

MANU/WB/0035/1999

**Equivalent Citation:** (1999)1CALLT220(HC)

## IN THE HIGH COURT OF CALCUTTA

Civil Appellate Jurisdiction, M.A.T. No. 2349 of 1997, M.A.T. No. 2433 of 1997, M.A.T. No. 2450 of 1997

Decided On: 06.11.1998

Appellants: **Indian Oil Corporation & Ors.**  
**Vs.**  
Respondent: **Shri Ujjal Chowdhury & Ors.**

### **Hon'ble Judges/Coram:**

*V.K. Gupta, J.*

### **Counsels:**

*For Appellant/Petitioner/Plaintiff: Mr. Anindya Mitra, Mr. P.K. Mallick, Mr. P.K. Chatterjee and Mr. A. Meharia, Advs.*

*For Respondents/Defendant: Mr. Saktinath Mukherjee, Mr. Bikash Ranjan Bhattacharyya, Mr. Amalesh Roy, Mr. Debasis Goon, Mr. C.R. Bag Mr. D.K. Chatterjee, Mr. Sibas Banerjee and Mr. H.K. Lahiri, Advs.*

### **Case Note:**

**Commercial - rejection - whether rejection order passed by appellants sustainable - Court observed that model code of conduct came into effect from 20.03.1996 - advertisement issued on 23.10.1995 and interviews held on 29.02.1996 - on these days model code of conduct not in force - petitioners cannot be said to be ineligible or disentitled for issuance of letter of intent or that earlier letter of intent liable to be cancelled - absence of negative stipulation in circular clearly means that even if time schedule mentioned in circular is not strictly followed - applicant cannot be deprived of his right to selection - appeal dismissed.**

## JUDGMENT

### **V.K. Gupta, J.**

**1.** On this reference being made to me in terms of Clause 36 of the Letters Patent, upon a difference of opinion between the two learned Judges of this court in the Division Bench hearing the Letters Patent Appeal against the Judgment of the learned single Judge dated 23 April, 1997 whereby a mandamus was issued by the learned single Judge directing the respondents not to give any effect or further effect to the impugned letter dated 6 February, 1997 cancelling the earlier letter of Intent dated 2 April, 1996. On 2nd April, 1996 the Indian OH Corporation while referring to the application of the writ petitioner with regard to distribution of LPG Dealership in Calcutta conveyed and communicated that it was intended to offer the distributorship based on the terms and conditions contained in the said letter of Intent dated 2 April, 1996. Vide the cancellation letter dated 6 February, 1997 however this letter of Intent was cancelled. The cancellation letter reads as under :--

REGISTERED WITH A/D

REF. NO. ER/LPG/202/157  
DATE : 06.02.97

Shri Ujjal Chowdhury  
Manickpur Eden Park  
P.O. Italgacha  
P.S. Dum Dum  
Calcutta--700 079.

Dear Sir,

Sub : LPG distributorship at Baranagar, Calcutta.

You have been Informed by our Memo. No. 'IND7I24 dtd. 30.5.96 to forthwith stop proceeding with the activities relating to commissioning of the distributorship in terms of the Letter of Intent No. ER/ LPG/202/157 dtd. 2.4.96 at Baranagar, Calcutta.

We, further, advise you that in accordance with the instructions received from the Ministry of Petroleum and Natural Gas, Govt. of India, the above referred Letter of intent stands rescinded effective from the date of its Issue and that the related merit panel prepared by the OSB also stands cancelled.

Thanking you,

yours faithfully,  
f/ Indian Oil Corporation Ltd. (MD)  
Sd/ V. SHUKLA  
DY.GENERAL MANAGER (LPG). ER."

**2.** Learned single Judge, as observed earlier quashed and set aside the aforesaid rejection order and issued a mandamus upon the respondents not to give any effect or further effect to the same. Aggrieved, the appellants filed an appeal under Clause 15 of the Letters Patent. The Division Bench comprising of R. Dayal and Amitabha Lala, JJ. however dissented in their findings and opinion with regard to legality of the cancellation of the letter of Intent and the issuance of the cancellation Order. Whereas R. Dayal. J. was of the view that the cancellation Order did not suffer from any arbitrariness and that for enforcing the Model Code of Conduct for the then ensuing Elections the Government was well within its rights to issue the cancellation Order. Amitabha Lala J. by his dissenting judgment held that the letter of Intent has created in the writ petitioner an equitable right and such a right standing on the periphery of the contractual right, the action of the executive authority must be subject to Rule of Law. He accordingly held that the cancellation order suffered from arbitrariness. It is in these circumstances that this reference has been made to me for resolving the difference of opinion between the two learned Judges of this court.

**3.** There are two aspects which require adjudication and which are relevant for deciding the issue of arbitrariness. One is, as to whether the letter of intent was cancelled because of the coming into force of the Model Code of Conduct following the announcement of the Elections and the second is, whether the Office Memorandum dated 22 October, 1996 could be given retrospective effect in so far as the negative consequence regarding the preparation/submission of the selection panel by the Oil Selection Board (OSB) was concerned.

**4.** In so far as the first issue is concerned, the respondents in the affidavit filed in answer to the writ application (affidavit of Ajit Kr. Majumder, Asst. Manager (Law) of Indian Oil Corporation) have clearly taken a definite stand that the letter of Intent was cancelled because of the coming into force of the Model Code of Conduct. The following statement in the Affidavit, being relevant bears reproduction:

"By the said Circular an Intimation was given to the Oil Selection Board as well as to all other Oil Companies Including IOC to the effect that no Interview by the Oil Selection Board for selection of dealers/ distributors should be held till the Elections are declared for by the Election Commission. Copy of the said Circular dated 8th April, 1996 is annexed hereto and marked with the letter "A".

**5.** Advertisement was Issued on 23 October '95 Inviting applications for appointment of distributors for LPG. Interviews were held on 29-02-96 and all eligible candidates Including writ petitioners were interviewed. As per the Circular dated 9-6-94 laying down the guidelines, the time for finalisation of the Merit Panel by the OSB and for advising the same to the State Level Coordination Committee expired on 1st March, 1996 and the time for the State Level Co-ordinator for sending the Panel to the Indian Oil Corporation expired on 3 March, 1996. It was only on 20th March, 1996 that the Election Commission announced the Schedule for the General Elections for the 11th Lok Sabha and Legislative Assemblies of some of the States. Model Code of Conduct, admittedly, came into effect only from 20 March, 1996 and not from any earlier date. Undoubtedly therefore, as on 23 October, 1995 when the advertisement was issued and on 29th February, 1996 when the interviews were held, the Model Code of Conduct was not in force. If such was the position, can it be said that the writ petitioners had become Ineligible or disentitled for the Issuance of the letter of Intent or that the letter of Intent earlier Issued in their favour was liable to be cancelled because of the coming into force of the Model Code of Conduct. The answer has to be an emphatic 'No' because the right had stood vested in the writ petitioners as far back as on 23 October, 1995 when the applications were Invited and the process for selection had been set into motion. Not only this, the interviews had been held on 29-02-96, again much before the announcement of the Elections and the coming into force of the Model Code of Conduct. The purpose of the Model Code of Conduct for being enforced is to ensure that the elections are held in a fair and free atmosphere and that the party in power does not exploit its official position by doling out patronage to the Electorate so as to Influence their mind while exercising their right of franchise. Such is not the position in the present case.

**6.** The second Issue to be decided also Involves the related issue as to whether the non-adherence to the time Schedule prescribed in the Circular dated 9-6-94 can entail the adverse consequence of the letter of Intent being cancelled. This issue indeed is very simple and can easily be considered on the touchstone of fair-play and objectivity, emanating from Article 14 of Constitution of India. Firstly the circular dated 9-6-94 did not at all prescribe any adverse consequence, nor did it contain any negative covenant so that if the time schedule prescribed therein was not adhered to either by the OSB or the State level Co-ordinator or for that matter, the Indian Oil Corporation, what would be the consequences. Secondly, the Office Memorandum dated 22 October, 1996 could not retrospectively create a situation leading to the adverse consequence since it had to operate only prospectively and since the right having once accrued in favour of the writ petitioners by virtue of the conditions contained in the circular dated 9-6-94, such a right could not have been taken away retrospectively by the Office Memorandum dated 22 October, 1996. Secondly, and more importantly once the letter of intent had been issued in favour of the writ petitioners. It clearly means that the appellants and all

concerned had not objected to the time schedule prescribed in the circular dated 9-6-94 not having been adhered to. The issuance of the letter of Intent clearly meant that the recommendation by the OSB had been accepted despite such recommendation having been made beyond the period prescribed in the Circular dated 9-6-94. And rightly so, since the circular did not prescribe any adverse consequence in the event the time Schedule was not adhered to. If the intention of the Authorities was that the non-adherence to the time schedule should result in deprivation of the right for selection, nothing prevented them from saying so clearly in the Circular dated 9-6-94. As we have seen in the Office Memorandum dated 22 October such a negative stipulation clearly finds place in the relevant operative part of the conditions relating to the grant of dealership. The absence of such a negative stipulation in the Circular dated 9-6-94 therefore can be said to clearly mean that even if the time Schedule mentioned in the Circular was not strictly followed, it could not result in the applicant being deprived of his right of selection, if the Oil Selection Board had recommended his name and it was forwarded by the State level Co-ordinator to the Indian Oil Corporation. Not only this, there is another angle to this part of the controversy. Despite the time Schedule having elapsed, the Oil Selection Board made the recommendation and this recommendation was unequivocally accepted by the State level Co-ordinator and then forwarded to the Indian Oil Corporation. Thus, despite being beyond time, the recommendation was accepted which resulted in the Issuance of the Letter of Intent. Once therefore the Letter of Intent was Issued on the basis of such acceptance of the recommendation, it was not lawful by the respondents to cancel it merely because the Office Memorandum dated 22 October "36 prescribed certain negative consequence which, as I have held earlier, were to operate only prospectively. I am of the opinion that by such act of cancelling the Letter of Intent, the respondents acted arbitrarily, violating Art. 14 of the Constitution. I accordingly concur with the view and findings of my learned Brother Amitava Lala, J. and hold that the appeal filed by the appellants against the Judgment of S.B. Sinha, J. has no merit and the same is liable to be dismissed.

**7.** The appeal accordingly is dismissed, but without any Order as to costs.

Later :

Let xerox certified copy be given to the learned Advocates appearing for the Parties expeditiously.

The learned Advocate appearing for the appellant prayed for stay of the operation of the Judgment and order passed today. After consideration, the same is refused.

**8.** Appeal dismissed

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