
(2018) 06 CAL CK 0207
In the Calcutta High Court
Case No : CAN 2806 of 2018, M.A.T. 424 of 2018

Tandra Das

APPELLANT

Vs

Rajib Lochan Das & Ors.

RESPONDENT

Date of Decision : 25-06-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 06 CAL CK 0207

Hon'ble Judges : DIPANKAR DATTA, J; SHAMPA SARKAR, J

Bench : Division Bench

Advocate : Milan Chandra Bhattacharya, Dilip Kumar Chatterjee, Sulagna Bhattacharya, Mrinmoy Bhattacharya, Sakti Nath Mukherjee, Ayan Banerjee, Debasree Dhamali

Final Decision : Dismissed

Judgement

SHAMPA SARKAR, J.

1. Aggrieved by the judgment and order dated April 30, 2018 in WP No. 11363 (W) of 2016 (Rajib Lochan Das vs. Indian Oil Corporation Limited and

Ors.), filed by the respondent no. 1 (hereinafter referred to as the writ petitioner), the appellant (respondent no.6 in the writ petition), has filed this intra-court writ appeal.

2. By the said judgment and order, the learned Judge was pleased to quash the Letter of Intent dated April 27, 2016 (hereinafter referred to as the

letter of intent) issued in favour of the appellant, and the Indian Oil Corporation Limited (hereinafter referred to as the oil company) was directed to

proceed with holding a re-draw, as was informed to the writ petitioner, by letter dated January 20, 2015, with a further direction that the said re-draw

must be held within a period of four weeks from the date of communication

thereof.

3. While hearing an application for stay of the judgment and order impugned in this appeal, we decided to take up the appeal for final hearing on consent of the parties.

4. The case of the writ petitioner is as follows:

a. Pursuant to a notice by advertisement published in the 'Ananda Bazar Patrika' on January 21, 2014, inviting applications under Rajiv Gandhi

Gramin LPG Vitrak (RGGLV) Scheme, the writ petitioner had applied for award of LPG distributorship under the OBC category for Singhee area in

the district of Birbhum. As per the said notice, amongst other stipulations, the applicants were required to have a minimum closing balance of Rs. 4

lakh in their bank accounts on the last date of submission of their applications.

b. Originally, as per the advertisement dated January 21, 2014, the last date for submission of the applications, alongwith all relevant documents and

information, was February 24, 2014. A corrigendum was subsequently published in the newspaper on February 23, 2014, extending the last date for

submission of the applications to March 24, 2014.

c. The oil company informed the writ petitioner that he had qualified for the draw and he was asked to send proof of having maintained a sum of Rs. 4

lakh, till March 24, 2014 (extended date as per the corrigendum), in the bank account mentioned by him in his application.

d. The writ petitioner was further informed by the oil company, after the first draw, that there would be a re-draw, consequent to the cancellation of

the candidature of the selected applicant in the first draw, during Field Verification of Credentials (hereinafter referred to as the FVC). The writ

petitioner was asked to be personally present for the re-draw at 11:00 am on February 12, 2015, at the office of the oil company. The re-draw was to

be held amongst the remaining eligible candidates. Finally, by a letter dated February 9, 2015, the writ petitioner was informed that due to some

administrative reasons, the re-draw had been kept in abeyance.

e. Thereafter, on enquiry, the writ petitioner came to know that the candidature of the appellant, who had been selected in the first draw, stood

cancelled subsequently due to disclosure of some incorrect information by her.

f. The writ petitioner, in the meanwhile, had also lodged objections before various

authorities of the oil company pointing out the ineligibility of the appellant, for award of the LPG distributorship. As the authorities of the oil company did not dispose of the objections raised by him, the writ petitioner made an application under the Right to Information Act, 2005 (hereinafter referred to as the RTI Act), asking for copies of the documents filed by all the applicants and for information regarding the reasons for the postponement of the re-draw, as also the reasons for cancellation of the candidature of the appellant. By a memo dated April 29, 2015, the oil company partially supplied to the writ petitioner the information sought, as well as the documents furnished by the appellant. The writ petitioner was informed that during field verification, the information supplied by the appellant, in respect to the availability of adequate fund of Rs. 4 lakh was found inconsistent with the actual available funds. However, the reason for postponement of the re-draw was not made available.

g. The writ petitioner, once again, made an application under the RTI Act, asking for the reason for postponement of the second draw.

h. It was at this stage that the authorities of the oil company, without informing the writ petitioner the reason for postponement of the redraw, issued the letter of intent in favour of the appellant on April 27, 2016, although, the appellant had, on an earlier occasion, found to be ineligible during the FVC.

5. Aggrieved by the issuance of the letter of intent under the RGGLV Scheme in favour of the appellant, the writ petitioner filed the application under Article 226 of the Constitution of India, inter alia, praying for cancellation of the letter of intent impugned therein.

6. In the affidavit-in-opposition of the oil company used in the proceedings before the learned Judge, it was, inter alia, stated that in course of the FVC, the relevant committee found that though the appellant had a balance of Rs. 4 lakh in her bank account on the last date indicated in the original advertisement for submission of applications, that is, February 24, 2014, she did not have a closing balance of Rs. 4 lakh on the last date mentioned in the corrigendum dated February 23, 2014 for such submission, that is, March 24, 2014. The committee came to a conclusion that the appellant had failed to fulfil the said eligibility condition and recommended for rejection of her candidature. It was further stated by the oil company that the appellant

was informed by a letter dated November 20, 2014, that she was not found eligible for the LPG distributorship. The oil company also stated that it subsequently came to know that the appellant had written a letter dated December 1, 2014 to the Ministry of Petroleum and Natural Gas, Government of New Delhi. By a letter dated July 13, 2015, the Directors of Marketing of all the oil marketing companies, including the oil company herein, were informed by the Under Secretary to the Government of India, Ministry of Petroleum and Natural Gas, that the eligibility of a candidate should be considered with reference to both the dates, namely, the last date for submitting applications as per the original advertisement, as also the last date as extended by the corrigendum. The said letter also stated that if a candidate had the requisite fund on the last date, as originally advertised, and had submitted the application before the said date, but had failed to maintain the balance in his/her bank account on the extended last date, rejection of his/her candidature would not be in consonance with the principles of natural justice.

7. The oil company stated that on receipt of the letter dated July 13, 2015, its Deputy General Manager was nominated to conduct a further FVC of the eligibility of the appellant and pursuant to the recommendation thereafter, the letter of intent dated April 27, 2016, was issued in favour of the appellant.

8. In the affidavit-in-opposition filed by the appellant, it was stated that the writ petitioner was not a permanent resident of Singhee Gram Panchayat, although the advertisement was restricted to applicants of the said locality; that the balance of Rs. 4 lakh on February 24, 2014 in the bank account was sufficient fulfilment of the eligibility condition by the appellant and, as such, cancellation of her candidature was subsequently recalled by the oil company; that the Ministry had taken a decision to regularise the deposit of Rs. 4 lakh on February 24, 2014 and to review its earlier order, as there was substantial compliance with the condition as per the date mentioned in the original advertisement; as such, the question of re-draw, as stated in the letter dated January 20, 2015 and as prayed for by the writ petitioner, did not arise. It was also contended by the appellant that writ petitioner had not acquired any vested or legal right in respect of the award of the LPG distributorship and thus, could not challenge the decision of the oil company to

award the distributorship to the appellant.

9. It was argued on behalf of the writ petitioner by Mr Sakti Nath Mukherjee, learned senior advocate before the learned Judge that as per the

corrigendum, the last date for submission of the applications was extended till March 24, 2014, but the stipulation in the advertisement that all the

applicants had to maintain the requisite balance of Rs. 4 lakh in their bank accounts on March 24, 2014 (extended last date), was never diluted. Any

alteration of the said condition by interference of a member of the parliament or a government functionary, would amount to change in the rules of the

game after the game had started, which was illegal. The writ petitioner relied on two decisions of the Supreme Court, namely, *Monarch Infrastructure*

(P) Ltd. Vs. Commissioner Ulhasnagar Municipal Corporation, reported in (2000) 5 SCC 287, and *Bahadursinh Lakhubai Gohil Vs. Jagdishbhai M.*

Kamalia, reported in (2004) 2 SCC 65, in order to emphasise that it was a well-settled principle that if any decision is taken by a statutory authority at

the behest of a person who did not have a role to play, the same would be ultra vires.

10. Mr Yadav, learned advocate appearing on behalf of the oil company argued that the appellant had submitted her application on February 28, 2014,

that is, within the period extended by the corrigendum. He also produced the original records to demonstrate the same to the court. He further

submitted that the relevant committee after the FVC recommended that the candidature of the appellant should be cancelled as she did not have the

requisite bank balance up to March 24, 2014 which amounted to noncompliance of the condition stipulated in the corrigendum. Later, on the instruction

of the Under Secretary to the Government of India, Ministry of Petroleum and Natural Gas, the letter of intent was issued in favour of the appellant.

11. Appearing before the learned Judge on behalf of the respondent no.6, that is, the appellant herein, Mr. Milan Bhattacharyya, learned senior

advocate argued that the letter dated July 13, 2015 contained the communication of the government policy with regard to awarding of LPG

distributorship and as such the decision in *Bahadursinh Lakhubai Gohil* (supra) had no application. It was also argued that the writ petitioner had not

averred that he himself had maintained the balance of Rs. 4 lakh. Further, according to Mr Bhattacharyya, the said condition in the advertisement was

a collateral condition and it was up to the oil company to decide the fate of the applications in its wisdom. In support of this contention, Mr.

Bhattacharya relied on the decisions of the Supreme Court in Punjab Financial Corporation Vs. Garg Steel, reported in (2010) 15 SCC 546, Union of

India Vs. R. Bhusal, reported in (2006) 6 SCC 36, Ramana Dayaram Shetty Vs. International Airport Authority of India, reported in AIR 1979 SC

1628, and Kanhaiya Lal Agrawal Vs. Union of India, reported in (2002) 6 SCC 315. He also relied on the following decisions, namely, G.J. Fernandez

Vs. State of Karnataka, reported in (1990) 2 SCC 488, IRCTC Vs. Doshion Veolia Water Solutions (P) Ltd., reported in (2010) 13 SCC 364, and

Michigan Rubber (India) Limited Vs. State of Karnataka, reported in (2012) 8 SCC 216.

12. The learned Judge on detailed consideration of the letter of cancellation of the oil company and the letter dated July 13, 2015 issued by the Under

Secretary to the Government of India, Ministry of Petroleum and Natural Gas, held that the action of the oil company in issuing the letter of intent in

favour of the appellant, acting upon the instruction of the government authority contained in the letter July 13, 2015, was wrong because of the

relevant fact that the appellant had submitted her application, within the extended period which was received by the oil company on February 28, 2014,

and not within the last date as originally advertised.

13. According to the learned judge, the decisions in Punjab Financial Corporation (supra) and R. Bhusal (supra), did not come to the aid of the

appellant, as from the pleadings in the writ petition and the disclosure made in the affidavit filed by the oil company, the entire facts of the case could

be ascertained and it would not be difficult to arrive at the conclusion that the action of the oil company was wrong. While discussing Kanhaiya Lal

Agrawal (supra) and the explanation in G.J. Fernandez (supra), the learned Judge came to a finding that the condition of availability of balance of Rs.

4 lakh, was an essential term of the advertisement and not a collateral one. The learned Judge held that when the oil company, being a public authority,

had set a condition of eligibility, it was not entitled to depart therefrom without rational justification. Admittedly, according to the learned Judge, the

appellant had not fulfilled that eligibility condition, and as such, the award of the letter of intent to the appellant, was against public interest.

14. For the reasons aforesaid, the letter of intent dated April 27, 2016, was quashed by the learned Judge and the oil company was directed to proceed with a re-draw, as envisaged in the letter dated January 20, 2015.

15. Such judgment and order has been challenged before us on various grounds, inter alia, that the learned Judge ought to have decided the eligibility of the writ petitioner without directing the re-draw on the basis of misplaced sympathy; that the learned judge failed to take into account that the writ petitioner himself suffered from a disqualification with regard to his residential status; that the learned Judge erroneously held that the action of the oil company in awarding the letter of intent to the appellant on the basis of the communication dated July 13, 2015, was wrong; and that the learned Judge erred in not holding that the appellant had fulfilled the eligibility conditions as envisaged in the original advertisement.

16. More or less the same arguments, as noted above, were repeated by Mr. Mukherjee, Mr. Yadav and Mr. Bhattacharya before us on behalf of the respective parties.

17. We need to place on record, at this stage, two other contentions raised before us, one by Mr. Bhattacharya and the other by Mr. Yadav.

18. According to Mr. Bhattacharya, the appellant had been to the office of the oil company on February 24, 2014 with her application and other

relevant documents required in terms of the advertisement. On that day, Rs. 4 lakh was admittedly available in the appellant's bank account.

However, the application was not accepted on the ground that residential status of the appellant had been certified by the Block Development Officer

of the block where she resides but such status had to be certified by the relevant SubDivisional Officer. The appellant was asked to return on

February 28, 2014 with the certificate of the Sub-Divisional Officer certifying her residential status. Although the advertisement did not require the

residential status of an applicant to be certified by the Sub-Divisional Officer of the sub-division where he/she resides, the appellant without entering

into any quarrel and bona fide believing what was told to her to be correct duly obtained the SubDivisional Officer's certificate on February 27,

2014 and submitted the application and the supporting documents on February 28, 2014. In view of such facts, Mr. Bhattacharya urged that the

candidature of the appellant ought to be considered treating February 24, 2014

as the date of submission of her application.

19. Mr. Yadav referred to a letter dated July 14, 2016 issued by the Deputy Secretary to the Government of India and contended on the basis thereof

that the Competent Authority having approved cancellation of advertisement of all locations of RGGLVs where draw/re-draw is yet to be conducted,

it is now a purely academic issue as to whether the appellant could have been considered eligible or not.

20. We consider it appropriate to deal with the aforesaid contentions, first.

21. During the course of hearing, we had enquired from Mr. Yadav as to the truthfulness of the incident of February 24, 2014, narrated by Mr.

Bhattacharya. The same was categorically denied and our attention was invited to a portion of the prescribed application form where the date of

receipt of the application had to be inserted by the office of the oil company. The date inserted in the application form submitted by the appellant reads

â??28-02-2014â??. Relying thereon, Mr. Yadav contested the contention of Mr. Bhattacharya and asserted that February 28, 2014 should be treated

to be the date on which she submitted her application.

22. By an order dated June 6, 2018, Mr. Yadav was directed to produce the relevant records pertaining to the dispute. Pursuant thereto, he produced

the original records of the case before us on June 12, 2016.

23. It appears from the original records as produced before us that although the appellant signed the application on February 24, 2014, the original

envelope in which the application and the supporting documents of the appellant had been submitted to the oil company bears its seal with a receipt

date of February 28, 2014.

24. We also found such records to include a statement of accounts issued by the Bolpur branch of Bank of Baroda (where the appellant maintained

her bank account) bearing the seal of the Branch Manager, dated February 28, 2014 indicating that on February 24, 2014, the appellant had a balance

of Rs. 4 lakh. There is, however, no document in the official records that the appellant did maintain the requisite closing balance of Rs. 4 lakh as on

March 24, 2014, that is, the last date for submission of applications, as extended by the corrigendum.

25. We are not inclined to accept Mr. Bhattacharyaâ??s contention that there was a real attempt on the part of the appellant to submit her

application together with the supporting documents on February 24, 2018, for more reasons than one.

26. First, there is no pleading to that effect either in the affidavit-in-opposition filed before the trial court by the appellant or in the stay application filed

in the appeal. A statement from the bar on a factual aspect, unsupported by an affidavit, cannot be accepted.

27. Secondly, there is no contemporaneous document at the end of the appellant whereby she apprised the oil company of the alleged incident of

February 24, 2014. Even in her letter dated December 1, 2014 addressed to the Honâ??ble Petroleum Minister, Government of India, which

ultimately led to issuance of the letter of the Under Secretary dated July 13, 2015, she did not complain that despite her best intention to submit the

application on February 24, 2014, she could not do so and was compelled to submit the same on February 28, 2014. Her version in the letter dated

December 1,

2014 is that she was not aware that the money in her bank account was not â?? withdrawableâ??. If indeed the appellant had been to the office of the

oil company on February 24, 2014, there ought to have been some reflection of her attempt in some document. That is of course not the case here.

28. Thirdly, copy of the statement of accounts, duly signed by the Manager of Bolpur branch of Bank of Baroda on February 28, 2014, has been found

in the original records as part of the documents that the appellant had submitted with her application. If indeed the appellant intended submission of her

application on February 24, 2014, it defies logic as to how and why the statement of accounts signed on February 28, 2014 could form part of the

documents received by the oil company. Although the appellant did have Rs. 4 lakh in her bank account on February 24, 2014, the statement of

accounts was not signed by the branch manager on February 24, 2014. Assuming that the statement of accounts was not required to accompany the

application in the prescribed form, as argued by Mr. Bhattacharya, but on due consideration of the factual position that such statement dated February

28, 2014 is found in the official records, it can be presumed that the appellantâ??s application was submitted on the same day. The contrasubmission

that the appellant had attempted to submit it on February 24, 2014, in the circumstances, appears to us to be an after-thought.

29. Finally, we are of the view that the appellant cannot feign ignorance of extension of the last date for submission of applications. She was aware that initially February 24, 2014 was the last date. She must also have been aware of the terms and conditions of the advertisement. If the oil company had refused to accept her application on February 24, 2014 and she was also not aware of extension of time till March 24, 2014 for submission of applications as per the corrigendum dated February 23, 2014, the reaction of the appellant that one would normally expect is raising of strong objection to the effect that February 24, 2014 itself being the last date, she would be losing the opportunity to submit the application. We have reasons to believe, based on our appreciation of the materials on record, that the appellant was conscious of the fact that the last date had been extended till March 24, 2014 and, accordingly, had submitted her application on February 28, 2014.

30. The plea raised before us by Mr. Bhattacharya to treat February 24, 2014 as the date of submission of application by the appellant, therefore, does not impress us at all.

31. Turning our attention to the letter dated July 14, 2016 issued by the Deputy Secretary to the Government of India, we are of the clear view that the same does not stand in the way of proceeding ahead with the re-draw directed by the learned Judge. Mr. Yadav may be right in his submission that the Government has taken a policy decision to continue RGGLV where draw or redraw, as the case may be, is yet to be held, the letter reflects a clear exception, that is, the policy will not apply to "advertisements which are under litigation". This is a case in respect of an advertised location which is under litigation and, therefore, it is excepted.

32. Let us now consider whether the learned Judge was justified in returning the findings he did.

33. Serial no. 10 of the prescribed application format required an applicant to give particulars of the name of the bank where he/she maintains a savings bank account. A particular column therein required mentioning of the "AMOUNT IN SAVINGS BANK ACCOUNT in Bank/Post Office" in the name of the applicant and member(s) of "Family Unit". A notarised affidavit as per the format given in Appendix-B was also required. What is relevant in paragraph 10 is the note appended thereto reading as follows:

â??Note: The amount declared above in each case must be available as closing balance on the last date for submission of application as specified in

the advertisement or corrigendum (if any) and the same will be verified during Field Verification.â??

34. The language of the note corresponds to the term in the advertisement, which is in vernacular, regarding the requirement of minimum closing

balance of Rs. 4 lakh as on the last date for submission of application as specified in the advertisement or corrigendum (if any).

35. It would be evident from the discussions made by us above, while dealing with Mr. Bhattacharyaâ??s submission in paragraph 18 supra, that the

appellant had indeed submitted her application on February 28, 2014, that is, beyond the last date as per the advertisement but within the extended last

date, as per the corrigendum. Our reading of the note appended to paragraph 10 of the application format together with the advertisement leads us to

the unmistakable conclusion that the eligibility condition of maintaining balance of Rs. 4 lakh in the savings account of a bank/post office, in view of the

insertion of the conjunction â??orâ??, and not â??andâ??, between the words â??advertisementâ?? and â??corrigendumâ??, must be considered

with reference to both the dates. It could be possible for an applicant not to notice the advertisement inviting applications when it is published, but to

notice the corrigendum. If thereafter he looks into the advertisement and submits an application within the extended last date, his eligibility has to be

considered with reference to the last date of submission of applications as per the corrigendum. Certainly, it cannot be considered with reference to

the original last date, because the application had not been filed within the last date mentioned in the advertisement. That being so, he must have

requisite balance in his savings account, be it in a bank or a post office, on the last date for submitting applications as per the corrigendum. However, if

an applicant had submitted his application prior to issuance of the corrigendum, say February 20, 2014, he was required to maintain the balance as on

February 24, 2014, that is, the last date as per the advertisement. This was exactly the view of the Honâ??ble Minister, expressed by the Under

Secretary in the letter, when he observed that â??(E)ligibility should be considered with reference to both the datesâ?. We are of the opinion that the

relevant term as regards maintaining a balance of Rs. 4 lakh was correctly interpreted by the Honâ??ble Minister, although we cannot but disagree

with whatever appears therein in regard to the factual aspect. We have no hesitation to hold that there was a serious error in understanding the facts, as have transpired, which rendered the appellant's selection and consequent issuance of the letter of intent in her favour, vitiated.

36. It would be apt at this stage to read the letter dated July 13, 2015. It is reproduced below:

"Subject " Issues pertaining to Smt. Tandra Das for RGGLV in district Birbhum, West Bengal.

Sir,

It has been observed by Hon'ble MOS(I/C), PNG that the candidature of the successful candidates have been rejected on account of lack of

requisite fund in the bank account on the extended date of submission of application. One such case of Smt. Tandra Das for RGGLV in Dist.

Birbhum, West Bengal has come to the notice of Hon'ble Minister wherein the applicant had the requisite fund on the last date of submission of

application as was originally advertised. However, by way of corrigendum, the last date of submission of application was extended by one more

month. Probably the applicant did not have any knowledge about the notice of the revised last date of submission. The candidature of Smt. Das was

rejected on the ground of non-availability of requisite fund on the last date of application as extended by the corrigendum, though the candidate had

requisite funds on the last date as originally mentioned in the advertisement.

2. Hon'ble Minister feels that stand taken by OMCs is erroneous and not in public interest. In this case, there are two dates and both the dates

need to be considered as originally advertised and as extended by the corrigendum. Eligibility should be considered with reference to both the dates.

Therefore, if a candidate has requisite fund on the last date of application, as originally advertised and has submitted his/her application before the

said date, his/her application should not be rejected. The act of rejecting such application by the OMCs is strictly not within the purview of natural

justice. Similar provisions already exist in respect of selection of RO dealerships. Hence extending similar benefits to be LPG distributorships

guidelines should not be an issue.

3. Hon'ble Minister has desired to issue necessary clarifications in the particular case.

4. An action taken report may be sent to this Ministry as the earliest so that the case may be submitted for the perusal of Honâ??ble MOS(I/C),

PNG.â??

37. On the factual score, as would be evident from the portion underlined in the aforesaid extract, we feel that the Honâ??ble Minister was not

properly briefed or else, the findings would have been entirely different. The oil company, however, without bringing it to the notice of the Honâ??ble

Minister that proper representation of the factual aspect had not been made before him, proceeded to act mechanically and issued the letter of intent

in favour of the appellant. Nothing could be more grossly wrong.

38. One of the points that Mr. Bhattacharya raised before us was that the condition that required the applicants to maintain closing balance of Rs. 4

lakh is not an essential condition.

39. We are afraid, we cannot agree with him. The oil company issued the advertisement, in respect of diverse locations, expressing interest to enter

into business relations with individuals. Those selected would become distributors of LPG in due course. Obviously, having regard to the

responsibilities that are to be shouldered by an LPG distributor, the oil company would not enter into business relations with any individual who is either

financially unstable or weak. It is for the purpose of ascertaining the financial status of the applicants that they were asked to indicate the closing

balance in their savings accounts on two specified dates and it was made clear to them that they should have at least Rs. 4 lakh as closing balance on

either of those, depending on the dates when the applications are submitted. Bearing in mind the object that was sought to be achieved by such

condition, we wonder how the term could be regarded as non-essential.

40. The learned Judge, in our considered view, was thus justified in interpreting the contents of the corrigendum to mean that if the application with all

the documents was submitted within February 24, 2014, then, the balance of Rs. 4 lakh on February 24, 2014 was sufficient compliance, but if the

application was submitted beyond February 24, 2014, then the balance should be Rs. 4 lakh, on the date of submission of application, as extended by

the corrigendum, that is, March 24, 2014.

41. Admittedly, in the instant case, the appellant had submitted her application on February 28, 2014, which was beyond the date fixed by the original

advertisement and as such, the appellant ought to have maintained the balance of Rs.4 lakh at least on March 24, 2014.

42. The decision of the Supreme Court in Commissioner of Police Vs. Gordhandas Bhanji, reported in AIR 1952 SC 16, supports the contention of Mr.

Mukherjee that any decision taken by a statutory authority at the behest of any other person who has no role to play in the matter would be ultra vires.

We are of the view that the letter of intent was issued at the suggestion of and/or on the advice of the Honâ??ble Minister, as communicated by the

Under Secretary, who did not have any role to play in the matter, and the same (letter of intent) was rightly quashed by the learned Judge.

43. Mr. Mukherjee relied on Ramana Dayaram Shetty (supra), with specialempphasis on paragraph 10, which is reproduced below:-

â??10â?|. This rule was enunciated by Mr Justice Frankfurter in Viteralli v. Seaton, where the learned Judge said:

â??An executive agency must be rigorously held to the standards by which it professes its action to be judged. â?|. Accordingly, if dismissal from

employment is based on a defined procedure, even though generous beyond the requirement that bind such agency, that procedure must be

scrupulously observed. â?|. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the

procedural sword shall perish with the swordâ??.

44. The decision of the Supreme Court in Punjab Financial Corporation (supra) relied upon by Mr. Bhattacharya does not come to his aid, as in the

instant case, the averments made in the writ petition and in the affidavits-inopposition filed by the respondent, indicate that a writ of mandamus can be

issued on the basis of the pleadings and materials disclosed. R. Bhusal (supra) also does not support the appellantâ??s case, as the learned Judge has

not gone beyond the pleadings and has not acted on materials which were not part of the record.

45. The ratio in Ramana Dayaram Shetty (supra) does not favour the case of the appellant, because the oil company in the instant case had not altered

the conditions of eligibility by the subsequent corrigendum. Moreover, any relaxation of the condition of maintaining a minimum bank balance of Rs. 4

lakh as on March 24, 2014, which the appellant did not maintain, would amount to denial of equal opportunity to many other applicants.

46. Kanhaiya Lal Agrawal (supra) does not help the appellant, inasmuch as, whether a condition in a notice inviting tender was an essential term or a collateral term could only be ascertained by reference to the consequences of non-compliance thereto. If non-fulfilment of the requirement resulted in rejection of the tender, then it would be an essential condition of the tender; otherwise, it would be a collateral term. The appellant appears to have signed a declaration that if any information furnished in the application format is later on found to be false or incorrect, her candidature would be liable to be cancelled. The information that she furnished against serial no. 10 that she had a balance of Rs. 4 lakh was found to be incorrect with reference to the last date for receiving applications, that is, March 24, 2014 which was the applicable date for her and, therefore, the oil company was right in rejecting her candidature initially. The consequence of furnishing false or incorrect information having been provided for in the application format and the appellant having signed the declaration cannot now turn around and take a contrary stand.

47. In this case, non-compliance of maintenance of minimum balance in the bank account by the appellant initially resulted in the cancellation of the appellant's candidature. This goes to show that the condition cannot be termed as a collateral one, as argued by Mr. Bhattacharya.

48. G.J. Fernandez (supra) also reiterates a similar view of the Supreme Court, as expressed in Kanhaiya Lal Agrawal (supra). V. Punnen Thomas

Vs. State of Kerala, reported in AIR 1969 Ker 81 (FB) also does not apply to the facts and circumstances of the case. In Michigan Rubber (Ltd.)

(supra), the scope of judicial interference in tender matters has been discussed. It has been held that, court should not interfere unless the action of the

authority was mala fide or a misuse of statutory powers. In this case, the action of the oil company, in issuing the letter of intent, on the dictates of the

Hon'ble Minister/Under Secretary, who was not connected with the process of grant of award of LPG distributorship, was arbitrary, against

public interest and unsustainable in law, and, as such, warranted interference by this court in judicial review. The decision in Doshion Veolia Water

Solutions (supra) too does not have any application at all since we have held the term in the advertisement requiring closing balance of Rs. 4 lakh in

the savings account as an essential.

49. We are of the further opinion that, it was within the domain of the oil company to decide on the eligibility of the applicants and the oil company acted illegally by issuing the letter of intent to the appellant on the dictates of the Honâ??ble Minister/Under Secretary, who had no role to play in the matter.

50. We also cannot accept the contention of the appellant that the learned Judge ought to have considered whether the writ petitioner satisfied the eligibility criteria regarding residential status, that is, whether he was a resident of Singhee Gram Panchayat or not. As per the usual procedure, verification of the truthfulness of the disclosures made by the applicants are done after the lottery/draw and if the writ petitioner succeeds in the re-draw, the oil company would be bound to verify his documents thereafter.

51. Having perused the original records and having considered the arguments that were advanced, we have no hesitation to hold that the impugned judgment and order dated April 30, 2018 does not suffer from any infirmity.

52. The oil company is directed to proceed with the re-draw, as proposed in its letter dated January 20, 2015, within a period of four weeks from the date of communication of this judgment and order.

53. We, however, make it clear that if the appellant has commenced business pursuant to the letter of intent, she shall be at liberty to carry on with the same for a period of two months from date, but not beyond. Within such time, the oil company shall complete the process of selection. This breathing time is granted bearing in mind the interests of the consumers of LPG of the location in question. If, however, business pursuant to the letter of intent has not commenced, law shall take its own course.

54. The appeal is, thus, dismissed without order for costs. The connected application too stands dismissed.

55. Photostat certified copy of this judgment and order may be made available to the parties on urgent basis, if an approach therefor is made.