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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6796/2015 & C.M.No.16968/2015

ASHWIN LAXMANBHAI KOTWAL

..... Petitioner

Through Mr.Mohan Babu Agarwal, Advocate.

versus

UNION OF INDIA

..... Respondent

Through Mr.Ajay Digpaul, CGSC with
Ms.Mohita, Advocate for UOI.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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19.05.2016

Present writ petition has been filed seeking appointment as a Member of the National Commission for Scheduled Tribes.

Learned counsel for the petitioner states that petitioner's nomination had been forwarded in 2014 by the Cabinet to the President of India, but due to application of model code of conduct, the petitioner could not be appointed. He states that the present Minister for Tribal Affairs is not re-sending the petitioner's file to the President of India.

In the counter-affidavit, it has been stated that as the Election Commission of India had advised the Government to defer the proposal for appointment of a Member to the National Commission for Scheduled Tribes, the petitioner's proposal was put up before the new Minister for Tribal Affairs after the formation of the new government, who did not agree with the said proposal and instructed

the Ministry to pursue a fresh proposal.

In the counter-affidavit, it has also been stated that the proposal to appoint the petitioner was an internal matter of the Ministry and had never been communicated to any outside agency including the petitioner. Consequently, according to the respondent, the petitioner has no right to maintain the present writ petition.

In rejoinder, learned counsel for the petitioner states that no person has till date been appointed as a Member of the National Commission for Scheduled Tribes.

In the opinion of this Court, it is settled law that till the proposal is communicated to the petitioner, it remains provisional in nature and it is always open to the concerned authority to re-consider the matter and recall/alter the order. The Constitution Bench of Supreme Court in ***Bachhittar Singh Vs. The State of Punjab, AIR 1963SC 395*** has held as under:-

“9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

10. The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of PEPSU provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is

observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh [Till the abolition of that office by the Amendment of the Constitution in 1956.] , is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the "order" of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned. In this connection we may quote the following from the judgment of this Court in the State of Punjab v.Sodhi Sukhdev Singh [AIR (1961) SC 493, 512] :

"Mr Gopal Singh attempted to argue that before the final order was passed the Council of Ministers had decided to accept the respondent's representation and to reinstate him, and that, according to him, the respondent seeks to prove by calling the two original orders. We are unable to understand this argument. Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent."

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Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character."

(emphasis supplied)

Consequently, as in the present case the appointment proposal was never communicated to the petitioner and the advice of the Council of Ministers has never been accepted by the President of India, neither the petitioner has the *locus standi* to file the present writ petition nor the advice of the previous Council of Ministers has become an action of the State.

Accordingly, the writ petition and the application are dismissed.

MANMOHAN, J

MAY 19, 2016

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