Chairman, the Managing Directors, the Director of Finance and any other full-time directors are to hold their respective offices.
- (d) The Governor shall have the right to fill any vacancy in the office of the Directors caused by removal, resignation, death or otherwise.

74 (a) Resolved that the composition of the Board as provided under Article 74 (a) of the Articles of Association of ANIDCO is substituted by the following provisions :

The Board of Directors shall comprise not less than 3 members and not more than 12 members.

(i) The Lt. Governor may nominate for such periods he may deem fit, the members of the Board from amongst officials of the A & N Administration, the Union of India, their Agencies and Corporations and others. The proportion of non-officials, if appointed, shall not exceed one third of the total membership of the Board.

(ii) The Lt. Governor may appoint amongst the official members of the Board a Chief Executive and a Chairman of the Corporation. The Chief Executive shall be designated as Managing Director. The Chairman shall preside over each meeting of the Board and each meeting of the General Body.

(iii) The Managing Director and other full time Directors shall be paid such salary and allowances as may be fixed by the Lt. Governor from time to time in accordance with the guidelines of the Bureau of Public Enterprises.

Chairman's authority -

- 75. The Chairman may perform any function and exercise any authority vested in the Board at an emergency. Any action so taken by the Chairman will be got ratified in the next meeting of the Board,
- 76. The Board may delegate such of its powers to the Chief Executive as may be deemed expedient from time to time.

POWERS OF BOARD OF DIRECTORS

General Powers of the Company vested in Board

- 77. (i) Subject to the provisions of the Act, the Board of Directors of the Company shall be entitled to exercise all such powers and to do all such acts and things as the Company is authorised to exercise and do:

Provided that the Board shall not exercise any power or do any act or thing which is directed or required, whether by the Act or by any other Act or by the Memorandum or Articles of the Company or otherwise to be exercised or done by the Company in General Meeting.

Provided further that in exercising any such power of doing any such act or thing, the Board shall be subject to the provisions contained in that behalf in the Act or any other Act, or in the Memorandum or Articles or in the regulations not inconsistent therewith and duly made thereunder, including regulations made by the Company in General Meeting.

(ii) No regulation made by the Company in General Meeting shall invalidate any prior act of the Board, which would have been validated if that regulation had not been made.

Specific powers to Board

- 78. without prejudice to the general powers conferred by the preceding Articles, and the other powers conferred by these Articles and subject to the provisions of the Act, the Board shall have the following powers, namely.

To acquire property

a. to purchase, take on lease or otherwise acquire for the Company, property, rights or privileges which the Company is authorised to acquire at such price, and generally on such terms and conditions as they think fit.

Works of Capital nature

b. to authorise the undertaking of works of a capital nature, subject to the condition that all cases involving a capital expenditure exceeding rupees one crore shall be referred to the Lt. Governor for his approval before authorisation: However, in the case of civil works, technical sanction of work will be obtained as per CPWD Manual.

To pay for property in debentures etc.

c. to pay for any property, rights or privileges acquired by or services rendered to the Company either wholly or partially in cash or in shares, bonds, or debentures or other securities of the Company, and any such

39 - - 4 -

shares may be issued either as fully paid up or with such amount credited as paid up thereon as may be agreed upon; and any such bond, debentures or other securities may be either specifically charged upon all or any part of the property of the Company and its uncalled capital or not so charged.

- To secure contracts by mortgage
- d. to secure the fulfilment of any contracts or engagements entered into by the Company by mortgage or charge of all or any of the property of the Company and its uncalled capital for the time being or in such manner as they may think fit;
- To appoint officer etc.
- e. to appoint and, at their discretion, remove or suspend such managers, secretaries, officers, clerks agents and servants for permanent, temporary or special services as it may, from time to time, think fit, and to determine their powers and duties and fix their salaries or emoluments and to require security in such instances of such amount as they think fit;
- Provided that no appointment, the minimum basic pay of which is more than Rs. 3,000 per mensem, shall be made without the prior approval of the Lt. Governor.
- f. to appoint any person or persons (whether incorporated or not) to accept and hold in trust for the Company, any property belonging to the company or in which it is interested or for other purposes and to execute and do all such deeds and other things as may be requisite in relation to any such trust, and to provide for the remuneration of such trustee or trustees;
- To bring and defend action etc.
- g. to institute, conduct, defend, compound, or abandon any legal proceedings by or against the Company or its Officers, or otherwise concerning the affairs of the Company, and also to compound and allow time for payment or satisfaction of any claims or demands by or against the Company;
- To refer to arbitration
- h. to refer any claim or demand by or against the Company to arbitration, and observe and perform the award;
- To authorise acceptance etc.
- i. to make and give receipt, releases and other discharges for money payable to the Company and for the claims and demands of the Company;
- To authorise endorsement of cheques, etc.
- j. to determine who shall be entitled to sign, on the Company's behalf bills, notes, receipts, acceptance, endorsements, cheques, releases, contracts and documents;
- To appoint attorney or agent
- k. to provide from time, for the management of the affairs of the Company in such manner as it thinks fit, and in particular to appoint any person to be the attorney or agent of the Company with such powers (including power to subdelegate) and upon such terms as may be thought fit;
- To invest moneys
- l. to invest, subject to such general or special directives, if any, given by the Lt. Governor in this behalf in securities or in any Bank or Banks to be specifically decided by the Board for having call or fixed deposits and opening current accounts and deal with any of the investments authorised by the Memorandum of the Association of the Company (not being shares in this Company) and in such manner as it thinks fit and from time to time to vary or release such investments;

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To dispose of property etc.

To execute mortgage by way of indemnity

To give Commission on profits

To make byelaws

To give bonus, pension, etc.

To establish local Board

To make contracts etc.

To delegate powers

Vacation of office of Director

- m. Subject to the provisions regarding consent of the Lt. Governor, to sell or dispose of or transfer the business or property, if any, of the Company or any part thereof for such consideration as the Company may deem proper and in particular for shares, debentures or securities of any other Company having objects altogether or in part similar to those of the Company.
 - n. to execute in the name and on behalf of the Company in favour of any Director or other person who may incur or be about to incur any personal liability for the benefit of the Company such mortgages of the Company's property (present and future) as it thinks fit and any such mortgage may contain a power of sale and such other powers, covenants and provisions as shall be agreed upon;
 - o. Subject to the approval of the Lt. Governor, to give to any person employed by the Company a commission on the profits of any particular business transaction, or a share in the general profits of the Company, and such commission or share of profits, shall be treated as part of the working expenses of the company;
 - p. to make, vary and repeal from time to time byelaws for the regulation of the business of the company, its officers and servants;
 - q. to give, award or allow any bonus, pension, gratuity or compensation to any employees of the Company or his widow, children or dependents, that may appear to the Directors just or proper, whether such employee, his widow, children or dependents, have or not a legal claim upon the Company.
 - r. to establish from time to time and at any time any local Board for managing any of the affairs of the Company in any specified locality in the Union Territory of Andaman and Nicobar or out of the Union Territory of Andaman and Nicobar and to appoint any persons to be members of such local board and to fix their remuneration, and from time to time to delegate to any person so appointed any of the powers, authorities and discretion for the time being vested in the Board of Directors other than their powers to make calls; and to authorise the members for the time being of any such Local Board or any of them to fill up any vacancies and any such appointment or delegation as may be made in such terms, and subject to such conditions as the Board of Directors may think fit, and the Board of Directors may at any time remove any person so appointed and may annul or vary any such delegation.
 - s. to enter into all such negotiations and contracts and rescind and vary all such contracts and execute and do all such acts, deeds and things in the name and on behalf of the Company as they may consider expedient for or in relation to any of the matters aforesaid or otherwise for the purposes of the Company; and
 - t. to delegate all or any of the powers, authorities and discretion for the time being vested in the Board of Directors, subject, however, to the ultimate control and authority being retained by it.
79. (1) The office of a Director shall ipso facto become vacant if:—
- a. he is found to be of unsound mind by Court of competent jurisdiction; or
 - b. he applies to be adjudicated an insolvent; or
 - c. he is adjudged an insolvent; or
 - d. he is convicted by a Court of an offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months; or

- e. he fails to pay any call in respect of the shares of the Company held by him whether alone or jointly with others within six months from the last date fixed for the payment of the call; or
 - f. he absents himself from three consecutive meetings of the Board or from all meetings of the Board for a continuous period of three months, whichever is the longer, without obtaining leave of absence from the Board; or
 - g. he (whether by himself or by any person for his benefit or on his account) or any firm in which he is a partner, or any private company of which he is a Director accepts a loan, or any guarantee or security for a loan, from the Company in contravention of Section 295 of the Act; or
 - h. he acts in contravention of section 299 of the Act; or
 - i. he becomes disqualified by an order of Court under Section 203 of the Act; or
 - j. he be removed from office in pursuance of Section 284 of the Act; or
 - k. by notice in writing to the Company he resigns his office; or
 - l. any office or place of profit under the company or under any subsidiary of the company is held in contravention of Section 314 of the Act and by operation of that Section he is deemed to vacate office.
- 2) Notwithstanding any matter or thing in sub-clause (c) (d) and (i) of clause (1), the disqualifications referred to in those sub-clauses shall not take effect:
- a. for thirty days from the date of adjudication, sentence or order; or
 - b. where an appeal or petition is preferred within the thirty days aforesaid against the adjudication, sentence or conviction resulting in the sentence, or order until the expiry of seven days from the date on which such appeal or petition is disposed of;
 - c. where within the seven days aforesaid, any further appeal or petition is preferred in respect of the adjudication, sentence, conviction or order and the appeal or petition, if allowed, would result in the removal of the disqualification, until such further appeal or petition is disposed of.

Disclosun
Director's
interest

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Office of Profit under 80. the Company or its subsidiary

Except with the previous consent of the Company accorded by a special resolution, as required under Section 314 of the Act (a) no director of the Company shall hold any office or place of profit, and (b) no partner or relative of a Director, no firm in which a Director or his relative is a partner, no private company of which a Director or member and no Director, Managing Agent, Secretaries and Treasurers or Manager of such a private company shall hold any office or place of profit carrying a total monthly remuneration of five hundred rupees or more, except that of Managing Agent / Director, Managing Agent, Secretaries and Treasures, Manager, Legal or Technical Adviser, Banker or Trustee for the holders of debentures of the Company, (i) under the Company or (ii) under any subsidiary of the Company, unless the remuneration received from such subsidiary in respect of such office or place of profit is paid over to the Company or its holding Company.

Conditions under which Directors may contract with Company

81. Subject to the provisions of Section 297 of the Act neither shall a Director be disqualified from contracting with the Company either as vendor, purchaser, or otherwise for goods, materials or services or for underwriting the subscription of any shares in or debentures of the Company, nor shall any such contract or arrangement entered in to by or on behalf of the Company with a relative of such Director, or a firm in which such Director or relative is a partner or with any other partner in such firm or with a private Company of which such Director is a member or Director be avoided, nor shall any Director so contracting or being such member or so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding office or of the fiduciary relation thereby established.

F.No.17(20)/2017-Leg.III
Government of India
Ministry of Law and Justice
Legislative Department

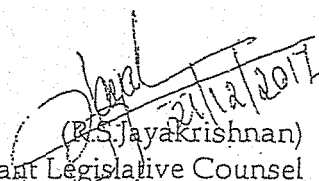
Shastri Bhawan, New Delhi
Dated the 21st December 2017

OFFICE MEMORANDUM

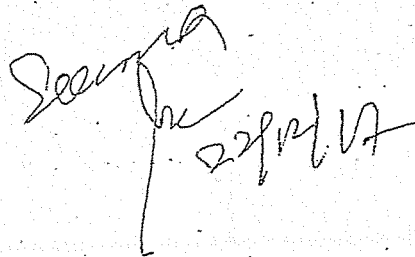
Sub.-: Nomination of Shri Bishnu Pada Ray, MP (LOk Sabha) on the Board of Directors of Andaman and Nicobar Islands Integrated Development Corporation Ltd(ANIIDCO) - reg.

The undersigned is directed to refer to the Lok Sabha Secretariat OM No.21/2/2(4)/2016/CII dated the 1st December 2017 on the subject mentioned above and to forward herewith the comments of the Legislative Department in the above mentioned case.

Encl:A/a


(R.S. Jayakrishnan)
Assistant Legislative Counsel
Tel. 23389661

The Lok Sabha Secretariat
Committee Branch-II
{Joint Committee on Offices of Profit }
{Kind Attn: Smt. Maya Lingi, Additional Director }
Parliament House Annexe


22/12/17

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Comments of the Legislative Department

Sub.: - Nomination of Shri Bishnu Pada Ray, MP (LOK Sabha) on the Board of Directors of Andaman and Nicobar Islands Integrated Development Corporation Ltd(ANIIDCO) - reg.

Lok Sabha Secretariat *vide* OM No.21/2/2(4)/2016/CII dated the 1st December 2017 has forwarded a copy of the letter as received from the Andaman and Nicobar Islands Integrated Development Corporation Ltd(ANIIDCO) in connection with the nomination of Shri Bishnu Pada Ray, MP(Lok Sabha) on the Board of Directors of ANIIDCO along with other requisite documents seeking the written opinion of Legislative Department.

2. The question under consideration is whether the nomination of the Hon'ble Members of Parliament to the Board of Directors would attract disqualification from membership of the House under 'Office of Profit' under article 102(1)(a) of the Constitution of India.

3. On going through the documents received from Lok Sabha Secretariat, it is seen that ANIIDCO is incorporated under section 617 of the Companies Act, 1956 as a Government Company and the Lt. Governor has the power to nominate the Board of Directors in the Board of ANIIDCO. As per the replies given to questionnaire of the Lok Sabha Secretariat, the role of the Member of Parliament in the Board of Directors will be as a public representative and his term will be for three years. To the query as to whether the members of the Board of Directors of the Corporation are purely advisory nature, they have stated that, as per the Articles of Association of ANIIDCO, all the powers to run the Corporation is vested with the Board of Directors, however the Board of Directors has delegated its powers to the Managing Director and other officials of the Corporation. To the query as to whether the Board of Directors exercise executive, legislative or judicial powers, the answer was negative. It was also stated that the Board of Directors have no powers of disbursement and they have got the powers of appointment or removal. It was also stated that the Board of Directors would not wield influence of power by way of patronage.

4. As per the information provided through the enclosed documents, in ANIIDCO, the member of Board is getting sitting fee of Rs 5000/- (Rupees five thousand only) per meeting for attending the Board Meeting and in addition, the Member of Board is also entitled for travelling expenses, accommodation, etc, on actual for attending the Board meeting. Further it is also stated that apart from sitting fee, the members of Board is also entitled to get 50% discount on food for personal consumption at megapode resort, which is run by ANIIDCO. In

reply to the query as to whether the allowances payable to the Member of Parliament as a Member of the Board of Director of the Corporation are covered under the Compensatory allowance defined in section 2(a) of the Parliament (Prevention of Disqualification) Act, 195, it was stated that no regular allowances is paid to the member of the Board.

5. Constitution and powers of Board of Directors:-

5.1 On going through the Memorandum & Articles of Association, it has been noted that, articles 73 and 74 provides for the Number of Directors and appointment of Directors. Section 74 (e) provides for the composition of Board. However, there is no specific provision for appointment of Members of Parliament as Members of Board of Directors and it simply says that the Lt.Governor may nominate for such periods he may deem fit, the members of the Board from amongst officials of the A & N Administration, the Union of India, their agencies and corporations and others.

5.2. Section 78 of the Memorandum and Articles of Association provides for the specific powers of the Board, which includes powers to acquire property, to authorize the undertaking of works of a capital nature, to pay for any property acquired, etc, to secure contracts by mortgage, to appoint officers, to remove or suspend them, to authorize endorsement of cheques etc. to appoint attorney etc., Hence it is felt that the Board of Directors, to which the Member of Parliament is a Member would be able to wield influence of power by way of patronage.

6. When a member holding an 'Office' is entitled to certain emoluments (like sitting fee, discount coupon etc.), it is also necessary to examine as to whether the remuneration is covered under "Compensatory Allowance" defined in Section 2(a) of Parliament (Prevention of Disqualification) Act 1959. As per the documents provided in the present case, the member will be getting Rupees 5000/- per sitting in addition to travelling and other allowances and apart from sitting fee, the member is also entitled to get 50 % discount on food personal consumption, meaning thereby the remuneration receivable by a member of the Board of Directors is not covered under 'compensatory allowance'. Further, the power of appointment of member is with the Government, which has been considered as an important test by the Hon'ble Supreme Court in a catena of case involving office of profit issues.

7. Accordingly, existence of the factors mentioned in paragraphs 5 and 6 suggest the elements of "Office of Profit" and the same may invite disqualification to the holder of the office of the Board of Directors of the ANIIDCO.

CONFIDENTIAL**MINUTES OF THE FIFTY FIRST SITTING OF
THE JOINT COMMITTEE ON OFFICES OF PROFIT
(SIXTEENTH LOK SABHA) HELD
ON 25 APRIL, 2018**

The Committee met on Wednesday, 25th April, 2018 from 1500 hrs. to 1600 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Kalraj Mishra

Chairperson

MEMBERS**LOK SABHA**

2. Shri T.G. Venkatesh Babu
3. Shri Bhagwant Maan
4. Prof. Saugata Roy
5. Kunwar Pushpendra Singh Chandel

RAJYA SABHA

6. Shri Manas Ranjan Bhunia

SECRETARIAT

S. No.	Name	Designation
1.	Dr. (Smt.) Preeti Srivasata	Joint Secretary

2. Smt. Rita Jaikhani Director
3. Smt. Maya Lingi Additional Director

REPRESENTATIVES OF THE MINISTRIES

DEPARTMENT OF PUBLIC ENTERPRISES

S. No.	Name	Designation
1.	Smt. Seema Bahuguna	Secretary
2.	Shri Rajesh K. Chaudhry	Joint Secretary
3.	Shri Kailash Bhandari	Deputy Director

MINISTRY OF LAW AND JUSTICE

(i) DEPARTMENT OF LEGAL AFFAIRS

1. Shri S. R. Mishra Additional Secretary

(ii) LEGISLATIVE DEPARTMENT

S. No.	Name	Designation
1.	Dr. Reeta Vasishta	Additional Secretary
2.	Shri R.S. Jayakrishnan	Deputy Legislative Counsel
3.	Shri Navneet Patial	Superintendent (Legal)

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee and briefly apprised them about the agenda of the sitting, i.e. examination of nomination of Shri Bishnu Pada Ray, Member of Parliament, Lok Sabha to the Board of Directors of Andaman and Nicobar Islands Integrated Development Corporation Ltd., (ANIIDCO) from the angle of Office of Profit.

3. Thereafter, the representatives of the Department of Public Enterprises and the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) were ushered in.

4. The Chairperson welcomed the representatives of the Department of Public Enterprises and Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) to the sitting of the Committee and apprised them in detail about the purpose of this oral evidence.

5. While briefing the Committee, the Secretary, Department of Public Enterprises submitted that they follow the definition of Public Enterprises survey and accordingly ANIIDCO is not a CPSE. ANIIDCO consist of 85% shares in the name of President of India, their funds are given by Industry Department of Andaman and Nicobar Islands Administration. Andaman and Nicobar is an Union Territory that is why the shares are in the name of President of India. Further, the Central Government has no administrative control. Another 15% shares are in the

name of Lt. Governor. The Company disburses the dividend to the Andaman Nicobar Administration not to the Central Government. The Secretary also submitted that as per the information available with the Department of Company Affairs wherein they list the State and Central Enterprises therein also ANIIDCO has been listed as State Government Company.

6. The representative of the Department of Legal Affairs (Ministry of Law and Justice) submitted that ANIIDCO is a Government Company, the role of MP in the Board of Director is that of Public representative without executive, legislative or judicial powers. Further, Member of Parliament would be getting a sitting fee of Rs.5,000/- per meeting in addition to travel and accommodation expenses, as per actual attending of such meeting with 50% discount on food for personal consumption. Further, it was also submitted that the details of pecuniary gain expenses to be paid seems to be out of pocket expenses with no element of profit and there does not appear to be any material to attract provisions of Article 102(1)(a) of the Constitution of India. Therefore, it may not be considered as an office of profit in Government of India.

7. In this connection, the Committee desired to have the following clarifications : -

1. If ANIIDCO, for the reasons specified by DPE, is not a CPSE, isn't the rationale behind the decision of not nominating MPs as Members of the Board,

relevant to the wholly UT Administration owned CPSE Board also?

2. Whether the role of MP as a Member on the Board as a Public Representative will be different from that of other non-official Members of the Board, or the MP appointed to the Board will be required to discharge the same functions as other non-official Directors.
3. On what basis Department of Legal Affairs has opined that there is no executive powers being vested in the Board of Directors. From the Articles of Association (Ref: Clauses 77-78 and functions of ANIIDCO as given in Articles of Association), it is seen that the Powers of the Board includes several functions of administrative / executive nature..
4. It is very clear that the appointment of the MP as a non-official Director is to be done by Lt. Governor who has the power to appoint and removal of Board of Directors. Thus the Government has the power to make appointment and removal in this case. The Department of Legal Affairs is aware that this is one of the main criteria for determining Office of Profit. What are

their comments in this regard.

5. It is very clear from the reply of the ANIIDCO, the MP as a Director of the Board would be entitled to get a sitting fee of Rs.5,000/- per meeting in addition to travel and accommodation expenses as per actual for attending such meetings with 50% discount on food for personal consumption. How has this been termed as 'Out of Pocket' expenses by the Department of Legal Affairs. Have they examined this issue keeping in view the provisions relating to Compensatory Allowance as defined under Sec. 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

The Department of Legal Affairs could not offer any satisfactory explanation / clarification on these points. The Committee desired that the matter regarding nomination of MP in ANIIDCO may be re-examined by the Department of Legal Affairs and they may give their opinion on the issue of appointment of Shri Bishnu Pada Raya, MP to ANIIDCO including specific comments on the above points. The representatives of the Department of Legal Affairs agreed to re-examine the issue and to furnish their comments within 15 days.

8. Thereafter, the Chairperson thanked the representatives of the Department of Public Enterprises

5)

and Ministry of Law and Justice (Legislative Department and Department of Legal Affairs).

9. The Committee then adjourned.

10. A copy of the verbatim proceedings of the sitting of the Committee has been kept on record.

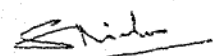
E.O. No: 304715/LS/2018
Government of India
Ministry of Law & Justice
Department of Legal Affairs

Shastri Bhavan, New Delhi
19.06.2018

OFFICE MEMORANDUM

Subject: Nomination of Shri Bishnu Pada Ray, Member of Parliament, Lok Sabha on the Board of Directors of Andaman and Nicobar Islands Integrated Development Corporation Ltd.,(ANIIDCO).

This has reference to Lok Sabha Secretariat's O.M. No.21/6/1(3)/1/2018/CII dated 6th June, 2018 on the above subject. In this connection it is stated that the points raised in the aforesaid O.M. have already been covered in our revised opinion which is sent herewith. This has the approval of Hon'ble Minister of Law & Justice.


(S.R.Mishra)
Additional Secretary
19.06.2018

Lok Sabha Secretariat
(Rita Jaikhani, Director)
Committee Branch -II
(Joint Committee on Offices of Profit)
G-013, Parliament House Annexe Extension Building
New Delhi.

4/6/18
20/6/18
AD (CB-II)
AS (CB-II)
20.6.18
Smt. Seema

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E.O. No.304715/LS/2018

The matter relates to re-examination of our opinion forwarded earlier to the Joint Committee on office of profit Lok Sabha Sectt. on the issue of nomination of Shri Bishnu Pada Ray (MP) Lok Sabha on the Board of Directors of Andaman and Nicobar Islands Integrated Development Corporation Ltd (ANIIDCO) from angle of office of profit.

2. Vide FTS No. 290915/2017/LS(F/A) this Department earlier opined that the nomination of Member of Lok Sabha to the Board of ANIIDCO 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.

3. On perusal of copy of Memorandum and Articles of Association of ANIIDCO (F/B) it is noted that ANIIDCO is a Government Company incorporated under Section 617 of the Companies Act, 1956. and the Lieutenant Governor, as per Article 52 has power to appoint any person as their representative. Further Articles 73 & 74 of Articles of Association of (ANIIDCO) provides for number of Directors and Appointment of Directors whose number shall not be less than 3 and not more than twelve. It further provides that the Board of Directors including Chairman and Managing Director may be paid sitting fees for attending the Board/Committee meeting as fixed by the Hon'ble Lt. Governor of A&N Island from time to time subject to the ceiling as fixed by the Government of India under the Companies Act.

4. The copy of answer given by ANIIDCO to the point wise queries raised by Lok Sabha is at F/C.

5. Article 102(1) of the Constitution of India 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 relevant provisions of the Parliament (Prevention of Disqualification) Act, 1959 read as under :

2. Definitions - In this Act, unless the context otherwise requires -

(a) "compensatory allowance" means 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 (30 of 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

S.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 being chosen as, or for being, a member of Parliament, namely

(h) the office of chairman or member of a committee (whether consisting of one or more members) set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into, or collecting statistics in respect of such matter, if the holder of such office is not entitled to any remuneration other than compensation for services rendered

6. The Hon'ble Supreme Court in the case of *Jaya Bacchan vs. Union of India* reported in (2006) 5 SCC 266, observed that, For deciding the question as to whether one is holding an office of profit or not, what is relevant is whether the office is capable of yielding a profit or pecuniary gain and not whether the person actually obtained a monetary gain. If the "Pecuniary gain" is "receivable" in connection with the office then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not. If the office carries with it, or entitles the holder to, any pecuniary gain other than reimbursement of out of pocket/actual expenses, then the office will be an office of profit for the purpose of Article 102 (1)(a) This position of law stands settled for over half a century commencing from the decisions of *Ravanna Subanna vs. G.S.Kaggeerappa*, AIR (1954) SC 653; *Shivamurthy Swami Inamdar vs. Agadi Sanganna Andanappa*, [1971] 3 SCC 870; *Satrucharia Chandrasekhar Raju Vs pradeep Kumar Dev*, [1992] 4 SCC 404 and *Shibu Soren vs. Dayanand Sahay & ors Shibu Soren vs. Dayanand Sahay & Ors* [2001] 3 SCR 1020.

7 The Hon'ble Supreme Court in the case of *Shibu Soren Vs. Dayanand Sahay & ors*. AIR 2001 SC 2583, made the following observations:

3. Article 102(1)(a) of the Constitution of India deals with disqualifications for 'being chosen as' and for being a member of either House of Parliament and inter alia provides (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;

4. A perusal of the above provision shows that three elements which are sine qua non for attracting the above provision are that the person concerned must hold an office (1) under the Government of India or any State; (2) the office should be an 'office of profit' and (3) the office should be other than an office declared by parliament by law not to disqualify its holder. Article 102(1)(a)(supra) corresponds to Article 191(1)(a) of the Constitution of India which lays down similar disqualifications for being chosen as or for being a member of the Legislative Council or Assembly of a State.

13. In *Shivamurthy Swami vs. Agadi Sanganna Andanappa*, 1971(3) SCC 870, the question under consideration of this Court was whether a Member of Koppal Taluk Development Board as well as a member of the District Development Council could be said to be holding an 'office of profit' under the Government. After analysing the fact situation besides relevant provisions including provisions of Article 102(1)(a) of the Constitution and various precedents of this Court, the Bench opined:

"... Therefore before the provisions of that Article can be attracted, it must be established that he was holding an office under the Union or the State Government and that office was an office of profit and thereafter we must see whether the disqualification relating to that office has been removed by any Parliamentary legislation. In other words, the office in question must have been held under a Government and to that some pay, salary, emoluments or allowance is attached. The word 'profit' connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit..." (Emphasis supplied)

14. The Bench noticed that the concerned person, Sangappa, became an ex-officio member of these bodies by virtue of his being elected as a member of the Mysore Legislative Council and therefore "it could not be said that he was holding those offices under the Government." The Court further opined that the allowances paid to the members of the Koppal Taluk Development Board and District Development Council were intended to meet their out of pocket expenses and were in the nature of compensatory allowances and not "profits". The Court summarised the tests which may be applied to determine whether an "office" is an office of profit under the State Government thus:

- (1) whether the Government makes the appointment;
- (2) whether the Government has the right to remove or dismiss the holder;
- (3) whether the Government pays the remuneration;
- (4) what are the functions of the holder; and
- (5) Does the Government exercise any control over the performance of those functions?"

26. The expression "office of profit" has not been defined either in the Constitution or in the Representation of People Act. In common parlance, the expression 'profit' connotes an idea of some pecuniary gain. If there is really some gain, its label - 'honorarium' - 'remuneration' - 'salary' is not material - it is the substance and not the form which matters and even the quantum or amount of "pecuniary gain" is not relevant - what needs to be found out is whether the amount of money receivable by the concerned person in connection with the office he holds, gives to him some "pecuniary gain", other than as 'compensation' to defray

his out of pocket expenses, which may have the possibility to bring that person under the influence of the executive, which is conferring that benefit on him.

8. In the present matter, in reply by ANIIDCO to query(s) raised by the Lok Sabha Sectt. it is mentioned that ANIIDCO is a Government company incorporated under Section 617 of the Companies Act, 1956 and the term of the Member of Parliament as a public representative in the Board of Director will be as a non-official director as nominated by Lt Governor is three years. Further, as per the provisions of the Articles of Association the power to nominate and remove Board of Directors vests in the Lt. Governor of Andaman & Nicobar. As regards the powers of Board of Directors, it is stated that no executive, legislative or judicial powers are being exercised with any powers of disbursement of funds, allotment of lands etc. Further, Board of Directors does not wield influence of power by way of patronage.

9. As regards allowances etc., the Member of Board is getting sitting fee of Rs. 5000 (Rupees Five Thousand) per meeting for attending the Board meeting and in addition, the Member of Board is also entitled for travelling expenses, accommodation etc. on actual for attending the Board meeting. That, apart from sitting fee, the Member of Board is also entitled to get 50% discount on food for personal consumption which is run by ANIIDCO.

In view of the above position (particularly paras 8&9 above) the nomination of Member of parliament in the Board of Directors of ANIIDCO may be considered to be an office of profit under the Government and the same may attract disqualification as mentioned under Article 102(1)(a) of the Constitution of India.

Pl. Biseru B.
22/5/18
26/5/18
25.5.18

(S.R.Mishra)
Additional Secretary
23.05.2018

Law Secretary

S. R. Mishra
25/05/18

6/3
O/o Minister of State for
Law & Justice
Dy. No. 3044/18
Date: 25/5/18

MSKJ
29/5/18

M/S
14/6/18

18/06/18
Law Secretary

AS (SRM)
19.6.18

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Annexure - VIII

~~Annexure - VIII~~

F.No. 1(27)/2014-Coord.(DPE)
Government of India
Ministry of Heavy Industries and Public Enterprises
Department of Public Enterprises

Block No.14, CGO Complex,
Lodi Road, New Delhi-110003
Dated the 18th April, 2018

OFFICE MEMORANDUM

Subject: Oral Evidence of the representatives of the Department of Public Enterprises in connection with the nomination of Shri Bishnu Pada Ray, Member of Parliament, Lok Sabha on the Board of Director of Andaman and Nicobar islands Integrated Development Corporation Ltd. (ANIIDCO)

The undersigned is directed to refer to Lok Sabha Secretariat O.M. No. 21/1/6(3)/2018/CII dated 16th April, 2018 on the subject mentioned above and to furnish the following information in this regard.

2. In terms of provisions of DPE OM dated 13th October, 1972 and 20th April, 1982 (copies enclosed), sitting Members of Parliament should not be appointed to Boards of Directors of CPSEs.

3. As regards the applicability of DPE guidelines, it is mentioned that DPE deals with matters relating to Central Public Sector Enterprises (CPSEs) and therefore DPE guidelines are applicable only to CPSEs, which for the purpose of Public Enterprises Survey laid in the Parliament, are defined as Government companies in which more than 50% equity is held by the Central Government. The subsidiaries (registered in India) of these companies in which any CPSE has more than 50% equity are also categorized as CPSEs. Since ANIIDCO is not a CPSE as per above definition, DPE guidelines are not applicable in this case. It may be noted that ANIIDCO in their reply dated 4th October, 2017 also stated that ANIIDCO is not a CPSE.

4. A copy of this O.M. is being endorsed to Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) for their reference and information.

5. This issues with the approval of Secretary, Department of Public Enterprises.

Encl : As stated

Kailash Bhandari
15/4/2018
(Kailash Bhandari)
Deputy Director
Tel : 2436-6247

Lok Sabha Secretariat,
(Ms. Rita Jaikhan, Director),
Parliament House Annexe,
New Delhi.

Copy to (for reference and information) :-

- (i) Ministry of Law & Justice (Secretary, Legislative Department), Shastri Bhavan, New Delhi.
- (ii) Ministry of Law & Justice (Secretary, Department of Legal Affairs), Shastri Bhavan, New Delhi.

Received at 5:30 pm
Del. Secy (CBI) / rap. Man
1.1.14 - 1.1.14

Composition of Board of Directors of
Public Enterprises. (BPE O.M. No. 2 (9)
/80-BPE (GM) dated 20th April, 1982)

CHAPTER II
PERSONNEL POLICIES

(g) Composition of Board of Directors

41. DPE/Guidelines/II(b)/6

Composition of Board of Directors of Public Enterprises.

As the Ministry of Industry, etc. are aware, according to the present policy of the Government, a sitting Member of Parliament should not be appointed to the Boards of Directors of Central Government Public Enterprises. The guidelines issued by BPE through its O.M. No. 2 (158)/ 70-BPE (GM) dated the 13th October, 1972, also envisaged that for large multi-unit enterprises and large trading organizations, the typical structure of a Board could be a full-time Chairman-cum-Managing Director, assisted by a few Functional Directors, and part-time Directors. It was, however, indicated at that time that there should be no bar to the appointment of a part-time Chairman if in particular cases this course appears desirable, in which cases, a suitable whole-time Managing Director should invariably be appointed.

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2. Government had occasion to review these two issues at considerable length in the context of the recommendations of the Committee of Public Undertakings and in the light of some proposals received from the Administrative Ministries from time to time.

3. Government have decided that the policy of not appointing sitting Members of Parliament to the Boards of Directors of Central Government Public Enterprises should continue. Government have also taken a decision that the policy of combining the post of Chairman and Managing Director of a public enterprise should be decided on the merits of each type of enterprise and the availability of a competent person to hold the post of part-time Chairman.

4. The above decisions are brought to the notice of the Ministry of Industry, etc. for information and compliance. Cases where sitting Members of Parliament are already functioning as part-time Members of the Boards of Central Government Public Enterprises may also be reviewed in the light of the above decision of the Government when the Boards of Directors of such enterprises are reconstituted.

(BPE O.M. No. 2 (9) /80-BPE (GM) dated 20th April, 1982)

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Composition of Boards of Directors of Public Enterprises. (BPE No. 2(158)/70- BPE (GM) dated 13th October, 1972)

CHAPTER II PERSONNEL POLICIES

(g) Composition of Board of Directors

39. DPE/Guidelines/II(b)/1

Composition of Boards of Directors of Public Enterprises

The question as to how the structure of the Boards of Directors of Public Enterprises can be rationalized, consistent with efficient functioning of these enterprises has been under consideration of Government for some time. It has now been decided that the following principles should be followed by the administrative Ministries in this regard:

i. For large multi-unit enterprises and large trading organizations, the typical structure of a Board could be a full-time Chairman-cum-Managing Director assisted by at least two functional Directors, one of whom would be in-charge of Finance, and part-time Directors.

As regards the inclusion of General Managers of constituent units and executive in-charge of different regions in the Boards of multi-unit or multi-regional enterprises, inclusion of a few General Managers and Directors by rotation could be considered. Even if all the General Managers are not made directors, those left out should also, in principle, be invited to attend and participate in all the Board meetings. It is, of course, understood that in certain situations, they may not, for good reasons, all be invited to a particular meeting.

ii. A typical structure of a Board for the smaller enterprises could be a Chairman-cum-Managing Director with one, and possibly even two senior officers of the undertaking itself as functional Directors together with some part-time Directors. One of the functional Directors could, if necessary, be designated as Executive Director or Director (Co-ordination), should the burden on the Chairman-cum-Managing Director be too heavy.

iii. In the cases referred to in (i) and (ii) above, there should be no bar to the appointment of a part-time Chairman, if in particular cases this course appears desirable. In such cases, a suitable whole-time Managing Director should invariably be appointed.

iv. The number of part-time non-official Directors on the Boards of multi-unit and multi-regional Public Enterprises may be about 1/3rd of the total strength, which may be of the order of 12 to 15. In relatively smaller enterprises, the Board strength should be between

8 and 12, including official and non-official part-time Directors, the number of the latter being about 1/3rd of the total.

v. The policy regarding appointment of full-time Chairman/ Managing Directors/Functional Directors from out of the "panels" being prepared by the Empanelment Selection Board in accordance with the Prime Minister's directive, should be followed without exception to ensure maximum utilization of the panels. The aim should be for the enterprises themselves to generate their own top executives at this level also, who should, therefore, be screened by the Empanelment Selection Board before considering empanelment of Government servants and men from private enterprises.

vi. Appointment of Government representatives on the Boards should ordinarily be restricted to the dealing Joint Secretary/Director, but in the case of some Ministries, other officials within it might be chosen so as to constitute a Management Coordination Cell, as proposed to be done in the Ministry of Industrial Development and Internal Trade or to meet the conditions about the number or directorships held by each officer.

vii. With regard to part-time Directors, as an interim measure, the services of those from the private sector, who have volunteered for full-time appointment in Public Enterprises and considered fit and empanelled to hold such top level posts in Public Enterprises may be advantageously utilised. A comprehensive list of those considered suitable for appointment as part-time Directors will, in due course, be prepared and circulated, it being understood, however, that discretion would be available to appoint those outside the list, where necessary. The final decision on the question of representation of workers on the Boards of Industrial Enterprises being pursued by the Department of Labour and Employment will also be relevant in this context.

viii. On the question whether Government representatives on the Boards of Public Enterprises should necessarily include a representative of the Finance Ministry, while Finance Ministry representatives may be appointed to the major Public Enterprises, the relatively smaller enterprises may do without representatives of the Finance Ministry. In such cases, however, where there is no representative of the Finance Ministry on the Boards, the undertakings should ensure that the concerned Financial Advisers (Heads of the respective Expenditure Divisions in the Finance Ministry) receive, sufficiently in advance of the Board meetings, the agenda papers, as also the minutes of the meetings. This will enable the Finance Ministry to keep in touch with the activities of the enterprises.

ix. The policy decision in regard to the exclusion of Members of Parliament in the Boards of Public Enterprises, which is based on the recommendations of the Krishna Menon Committee should remain unchanged. (The relevant extract from the report of the Krishna Menon Committee on State Undertakings and Government's decisions thereon, referred to above, is enclosed in Annexure).

2. The above decisions are brought to the notice of the Ministry of Petroleum and Chemicals, etc., for information and compliance.

ANNEXURE

Extract from the report of the Krishna Menon Committee on State Undertakings and Government's decision thereon.

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42. Members of Parliament on Boards

A more difficult question to decide arises in the matter of Members of Parliament or Legislative Assemblies, and whether they should be members of Boards of Management. The overwhelming weight of considerations must be against it. Such membership even if it carries no emoluments, carries much power and patronage. The Member of Parliament concerned is part of the organ of public control and is the exponent of public criticism in Parliament. As a Director or part of a concern's administration he is responsible for the very conduct and affairs which Parliament, and therefore, he is called upon to examine, criticize and judge. Having specialized and inside knowledge, he can use it in Parliament and elsewhere, when he has disagreements with his colleagues on the Board and wishes to take a line apart from the team of which he is a Member. His colleagues who are not Members of Parliament like himself cannot reply. They are "officials"—employed in State Undertakings. His Parliamentary colleagues are also at a disadvantage because he purports to speak from expert and inside knowledge. The Minister finds himself in a very embarrassing position when the matter is debated in the House.

43. There is also the further consideration—for whom does he speak?

(1) If he speaks for the industry in Parliament he takes the place of the Minister; (2) if he speaks for the Board as Managing Director or Chairman, being one himself, then he has greater facilities which other MPs do not have; (3) if he turns critic, he places every one including the industry in an adverse position.

44. It will be understood that such a Member of Parliament, who is not a member of Government, cannot take over the functions and duties of a Minister. He cannot be a critic for the reasons stated above. Thus, he can neither defend nor criticize, for as Chairman or a Director of the Company concerned he has access to information which others do not have and which he should not use. Therefore, if a Member of Parliament is Chairman or even a Director, he would disqualify himself for participation in discussions in regard to the concern he is associated with, and there would be severe limitations in regard to his participation in debates on similar concerns or State concerns as a whole. On the other hand, he cannot be obliged to sit in Parliament unconcerned, when the debate is on matters of which he has knowledge. This, in effect, would prevent him from functioning fully as a Member of Parliament. If, on the other hand, he were to use his position and his knowledge, then he places the concern of which he is an active and responsible part and the Board at a great disadvantage as well as in a position of embarrassment. His colleagues and the concern are not represented in Parliament except through the Minister. Conflicts will arise as to whom the Minister represents. In the result, therefore, appointment of Members of Parliament in Corporations is altogether an unhealthy practice and is difficult to justify.

Government's Decision on the Above Recommendation

"Members of Parliament should not be appointed to Boards of Directors".

(BPE No. 2(158)/70-BPE (GM) dated 13th October, 1972)

CONFIDENTIAL

**EXTRACTS OF THE MINUTES OF THE FIFTY THIRD
SITTING OF THE JOINT COMMITTEE ON OFFICES OF
PROFIT (SIXTEENTH LOK SABHA) HELD ON
WEDNESDAY 25TH JULY, 2018**

The Committee met on Wednesday, 25th July, 2018 from 1515 hrs. to 1545 hrs. in Committee Room 'E', Basement, Parliament House Annexe, New Delhi.

PRESENT

Shri Kalraj Mishra - Chairperson

MEMBERS

LOK SABHA

2. Adv. Sharad Bansode
3. Smt. Meenakashi Lekhi
4. Shri M.K. Raghavan
5. Prof. Saugata Roy
6. Smt. Supriya Sule
7. Kunwar Pushpendra Singh Chandel

RAJYA SABHA

8. Shri Mahesh Poddar

SECRETARIAT

1. Dr. Preeti Srivastava - Joint Secretary
2. Smt. Rita Jailkhani - Director
3. Smt. Maya Lingi - Additional Director

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

3. Thereafter, the Committee considered and adopted the draft Report regarding Election / Nomination of Member of Parliament on the Board of Directors of Andaman & Nicobar Islands Integrated Development Corporation Ltd., (ANIIDCO) without any modifications.

2. XX XX XX XX

3. The Committee then adjourned.

XX Does not pertain to this Report.