
(2000) 01 DEL CK 0039

In the Delhi High Court

Case No : Civil Writ Petition No. 3796 of 1999, Civil Misc. 7592, 10848 and 14072/99, Civil Writ Petition No. 496 of 1999, Civil Misc. 712 of 1999, C.W. 3796/99 and C.Ms. 7592, 10848 and 14072/99

Anand Darbari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 2 AD 453 : (2000) 53 DRJ 18

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : Mr. Shanti Bhushan and Mr. A. Sharan, for the Appellant; Mr. Kirit N. Rawal, A.S.G., Mr. H.S. Phoolka, Senior Advocate, Mr. S.S. Bawa and Mr. Israel, for the Respondent

Judgement

N.G. NANDI, J.

C.W. 496/99 & C.Ms. 712/99

1. In the Civil Writ Petition No. 3796/99 under Articles 226 & 227 of the Constitution of India, the petitioner has been praying for the writ of certiorari or any other appropriate writ or order quashing the non-acceptance of the recommendations dated 21.4.1999 of Public Enterprises Selection Board, (for short "PESB"), and the consequent decision of the Appointment Committee of Cabinet, (for short "ACC"), to terminate the tenure of the petitioner as Chairman-cum-Managing Director (for short "CMD"), Cement Corporation of India (for short "CCI") and to issue a writ of mandamus or any other appropriate writ or direction directing ACC to take appropriate decision regarding extension of the petitioner's tenure as CMD, CCI on the basis of the recommendations of the PESB without taking into account the extraneous and irrelevant facts pertaining to withdrawn proposal dated 3.2.1999 of respondent No.1, as referred to in the note prepared by the Secretary, ACC and also for the issue of writ of prohibition

or any other writ or order restraining respondents 1 & 2 from terminating the services of the petitioner pursuant to the impugned non-acceptance of the recommendations of PESB.

In C.W. 496/99, the petitioner prays for direction quashing/expunging the adverse observations/remarks contained in ACRs of the petitioner for the years 1995-96 and 1996-97, as communicated to the petitioner vide two letters dated 18.12.1998 AND for the direction restraining the respondents from considering or taking into account the adverse remarks contained in the ACRs for the years 1995-96 and 1996-97 for any purpose while holding joint appraisal of the petitioner for considering the petitioner's case for the extension of his tenure as CMD, CCI or for any other purpose and also directing respondent No.1 to produce the relevant communications, letters and notes with regard to recommendations of respondent No.1 during the year 1995-96 and 1996-97 for the extension of the petitioner's service tenure with effect from 2.1.1996 and upgradation of petitioner to Schedule "A" scale of pay.

2. It is not in dispute that on 2.1.1989, the petitioner was appointed as CMD of CCI for a period of five years; that on 18.10.1994, the petitioner was granted extension for two years as CMD, CCI with effect from 2.1.1994; that on 5.9.1995, the petitioner was granted vigilance clearance by Central Vigilance Commission, for short "CVC", for proposed appointment of the petitioner as Chairman of Rashtriya Chemical & Fertilisers Limited; that the petitioner was granted three years extension with effect from 2.1.1996 as CMD, CCI; that in September 1996, the petitioner was considered by PESB for the post of Chairman, Airport Authority of India (AAI) and was placed at No.1 in the panel prepared by PESB.

3. It is the case of the petitioner that in September 1996, an anonymous complaint was filed with respondent No.1 containing various allegations which were examined by respondent No.1 and having found no substance in the allegations contained in the complaint informed CVC accordingly and requested for vigilance clearance to the petitioner for his appointment as Chairman, AAI; that respondent No.1 appointed a Committee consisting of two officers of rank of Director of Deputy Secretary (defense) to look into the allegations appointed by CVC; that the above Committee of respondent No.1, after making an independent enquiry into those allegations, found no substance and cleared the petitioner of all the allegations; that respondent No.1, while forwarding the report of the aforesaid Committee, categorically concluded "in view of the findings of the independent inquiry, it has been decided to close the cases against the petitioner CMD, CCI" and asked for vigilance clearance. CVC, in spite of the above in-depth inquiry conducted by the Committee of respondent No.1 and clarification submitted by the Committee, arbitrarily refused to grant vigilance clearance" to the petitioner for his appointment as Chairman, AAI; that respondent No.1 informed Department of Personnel & Training, Government of India regarding the inquiry conducted by its Committee and non-substantiation

of the allegations against the petitioner; that as a counter blast to C.W. 4749/97 filed by the petitioner in the Delhi High Court against the refusal by CVC to grant vigilance clearance for appointment as Chairman, AAI, respondent No.1, under the instructions of CVC, initiated disciplinary action by serving memorandum and charge-sheet containing six charges relating to matters already gone into and investigated in detail by departmental committee of respondent No.1 as well as Board of Directors, CCI from time to time but nothing was found against the petitioner at any stage; that on recommendations of the CVC and at the instance of respondent No.1, Central Bureau of Investigation (CBI) registered an FIR against the petitioners and eight other retired and serving officers of CCI containing identical allegations as contained in the memorandum/charge-sheet dated 24.11.1997 issued by respondent No.1; that till date no disciplinary action has been initiated against the remaining eight officers of CCI against whom identical allegations existed in the FIR dated 25.11.1997; that respondent No.1 received CBI report to the effect that the allegations made against the petitioner and others remained unsubstantiated; that respondent No.1, after receiving CBI report, appointed Inquiry Officer to hold the inquiry into all the charges without considering CBI report, in violation of the provisions of Vigilance Manual and Government of India instructions issued vide DOPT with the sole intention to keep the matter of vigilance clearance pending against the petitioner; that the disciplinary proceedings came to be stayed vide order passed in C.W.3376/98 filed by this petitioner; that respondent No.1 initiated the matter for joint appraisal by apprising PESB about the expiry of the petitioner's tenure as CMD, CCI on 1.1.1999; that the reporting officer of respondent No.1 raised two Annual Confidential Reports (ACRs) in respect of the petitioner for the period 1995-96 and 1996-97 and made adverse remarks in the said reports after a period of 31 days and 11 months respectively; that the said remarks are contrary and inconsistent with the view expressed and stand of respondent No.1 about the performance of the petitioner No.1 during the relevant period indicated in several performance reports sent to PESB and the Appointment Committee of Cabinet i.e. ACC; that the petitioner came to know about the raising of such reports on 21.12.1998; that the ACRs containing adverse remarks were not communicated to the petitioner; that PESB advised/recommended continuance of the petitioner as CMD, CCI beyond 1.1.1999 in conformity with the Government of India's Policy and instructions contained in letters dated 12.12.1996 and 21.11.1998 so as to hold the joint appraisal meeting after giving reasonable opportunity to the petitioner to represent against the adverse remarks contained in the ACRs; that the petitioner received letter from Secretary, PESB informing about the joint appraisal meeting and asked the petitioner to attend the same on 26.12.1998; that the petitioner attended the office of PESB for participating in the joint appraisal meeting; that the petitioner learnt about the decision of respondent No.1 taken on 30.12.1998 not to continue the term of the petitioner beyond 1.1.1999 notwithstanding the recommendations of PESB and in violation of the Cabinet/ACC instructions contained in Cabinet Secretary's letter dated 12.12.1996 and in PESB's letter dated 21. 11. 1996; that the respondent No.1

sent a proposal to ACC through Establishment Officer, DOPT, who also acts as Secretary to ACC, to terminate the tenure of the petitioner as CMD, CCI; that the CBI, who reinvestigated the matter in response to CVC's letter dated 16.12.1998, submitted its report stating that the investigation has not found any violation in the purchase policy approved by the Board of Directors or delegation of powers on the part of any authority of CCI or violation of founding rules or procedure and that no malafides or irregularities could be established against any person during the course of investigation; that respondent No.1 withdrew its proposal dated 3.2.1999 vide which respondent No.1 had proposed to ACC to terminate the tenure of the petitioner as CMD, CCI; that the then Minister of State for Personnel, on perusing the proposal dated 3.2.1999 initiated by respondent No.1 for termination of tenure of petitioner, observed that the facts regarding CBI's report in favor of the petitioner and recommendations of PESB for continuity of the petitioner beyond 1.1.1999 till the joint appraisal was done and a decision was taken by ACC as per existing Government instructions were not brought out in the proposal; that the petitioner submitted report against the adverse remarks for the years 1995-96 and 1996-97; that the PESB, after considering the report of the petitioner sent through respondent No.1, was of the view that remarks in ACRs of the petitioner for the period 31.12.1997 to 31.3.1998 appear to be adverse which had not been communicated to the petitioner. In this regard, respondent No.1 informed PESB that the relevant entries made in the above ACRs for three months were not adverse; that as regards ACRs from 31.12.1997 to 31.3.1998, respondent No.1 informed PESB that relevant entries are not adverse in nature; that PESB, on considering the entire matter, reluctantly decided to carry out the joint appraisal of the petitioner and it was also decided not to take cognizance of ACRs for the years 1995-96 and 1996-97; that the PESB held joint appraisal meeting in which the petitioner appeared and joint appraisal of his performance was conducted by PESB; that PESB, after carrying out the critical evaluation of the performance of the petitioner and keeping in view overall performance of the petitioner within the financial constraints and inherent problems in CCI formed the view that there was justification for further continuance of the petitioner as CMD, CCI and PESB, after consulting respondent No.1, recommended extension of tenure of the petitioner from 1.1.1999 to 31.3.2001; that respondent No.1 forwarded recommendations of PESB, Secretary to ACC, DOPT along with current status of vigilance clearance including second report of CBI counter in February 1999 which has reported its earlier conclusion that no mala fide or irregularity could be established against the petitioner; that EO & Secretary to ACC, DOPT, submitted a note to ACC, on the recommendations of PESB, for extension of tenure of the petitioner beyond 1.1.1999 up to 31.3.2001 keeping in view the facts mentioned in the note. That in the said note, the facts with regards to the second report of CBI given in February 1999 which once again gave a clean chit to the petitioner has not been mentioned; that the Secretary, ACC referred to in detail earlier proposal dated 3.2.1999 put up by respondent No.1 proposing terminating the tenure of petitioner which had been withdrawn by respondent No.1 in view of the

final order dated 26.3.1999 passed in C.W.6724/98; that the reference to the same was to prejudice the mind of ACC and adversely influence the decision to be taken by ACC on the recommendations of PESB being only material which ACC is to consider for taking a decision on the issue of extension or otherwise of the petitioner as CMD, CCI; that the petitioner has learnt that ACC, inspired by the recommendations of PESB to extend the tenure of the petitioner up to 31.3.2001, has declined to accept the recommendations and has decided not to extend tenure of the petitioner any further; that the ACC, while taking the aforesaid decision, has not given any reason for not accepting the recommendations of PESB which have been made by PESB after considering the past performance reports of the petitioner and various other relevant factors relating to the interest and welfare of the organisation and the existing financial constraints faced by CCI.

4. The respondent No.1, vide counter affidavit, took preliminary objections and contended that the petitioner has suppressed relevant material facts from the court and has not approached the court with clean hands and the petitioner is guilty of suppressive and suggestio falsi; that the petitioner has suppressed the fact that during the tenure of the petitioner, the performance of the company declined sharply and the company suffered heavy losses amounting to around Rs. 700 crores and thereby eroding the net worth of the company completely; that consequently, the company had become sick and had been referred to BIFR under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 which has inter-alia adversely affected the future of more than 5000 employees; that on this ground alone, the claim of the petitioner for any form of relief is liable to be dismissed; that the petition is not maintainable as the appointment of the petitioner as CMD, CCI was of a contractual nature for a specified period and he has no right to continue in his post after completion of his tenure; that the decision to grant "further extension of tenure, if any, vest with the Government and the petitioner cannot claim extension as of right; that the petitioner has based his claim for extension on the recommendations of PESB and thereby attempting to convey that the PESB is an expert body and its recommendations should be accepted by the Government; that the averments in the petition are not the correct interpretation of the role of PESB; that PESB's role is only advisory to facilitate decision making by the ACC and as such PESB's recommendations are not binding and the writ is, Therefore, liable to be dismissed; that the petitioner was appointed as CMD, CCI for a period of five years with effect from 2.1.1989; that the appointments of Chief Executives/Functions Directors of Public Sector Undertaking (PSUs) are of a contractual nature for a specified period and do not envisage any automatic extension of tenure till superannuation; that in January 1994, the tenure of appointment of the petitioner was extended for a period of two years up to 2.1.1996; that thereafter the petitioner was given another extension for three years which expired on 1.1.1999; that on 31.12.1998, this High Court (Vacation Judge) passed an interim order directing that status-quo with respect to the post held by the petitioner viz. CMD, CCI should be

continued; that in C.W.6724/98, the High Court directed that "the petitioner shall submit his Explanation without prejudice to his contentions in the writ petition to the first respondent on or before 7.4.1999 and the first respondent shall forward the Explanation to PESB for consideration. It is for the PESB to consider the report in accordance with law including the question whether ACRs for the years 1995-96 and 1996-97 should be taken into account. The joint appraisal shall be done on or before 20.4.1999. The PESB shall send the appraisal report to the first respondent and the first respondent shall forward the same to ACC and the ACC shall take appropriate decision in accordance with the law. Until ACC takes a decision, the petitioner shall continue to function as CMD." Pursuant to the above, the report submitted by the petitioner against the adverse remarks in his ACRs was forwarded to PESB and PESB had conducted the performance appraisal on 19.4.1999; that PESB's report was submitted to the ACC for consideration and appropriate orders; that after considering the PESB's report, ACC did not accept the PESB's recommendations and directed that the petitioner should not be given any further extension and he should be relieved of his duties with immediate effect; that the petitioner was accordingly relieved of his duties as CMD, CCI with effect from 29.6.1999; that the directions given by the High Court in its order dated 26.3.1999 regarding the completion of the procedural formalities were fully complied with and the ACC, which is a competent authority in such matters, has taken the decision not to extend the tenure of the petitioner; that after the petitioner was relieved from the post of CMD, CCI, his successor has brought to the notice of respondent No.1 some glaring irregularities involving the petitioner; that it has been reported that more than two hundred persons were appointed on ad hoc basis in violation of the prescribed recruitment rules and procedures; that the petitioner by misusing his position has availed of some undue financial benefits like LTC, leave encashment, car advance, etc. without following the applicable rules and regulations and in utter disregard to the poor financial health of the company and the fact that the company had become sick; that the petitioner also disregarded the fact that the salaries/wages of the employees/workers were not being paid regularly for several months. It is further contended that the various units of CCI have been running at very low capacities; that the net profit in the year 1991-92 mentioned by the petitioner was largely on account of financial reliefs approved by the Government of India as a part of capital restructuring of CCI. So also, the profits in the year 1997-98 were largely on account of utilisation of the sale proceeds of one of the units of CCI; that the results shown to be achieved are not due to the efforts of the petitioner and to the contrary, the actual production of cement by CCI fell to a level of 9.85 lakh MT in 1997-98 as against 31.61 lakh MT in 1991-92; that during this period, the capacity of various plants of CCI remained almost the same; that the net loss rose sharply from 52.1 crores in 1992-93 to 159.41 crores in 1996-97; that the total loss in course of six years i.e. from 1992 to 1998 is Rs. 611.88 crores; that the profit shown during 1997-98, is only on account of sale of one of the units of CCI namely yerraguntla and not on account of operations; that the unsecured loans raised by CCI rose sharply during the

period from 1989 to 1998, the total amount of unsecured loans including interest thereto availed of by CCI at the end of the year 1989-90 were around Rs.265 crores which rose sharply to Rs. 661 crores at the end of the year 1997-98; that the ACRs is not the sole factor taken into consideration by the competent authority while considering extension/non-extension of tenure of Board-level appointees and the question of extension/non-extension of tenure was considered by the competent authority taking into account various factors such as the performance of the concerned official, results achieved, etc. that in Department of Heavy Industry itself, services of Captain Rudra, former CMD, TAFCO were not continued up to his superannuation; that as directed by the High Court in its order dated 26.3.1999, PESB had held a joint appraisal which has been considered by ACC; that the decision not to extend the tenure of the petitioner as CMD, CCI is that of ACC which is the competent authority; that in any case, PESB has not considered ACRs of the petitioner for the years 1995-96 and 1996-97, Therefore, all such averments are not relevant for the present purpose; that a decision had been taken not to continue the services of the petitioner beyond 1.1.1999 are denied as false and misleading; that no decision had been taken by respondent No.1 not to continue the services of the petitioner beyond 1.1.1999 as ACC is the competent authority in such matters; that the respondent had brought the factual position of the case relating to the continuance of the petitioner in the post of CMD, CCI after expiry of his approved tenure on 1.1.1999 to the notice of the ACC by way of a letter on 3.2.1999; The respondent had, however, subsequently on 26.3.1999 withdrawn the letter in pursuance of the directions of the High Court and informed the ACC of the directions by the High Court given on 26.3.1999 in C.W. 6724/98 for complying with the procedural formalities; that the respondent had forwarded the petitioner's report dated 7.4.1999 against the adverse remarks in the ACRs to the PESB for consideration in compliance with the directions dated 26.3.1999. It is denied that the views of respondent No.1, during the performance appraisal conducted by PESB, were an attempt to discontinue the services of the petitioner as CMD. It is denied that there is any nexus between the impugned decision of the ACC and any such request being referred to by the petitioner, that the Industry Minister received requests/representations from various quarters regarding the administrative matters of the employees of PSUs under the administrative control of the Ministry; that such representations are generally forwarded to the concerned PSU for consideration. The respondent denies any alleged bias consequent upon the inability to comply with the request to transfer a particular employee of CCI; that it is not that all the representations and requests are accommodated or accepted and this does not lead to any action against the Chief Executives of the PSU concerned.

5. Respondents 2 & 3, vide their counter affidavit, have taken the stand consistent with that of respondent No.1.

6. It is submitted on behalf of the petitioner by Mr. Shanti Bhushan, learned Senior Counsel that unless there is something positive or glaring against the

recommendations of the PESB, the recommendations of PESB are normally to be accepted; that the note of doubtful integrity by the Minister concerned is without any basis; that the CBI report, which is in favor of the petitioner, is suppressed; that the PESB is an independent body consisting of highly placed officers and its recommendations are in highly objective manner and must be given its due weight; that the CBI also gave clean chit to the petitioner and the CBI report is binding to all concerned; that the paradise report submitted by CBI is suppressed and that the impugned order not to continue the petitioner is on some extraneous considerations; that from time to time, PESB recommended extension to the petitioner and on 21.5.1999 the note has been prepared suppressing CBI report of 9.2.1998; that there was no material placed before the Minister concerned for passing the impugned order; that the non-acceptance of recommendations of PESB is without any rational basis and there is a complete departure from the normal practice and the impugned order is discriminatory and arbitrary; that respondent No.1 did not consider the matter from the angle it ought to have been considered and in absence of strong reasons available for not accepting the PESB recommendations, the recommendations were binding; that the matters not amounting to criminal offence is not required to be referred to vigilance, especially when the CBI investigation clears the petitioner; that the normal procedure has been given a go by and the concerned file moved/cleared in one day by the Ministry concerned; that the very creation of PESB implies binding nature of its recommendations except in cases where there is grave objection to the recommendations; that the motivated people are behind the petitioner; that the petitioner has every right to get information and the same is consistent with the public interest and there is nothing wrong in getting the information by the petitioner. The question is whether the information got by the petitioner is correct or not and not how the petitioner got the information; that there is nothing against the petitioner's integrity and it is not suggested as to how the petitioner's integrity is doubtful in any manner, especially when PESB does not say so.

7. As against this, it is submitted by Mr. Kirti N. Rawal, learned Additional Solicitor General for the respondents, that the petitioner's appointment is purely contractual till 31.12.1998 and that the post in question is a selection post; that during the tenure of the petitioner, CCI suffered loss of nearly 700 crores and the decision not to extend the contractual appointment cannot be regarded illegal in any manner; that there is no contractual or statutory right available to the petitioner and that there is no basis namely legal right to claim the relief; that the recommendations of PESB are not binding on the respondents and that there cannot be a specific performance of personal service; that the scheme, for the completion of which the tenure of the petitioner was recommended, has now lapsed and today there is no such scheme; that on the basis of the relevant material placed before the ACC, the decision in question has been reached; that the performance of the petitioner was poor, yet petitioner wants to stick to the post of CMD, CCI; that no interference under Articles 226 and 227 of the

Constitution is called for since there is no equitable/legal basis for the same; that the recommendations of PESB cannot prevail over the ACC since the role of PESB is only advisory in nature and the ACC is the only competent authority to take decision whether to extend the tenure of the petitioner or not and having regard to all the facts and circumstances, ACC had reached the decision not to extend the tenure of the petitioner. It is further submitted that since the petitioner has not disclosed the source of information/papers received by him, the petitioner would be guilty of suppression and would not be entitled to the relief under Article 226 of the Constitution of India.

8. It may be noted at the outset that Mr. Shanti Bhushan, learned senior counsel for the petitioner, has fairly stated that the petitioner has no legal right to claim the extension to the post of CMD, CCI.

9. It is not in dispute that all that the petitioner wants is that the recommendations by PESB should be given due weight since the CBI is ment by senior officers of high stature and its recommendations should not be lightly brushed aside by the respondent unless there are good reasons for so doing since the CBI has on two occasions cleared the petitioner and PESB having noted the same.

10. Mr. Rawal, learned Additional Solicitor General, has relied on the decision in the case of Shankarsan Dash Vs. Union of India, , wherein bench comprising of five Judges of the Supreme Court held that the candidate does not get any right to appointment by mere inclusion of his name in the list. The final selection is subject to satisfactory report of character, antecedents and suitability of the candidate. The appellant cannot claim that he had acquired a right to be appointed against the vacancy arising later on the basis of any rules.

11. In the case of Director, Institute of Management Development, U.P. Vs. Pushpa Srivastava, 1993 (II) LLJ 190, the Supreme Court held that "when the appointment is contractual and by efflux of time, the appointment comes to an end, the respondent can have no right to continue in the post. Once this conclusion is arrived at, what requires to be examined is, in view of the services of the respondent being continued from time to time on adhoc basis for more than one year, whether she is entitled to regularisation? The answer should be in the negative."

12. In the instant case, the petitioner's appointment as CMD, CCI was for a period of five years from 2.1.1989 and the term of the petitioner was extended from time to time up to 1.1.1999. It is not in dispute that the petitioner was considered by PESB for the post of Chairman, AAI and was placed at No.1 in the panel; that in September 1995, vigilance clearance by the "CVC" was granted for the proposed appointment of the petitioner as the Chairman of Rashtriya Chemicals & Fertilisers Limited.

13. In the case of Union of India, etc. etc. Vs. N.P. Dhamania, etc. etc., , it has been held that Appointment Committee of Cabinet can differ with the

recommendations of the DPC convened by UPSC; that the recommendations of DPC are advisory in nature and are not binding on the appointing authority. However, reasons must be recorded for differing, though they may not be communicated to the officer concerned. It is open to the appointing authority to produce necessary records before the court to prove existence of reasons. There can be no disagreement with the proposition of law laid down in the case of Union of India & Others Vs. N.P. Damania & Others (supra) that the recommendations of DPC are advisory in nature and such recommendations are not binding on the appointing authority. It is open to the appointing authority to differ from the recommendations in public interest.

14. In the case of B.C. Chaturvedi Vs. Union of India and others, , the Supreme Court, while dealing with the case of a departmental enquiry held that the disciplinary authority and on appeal, the appellate authority being fact finding authorities being exclusive, the power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute their own conclusion on penalty and impose some other penalty.....". This decision relied on by the learned Additional Solicitor General is besides the point. The proposition propounded in the case of Union of India & others Vs. N.P. Damania & Others (supra) is well accepted.

15. In the case of R.C. Jain Vs. High Court of Patna and Others, , it has been held that withholding the source of information in the affidavit filed and the counsel also not disclosing the court the source from which the person filing the affidavit had obtained the information/documents, is totally reprehensible and improper.

16. As against this, it is submitted by the senior counsel for the petitioner that the information/documents are not a document which contained any secret information and no secrecy is required to be maintained with regard to the contents of the documents filed by the petitioner and the same do not relate to the security and that the justice can be done to the petitioner only on the information which the petitioner has been able to collect.

17. One of the argument advanced by the learned Additional Solicitor General is that during the term of the petitioner as CMD, CCI, the net loss of CCI increased and it reached nearly 700 crores. This is one of the reason to suggest inefficiency/unsuitability of the petitioner. It may be appreciated that an industrial concern incurring loss could be for variety of factors. It is not disputed that the petitioner functioning as the CMD, CCI has number of other persons working in various departments. The loss could be attributed to the recession in the industry, shortage of power, financial crunch, labour problem so on and so forth this could be at the most a factor for considering suitability of the incumbent, but the loss cannot be attributed to the person concerned.

18. In the instant case, one of the reasons coming forth from the respondents for not extending the term of the petitioner as CMD, CCI is that the petitioner's integrity is doubtful which is vehemently objected by the learned counsel for the petitioner contending that there is no basis or material from which the integrity of the petitioner could be said to be in any manner doubtful.

19. The original file relating to the extension of the term of the petitioner as CMD, CCI beyond 1.1.1999 from the Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, New Delhi has been placed for my perusal by the learned counsel for the respondents. I have perused the note dated 23.12.1998 put up by S.O. (ACC) which has the signatures of U.S. (ACC) and D.S. (S.M) and the note of E.O. dated 26.12.1998 and the note of the E.O. dated 30.12.1998. I have also perused the notes put up from time to time by Secretary (ACC) dated 17.2.1999, the noting dated 4.4.1999 by MOS(PP) which refers to CBI report and other documents in F.No.13(29)/EO/98(ACC). The file also contains the noting dated 9.4.1999 by E.O. The noting by the office of MOS(PP) dated 16.3.1999 refers to the documents namely joint appraisal of performance of the petitioner, the report of CBI which inquired into the allegations against petitioner and the orders of the Delhi High Court directing status-quo with respect to his tenure. The note dated 31.3.1999 at page 11 suggests that in view of the directions given by the Delhi High Court, the Department of Heavy Industry has requested that no action may be taken on its proposal regarding the tenure of petitioner as CMD, CCI beyond 1.1.1999 and that it may be treated as withdrawn and consequently the file has been withdrawn. It also suggests that MOS(PP) was asked to see the officer signing the note dated 31.3.1999 for information. I have also perused the note dated 31.5.1999 by the Secretary, ACC.

I have also perused the confidential note dated 21.6.1999 which is regarding the recommendation of the extension of tenure of the petitioner beyond 1.1.1999 to 31.3.2001. The note suggests that the PESB has noted that BIFR has finalised a rehabilitation package and that the implementation of the BIFR package within a specific time frame requires commitment to the package and firm grip over the company including the labour force. The note proceeds to state that it is seen from the records that no rehabilitation package is under implementation. The recommendations by PESB are noted to be deficient for which reasons have been given in the said note and the perception of PESB regarding the petitioner as the CMD, CCI has not been shared in the said note. The said note also refers to the recommendations of CVC and the framing of the charge against the petitioner and departmental inquiry having been ordered. The note concludes that in the circumstances, the proposal before the ACC for extension of tenure of the petitioner should not be approved and the petitioner should not be given any further extension. It appears that the said file went to the Home Minister who on 24.6.1999 agreed with the views expressed by the Industry Minister, particularly because of the facts mentioned in para 4 (which deals with the recommendations of CVC, the framing of charge against the petitioner and the departmental

enquiry ordered). It is suggested that the file was placed before the Prime Minister on 24.6.1999 and the note put up by the Industry Minister and the Home Minister received the assent from the Prime Minister on 24.6.1999. Thereafter on 25.6.1999, the Industry Minister noted that immediate orders may be issued for implementation of the above orders.

20. The petitioner filed C.M.14072/99 stating that during the tenure of the petitioner as CMD, CCI, one Sh. R.K. Aggarwal was appointed as Director (Finance) in May 1996 who was also one of the members of Board of Directors of the CCI; that his appointment was for a period of five years or till completion of 58 years of age, whichever is earlier; that even his appointment was cleared by ACC; that the disciplinary action was also contemplated against Sh. R.K. Aggarwal as per the advice of CVC along with the disciplinary action contemplated against the petitioner on the same set of chargesheet, which ultimately came to be quashed by the High Court of Delhi in C.w. 3376/98 filed by the petitioner; that Mr. Aggarwal did not file any writ petition against the contemplated disciplinary action as per the CVC advice; that though the department had contemplated disciplinary action against Sh. R. K. Aggarwal, yet they did not do so, instead vide letter No. D.O. No. 1(3)/94 PE XII dated 30.11.1999 his case was recommended for confirmation of balance period of his tenure; that Sh. Aggarwal was also holding additional charge of Director (Marketing) and consequently should also be held responsible for the alleged omission and commission of acts pertaining to CCI along with the petitioner; that one Sh. A.K. Sinha was appointed as Director (Operations) on 23.3.1997 during the tenure of the petitioner for a period of five years or till the age of 58 years, whichever is earlier; that he completes his 58 years on 19.12.1999; that Mr. Sinha also held additional charge of the post of Director (Personnel) till August 1998; that as per the CVC advice in the month of September 1997, for the same alleged irregularities (in connection with the finalisation of tenders for the procurement of coal linkages on turn key basis from private transporters) during the period 1995-98, major penalty action had to be taken against all the officers and functional directors of CCI who were involved in these decision; that Sh. R.K. Aggarwal. Director (Finance) was part of the competent authority which approved the Tender Committee recommendations regarding procurement of coal for the last 8 out of 14 tenders while Sh. A.K. Sinha was part of the competent authority in the last 3 tenders along with Sh. Aggarwal; that vide letter dated 30.11.1999, the respondents themselves have confirmed that in case of Sh. R.K. Aggarwal, disciplinary action was contemplated against him along with the CMD and other officials of CCI for their involvement in the same irregularities for which a charge-sheet was issued to the petitioner and the disciplinary action was contemplated against Sh. Aggarwal along with others on the advice of CVC; that regarding Sh. A.K. Sinha, Director (Finance), the respondents have not even taken steps for initiating disciplinary action for the same alleged acts of omission and commission for which the petitioner was held responsible and charge-sheet issued; that ignoring all the aspects, the Department of Heavy Industries, vide

their letter No. D.P. No. 1(3)/96-PE XII dated 3.12.1999 addressed to the Secretary, PESB has recommended the case of Sh. Sinha for confirmation of his balance tenure which would in effect result into extension of two years of term to Sh. Sinha till the age of 60 years; that this action of the respondent clearly smacks of vindictiveness as well as continued mala fide approach vis a vis the petitioner; that for the same acts of omission/commission, if any, the petitioner who was only 52 years at the relevant time, was singled out for unequal treatment and discrimination; that the performance of CCI is not person specific but is a result of the collective responsibility and the efforts of all the functional Directors as well as the CMD and all the disciplinary actions and inquiries conducted against the petitioner were only for the purpose of denying the petitioner justice.

21. The respondent has filed a reply to the said CM and contended that the petitioner has raised extraneous issues to give a colour of discrimination and that the petitioner has annexed copies of confidential letters issued by respondents to the PESB; that the respondent has filed an application u/s 151 CPC for a direction to the petitioner to disclose the source from where he obtained information from confidential file; that the petitioner did not disclose the source and on the other hand has annexed copies of two more confidential letters sent by the respondent to PESB; that the conduct of the petitioner goes to show that he is capable of getting any information from the confidential files of the Government and misuse the same to his advantage; that the petitioner in this C.M. has raised certain non-issues; that the sole intention of the petitioner is to confuse the issues; that in the C.M. the petitioner has tried to draw a parallel between his case and the case of other two functional Directors of the company vis-a-vis Sh. R.K. Aggarwal, Director (Finance) and Sh. A.K. Sinha, Director (Operations); that as a matter of fact the case of the petitioner is entirely different and distinct from the cases of these two Directors and no parallel can be drawn between these two cases; that the issue involved in the writ petition in respect of petitioner was whether the petitioner can claim extension in his tenure beyond the contractual period which has expired on 2.1.1999; that the ACC, which is the competent authority, has considered the entire matter and keeping in view the performance of the company, the performance of the petitioner during his long tenure of 10 years from 3.1.1989 to 1.1.1999 and several other factors decided not to grant further extension whereas in the case of Sh. R. K. Aggarwal and Sh. A. K. Sinha, the issues raised are quite different and distinct; that raising of retirement age from 58 to 60 years is a natural benefit accruing to the individual Board level appointees and is not linked to other aspects like performance, etc; that in view of this position, there is no parallel between the case of the petitioner and the case of other two functional Directors; that as a matter of fact, Sh. Aggarwal was appointed as Director (Finance) on 21.5.1996 and Therefore, his involvement in the awarded contracts was relatively for a shorter period; that in the case of Sh. A.K. Sinha, he was appointed on 22.3.1997 and, Therefore, he was not involved in the award of contract for the

aforesaid period; that besides the role of the petitioner as CMD and role of Sh. Aggarwal as Director (Finance) was different and distinct.

22. It will be seen from C.M. 14072//99 that Mr. R.K. Aggarwal and Mr. A.K. Sinha were the functional Directors along with the petitioner. As far as Mr. R.K. Aggarwal, Director (Finance) is concerned, the CVC advised disciplinary action and the disciplinary action was contemplated against Mr. R.K. Aggarwal on the same set of charges as against the petitioner and Mr. R.K. Aggarwal did not challenge the proposed disciplinary action against him and though the department was free to initiate action against Mr. Aggarwal, the department did not do so in spite of advice of CVC, instead vide letter dated 30.11.1999, the case of Sh. R.K. Aggarwal was recommended to the PESB for confirmation of balance period of his tenure. As far as the other functional director Mr. A.K. Sinha, Director (Operations) is concerned, he completes the age of 58 years on 19.12.1999 and also held additional charge of the post of Director (Personnel) till August 1998. As per the CVC advice, in the month of September 1997 for the same alleged irregularities, (in connection with the finalisation of tenders for procurement of coal linkage on turn key basis from private transporters) during the period 1995-98, major penalty action had to be taken against all the officers and functional Directors of CCI (for the relevant tenders and period) who were involved in these decisions including Mr. A.K. Sinha, Director (Operations) and holding charge of post of Director (Personnel) till August 1998.

There is no denial in the reply to the CM to the allegations that Mr. R.K. Aggarwal, Director (Finance) was part of the competent authority which approved the Tender Committee recommendations regarding procurement of coal for the last 8 out of 14 tenders while Sh. A.K. Sinha was part of the competent authority in last 3 tenders along with Sh. R.K. Aggarwal.

23. It is not suggested from the record that the respondents initiated any steps to take disciplinary action against Mr. A.K. Sinha for the same alleged acts of omission and commission for which the petitioner was charge-sheeted subsequently came to be quashed in C.W. 3376/98 and ignoring all the aspects, the Department of Heavy Industries, vide their letter dated 3.12.1999, recommended the case of Sh. A.K. Sinha for confirmation of his balance tenure. In reply, it is stated by the respondent that the case of the petitioner is different since the case of Mr. R.K. Aggarwal and Mr. A.K. Sinha relate to the raising of retirement age and that the involvement of Mr. Aggarwal in the awarded contract was relatively for a shorter period. This cannot be accepted.

24. Accepting the contents of the C.M. to be correct, what is suggested thereby is that Mr. R.K. Aggarwal was differently treated inasmuch as the CVC had also advised taking of disciplinary action against Mr. R.K. Aggarwal- one of the functional Directors of CCI on the basis of the same charges for which the petitioner was served with the charge-sheet and departmental proceedings initiated yet no action was taken against Mr. Aggarwal and Mr. Sinha, another functional director, and the petitioner is discriminated by recommending the case

of Mr. Aggarwal and Mr. Sinha to PESB for extension of their tenure.

All what could be said is that the cases of two other functional Directors are sent to PESB for extension of their tenure whereas petitioner not extended beyond 2.1.1999 and that the respondents should have treated Mr. R.K. Aggarwal and Mr. Sinha with the same yard stick without any discrimination in the matter of initiating departmental proceedings and treating all involved alike. But that by itself will not clinch the issue. Leaving every other thing aside, as petitioner admittedly does not have legal right to continue on the post of CMD, CCI and cannot claim extension so of right, the recommendation of the cases of Mr. R.K. Aggarwal and Mr. A.K. Sinha for extension of their tenure as Directors will not have any bearing as far as petitioner is concerned.

25. Simply because the file was put up before the Home Minister and the Prime Minister on the same day, that by itself would not necessarily justify the interference with the order not extending the term of the petitioner beyond 1.1.1999 as CMD, CCI.

26. The perusal of the original file, as above, does not suggest any illegality inasmuch as PESB has only an advisory role to perform and its recommendations may nor may not be accepted by the Ministry concerned. Simply because PESB is mend by the senior officers of stature, that cannot make the recommendatory nature of PESB into mandatory one. As far as the implementation of the BIFR Implementation Package, for which the PESB has recommended the extension of the petitioner, is concerned, as revealed from the papers, no rehabilitation package is under implementation. Thus, the basic of the PESB recommendation was the implementation of the rehabilitation package within the specified time frame, cannot be the reason for extending the tenure of the petitioner. Be it as it may, the petitioner having no legal right and the recommendations by PESB being only advisory in nature with no binding effect. I am not able to agree with the submissions advanced by the learned senior counsel for the petitioner that the ACC be directed to reconsider the extension of the petitioner as CMD, CCI beyond 1.1.1999 till 31.3.2001.

27. Having regard to the facts and circumstances, as above, I am of the view that the exercise of extraordinary jurisdiction under Article 226 of the Constitution of India not called for.

In the above view of the matter, both the writ petitions and the C.Ms. are liable to be dismissed with no orders as to costs.

28. Ordered accordingly.