

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

SECOND REPORT

Presented to Lok Sabha on 13.12.2005
Laid in Rajya Sabha on 13.12.2005

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**LOK SABHA SECRETARIAT
NEW DELHI**

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

Shri Chandra Bhushan Singh - Chairman

MEMBERS

LOK SABHA

2. Shri Ananth Kumar
3. Shri Ashok Argal
4. Shri Shivraj Singh Chauhan
5. Shri Mohan Jena
6. Shri S.K. Kharventhan
7. Shri G. Nizamoddin
8. Shri Nikhilananda Sar
9. Shri Bharatsinh M. Solanki
10. Shri Sita Ram Yadav

RAJYA SABHA

11. Prof. Saif-ud-Din-Soz*
12. Shri Silvius Condpan
13. Shri Manoj Bhattacharya
14. Shri Ram Nath Kovind
15. Shri K. Rama Mohana Rao

SECRETARIAT

1. Shri John Joseph - Secretary
2. Shri R.C.Ahuja - Joint Secretary
3. Shri R.K. Bajaj - Deputy Secretary
4. Shri J.V.G. Reddy - Under Secretary

* Elected by Rajya Sabha on 22 August, 2005 vice Shri Eduardo Faleiro retired

INTRODUCTION

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

2. The matter covered in the Report was discussed by the Joint Committee on Offices of Profit with the representatives of the Ministry of Law and Justice and Department of Space on 18 October, 2004 and 16 July, 2005 respectively.
3. The Committee examined the composition, character, functions etc. of Space Commission and ISRO/DOS constituted by the Union Government and the emoluments and allowances payable to their non-official Members/Honorary Advisor with a view to considering whether the holders of the offices of these bodies would incur disqualification under Article 102 of the Constitution of India.
4. The detailed information regarding the composition, character, functions, emoluments and allowances payable to the members of these bodies was furnished by the concerned Department and the Committee wish to express their thanks to the Department of Space for furnishing the information desired by the Committee. They also wish to express their thanks to the Ministry of Law & Justice for giving their considered opinion in the matter.
5. The Committee considered and adopted this Report at their sitting held on 14 October, 2005 (APPENDIX).
6. The observations/recommendations of the Committee in respect of the matter considered by them are given in succeeding paragraphs.

CHANDRA BHUSHAN SINGH,

Chairman,

Joint Committee on Offices of Profit

NEW DELHI

14 October, 2005

22 Asvina, 1927 (Saka)

Report

CHAPTER

Appointment of Member of Parliament as (i) Honorary Adviser in Department of Space / Indian Space Research Organisation (ISRO) and as (ii) part-time Member of Space Commission.

The Department of Space vide their D.O. Letter No. 12/5/4/2003-I dated 4 September, 2003 requested for approval of their proposal for appointment of Dr.K.Kasturirangan, M.P., Rajya Sabha as Honorary Adviser in Department of Space/Indian Space Research Organisation and vide O.M. No. 12/5/5/2003-I dated 7 January, 2004, the Department also requested for reconsideration of recommendation made by the Joint Committee on Offices of Profit contained in 8th Report, 13th Lok Sabha that appointment of members of Parliament as part-time members of Space Commission would entail disqualification for being chosen as, or for being, a member of Parliament. These issues are discussed in the succeeding paragraphs.

I. Office of Honorary Adviser in Department of Space/Indian Space Research Organisation (ISRO)

2. The main function of the ISRO is to execute the space programmes formulated by the Department of Space. Besides, it also coordinates the overall programmes like satellite communication, earth observation, launch vehicle, space science, space-industry coordination, disaster management support, international cooperation, publications and relations, budget and economic analysis and human resources development.

The Department of Space in their letter dated 4 September, 2003 have stated that Dr. K. Kasturirangan has served the Department of Space for 35 years in various capacities. He has served as Secretary in the Department of Space for more than 9 years. Dr.

Kasturirangan has distinguished himself in the field of space research and his contributions to the space programmes and projects are invaluable.

In order to avail his vast experience, the Department of Space have proposed to appoint Dr. Kasturirangan as Honorary Adviser in DOS/ISRO. It has also been stated that since his appointment as Adviser will be in an Honorary capacity, Dr. Kasturirangan will not be receiving any financial remuneration and it will not lead to any conflict of interest as a member of Parliament (Rajya Sabha).

3. Further details furnished by the Department of Space vide their O.M. dated 23 September, 2003 and 8 October, 2003 are as follows:-

- (i) The Honorary Adviser does not exercise any financial or executive powers. His functions include advising Chairman of ISRO on matters which are referred to him. From time to time he will give suggestions in matters of scientific nature concerning Space Science and Technology.
- (ii) He will be given travel expenditure and incidentals actually incurred for specific visits undertaken with reference to matters referred to him for advice. No sitting fee is given. However, working level office facilities and transport on need basis will be extended to him.
- (iii) No ceiling is prescribed on travel expenditure and incidentals. He will be paid travelling expenditure and incidentals as admissible to an officer of 'A' category, befitting the level of a retired Secretary to Government of India.
- (iv) Working level facilities and transport facilities include an office room in Antariksh Bhavan in Bangalore with the facilities of

telephone/fax and internet. He will be given part time assistance of Personal Assistant when he works in the office. Transport facility will be limited to official trips between office and residence.

- (v) Since travel expenditure and incidentals are in the nature of reimbursement, it is not considered as a source of profit. Similarly the working facilities provided do not constitute any source of profit/remuneration. These are provided only for enabling and assisting him to render necessary advice when required to do so (not on full time basis).

4. To a query whether the office of Honorary Adviser in the Department of Space/ISRO could be construed as an Office of Profit, the Ministry of Law and Justice (Department of Legal Affairs) opined as under:

“The office of the Honorary Adviser of ISRO appears to have not been included in the list of offices exempted under the Parliament (Prevention of Disqualification) Act. However, since the post does not carry any financial remuneration and the facilities proposed to be provided are in the nature of compensatory allowances defined in the Act, it appears that holding of office of Honorary Adviser of ISRO by Dr. Kasturirangan on the proposed terms and conditions as clarified by the Department of Space would be in order. Dr. K. Kasturirangan, however, may be advised to satisfy himself on his own and take appropriate view in the matter accordingly.”

5. The Committee at their sitting held on 18 October, 2004 discussed the above proposal with the representatives of Ministry of Law and Justice (Department of Legal Affairs) in the context of the concept of Office of Profit under the Constitution and decided to hold further discussion with the representatives of Department of Space.

6. The Committee held informal discussions with the representatives of Department of Space during their study visit to Bangalore on 16 July, 2005. The following information/clarifications were provided to the Committee in a written reply dated 25 July, 2005:-

- (i) The Daily Allowance (DA) entitlement for an officer of the rank of Secretary to Government of India are as follows:-

Stay at	A1Class cities	A Class cities	B1Class cities	Other places
Hotel	Rs.650	Rs.525	Rs.425	Rs.335
Other than Hotel	Rs.260	Rs.210	Rs.170	Rs.135

- (ii) The post of Honorary Adviser is not a permanent position in DOS/ISRO and it is related to the personal calibre of Dr.K. Kasturirangan.
- (iii) As Honorary Adviser, Dr. Kasturirangan's role will be limited to giving technical/scientific advice only. There is well-established system for financial decision making in DOS/ISRO and the financial decision making is completely separated from the technical decision making. Honorary Adviser will not in any way impinge upon the executive or financial functioning/decision making process in DOS/ISRO.
- (iv) The Department would like to continue to benefit from the knowledge, expertise and experience of Dr. K. Kasturirangan.

7. To a query as to whether the duties of Hon.Adviser, DOS/ISRO and the duties of member of Parliament are compatible, the Department of Space replied as under:-

“Appointment as Hon.Adviser was contemplated so as to ensure that vast knowledge and experience of Dr. K. Kasturirangan are available to DOS/ISRO

even after he ceased to have a formal association with the Organization. The intention was to ensure that his scientific, technical and intellectual knowledge and expertise are constantly available to DOS/ISRO. This arrangement was contemplated solely in the interest of DOS/ISRO as a number of on-going projects were conceived during Dr.K. Kasturirangan's tenure as Secretary, DOS/Chairman, ISRO and it was felt that his contribution would ensure continuity in their formulation and, later, implementation. The role of Hon.Adviser was expected to focus on matters that are technical, and would have nothing to do with administrative, executive and financial decision making.”

8. The Committee also took into consideration a few cases relevant for consideration of the question which are summarised below:

- (A) In the case of Shri M. Jafer Ali, a nominated Member of Legislative Council of Andhra Pradesh, appointed (in 1964) as consultant to the Government of India in the Ministry of Irrigation and Power for a period of one year to advise on problems pertaining to irrigation and power projects that might be referred to him for advice (who functioned from his normal place of residence on a fee of Rs.150/- per day for the actual day of work subject to a maximum of Rs.12,000/- for the whole year), the Election Commission held that by accepting the said appointment, Shri Jafer Ali was holding an office of profit and was consequently disqualified for being a Member of the Legislative Council of the State. (E.L.R. Vol. XXVI P.444)
- (B) Shri R. Mohanarangan a Member of Rajya Sabha had to vacate his seat in September 1982 for holding the post of Special Representative of Tamil Nadu as he was getting some benefits like use of staff car, occupation of Tamil Nadu House and use of a telephone. In that case also the member was not entitled to draw any salary or honorarium or any pecuniary benefit from that post. The Election Commission nevertheless declared it an “Office of Profit”

under the Government as the post of Special Representative carried a salary which was actually attached to the post.

- (C) It has also been held by the Chief Election Commissioner (in March, 1953) in the matter of Vindhya Pradesh Legislative Assembly Members that for the purpose of deciding the question of disqualification, so long as any profit was attached to any office, it did not matter whether the profit has in fact been appropriated or not and there was no distinction between members who draw their allowance and those who did not. (E.L.R. Vol. IV P.422)

9. The Committee also note that in their Tenth Report, the Joint Committee on Offices of Profit (Seventh Lok Sabha) had laid down the following criteria to decide the question as to which of the offices should disqualify and which should not disqualify a person for being chosen as or for being a Member of Parliament:

“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 run 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 or 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 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 member of Parliament:-

- (i) Whether the holder draws any remuneration, like sitting fee, honorarium, salary, etc. i.e any remuneration other than the 'compensatory allowance' as defined in Section 2 (a) of the Parliament (Prevention of Disqualification), Act, 1959;
[The principle thus is that if a member draws not more than what is required to cover the actual out-of-pocket expenses and does not give him pecuniary benefit, it will not act as a disqualification.]
- (ii) Whether the body in which an office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, allotment of lands, issue of licences, etc., or gives powers of appointment, grant of 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.”

10. The Committee note that the main function of the DOS/ISRO is to execute the Space programmes as formulated by the Department of Space. However, as honorary adviser to DOS/ISRO Dr. Kasturirangan's role will be limited to giving

technical and scientific advice only to the Chairman, ISRO on matters referred to him. The Committee note that the post of honorary adviser is not a permanent position in DOS/ISRO and it is related to the personal calibre of Dr. K. Kasturirangan. The honorary adviser also does not exercise any financial, executive powers or wield influence by way of patronage. The post has also not been conferred with any powers of disbursement of funds, etc.

11. As regards the facilities and remuneration attached to the post of honorary adviser, the Committee note that Dr. K. Kasturirangan, as honorary adviser, will be given travel expenditure, incidentals actually incurred for specific visits undertaken in connection with matters referred to him for advice. In addition, he would also be provided with office room with facilities of telephone/fax, internet and part time assistance of a Personal Assistant and a staff car for travels.

12. The Committee note that the judgement of Election Commission in the cases of Shri M. Jafer Ali, a nominated member of Legislative Council of Andhra Pradesh and Shri R. Mohanrangan, a member of Rajya Sabha and the guidelines laid down by the Joint Committee on Offices of Profit (Seventh Lok Sabha) as given in paras 8 and 9 of the Report are relevant in this case.

13. The Committee are of the view that the facilities of an office room with telephone/fax/internet, personal assistant and a staff car proposed to be provided to Dr. K. Kasturirangan for holding the office of honorary adviser in DOS/ISRO are not covered under the 'Compensatory Allowance' as defined in Clause 2 (a) of the Parliament (Prevention of Disqualification) Act, 1959. As such, the holder of office of honorary adviser to the DOS/ISRO would entail disqualification for being chosen as or for being a member of Parliament.

14. The Committee, however, feel that eminent scientists like Dr. Kasturirangan, when appointed as honorary adviser to the DOS/ISRO, could play a very useful and constructive role in the promotion and development of Space Science and Technology. Therefore, he being a member of Parliament should not be

deprived of the opportunity to serve as honorary adviser to DOS/ISRO on purely technical grounds.

15. After giving a careful consideration to all these aspects and the constraints under the law, the Committee recommend that the proposed appointment of Dr. K. Kasturirangan as honorary adviser to DOS/ISRO should be exempted from disqualification for being chosen as or for being a member of Parliament provided he is not entitled to any remuneration other than the 'Compensatory Allowance' as defined in Section 2 (a) of the Parliament (Prevention of Disqualification) Act, 1959. Alternatively the Government should consider to amend the Parliament (Prevention of Disqualification) Act, 1959 expeditiously in order to include the office of honorary adviser to DOS/ISRO under the relevant schedule to prevent the holder of this office from incurring disqualification for being chosen as, or for being a member of Parliament.

II. Part-time Membership of the Space Commission

The Joint Committee on Offices of Profit had examined the Space Commission earlier and recommended in their Eleventh Report (Fifth Lok Sabha) in the year 1974-75, that the membership of the Commission ought not be exempted from disqualification.

2. Subsequently on a proposal received from the Department of Space in the year 2003 regarding appointment of members of Parliament [Dr. Kasturirangan MP (Rajya Sabha) and Dr. B. Bimal Jalan MP (Rajya Sabha)] as part time members of the Space Commission, the matter had been re-examined by Joint Committee on Offices of Profit during 13th Lok Sabha and it recommended in their 8th Report presented to Lok Sabha on 30.1.2004 that since the Space Commission exercises executive, legislative and financial powers, the proposed appointment of Members of Parliament as part-time members of the Space Commission appeared to entail disqualification for being chosen as or for being a Member of Parliament. While taking this view the Committee had observed that the Space Commission was responsible among others for preparing the Budget of the Department of Space and for implementation of the Governments policy in all matters concerning Space and the Commission has full executive and financial powers. It has also legislative functions in promulgating rules and orders.

3. The Department of Space have since requested for reconsideration of the matter by Joint Committee on Offices of Profit on the following grounds:-

- (i) membership of MPs in the Space Commission would fall under the ambit of Section 3 (i) of the Parliament (Prevention of Disqualification) Act, 1959.
- (ii) Since the Space Commission is a collegial body and no member of the Space Commission individually exercised the powers of the Commission, the membership of the Commission ought to be exempted from disqualification.

4. On 18 October, 2004 the Committee discussed the above proposal with the representatives of the Ministry of Law and Justice (Department of Legal Affairs) in the context of the concept of office of profit under the Constitution and decided to hold further discussion with the representatives of Department of Space.

5. The Committee also undertook study visit to Bangalore on 16 July, 2005 to discuss the above issue with the representatives of Department of Space. During informal discussion at Bangalore, the Committee were apprised that the Space Commission does not exercise any executive, legislative, financial or judicial powers. The executive powers of DOS/ISRO are exercised by the Space Commission in accordance with the delegation of powers. Financial Powers are exercised by the Chairman alongwith the Members for finance in respect of projects and procurements in accordance with financial delegation of powers. In respect of Budget, the Commission makes recommendations within the schemes and allocation approved in the five year plans that are processed by the Planning Commission considered by the Government and ultimately approved by the Planning Department. While Space Commission recommends/approves policy matters, it does not enjoy legislative powers.

6. The Department of Space believes that the tradition of having former Chairman, Space Commission as Member of the Space Commission is a healthy tradition and needs to be continued in public interest. This has been done in the past in the case of Prof. Satish Dhawan and Prof. U.R. Rao. However, these persons were not Members of Parliament.

7. The Committee observe that there is no material change in the character, composition, powers and functions of the Space Commission. The information submitted by the Department of Space for reconsideration of the issue is not convincing because the relevant question in this regard is whether the Space Commission in which the office is held exercises executive, legislative or judicial functions and not whether an individual member appointed to the Commission exercises these powers. This is also the criteria followed by Joint Committee on

Offices of Profit in deciding the question as to which of the offices should disqualify, as noted in para 9 above (Part I). As per this criteria, the plea that the Space Commission is a collegial body and no member of the Commission individually exercises the powers of the Commission becomes untenable.

8. The Committee, however, are of the view that association of eminent scientists like Dr. K. Kasturirangan MP (Rajya Sabha) with the Space Commissions would go a long way in promotion and development of the Space Science and Technology in the country. Eminent Scientists of his stature may not be deprived of the opportunity to serve on Space Commission merely on technical grounds. The Committee, therefore, feel that there is a strong case for exempting the holders of the post of member/part time member of the Space Commission from disqualification.

9. The Committee, therefore, recommend that the Government may consider to amend the Parliament (Prevention of Disqualification) Act, 1959 so as to include this office under the relevant Schedule to prevent the holder of this post from incurring disqualification for being chosen as, or for being a Member of Parliament.

NEW DELHI

14 October, 2005
22 Asvina, 1927 Saka

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

APPENDIX
VII

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

The Committee sat on Friday, 14 October, 2005 from 1500 hrs. to 1530 hrs in Committee Room No. '62', Parliament House, New Delhi.

PRESENT

Shri Manoj Bhattacharya - In the Chair

MEMBERS (LOK SABHA)

2. Shri Ashok Argal
3. Shri Mohan Jena
4. Shri G. Nizamuddin
5. Shri Nikhilananda Sar
6. Shri Sita Ram Yadav

MEMBERS (RAJYA SABHA)

7. Prof. Saif-ud-Din-Soz
8. Shri Silvius Condpan
9. Shri K. Rama Mohana Rao

SECRETARIAT

Shri R.C. Ahuja - Joint Secretary
Shri R.K. Bajaj - Deputy Secretary
Shri J.V.G. Reddy - Under Secretary

2. In the absence of Chairman, the Committee chose Shri Manoj Bhattacharya, M.P. to act as Chairman for the sitting under Rule 258 (3) of the Rules of Procedure and Conduct of Business in Lok Sabha. Thereafter, the Committee took up the draft Second Report for consideration and adopted the same without any modification.

3. The Committee also placed on record their appreciation of the valuable assistance rendered to them by the officers and staff.

The Committee then adjourned.