



PARLIAMENT OF INDIA
RAJYA SABHA

173

**DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON TRANSPORT, TOURISM &
CULTURE**

**ONE HUNDRED SEVENTY THIRD REPORT
ON
THE NATIONAL HIGHWAYS AUTHORITY OF INDIA
(AMENDMENT) BILL, 2011**

**(PRESENTED TO THE RAJYA SABHA ON 15.03.2012)
(LAID ON THE TABLE OF THE LOK SABHA ON 15.03.2012)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
MARCH, 2012/PHALGUNA, 1933 (SAKA)**

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* To be appended at printing stage.

**COMPOSITION OF THE DEPARTMENT-RELATED PARLIAMENTARY STANDING
COMMITTEE ON TRANSPORT, TOURISM AND CULTURE
(2011-2012)**

1. Shri Sitaram Yechury - Chairman

Rajya Sabha

2. Prof. Saif-ud-Din Soz
3. Shri Satish Sharma
4. Shri Shadi Lal Batra
5. Shri Ramdas Agarwal
6. Shri Vikram Verma
7. Shri Narendra Kashyap
8. Shri Thomas Sangma
9. Shri Pyarimohan Mohapatra
10. Shri Syed Azeez Pasha

Lok Sabha

11. Yogi Adityanath
12. Shri Avtar Singh Bhadana
13. Shrimati Tabassum Hasan
14. Dr. Mahesh Joshi
15. Shri Hassan Khan
16. Dr. Kruparani Killi
17. Shri Jose K. Mani
18. Dr. Sanjeev Ganesh Naik
19. Shrimati Jaya Prada Nahata
20. Shrimati Raneer Narah
21. Shri Rajaram Pal
22. Shri Bal Kumar Patel
23. Shri Rudramadhab Ray
24. Shri Madan Lal Sharma
25. Shri Dushyant Singh
26. Shrimati Meena Singh
27. Dr. Raghuvansh Prasad Singh
28. Shri Rakesh Singh
29. Shri Shatrughan Sinha
30. Shri Anurag Singh Thakur
31. @Shri Subrata Bakshi

SECRETARIAT

Shri N.K. Singh, Joint Secretary
Shri Jagdish Kumar, Director
Shri Swarabji B., Joint Director
Shrimati Nidhi Chaturvedi, Assistant Director
Shri T Kennedy Jesudossan, Committee Officer

@ Nominated on 2nd March, 2012 *vice* Shri Ajit Singh who ceased to be a Member of the Committee consequent upon his inclusion in the Council of Ministers w.e.f. 18th December, 2011.

INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture, having been authorised by the Committee to present on its behalf, do hereby present this One Hundred and Seventy Third Report of the Committee on the National Highways Authority of India (Amendment) Bill, 2011*.

2. The Bill was introduced in the Lok Sabha on the 19th December, 2011. In pursuance of rules relating to the Department-related Parliamentary Standing Committees, the Hon'ble Chairman, Rajya Sabha, referred** the Bill to the Committee on the 13th January, 2012 for examination and report on or before 15th March, 2012.

3. The Committee took oral evidence of the Secretary, Ministry of Road Transport and Highways and representatives of National Highways Authority of India at its meeting held on the 6th February, 2012.

4. The Committee considered the draft Report on the subject and adopted the same on 13th March, 2012.

6. The Committee wishes to express its thanks to the Secretary and other officers of the Ministry of Road Transport and Highways and National Highways Authority of India and Ministry of Law and Justice for the assistance and inputs provided during deliberations on the provisions of the Bill.

NEW DELHI ;
March 13, 2012
Phalgun 23, 1933 (Saka)

SITARAM YECHURY
*Chairman,
Department-related Parliamentary Standing
Committee on Transport, Tourism & Culture.*

* Published in the Gazette of India Extraordinary Part II, Section-2, dated 19th December, 2011.

** Rajya Sabha Parliamentary Bulletin Part II, No.49210 dated 16.01.2012.

Report

The National Highways Authority of India (Amendment) Bill, 2011 was introduced in the Lok Sabha on the 19th December, 2011. The Bill was referred to the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture for examination and report. The Committee has examined the Bill and finalized the Report as per the mandate. The Bill seeks to further amend the National Highways Authority of India Act, 1988.

2. The reasons for introduction of the Bill, as informed by the Ministry of Road Transport and Highways have been discussed in the succeeding paragraphs.

3. The National Highways Authority of India was established as a statutory body under the National Highways Authority of India (NHAI) Act, 1988.

4. Section 3 of the National Highways Authority of India Act, 1988 provides for constitution of the National Highways Authority of India. As per sub-section (3) of the said section, the authority shall consist of (i) a Chairman; (ii) not more than five full-time members; and (iii) not more than four part-time members. The Ministry has stated that keeping in view the vastly increased mandate for National Highways Authority of India and also the greatly enhanced participation envisaged for the private sector, it is proposed to expand the strength of full-time Members from five to six and part-time Members from four to six to allow induction of professionals of repute in the fields of financial and project management. Induction of outside professionals will enhance the capacity of the Authority to take strategic decisions, widen its perspective, bring in best management practices, and assist in achieving the goal of higher private participation.

5. NHAI is mandated to implement National Highways Development Project (NHDP) in various phases. About 54,000 kms length of highways has been included for development under NHDP. The Government has adopted Public Private Partnership mode (PPP) as the preferred mode of delivery of projects. As PPP is an emerging field and implementation of the NHDP programme on PPP mode, called for creation of a specialized agency with unique and specific skills sets, the Committee on Infrastructure (CoI) in its meeting held on 13.1.2005 under the Chairmanship of the Prime Minister took the following decision :-

“In order to provide autonomy and delegate more powers to NHAI for approval of individual projects within the overall programme including the financing structure approved by CCEA, it is necessary to build institutional capacity of NHAI by making it a multidisciplinary professional body with high quality financial management and contract management expertise.”

6. With a view to build the institutional capacity of the National Highways Authority of India, the Ministry of Road Transport & Highway vide its Note dated 5th July, 2007 sought the approval of the Cabinet for the re-structuring of NHAI. The proposal inter-alia included increase in number of full-time members from five to six and part-time members by two i.e., from four to six, who would be from the non-Government sector, one from IITs/IIMs and the other from financial institutions. The proposal was approved

by the Cabinet in its meeting held on 20th July, 2007. A draft NHAI (Amendment) Bill was accordingly submitted to the Cabinet for amending the NHAI Act, 1988 to incorporate the provision for the proposed increase in the number of full-time and part-time members of NHAI.

7. After various procedural delays, the National Highways Authority of India (Amendment) Bill, 2008 was introduced on 22nd December, 2008 in the Lok Sabha. The Amendment Bill was referred to the Department-related Standing Committee on Transport and Tourism for examination and report. The Committee examined the Amendment Bill and submitted its 148th report on 16th February, 2009.

8. The Ministry of Road Transport and Highways has submitted that as the Ministry was processing the comments and recommendations of the Department-related Parliamentary Standing Committee on Transport and Tourism, the 14th Lok Sabha was dissolved and consequently the NHAI (Amendment) Bill, 2008 has lapsed.

9. A Cabinet Note for reintroducing amendment of the National Highways Authority of India Act, 1988 for increasing number of full-time members from 5 to 6 and part-time members from 4 to 6 was sent to the Cabinet for approval on 9.9.2011. The Cabinet in its meeting held on 30.9.2011 has approved the proposal. After vetting by the Legislative Department, the National Highways Authority of India (Amendment) Bill, 2011 was introduced in the Lok Sabha on 19.12.2011.

10. The Committee in its meeting held on the 06th February, 2012 heard the views of the Secretary and other officials of the Ministry of Road Transport and Highways, National Highways Authority of India and Ministry of Law and Justice on the Bill. The Committee in its meeting held on the 13th March, 2012 examined the Bill in its entirety and adopted its report. The Committee's consideration/recommendations have been given in the succeeding paragraphs.

11. The Committee noted that in order to equip the Authority to manage the enhanced mandate and to handle the Public Private Partnership Projects effectively in future, the Central Government has decided to amend sub-section (3) of section 3 of the said Act. The NHAI (Amendment) Bill, 2011 proposes to substitute sub-section (3) of Section 3 of NHAI Act 1988 as follows:

“(3) The Authority shall consist of:-

- (a) a Chairman
- (b) not more than six full-time Members; and
- (c) not more than six part-time Members,

to be appointed by the Central Government by notification in the Official Gazette:

Provided that the Central Government shall, while appointing the part-time members, ensure that at least two of them are non-government professionals having knowledge or experience in the financial management, transportation planning or any other relevant discipline”.

12. The Secretary, Ministry of Road Transport and Highways while deposing before the Committee stated that the increase in the mandate of National Highways Authority in recent past had necessitated this amendment in the NHAI Act, 1988. The Committee wanted to know when was the original mandate of NHAI was changed, it was informed that while the mandate of NHAI (to develop, maintain and manage national highways in the country) remains unchanged, the scope and quantum of its work has gone-up significantly, after the National Highways Authority of India was set up in 1995. After launch of NHDP, the work profile of NHAI has changed substantially. The NHAI added nearly 40,000 kms of national highways under various NHDPs from 2000 to 2007 and many of the projects are under implementation. Now more and more projects are being implemented on Public-Private Partnership which entails issues of project structuring, financial planning, bidding and contract management.

13. The Secretary further stated that change in funding pattern of road projects from public funding to private funding requires the increase in full- time and part-time members of NHAI Board. He added that as more road projects are awarded under PPP model, Government has decided to ensure that while appointing the part-time members, at least two of them are non-government professionals having knowledge or experience in the financial management, transportation planning or any other relevant discipline.

14. To a specific query on how increase in the number of full time and part-time members will help in achieving the objectives for which the amendment is being sought, it was informed that under the existing Act, there is provision of 5 full time members. Besides, there are 4 part-time members who are government officials. However, keeping in view the increased work load and to encourage private sector in development and financing of projects and the fact that earlier projects were undertaken on EPC mode it was felt that now they have to be structured and steered on PPP mode in which there is active private sector participation. There are many contractual, financial and technical issues that constantly being thrown up including diverse issues of implementation and execution, it was felt necessary to have another full time member on the board of NHAI. Further, induction of outside professional in the Board, will enhance the capacity of the Authority to take strategic decisions, widen its perspective, bring in best management practices and accordingly it was decided to have two part-time members to represent outside experience of the financial and project-management domain. As such, it has been proposed to have two non-governmental members – one from a IITs/IIMs and other from the Financial services sector.

15. When the Committee asked the reason for appointing non-governmental professionals as part-time members only and not as full time, the Secretary informed the Committee that the job of full-time members is more on planning and core implementation side and, therefore, the benefit of the non-government professional members who are expert in their field is taken by making them as part-time Members in the Authority with a view to get their inputs to facilitate the framing of policies and to take major decisions.

16. To a query by the Committee on the powers and duties of the Member and their role in decision making, it was informed that Section 25 of the NHAI Act, 1988, prescribes that the Authority may, by general or special order in writing delegate to the

Chairman and any other member or any other officer of the Authority, subject to such conditions and limitations, if any, as may be specified in the order such of its powers (except its powers under Section 35) and functions, as it may deem necessary. The Authority has delegated from time to time its power to the Chairman but not to the Members specifically. At present full time Members are assigned work by Chairman. However, Section 34(b) of NHAI Act 1988 provides for power of the Central Government to make rules with regard to the powers and duties of the Chairman and Members.

17. Regarding the reasons for allowing persons from private companies to apply for the post of Chairman, NHAI and the possible conflict of interest in such cases it was submitted to the Committee that the persons from the private companies have been permitted to apply for the post of the Chairman, NHAI so as to make the body more professional and to oversee management of works and resources with modern management and professional expertise. Considering the wide scope of the work available with NHAI, a person in the private sector may wish to get associated with it to derive satisfaction from participating in a National programme. In order to deal with the possible conflict of interest, two years cooling off has been made mandatory after he had resigned from his job from the entity having dealings with the NHAI, before a person applies for the post of Chairman, NHAI.

18. Regarding the qualification for appointment of Chairman of NHAI the Ministry submitted to the Committee that in order to enlarge the candidature and to provide energetic and stable tenure to the post of Chairman of NHAI, officers with 2 years of service as Additional Secretary were permitted to apply for the post of the Chairman. The members are of Joint Secretary level who are in the pay scale of Additional Secretary, generally on deputation.

Recommendations/observations of the Committee

19. The Committee notes that a similar legislation – the National Highways Authority of India (Amendment) Bill 2008, was brought earlier also that was examined by this Committee and the 148th Report thereon was submitted to the Parliament. The Committee appreciates that some of its recommendations have been accepted by the Government and incorporated in the present Bill.

20. The Committee, however, notes that some of its major recommendations regarding the revamping of the NHAI, it appears have not been accepted by the Government as these find no mention in the Bill. In the face of the enormous challenges before the NHAI of not only completing the existing projects but also meeting uphill target of constructing 21 kms. of highway everyday, the Committee feels, NHAI will not be able to live upto these simply by having one more full-time and two part-time Members. While the Government may be having its own arguments for doing so, but such a cosmetic face-lift will not be enough. The need of the hour, in fact, is granting more financial and administrative powers to NHAI. The Committee, therefore, reiterates its earlier recommendation contained in its 148th Report that simply adding of professionals as part time members in the NHAI will not strengthen the organization in the required manner.

21. The Committee notes that the Bill proposes to take non-government professionals as part time members, having knowledge or experience in certain areas. It reads as: “financial management, transportation planning or any other relevant discipline”. The Committee feels that the words “any other relevant discipline” is certainly vague and liable to be interpreted differently at different occasions to suit certain vested interests. The Committee, therefore, recommends that in the interest of clarity and transparency, the “any other relevant discipline” must be specified as it has been done for the “financial management and transportation planning”.

22. The Committee notes that the argument given by the Government for not inducting non-government professionals as full-time Members had been reversed in the case of that given for allowing persons from private companies to apply for the post of Chairman, NHAI. In other words, while Government does not want to induct non-government professionals as full time Members, it has no problems in appointing such persons as Authority’s Chairman – the most powerful position.

23. The Committee finds the argument against the possible conflict of interest in the case of persons from private companies, unconvincing and the two years cooling off will not be adequate for taking care of all the possible eventualities in this regard.

24. As regards making officers with two years of service as Additional Secretary eligible for the post of Chairman, NHAI, the Committee found no justification for fixing “two Years” for this. Besides, the Committee is of the opinion that in view of the Members of the NHAI being in the pay scale of Additional Secretary, allowing officer of the same level as Chairman will not be conducive for the smooth functioning of the NHAI. The Committee also feels that condition of two years of service as an Additional Secretary shall prevent the persons from the Public Sector Undertakings having relevant experience in the infrastructure sectors-power, civil aviation, ports and other such sectors.

25. The Committee takes a strong exception to the Government’s inability to make Rules under Section 34 (2) (b) of the National Highways Authority of India Act, 1988 for providing powers and duties of the Chairman and Members. Instead, the entire gamut of powers has been delegated to the Chairman by the Authority and the rules defining the duties and functions of the Members have not been framed till date. In such a situation, the National Highways Authority of India, it appears is being run purely on the whims and fancies of some persons. This is unacceptable to the Committee as it is certainly an infringement of the legislative mandate given by the Parliament in the NHAI Act. By not doing so, the Government has not only failed to follow the mandate of Parliament to frame relevant Rules and Regulations given under Section 34(2)(b) but has also failed to place them before the Parliament as provided under Section 37 of the NHAI, Act. The Committee is of the considered opinion that the present Bill will not serve the purpose unless the powers and duties, not only of the Members but also of the Chairman are defined, as provided in Section 34(2)(b) of the National Highways Authority of India Act, 1988. The Committee accordingly recommends that the

Government should take up the exercise of framing of Rules and Regulations defining the powers and duties of Members and Chairman of the NHAI without any further delay.

26. The Committee also recommends that the Government should come up with a comprehensive legislation incorporating all the suggestions/recommendations made for restructuring and strengthening of NHAI at the earliest.

27. The Committee recommends that the Bill may be passed after incorporating the suggestions made by it.

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