

**(1998) 03 DEL CK 0039**  
**In the Delhi High Court**  
**Case No : CWP. No. 431 of 1998**

Waris Rashid Kidwai

APPELLANT

Vs

Union of India and Others

RESPONDENT

**Date of Decision :** 18-03-1998

**Acts Referred:**

**Citation :** (1998) 2 ILR Delhi 589 : (1998) ILR Delhi 589

**Hon'ble Judges :** Y.K. Sabharwal, J;Dr. M.K. Sharma, J

**Bench :** Division Bench

**Advocate :** Dr. A.M. Singhvi, Mr. P.K. Bansal and Mr. D. Vidyanandam, for the Appellant; Mr. Ashok Desai, Attoreny General, Mr. Arun Jaitley, Mr. Rakesh Dwivedi, Mr. Rakesh Tikku, Ms. Niti Dikshit, Ms. Pratibha, M. Singh, Mr. Maninder Singh and Ms. Rekha Palli, for the Respondent

## **Judgement**

Y.K. Sabharwal, J.—Waris Rasheed Kidwai, the petitioner, has filed this public interest writ petition challenging the mode and manner of appointment to the post of Chairman and Managing Director (CMD) of Minerals & Metals Trading Corporation (MMTC). He seeks quashing of the panel constituted for the said post pursuant to interviews held on 31st July 1997 and the proposed appointment of Mr. S.D. Kapoor, Respondent No. 4.

2. The petitioner is stated to be Secretary General of Standing Conference of Public Enterprises (SCOPE), an Apex Body of Public Sector Enterprises to promote the interest of Public Sector and advise the Government on formulation of policies regarding the management of Public Sector and to help the public enterprises in achieving professional excellence. The petitioner claims that with his efforts the SCOPE has become a member of the International Organisation of the Employers in Geneva, an affiliated body of ILO and he was member of Indian delegation to ILO in each of the years from 1982 to 1992 and was elected Chairman of Committee on professional works set up by ILO. It is also claimed that the petitioner is a founder member of FORE, a premier body on management education in India, Indian Institute of Industrial Studies and also of

Executive Board of Delhi School of Business and is stated to have written various books and articles on the subject. Petitioner claims that he is actively interested in proper functioning of public sector institutions and in proper utilisation of funds invested by the Government in public sectors and in improving the image of public sector undertakings both in India and abroad since he has been working for it for nearly 30 years for the cause of public sector and, Therefore, has filed this petition in public interest.

3. It appears that the post of CMD fell vacant in May 1977 on retirement of then CMD S.N. Malik. The procedure for filling the said post is that Public Enterprises Selection Board (PESB) lays down job descriptions, qualifications and experience for eligible candidates, shortlists candidates out of the eligible officers of the company other than public sector undertakings, organized services and private sector, holds interviews and makes a panel of candidates selected as suitable for the posts and forward the same to the concerned Ministry for processing the case for approval of Appointments Committee of the Cabinet (ACC). The concerned Ministry processes the case, obtains vigilance clearance, obtains the views of the concerned Minister and forward the proposal to Establishment Officer, Ministry of Personnel, Public Grievances and Pension, who is the Secretary of ACC for obtaining and conveying the ACC decision on the proposal. The ACC comprises the Prime Minister, the Home Minister and the Minister in charge of the concerned Ministry, Ministry of Commerce in the present case. According to the affidavit filed on behalf of the Union of India the Secretary, ACC, submits the proposal to the Home Minister and the Prime Minister through the Cabinet Secretary and the decision is finally approved/taken at the level of the Prime Minister and is conveyed to the Ministry concerned by the Secretary, ACC.

4. The PESB was requested by Ministry of Commerce to consider the matter of selection for the post of CMD, MMTC and simultaneously it also requested MMTC to provide the names of eligible internal candidates for consideration of PESB. The PESB had sent job requirement to Ministry of Commerce on 2nd June 1997. The Ministry of Commerce is also stated to have sought the up to date bio-data of the internal candidates in the form as prescribed by PESB including the key bio-data information form of the eligible internal candidates to be sent to it by 13th June 1997 for onward transmission to PESB. The respondent No. 4 had applied for being considered for the post of CMD on 13th June 1997.

5. The PESB invited 3 internal candidates including S.D. Kapoor, Respondent No. 4, Director, MMTC and few others from other public sector enterprises as also from the organized services. The interview for selection to fill the vacancy was held on 31st July 1997.

6. The PESB is said to have empanelled 2 officers for this post, namely, Sushil Tripathi, IAS (UP-1968), Respondent No 3 being at Serial No. 1 on the panel and S.D. Kapoor, Respondent No. 4 being at No. 2 on the panel.

7. According to the averments made in the writ petition the persons who applied

for the post of CMD included certain officers holding the rank of Joint Secretary to the Government of India and their applications, it is claimed by the petitioner, should have been out rightly rejected at the threshold stage itself by PESB since they were totally ineligible in terms of the basic requirement of the circular which provided that a candidate from the organized services to be eligible has to hold the post of not lower than the rank of Additional Secretary to the Government of India. The claim of the petitioner is that Respondent No. 3 was ineligible since he did not fulfill the basic eligibility criteria of holding the post of Additional Secretary to the Government of India at the relevant time. According to the petitioner no IAS officer of 1968 batch had been empanelled for the post of Additional Secretary to the Government of India and, Therefore, Respondent No.3 was ineligible but was not only considered by PESB but was placed at Serial No. 1 of the panel. It appears from the record that PESB considered Respondent No. 3 since he was in the pay scale of an Additional Secretary.

8. According to the petitioner Respondent No.4 also could not be appointed because his name had not been approved either by Commerce Minister or by the Home Minister. The Commerce Minister had opined that a fresh panel may be called from PESB.

9. The petitioner claims that the proposed appointment of Respondent No. 4 is illegal and appointment is being made in a haste and in a manner calculated to appoint a pre-determined person for undue and ulterior motives and for certain political considerations specially when the Lok Sabha elections have been announced and model code of conduct has come into force and thus the proposed appointment is said to smack of taint with malafide action and undue favouritism which would upset organisational hierarchy and cause demoralisation to entire public sector and harm the image of flourosing company of Government of India which is to interact with its counterparts all over the globe. According to the petitioner the panel is liable to be quashed, particularly, when it was so opined by the Commerce Minister. The Minister of Personnel is also stated to have concurred with the viewpoint of the Commerce Minister. it has been submitted that since two out of the three ACC members have not approved the name of Respondent No. 4, there is no reason, occasion or propriety to proceed with the proposed appointment of Respondent No. 4 from the said panel. Further it is claimed that the Respondent No. 4 is being appointed without obtaining the clearance from Central Vigilance Commission (CVC).

10. Respondent No. 3 has adopted a neutral approach contending that he is not interested in the controversy and was thus not laying claim to be appointed as CMD of MMTC and it is for the Government to appoint such person as it may deem fit. Respondent No. 3, however, claims that he was eligible for the post on account of his pay scale.

11. A perusal of record reveals that the Commerce Minister was for scrapping of the panel. According to him, Respondent No. 3 was not eligible and Respondent No. 4 was prima facie guilty in certain MMTC deals resulting in loss of crores of

rupees to MMTC. The Cabinet Secretary and the Home Minister were of the view that Respondent No. 3 should be appointed as CMD and, therefore, they did not express any definite viewpoint in respect of Respondent No. 4. The Minister of Personnel also did not express any definite viewpoint one way or the other. The Prime Minister, however, was of the view that Respondent No. 3 being not Additional Secretary in the Government of India was ineligible and Respondent No. 4 was fit to be appointed to the post.

12. In view of the fact that Respondent No. 3 is not proposed to be appointed and he has also not pressed his claim, if any, to be appointed to the post of CMD, the question whether he was eligible or not loses significance. Therefore, it is not necessary in the present case to decide whether for considering eligibility, the rank of the post is the determining factor or the pay scale. The only question which falls for our determination is about the validity or otherwise of the proposed appointment of Respondent No. 4 as CMD of MMTC.

13. Learned Attorney General appearing for the Government and Mr. Jaitley appearing for Respondent No. 4 have vehemently supported the proposed appointment and have opposed the writ petition.

14. The respondents 1, 2 & 4 have also questioned the locus standi as also the bonafides of the petitioner to file this public interest petition. It has been claimed that the petitioner is guilty of concealment of material facts from this court inasmuch as the petitioner has business interest in MMTC which has not been disclosed and thus the petitioner had disentitled himself to invoke the jurisdiction of this court. Certain documents have been filed by the respondent No. 4 in support of the contention that the petitioner after his retirement about 5 years ago, as Secretary General of SCOPE has commercial dealings with different public sector undertakings including MMTC and also that his two sons are running a Catering Company in the name and style of La Cuisine Pvt. Ltd. which provides catering services as a business to different PSUs including MMTC Ltd. The suggestion also is that the writ petition has been filed by the petitioner at the instance and on behalf of certain vested interests in the MMTC itself.

15. There can be no doubt that commercial interest of a petitioner in an organisation in respect of which a public interest litigation is brought before a court is required to be disclosed. Along with other relevant facts and non disclosure of such interest can result in denial of hearing to the petitioner. Further, there can also be no doubt that if a petition purporting to be a public interest petition is filed in fact at the instance of someone else or on behalf of certain vested interests such a petition does not deserve to be entertained. Mr. Jaitley strongly relies upon the observations of Justice Khalid in the case of Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, that a public interest litigation must inspire confidence of the court and among the public. Public spirited litigants must be above suspicion and the court ought to ask itself question "Is there something more than what meets the eye in this case". Pandey's case was of construction of a Hotel in Calcutta by Taj Group of

Hotels which he objected in public interest writ petition stating that it would adversely affect the Zoo and its inmates. The purported object of Pandey was to preserve the Zoo, to protect and encourage the migratory birds, to keep their trajectory clear, to preserve their diurnal feed and nocturnal habitat and to protect the Zoo. It may be noticed that the Supreme Court went into the facts and circumstances of the case and came to the conclusion that the Government of West Bengal was perfectly justified and acted bonafide in granting the lease to Taj Group of Hotels for construction of a 5-Star Hotel in Calcutta and it did not fail to take into account any relevant considerations and also that the Hotel had given all assurances necessary to preserve the Zoo and its inmates and further that the Government did not sacrifice in any way the financial interest of the State. Justice Khalid, as noticed above, also doubted the bonafides of Pandey. The motive of a public interest writ petitioner has to be examined with care and caution and on reasonable suspicion of the motive the court can decline hearing to a petitioner though in an appropriate case the court may still examine the controversy on its own. The creditability of the writ petitioner, particularly, in public interest litigation is of utmost importance. There can be no doubt that it is necessary to have some self imposed restraint in such matters. It is a question to be examined on the facts of each case whether the invocation of the jurisdiction of the court by so called public spirited person is bonafide or not. The circumspection and caution is needed while exercising public interest jurisdiction. It cannot be invoked to settle private scores (See : Chhetriya Pardushan Mukti Sangharsh Samiti Vs. State of U.P. and others, ). In the case of Ramsharan Autyanuprasi and another Vs. Union of India and others, , relied by Mr. Jaitley it was noticed by the court that the litigation was between members of erstwhile Royal family to settle their own scores and, there fore, the court came to the conclusion that it would be improper to consider the said litigation to be a public interest litigation. The said litigation was not pro bono publico, for the benefit of the public but for the benefit of a particular section of public for their personal rights.

16. In the present case the antecedents of the petitioner have already been noted above. It appears, prima facie, that he has been actively associated with the development of public sector undertakings. The interest of his sons of providing catering services in the SCOPE Complex which houses many organisations including MMTC does not have any material bearing and non-disclosure thereof is of no consequence. Regarding the commercial interest which respondent No. 4 alleges the petitioner has in MMTC, it was explained by the petitioner that the documents which have been filed by respondent No. 4 on record do not as such show any commercial interest of the petitioner. It was submitted that the company of the petitioner had only made an enquiry on behalf of a buyer from MMTC and except for certain correspondence no business was transacted and further it was explained that the MMTC has fixed norms for pricing and it cannot give any favor to anyone and also that no business was transacted with the MMTC. The petitioner has further filed an affidavit stating

that he is not intending and will not pursue any offer/contract in future with MMTC. We may also note that some of the letters filed by Respondent No. 4 to show the alleged business/commercial interest of the petitioner with MMTC, are addressed to then Chairman, MMTC and also to Respondent No. 4 as well. In the facts and circumstances of the present case we do not think that the petitioner had such an interest in MMTC which was withheld from court so as to disentitle him to approach this court by this public interest litigation. On the facts of the case, prima facie, we do not think that the writ petition has been filed at the instance of some vested interests in the MMTC. Further, it has to be borne in mind that MMTC is one of important and vital public sector Undertakings set up primarily for export of minerals and import of critical raw-material for the domestic sector and industry. It is one of the premier companies in the field of international trade having turnover of thousand of crores of rupees. It cannot be doubted that the person who heads this vast foreign trade enterprise must be one of proven ability and possess highest degree of impeccable integrity and appointment to such assignment should be above any reasonable suspicion. In view of the above, the important aspects in respect of appointment of the Chief Executive of MMTC having come to the notice of court deserve to be looked into and examined even suo moto even if we assume that the petitioner is not entitled to be heard. This court is not powerless to examine it suo moto.

17. In respect of appointments like the one in question before us, CVC acts as a watchdog. The person to be appointed to such a post has to be above board and ought to have impeccable integrity. The CVC clearance before appointment is not just a formality. The requirement of CVC clearance has a laudable object behind it. Learned Attorney General did not dispute that CVC clearance for the appointment to the post of CMD of MMTC is necessary. It is not in dispute and the file produced by CVC also shows that such a clearance was not obtained. Various office memorandums have been issued from time to time by Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, on the subject of obtaining CVC clearance for making appointment to the public sector undertakings. We have perused the office memorandums dated 4th August 1988, 6th March 1995, 1st August 1996, 9th January 1997, 23rd May 1997 and 31st December 1997. The PESB while sending its recommendation to the Administrative Ministry is also required to endorse a copy to CVC so that it could initiate advance action for obtaining vigilance clearance. It is also provided that the CVC while examining the antecedents of an officer already working for the public sector enterprises need not necessarily review officer's record from the very beginning and that if a person is functioning in a particular post the appointment to which was done after vigilance clearance, the CVC shall then limit its enquiry for the period spent in that particular post without going into the officer's entire past career.

18. Learned Attorney General faced with the facts of the case where CVC clearance had not been obtained, vehemently contended that there was substantial compliance in the matter of obtaining CVC clearance. It was

submitted that the tenure of Respondent No. 4 as Director of MMTC expired on 31st March 1997. On 11th June 1997 CVC gave clearance in respect of extension to be granted to Respondent No. 4 as a Director. On 17th September 1997 ACC approved the extension of respondent No. 4 as Director of MMTC and on 29th September 1997 16th October 1997 the order for extension of tenure of Respondent No. 4 as Director of MMTC was passed by the Government. It was also submitted by learned Attorney General that CVC clearance was for the person and not for the post and thus it was contended that in view of CVC clearance granted on 11th June 1997 though for extending the tenure of Respondent No. 4 as Director, no separate CVC clearance for the post of CMD was required and in any case, these facts, Mr. Desai contended, showed that there was substantial compliance in respect of CVC clearance. We are unable to accept the contention. The post of CMD was altogether different and the post of Director was different. The former post carries higher responsibilities. The CMD is the Head of the organisation. The contention that the clearance is for the person and not the post cannot be accepted in abstract. In our view CVC clearance is required in respect of a particular person for a specified post. Kapoor's proposed appointment was to a higher post. It is not a case where CVC clearance was obtained for a higher post and appointment was being made to a lower post. Yet another reason why the contention of substantial compliance urged by Mr. Desai cannot be accepted is that the office memorandum specifically requires the CVC clearance even in respect of an officer already working though without going into the officer's entire past career. We may also note that the view point of CVC also is that a separate clearance is necessary for the post of CMD. Admittedly, no such clearance has been obtained. It may also be noticed that learned Attorney General towards fag end of his arguments submitted that if it is found that a fresh CVC clearance is necessary for appointment to the post of CMD, this court could issue directions for obtaining such clearance before making appointment of Respondent No. 4 to the post of CMD.

19. Now we may deal with the contention urged by Mr. Jaitley that a court cannot enquire into the respective opinion which the members of ACC may have expressed while considering cases of such appointments or the manner and mode of voting by the members, in case there is any such voting on difference of opinion between them. In support reliance has been placed by learned counsel on Article 74 of the Constitution of India.

20. Article 74(1) inter alia stipulates that there shall be a Council of Ministers with the Prime Minister as the Head to aid and advise the President who shall in the exercise of his functions act in accordance with such advise. In view of bar contained in Article 74(2) the Court is debarred from enquiring into the advise tendered under Article 74(1) of the Constitution. Article 74(2) stipulates that the question whether any and if so what advise was tendered by the Ministers to the President shall not be enquired into in any court. Mr. Jaitley contended that the decision of ACC is in the nature of advise tendered by Council of Ministers to the President and, Therefore, this court cannot enquire the question as to what

advise was tendered and, Therefore, the viewpoint of the different members of the ACC cannot be gone into by this court. This matter, Mr. Jaitley contends, is outside the purview of judicial review. It has been contended that ACC has been constituted to conduct the business of the Government as stipulated by Article 77 and its business is deemed to be a decision of the Council of Ministers and is in the nature of aid and advise to the President. It has, however, to be borne in mind that what is debarred to be enquired into is the aid and advise and not the material on which the advise is tendered by the Council of Ministers. That material cannot be said to be part of the advise and it is thus outside the exclusionary rule enacted in Article 74(2) of the Constitution (See: S.P. Gupta Vs. President of India and Others, and R.K. Jain Vs. Union of India and Others, ). Further, such an appointment does not call for any aid and advise to the President as contemplated by Article 74(1). It is only an appointment in the name of the President which is altogether a different matter. Such appointments cannot be said to be based on the advise of the Council of Ministers to the President and thus these appointments cannot be said to be protected under Article 74(2). The limited provision contained in Article 74(2) cannot override the basic provisions in the Constitution relating to judicial review in respect of the Appointments of this nature. As stated by the Supreme Court in famous S.R. Bommai and others Vs. Union of India and others etc. etc., , Article 74(1) deals with the acts of the President done "in exercise of his functions", whereas Article 77 speaks of the executive action of the Government of India which is taken in the name of the President of India. Insofar as the executive action of the Government of India is concerned, it has to be taken by the Minister/officer to whom the said business is allocated by the Rules of Business made under clause (3) of Article 77 for more convenient transaction of the business of Government of India. All the business of the Government is transacted by the Minister or other officer empowered in that behalf, of course, in the name of the President. There is no occasion in such cases for any aid and advise being tendered to the President by the Council of Ministers. The President did not really come into the picture so far as Article 77 is concerned. Though expressed in the name of the President they are the acts of the Government of India which are distinct from the acts of the President "in the exercise of his functions contemplated by Article 74". Paras 320 and 321 of Bommai's case leaves no manner of doubt that such appointments are only in the name of the President and do not have the protection of Article 74(2) of the Constitution. We may further note that the learned Attorney General did not urge that the decision of ACC is protected from judicial scrutiny on account of Article 74(2). In view of the above, the contention of Mr. Jaitley deserves to be rejected.

21. This takes us to the last contention, namely, the manner and mode of consideration by ACC.

22. Mr. Ashok Desai, learned Attorney General submitted that the Prime Minister has superemacy in the matters required to be considered and decided by the ACC. Whatever be the views of other members of ACC, what matters is the final

decision/viewpoint of the Prime Minister, was the thrust of submission of Mr. Desai. To illustrate, the submission of Mr. Desai was that if in ACC there are 5 members and four may be in favor of "A", but "B" can be appointed if he is the choice of the Prime Minister and such appointment cannot be challenged on the ground that majority of members of ACC were in favor of "A". On the other hand the submission of Dr. Singhvi was that in such matters of appointments there is no question of superemacy of the Prime Minister and the decision has to be ACC and in case of difference of opinion between members of ACC, the majority decision has to prevail. Mr. Arun Jaitley supported the principles of the superemacy of Prime Minister as propounded by learned Attorney General.

23. We may recapitulate briefly what we have already stated in the earlier part of this judgment. The Commerce Minister was for scrapping the panel. As per the viewpoint of Commerce Minister Respondent No. 3 was not eligible and respondent No. 4 did not deserve to be appointed to the post. The Minister of State (Personnel) agreed with the view point of the Commerce Minister that Respondent No. 3 as of date does not fulfill the requirement and he was, Therefore, not eligible. Regarding Respondent No. 4, his opinion was that CVC could be asked to expedite examining the concerned details and on receipt of report of CVC, the decision be taken on the candidature of Respondent No. 4. The Home Minister was for the acceptance of the view- point of the Cabinet Secretary that Respondent No. 3 was eligible and should be appointed. The Prime Minister decided that Respondent No. 3 was not eligible and Respondent No. 4 shall be appointed as CMD of MMTC. The law requires that the decision regarding appointment to this post shall be by ACC. The consideration by ACC has to be meaningful before it decides as to who deserves to be appointed. We are in agreement with the submission of learned Attorney General that neither any set procedure has been provided nor in the very nature of things it is practicable or possible to provide any hard and fast procedure as to how the meeting of ACC shall take place and the manner in which the members of ACC should consider the matter falling within the purview of ACC. The fact that the ACC need not have any set procedure for considering matter under its purview does not mean that there should be no consideration by the ACC. The matters required to be decided by the ACC have to be considered by members of ACC. Let there be no set or laid procedure for ACC but it cannot be held that let there be also no meeting of mind of the members of the ACC. There has to be meeting of mind have a meaningful consideration. They have to be at ad idem. A perusal of the record in the present case, however, shows that there has been no meeting of mind. The Minister of Commerce was of view that the panel deserves to be scrapped. The Minister of State (Personnel) desired that CVC clearance be obtained before taking a decision on candidature of Respondent No.4 but when the Home Minister expresses the view that the person at penal No.1 (Respondent No.3) deserves to be appointed, the viewpoint of Home Minister that panel need not be scrapped and Respondent No. 3 be appointed is not brought to the notice of the Commerce Minister and the Personnel Minister. Ultimately, when the Prime

Minister decides neither to accept the viewpoint of the Commerce Minister nor of Personnel Minister nor that of the Home Minister, the matter does not go back or brought to the notice of either of the Ministers. We are not suggesting that necessarily the file must go back. In a given case there may be a meaningful consideration or meeting of mind even by telephonic conversation. In this case perusal of the files, however, show that nothing of the kind happened. After Commerce Minister takes a view, he does not know what is view point of Personnel Minister or Cabinet Secretary or Home Minister. After the Home Minister decides he does not know as to what is the viewpoint or decision of the Prime Minister. It is thus evident that at no stage there was meeting of mind between different members of ACC. It cannot be contemplated that the Government of India (Transaction of Business) Rules, 1961, stipulated that there may not be even meeting of mind of members of ACC. We are of the view that there has to be a meaningful consideration by members of ACC, when The Government of India (Transaction of Business) Rules, 1961, provide that the ACC shall have the power to consider and to take a decision on the matter referred to it. Therefore, there has to be a decision of ACC on the matter referred to it and a decision could be said to have been arrived at when there is discussion or consultation amongst the members of the Committee on the issue even by circulation and thereafter there is some agreement of meeting of mind amongst them. A decision cannot be said to have been arrived at when each of the members give separate opinion as in this case. When there is difference, disagreement and divergent view of each of the members of the ACC then there has to be some discussion or consideration of each others viewpoint before any decision in the eyes of law can be arrived at. It may be noticed that the Prime Minister accepted the note of proposal for appointment of Respondent No.4 on the ground that no fresh vigilance clearance is necessary for his appointment as CMD with which view we have disagreed as held in preceding paras but other Ministers did not know of Viewpoint of the Prime Minister.

24. The ACC cannot act arbitrarily. It is required to act resonably. The absence of meeting of mind of members of ACC would show arbitrariness. In Union of India, etc. etc. Vs. N.P. Dhamania, etc. etc., the question that came up for consideration before the Supreme Court was whether it is open to the ACC to differ from the recommendation of the Departmental Promotion Committee and, if so, whether the reasons must be given for so differing. The Supreme Court answered the question by holding that though it was open to ACC to differ from the recommendations of DPC, it must give reasons for so differing to ward off any attack of arbitrariness and the reasons have to be recorded in the file though there is no need to communicate the reasons to the officer affected. In the said case it was found that no reasons had been recorded in the file for ACC differing from the recommendations of DPC. The Supreme Court held that the ACC may reconsider the cases in the light of the decision. The following directions were issued by the Supreme Court:-

"The Appointing Authority shall consult the UPSC once again by making reference

back to them indicating the reasons for making a departure from the panel recommended by the Commission and also forward the material on which it has reached the conclusion not to appoint the respondent and obtain their views before taking final decision in the matter. In case after consultation with the UPSC, in the manner indicated above, the name of the Respondent Is restored to its original position as recommended by the UPSC, the case of the respondent for promotion to the post of Commissioner of Income Tax, shall be considered on merit and necessary orders be passed within 3 months from the date of the receipt of the file from the UPSC."

25. If there is meeting of mind, then the question may arise that in case of difference of opinion, whose decision would prevail. Would the majority opinion will prevail? The view point of the Prime Minister will prevail? In the present case, however, it is not necessary to answer these questions because that stage did not arise as at no point of time there was meeting of mind of members of ACC. We may only note that learned Attorney General strenuously pleaded in favor of the proposition of superemacy of the Prime Minister and in support relied upon Commentary on the Constitution of India by Dr.D.D.Basu and on Cabinet Government by Sir Ivor Jennings, Third Edition as also to Rule 6 & 12 of the aforesaid Rules. On the other hand, Dr. Singhvi placed strong reliance on observations made in S.P.Anand Vs. H.D.Deve Gowda & Ors, JT 1996 (1) SC 274 and submitted that though the Prime Minister may have a special status and may have superemacy in the matter of hire and fire of the Ministers but in the matter of such appointments, he has no superemacy. Dr. Singhvi contended that Indian Constitution postulates superemacy of Council of Ministers with Prime Minister as its head and not that of the Prime Minister who is first amongst equal particularly in matters of such appointments which are to be cleared by ACC Reliance has been placed by learned counsel to the decision in the case of Samsher Singh Vs. State of Punjab and Another, . We leave the matter here itself.

26. For the aforesaid reasons, we are of the view that, at present, Respondent No. 4 cannot be appointed as CMD of MMTC. Thus, we quash the proposed appointment of Respondent No.4 as CMD of MMTC. If considered necessary, ACC can again consider the panel prepared by PSEB in the light of this decision. The writ petition is disposed of accordingly leaving the parties to bear their own costs.