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**(2010) 10 PAT CK 0094**  
**In the Patna High Court**  
**Case No : CWJC No. 8625 of 2001**

Abhay Kumar Jha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 12-10-2010

**Acts Referred:**

**Citation :** (2010) 10 PAT CK 0094

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## Judgement

Ramesh Kr. Datta, J.—Heard learned Counsel for the parties.

2. The Petitioner seeks quashing of the order dated 20.6.2001 (Annexure-14) passed by the Chairman, Dealer Selection Board, Patna holding that the selection of the Petitioner for the distributorship of LPG for Jhanjharpur is invalid and cancelling the same, as also the order dated 29.5.2001 (Annexure-10) passed by S.D.O., Benipatti, District-Madhubani cancelling the Residence Certificate dated 23.9.2000 as also the subsequent Resident Certificate dated 16.5.2001 issued by the S.D.O., Benipatti.

3. The Petitioner, private Respondent No. 7 Rajeev Kumar and others applied for distributorship of LPG Bharat Gas for location Jhanjharpur in the district of Madhubani pursuant to advertisement published in September, 2000 issued by the Respondent-Bharat Petroleum Corporation Limited with respect to various districts of Bihar under open category. The said advertisement also included distributorship of Jalle in the District of Darbhanga. One of the conditions for the appointment of distributor was that the candidate must be a resident of the district in which the agency is located.

4. The Petitioner was admittedly born in the town of Darbhanga where his ancestral house was located and his name was also appearing in the voters' list of 1995 of Darbhanga. He claims that after his marriage in 1994 with the daughter of one Shri Sudhakar Mishra, resident of Village-Arer, Dilli Tola, District-Madhubani, he setup a small business of shoes and chappals by taking on lease a shop at Sakri in the District of Madhubani and subsequently he left his father's house at Darbhanga and started living alongwith his wife in his father-in-law's

house at Village-Arer, Dilli Tola, District-Madhubani from January, 1996 onwards. A Panchnama was also executed on 21.12.1995 between the Petitioner and his father settling the issues with respect to the family income, property, etc., in which his desire and intention to live with his father-in-law was noted which was also notarised on 26.12.1995. It is the stand of the Petitioner that subsequently he got his name deleted on 29.1.1999 from the family Ration Card of his father at Darbhanga and a certificate to that effect was issued by the Marketing Officer, Darbhanga. It is also claimed by the Petitioner that his three children were born at Village-Arer in Madhubani District between August, 1996 and April, 2001 and the eldest one being his daughter was admitted in Vidya Niketan English School at Village-Arer in January, 2000.

5. In view of the aforesaid facts when the advertisement was issued the Petitioner applied for distributorship for Jhanjharpur in Madhubani District where he was residing and having shop instead of Jalle, in the district of Darbhanga. He also applied and received residence certificate from the In-charge Block Development Officer, Benipatti on 23.9.2000 as the Block Development Officer was on strike as a member of the Bihar Administrative Service Association (BASA) . Another residence certificate was also obtained by the Petitioner on 23.2.2001 which was granted by the Block Development Officer, Benipatti and the same was produced at the time of interview before the Dealer Selection Board (DSB) . In the panel that was prepared the Petitioner's name was at SI. No. 1 while that of Respondent No. 7 was at SI. No. 2. Thereafter spot investigation was made and ultimately the Letter of Intent dated 25.4.2001 was issued in favour of the Petitioner. The Petitioner claims to have invested a substantial amount of Rs. 7 lakhs towards infrastructure including acquisition of land, construction of godown and showroom, in support of which he has annexed copies of photographs of the same.

6. It appears that a complaint was filed by Respondent No. 7 before the Respondent oil company alleging that the Petitioner was not a resident of District-Madhubani but of Darbhanga and with respect to which CWJC No. 5778/2001 was also filed by Respondent No. 7 which was disposed of on 3.5.2001 at the very inception without issuing notices with a direction to the DSB to dispose of the complaint of Respondent No. 7 in accordance with law. The Petitioner thereafter applied and obtained another residence certificate from the Sub-Divisional Officer, Benipatti dated 16.5.2001. In the meantime the SDO, Benipatti on a petition of Respondent No. 7 directed the BDO, Benipatti to submit his report regarding the issuance of residence certificate in favour of the Petitioner and the BDO directed the Statistical Supervisor, Block Office, Benipatti and the Panchayat Sewak, Arer to enquire and report. In their separate enquiry reports to the BDO, they reported that the Petitioner who was a resident of Darbhanga was married at Arer in 1994 and from 1996 he was staying with his father-in-law alongwith his wife and children but has not constructed any separate residential house there. They also reported that the Petitioner was having a business of Shoes and Chappals of Bata at Sakri and he used to stay at Village-Arer. It is also

reported that his name does not find place in the voters' list of 1995 since he is living with his in-laws since 1996. It was further reported that the villagers have supported the said fact and the certificate regarding surrender of Ration Card in 1999 at Darbhanga was also referred. They also reported that his father-in-law has given him land in the village for constructing his own house for which a gift deed was executed. The BDO, Benipatti in his report to the SDO, Benipatti mentioned the aforesaid facts as reported in the enquiry reports by the Statistical Supervisor and the Panchayat Sewak but came to the conclusion that from the enquiry reports it is not clear whether the Petitioner is resident of Village-Arer since his name is not mentioned in the voters list whereas his name finds place in the voters' list of Darbhanga of 1995 and came to the conclusion that the Petitioner is not a permanent resident of Baijalpur (Arer, Dilli Tola) and temporarily residing there with his father-in-law. For the said reasons, the residence certificate issued in his favour is not correct and on wrong application and misleading the office he had got the residence certificate issued. He also referred to the fact that during the time the residence certificate was issued he was on strike on the call of the Bihar Administrative Service Association.

7. Upon consideration of the aforesaid report of the BDO, the SDO, Benipatti after accepting the conclusion of the BDO, Benipatti cancelled the residence certificate dated 23.9.2000 issued by the BDO and also the residence certificate issued by his office on 16.5.2001. The said order was forwarded to the Chairman, DSB also. The Chairman, DSB after considering the said order held that the residence certificate filed by the Petitioner alongwith his application has been fabricated since on the date the certificate appears to have been issued, the members of the BASA were on strike and the Petitioner somehow or the other managed to get the certificate from the BDO office and as the SDO cancelled the certificate filed alongwith his application since the same were found to be fabricated and none of the papers of the Petitioner shows that during the relevant time he was residing in Village-Arer. He also noted that although he has been residing in Village-Arer since about 6 years, but he surrendered the Ration Card certificate as late as on 29.1.1999 and thus he cannot be allowed to contend that he had left Darbhanga much before and thus came to the conclusion that it can be safely held that residence certificate filed by the Petitioner is a fabricated document and that the other documents filed by the applicant with his application are of dates subsequent to the filing of the application and they do not inspire confidence since they appear to have been created by persons interested in the Petitioner and besides they do not prove the factum of actual residence of the Petitioner in Arer and thus came to the conclusion that he did not reside at least when the advertisement was made in Village-Arer in the district of Madhubani and for the said reason he held the selection of the Petitioner for the purpose of Distributorship of LPG for Jhanjharpur as invalid and cancelled the same.

8. Learned Counsel for the Petitioner has referred to the various documents in his favour including the Panchnama dated 21.12.1995 relating to family partition

which was notarized on 26.12.1995 as also the certificate of surrender of ration card dated 29.1.1999. He also refers to school fee receipts of his daughter from the school at Village-Arer starting from 6.1.2000 and the certificate of the principal to show that all these were much prior to the advertisement on 6.9.2000. It is thus urged by learned Counsel for the Petitioner that all these documents show that the Petitioner has been residing with his father-in-law at Village-Arer from the year 1996 itself and also carrying on his business in the district of Madhubani at Sakri which is evident from the lease deed dated 11.4.1995.

9. Learned Counsel also submits that the fact of his residing at Village-Arer has also been on enquiry found to be correct by the Panchayat Sewak, Arer and the Block Statistical Officer, Benipatti in their reports dated 24.5.2001 and 25.5.2001 and the BDO, Benipatti in his letter dated 27.5.2001. It is urged by learned Counsel that from the said facts it was evident that the facts stated by the Petitioner were correct that he was residing at Village-Arer since 1996 with his father-in-law and it was not open to the BDO to have reported that he was only a temporary-resident of that area and that the earlier report was in no way obtained through any manipulation or fabrication. Learned Counsel also submits that the Sub-Divisional Officer did not apply his mind to the fact which was reported to him for reasons best known to him and chose to cancel the residence certificate granted in favour of the Petitioner.

10. It is also urged by learned Counsel that the order of the Sub-Divisional Officer cancelling the residence certificate issued earlier is violative of the principles of natural justice as no opportunity was afforded to the Petitioner before such order had been passed which affected the valuable rights of the Petitioner.

11. Learned Counsel also assails the impugned order dated 29.12.2001 of the Sub-Divisional Officer stating that it shows that no reference has been made to the facts reported to him by the BDO as contained in the enquiry reports of the Block Statistical Officer, Benipatti and the Panchayat Sewak, Arer and for the said reasons, the order is fit to be set aside.

12. It is also submitted by learned Counsel that the Chairman, DSB has not applied his mind to the facts placed before him and has completely misdirected himself in coming to the conclusion that the certificates filed by the Petitioner alongwith his application were fabricated documents whereas no such allegation is to be found at any stage. Only statement that had come was that since the BDO was on strike, the certificate had been issued by the In-charge BDO which fact has not been denied at any stage by any authority and it is not a case that forged and fabricated document had been produced by the Petitioner.

13. Learned Counsel further submits that the Chairman has not followed the procedure laid down in the Grievance Redressal System as contained in the guidelines of the Government dated 9.10.2000 and under Clause 3.15 thereof

the Chairman cannot take any decision in his individual capacity but must pass order in consultation with other members of the DSB after due enquiry by officers appointed by the General Manager of the Oil Company but no such thing has been done. In this regard he submits that it is well settled proposition that power must be exercised in the manner laid down, for which he refers to a decision of the Supreme Court in the case of Ramchandra Murarilal Bhattad and Others Vs. State of Maharashtra and Others, in which the proposition was laid down that where power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily not permitted.

14. Learned Counsel also refers to various decisions of the Supreme Court on the question of interpretation of the word "Residence". However, he strongly relies upon a decision of the Apex Court in the case of Bhagwan Dass and Another Vs. Kamal Abrol and Others, in which most of the other cited decisions have been considered and the principles laid down particularly in relation to criterion of residence for allotment of LPG Distributorship. Paras 11, 12 and 13 of the said decision are quoted below:

11. From the aforesaid analysis it is apparent that the word "residence" is generally understood as referring to a person in connection with the place where he lives, and may be defined as one who resides in a place or one who dwells in a place for a considerable period of time as distinguished from one who merely works in a certain locality or comes casually for a visit and the place of work or the place of casual visit are different from the place of "residence". There are two classifications of the meaning of the word "residence". First is in the form of permanent and temporary residence and the second classification is based on de facto and de jure residence. The de facto concept of residence can also be understood clearly by the meaning of the word "residence" as given in Black's Law Dictionary, 8th Edn. It is given that the word residence means bodily presence as an inhabitant in a given place. Thus de facto residence is also to be understood as the place where one regularly resides as different to the places where he is connected to by mere ancestral connections or political connections or connection by marriage.

12. In the present case, the necessary eligibility criterion requires the applicant to be a resident of Kangra district. The advertisement inviting the applications has not defined the same and hence it would be necessary to see the intention of the framers of the eligibility criteria to understand the true meaning or the sense for which the word "resident" is used or as to why the criterion of resident is put as an eligibility criterion for allotment of LPG dealership/distributorship. In the present case the intention of the framers appears to be to provide employment or source of earning for the residents of Kangra district in the form of LPG dealership/distributorship. The eligibility criterion requires the person to be a resident of Kangra district only in the actual sense and not in any other sense. What is required to fulfil the eligibility criterion of residence is that the person

should be a de facto resident and not have a mere connection with the place on account of her husband having some personal and ancestral property in Kangra. There is no finding recorded by the Court that the husband of Respondent No. 1 is permanently residing at Kangra or has permanent abode in Kangra. From the finding arrived at by the High Court it can be said that her husband having ancestral property in Kangra is a visitor to that place and occasionally resides there for a few days. Respondent No. 1 prima facie appears to be a permanent resident of Mandi, since her name appears in the voters' list of Mandi and that she has been drawing her ration from Mandi as per the case set up by the Appellants. It is further clear that the intention of providing employment and source of earning to the residents of the place would be fulfilled only if the person is actually living in Kangra and not by his/her remote connection to the place. It may also be seen that another eligibility criterion is that the person should not be a partner or having any dealership or distributorship agency in any petroleum company and, therefore, the dealership/distributorship has to be allotted to the person who does not hold any other dealership/distributorship agency of any other petroleum company. This term indicates that the Corporation wants that the dealership at a particular place has to be handled by that person, which would necessarily require the personal presence of that person at the place of business. The notice of intent issued to Respondent 1 on 3.3.1988 further clarifies this requirement when it says that the dealer is to be a full-time working dealer which necessitates the permanent residence at a place for which the dealership licence is given. When the agency requires full-time working dealer it would be only possible if the person actually resides in Kangra district and not working through agent or servants engaged for the said purpose. This further indicates that the dealer is required to be a de facto resident of the place from where the dealership licence is to be issued and it is not permissible to have casual connection or temporary residence at that place.

13. For the aforesaid reasons we are of the view that the High Court has committed an error in construing the term "resident of Kangra district" as not requiring a person to be a permanent resident of that place and his casual connection to the district would fulfil the necessary mandatory criteria provided in the advertisement notice. As the approach of the High Court in deciding the second appeal against the Appellant was based on its interpretation of the criterion of residence and as we have taken a different view of the matter, we set aside the judgment and decree passed by the High Court and remand the matter back to the Court for fresh consideration of the appeals in the light of interpretation given by us to the term "resident of Kangra". The appeals are disposed of accordingly with no order as to costs.

15. It is also submitted by learned Counsel that mere non-existence of the name of the Petitioner in the voters' list of Arer is of no consequence as the voters' list itself was of the year 1995 and the Petitioner on account of his involvement in business activities had not taken steps to get the same updated. It is stated by learned Counsel that subsequently in the year 2003 the Petitioner got himself

registered as a voter of Village-Arer although he admits that the same could not be of any value so far as the present matter is concerned but is only to show that the Petitioner, as a matter of fact, was and is continuing to reside at Arer with all intention to continue as a resident of the said place from the year 1996. It is the contention of learned Counsel that in any case the existence of name in the voters' list is not conclusive of the fact as to whether a person is ordinary resident of the said area as has also been laid down u/s 20(7) of the Representation of the Peoples Act, 1950.

16. Learned Counsel for the Respondent No. 7, on the other hand, assails the various documents filed by the Petitioner specially the pre-advertisement documents. It is submitted by learned Counsel that the lease deed of the shop dated 11.4.1995 does not in any way help the Petitioner as the place where the shop is located, namely, Sakri although in the district of Madhubani is closer to Darbhanga than the Village-Arer. He also submits that the Panchnama dated 26.12.1995 was between the Petitioner and his father and thus could have been easily manufactured. He also assails the deletion of the Petitioner's name from the ration card at Darbhanga on 29.1.1999 stating that there is nothing to show that the Petitioner's name was included in any ration card at Arer. It is also his stand that the school fees receipts of the school at Arer with respect to his daughter although pertain to prior date to the date of advertisement but it could not be held to mean that the Petitioner himself resides at Village-Arer as it is not uncommon for children to pursue studies from their maternal grandfather's house.

17. Learned Counsel also refers to the registration certificate dated 9.4.1999 issued by the Commercial Taxes Officer with respect to the Shoe shop of the Petitioner at Sakri in which the Petitioner has been shown as a resident of Darbhanga and not of Village-Arer.

18. Learned Counsel also refers to various certificates of the Officer Incharge of Arer Police Station, District Superintendent of Police, Madhubani, Mukhiya of the concerned Gram Panchayat which go to show that the Petitioner is not resident of Village-Arer.

19. It is strongly contended by learned Counsel that the Petitioner has been unable to produce a single document like ration card, driving licence, telephone bill, Mobile Bill, Pan Card, Electricity Bill, etc. to show that he was actually living and residing at Village-Arer. It is urged by learned Counsel that it cannot be said that there is any positive evidence in favour of the Petitioner residing at Village-Arer and actually consider him to be a permanent resident of the said area.

20. Learned Counsel also refers to remarks made in the reports of the BDO, Benipatti to submit that the residence certificate had been obtained after misleading the office of the Block Development Officer.

21. It is also submitted by learned Counsel that in view of the so many disputed questions of fact involved no writ petition should be entertained, in support of

which he has cited several decisions.

22. It is lastly submitted by learned Counsel for Respondent No. 7 that the Respondent was issued the Letter of Intent in March, 2002 and running his LPG Distribution for last 7 years for which he had invested more than Rs. 17 lacs earlier and recently another Rs. 20 lacs. For the said reasons it is urged by learned Counsel that it would be inequitable to allow the writ petition and dislodge the Respondent No. 7 from the dealership. In support of the same learned Counsel relies upon a decision of the Apex Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, in the relevant part of para 35 of which it has been held as follows:

.. Moreover, the writ petition was filed by the Appellant more than five months after the acceptance of the tender of the 4th Respondents and during this period, the 4th Respondents incurred considerable expenditure aggregating to about Rs. 1,25,000/- in making arrangements for putting up the restaurant and the snack bars and in fact set up the snack bars and started running the same. It would now be most iniquitous to set aside the contract of the 4th Respondents at the instance of the Appellant. The position would have been different if the Appellant had filed the writ petition immediately after the acceptance of the tender of the 4th Respondents but the Appellant allowed a period of over five months to elapse during which the 4th Respondents altered their position. We are, therefore, of the view that this is not a fit case in which we should interfere and grant relief to the Appellant in the exercise of our discretion under Article 226 of the Constitution.

23. It is also contended by learned Counsel that under the guidelines the authorities of the Oil Company are required to act on the basis of residence certificate issued by the concerned officers of the State Government and once it is held by the State Officers that the residence certificate is not proper and the same is cancelled then it is not required or expected by the authorities of the Respondent-Oil Company to make an independent enquiry with respect to the validity or genuineness of the residence certificate rather they must act upon it. In support of the same he relies upon a decision of the Apex Court in the case of Jagdish Mandal Vs. State of Orissa and Others, in para-26 of which it has been held as follows:

We have referred to various reports only to show that there exist divergent views about the genuineness of the TD passbook. It is wholly unnecessary to record a definite finding on the issue whether the TD passbook submitted by one of the tenderers towards EMD is genuine or forged. In this case, as the Superintendent of Post Offices informed the Department that the postal TD passbook produced by the fifth Respondent should not be acted upon, the Committee proceeded to hold that his tender was "non-responsive" or defective as it was not accompanied by a valid EMD. In such circumstances, the limited question that had to be considered in a writ petition filed by the unsuccessful tenderer is whether the Committee acted unreasonably in taking such a decision.



There can be no doubt that it did not. The tender was to be accompanied by an EMD as prescribed. If the Postal Department which issued the TD passbook pledged by the fifth Respondent towards EMD, said that it should not be acted upon, there is no question of the Committee then holding any further, enquiry about its genuineness and holding up the evaluation of tenders. For example if a pay order/banker's cheque/demand draft issued by a bank is produced as EMD and the bank informs that such pay order/cheque/DD should not be acted upon, the authority concerned is not expected to suspend the process of evaluation and hold an enquiry in regard to the validity of genuineness, but act upon the information received from the bank and treat the EMD as defective and proceed with the evaluation of tenders on that basis.

24. Learned Counsel for the Respondent Bharat Petroleum Corporation strongly contends that no benefit can be derived by the Petitioner from the decision of the Supreme Court in Bhagwan Das case (supra) which was a case arising out of civil suit which ultimately went to the Supreme Court. It is urged that in the present matter in writ proceedings various issues of facts cannot be decided and the Petitioner if he was aggrieved, had never approached the Civil Court for the decision on the various issues of fact. Thus, according to him, the writ petition ought to be summarily dismissed.

25. It is also contended by learned Counsel that the Oil Company only act on the residence certificate issued by the State authorities and since the Sub-Divisional Officer himself cancelled the residence certificate issued, there was no occasion to consider the case of the Petitioner. In this regard it is urged by learned Counsel that as on the date when the impugned order dated 20.6.2001 was passed by the Chairman, DSB, there was no residence certificate in existence issued by the competent authority of the State Government and thus the order passed by the Chairman, DSB is correct order and suffers from no illegality or infirmity.

26. Learned Counsel also refers to the guidelines laid down for the procedure to be followed on receipt of a complaint and submits that there is no requirement by the Chairman to refer the matter for an enquiry and it is open to the Chairman to himself decide it and in such circumstances, there is no requirement of consulting the members of the DSB. He refers to para 3.15 to say that the members of the DSB do not remain as such for more than one week and in such circumstances, the Chairman is competent to decide.

27. It is also urged by learned Counsel that the Petitioner having participated in the proceedings before the Chairman he cannot be permitted to turn around and challenge his jurisdiction.

28. It is further submitted by learned Counsel that equities are also in favour of Respondent No. 7 since the Petitioner has already sold whatever infrastructure he may have created and further it would be inconvenient to the general public if the dealership is cancelled and new dealership is permitted to be set up as held

by the Supreme Court in the case of Moumita Podder v. Indian Oil Corporation Ltd. and Anr. in its decision dated 30.7.2010 in Civil Appeal Nos. 6071 and 6072 of 2010, in paras 31, 32 and 36 of which it has been-held as follows:

31. In view of our findings recorded above, the normal order would be to set aside the impugned judgment of the Division Bench. Further direction would have been to offer the dealership to the next candidate on the panel of three. But these candidates have shown no interest in these proceedings. In these circumstances, the learned Counsel for Respondent No. 2 has made strenuous efforts to persuade the Court, not to interfere in the grant of the dealership to Respondent No. 2. The same prayer was also made before the learned Single Judge. It was, however, rejected with the observations reproduced in the earlier part of the judgment. The learned Single Judge rejected the submission by placing reliance on a judgment of this Court in V. Purushotham Rao v. Union of India and Ors. (2001) 10 SCC 305. In our opinion, the aforesaid judgment was rendered under some very peculiar and exceptional circumstances. It was a case where allotment of retail outlets of petroleum products had been made by a Minister in violation of all norms while exercising his discretionary powers for making the allotments. These allotments had been made in the absence of any guidelines. The circumstances were such that this Court was constrained to make the observations relied upon by the learned Single Judge which are as under:

23. So far as the fifth question is concerned, it is no doubt true that the Appellants have invested considerable amount in the business and have operated it for about eight years but even on equitable considerations, we do not find any equity in favour of the Appellants. The conduct of the Minister in making the discretionary allotments has been found to be atrocious, in the very three-Judge Bench decision of this Court and in relation to similar allotments made by the said Minister in favour of 15 persons who were Respondents in common cause case. This Court came to hold that the allotments of the public property had been doled out in an arbitrary and discriminatory manner and the Appellants had been held to be beneficiaries of such arbitrary orders and allotments. The question of granting the allottees relief on equitable consideration did not arise at all, for the same reasons in a case like this, a sympathetic consideration on the ground of equity would be a case of misplaced sympathy and we refrain from granting any relief on any equitable consideration. In our view, the Appellants do not deserve any equitable consideration.

The above observations make it abundantly clear that this Court was dealing with a situation where the concerned Minister had bestowed undue favour on the Appellants in that case. Such is not a situation in the present case. Therefore, the aforesaid observations would be of little assistance to the Appellant herein.

32. The facts and circumstances of this case are not such where this Court would be reluctant to come to the aid of a selected candidate, against whom there are no allegations of manipulation or any undue favour having been shown to her. In our opinion, this is not a case of such an exceptional nature where equitable

considerations would be impermissible. The peculiar facts of this case are such that it would be appropriate for the Court to take into consideration the subsequent events, in order to do complete justice between the parties. In the case of Kedarnath (supra) this Court delineated the circumstances in which the subsequent events could be taken into consideration in the peculiar facts and circumstances of a particular case. It was emphatically observed as follows:

16. In our opinion, by not taking into account the subsequent event, the High Court has committed an error of law and also an error of jurisdiction. In Our judgment, the law is well settled on the point, and it is this: the basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit or proceeding and the suit/action should be tried at all stages on the cause of action as it existed at the commencement of the suit/action. This, however, does not mean that events happening after institution of a suit/proceeding, cannot be considered at all. It is the power and duty of the court to consider changed circumstances. A court of law may take into account subsequent events inter alia in the following circumstances:

(i) the relief claimed originally has by reason of subsequent change of circumstances become inappropriate; or (ii) it is necessary to take notice of subsequent events in order to shorten litigation; or (iii) it is necessary to do so in order to do complete justice between the parties.

(Re. Shikharchand Jain v. Digamber Jain Praband Karini Sabha, SCC P. 681, para 10.)

In view of the above, we find that the course adopted by the Division Bench was appropriate, as well as being legally correct.

36. In our opinion, the facts and circumstances of this case are such that the approach adopted by the Division Bench, in taking note of the subsequent events, was appropriate and legally permissible. The clumsy handling of the entire selection process by Respondent No. 1 ought not to result in disqualification of the Respondent No. 2 who was perhaps not properly guided. There are no allegations made that Respondent No. 2 has either manipulated the selection or that any undue favour has been shown to her by the Selection Committee. We also cannot ignore the fact that candidates at Nos. 2 and 3 of the panel have not challenged the selection and grant of dealership to Respondent No. 2. The Appellant could also not get any relief, not being in the panel of selected candidates. It is also to be noted that the dealership has been operating for more than five years. It is stated to be one of the best, if not the topmost, outlet in the State. Entire infrastructure has been made available with the combined efforts of Respondents No. 1 and 2. Closure of the dealership, at this juncture, would result in disastrous consequences to Respondent No. 2. We have already noted that the decision of the Selection, Committee is rendered arbitrary due to non-observance of the stipulated criteria in the policy circular dated 4.9.2003 and the public notice dated 19.2.2004. We have also noted that it is not

a case where the selection is vitiated by proved mala fides; nor any allegations of undue favour being shown to Respondent No. 2 have been made. Even leaving aside the loss which would be incurred by Respondent No. 2 it would not be possible for this Court to ignore the far reaching consequences of cancellation of the retail outlet in the small State of Tripura where such facilities are not in abundance. Therefore, keeping in view the overall public interest, we decline to exercise the extraordinary jurisdiction of this Court under Article 136 of the Constitution of India for setting aside the selection made in favour of Respondent No. 2.

29. Learned Counsel for the Respondent-Oil Company while adopting the aforesaid submissions on behalf of Respondent No. 7 further submits that there is no arbitrariness or mala fide alleged against the Chairman so far as the impugned order is concerned.

30. Learned Counsel for the Petitioner challenges the submissions so far as the question of equities is concerned, by contending that it is well settled that equity does not override the law rather it follows the law. It is also submitted that the Petitioner had also made huge investment at the relevant time but the same was not considered while cancelling his LOI two months after the same was issued and thereafter allotting the dealership in favour of Respondent No. 7. In this regard, he also refers to the maxim of equity which provides that between equal equities the law will prevail and between equal equities the first in order of time shall prevail. It is thus submitted by learned Counsel that even equity in the present matter is in favour of the Petitioner.

31. It is also urged by learned Counsel for the Petitioner that the order passed by the Chairman, DSB is an order dependent on the cancellation order of the SDO on non-est ground and thus if the first order goes then the subsequent order would also become invalid and fit to be set aside. In support thereof a decision of the Supreme Court has been cited in the case of Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Thomas Stephen and Co. Ltd., Quilon, , in para 5 of which the said proposition has been laid down.

32. Learned Counsel also submits that there can be no question of waiver in the present matter as waiver must be specifically pleaded which has not been done by the Respondents and they have also failed to show that the Petitioner's participation was with intent and knowledge of the relevant guidelines under which the power is not exclusively of the Chairman.

33. It is further submitted by learned Counsel that the investment made by Respondent No. 7 on infrastructure can easily be recouped by him by selling the land, house and godown on much more profitable price and so far as the question of inconvenience to the general public is concerned, the same can be mitigated by allowing the Respondent No. 7 to continue for 2-3 months more until the Petitioner is able to establish his dealership.

34. I have considered the submissions of learned Counsel for the parties. At the

outset I will consider the contention on behalf of the Respondents that various issues and disputed questions of fact arise in the matter and, therefore, the writ petition should not be entertained in view of the long line of decisions of the Apex Court and of this Court. The established proposition laid down by the Apex Court and this Court in the matter of consideration of disputed question of fact is that the same is not absolutely barred in the exercise of powers by the Court. It is essentially a rule of prudence and for this Court to consider whether the issues of fact are such which can only be conveniently considered during the course of trial in a Civil Court. However, as a general and normal rule the writ courts have refused to exercise jurisdiction where disputed questions of fact, which cannot be conveniently considered under the writ jurisdiction, arise. Such however, does not appear to be the position in the present matter.

35. From the materials on the record, it is evident that the essential challenge of the Petitioner is to the order dated 29.5.2001 (Annexure-10) passed by the Sub-Divisional Officer, Benipatti by which the residence certificate issued by the Block Development Officer as also by him have been cancelled by him. The question would be whether the said cancellation has been made in accordance with the well established principles laid down by this Court and also whether it has been passed after observing the principles of natural justice and whether it is based upon some material and is not perverse. The second challenge of the Petitioner is to the order dated 20.6.2001 passed by the Chairman, Dealer Selection Board by which on the ground that the Petitioner not being a resident of the Madhubani district and having produced fabricated and manipulated certificate of residence and the same having been subsequently cancelled by the authorities of the State, the Distributorship of LPG of the Petitioner was also held to be invalid and cancelled. So far as the said issues are concerned, for the consideration of the same no fresh material and consequently no further evidence is required and all that has to be seen is whether the order of cancellation by the SDO and the consequential order of the Chairman, DSB are fit to be quashed or not in the light of the materials on the record. That being the position the submission of learned Counsel for the Respondents that the issues cannot be considered in a writ petition must fail.

36. For a consideration of the challenge to the impugned orders the main question is the interpretation of the word "residence", as one of the criteria for allotment of LPG Distributorship was residence in the district concerned. The said issue is no longer *res integra* and apart from being considered in various decisions of the Apex Court it has specifically been considered in Bhagwan Das's case (*supra*) with respect to allotment of LPG Distributorship. In the said case it has been laid down after considering a large number of earlier decisions of the Apex Court that residence is to be understood as residing in a place or dwelling in a place for a considerable period of time as distinguished from one who merely works in a certain locality or comes casually for a visit. In this regard distinction was also made between permanent and temporary residence on the one hand and *de facto* and *de jure* residence on the other. *De facto* residence was held to

be a place where a person regularly resides as different from the places with which he has mere ancestral connections or political connections or connection by marriage. It has also been laid down that the concept of residence does not have any absolute connotation and must be considered in the context in which it is required. With respect to LPG Dealership/Distributorship it was held that the intention is to provide employment or source of earning for the residents of the concerned district and thus the person in order to be eligible must reside in the said district in the actual sense and not in any other sense, i.e., de facto residence, and not have a mere connection with the place, having personal or ancestral property in a district was not considered as sufficient for the said purpose. The Apex Court held that one must have a permanent abode in the concerned district and not be a mere visitor to the place or occasional resident there as the intention is that the Dealership must be managed by the person who is allotted the same which necessarily requires the personal presence of the said person at the place of business; the dealer has to be full-time worker and thus permanently residing at the given place and not operating the dealership through agents or servants. Thus the emphasis of the Apex Court was that the residence must be a de facto residence and not mere de jure residence.

37. The impugned orders of cancellation have thus to be considered on the anvil of the aforesaid propositions laid down by the Apex Court with respect to interpretation of the term "residence" in the context of dealership/distributorship of LPG.

38. In the present matter a residence certificate was initially issued by the In-charge BDO, Benipatti on 23.9.2000 which was annexed with the application of the Petitioner. The reason for the issuance of the certificate by the In-charge BDO was admittedly the fact that the BDO concerned had gone on strike on the call of the Bihar Administrative Service Association as he was a member thereof. That being the position the grant of residence certificate by the In-charge BDO can under no circumstance be assailed on the ground that it is not by the BDO himself but by the In-charge BDO. If the concerned BDO was not available for discharge of his official duties and in violation of his obligations as a public servant under the Bihar Government Servant Conduct Rules had gone on strike then the same cannot be used to assail any certificate issued by the In-charge BDO as being a fabricated and manipulated document.

39. The second aspect of the matter is that the residence certificate dated 23.9.2000 and other documents furnished by the Petitioner were subject to verification and full investigation by the Respondent-Oil Company and after finding all the documents in order the Letter of Intent was issued in favour of the Petitioner and only subsequently on the complaint of the Respondent No. 7, the SDO, Benipatti and the authorities of the Oil Company again took up the matter. So far as the Sub-Divisional Officer is concerned he directed the BDO, Benipatti to get the matter enquired and report to him. Pursuant to the same, the matter was got enquired by the BDO by deputing the Statistical Supervisor, Block Office,

Benipatti and the Panchayat Sewak, Arer and both of them in their reports after making local enquiries and looking into the various documents produced before them gave their reports that the Petitioner after his marriage at Arer in 1994 had subsequently from the year 1996 shifted his residence there and was staying with his father-in-law alongwith his wife and children. The said fact has also been accepted by the BDO, Benipatti and has not been held to be false by the Sub-Divisional Officer, Benipatti. Thus, those facts have to be considered as the material available on the record for the Sub-Divisional Officer to have acted in the matter. The sole question which is required to be considered in the matter is whether in view of the said factual position it was open to the Sub-Divisional Officer to come to a conclusion that the residence certificate dated 23.9.2000 was fabricated and manipulated and liable to be cancelled, applying the principles which have been laid down by the Courts of law in this regard. The issue is not the personal notion of the Sub-Divisional Officer about a person being a resident or not being a resident of a particular area for being eligible to be granted residence certificate but whether the residence certificate in terms of the law laid down by the Courts in the matter of LPG distributorship could have been issued in favour of the Petitioner in view of the said factual basis or a residence certificate already issued could have been cancelled even after the said factual findings. The fact that it was issued by the In-charge BDO and not the BDO, as already held above, is wholly irrelevant for the purpose in the said matter.

40. As per the decision of the Apex Court in Bhagwan Das's case (supra) it is evident that the crucial issue was as to whether the Petitioner was staying at Village-Arer with the intention at the relevant time as can be judged from his action to continue to stay there and make it his residence or not, in view of the facts reported by the Block Statistical Supervisor and the Panchayat Sewak on the direction of the BDO, Benipatti pursuant to the direction by the SDO, Benipatti. Reports show that the contention of the Petitioner that he was staying at Arer alongwith his family members with his father-in-law from January, 1996 has, as a matter of fact, been found to be correct by local enquiry made by the Block and Panchayat officials. Thus, his intention to shift his residence to Arer and remain there is clearly established by the said reports. The advertisement for LPG Distributorship was published in September, 2000 by the time the Petitioner had already been a resident of Arer for approximately four years and eight months. This clearly shows that the Petitioner had become a de facto resident of Village-Arer in terms of what has been laid down by the Apex Court in Bhagwan Das's case (supra) . Once it is held that although the ancestral home of the Petitioner falls in Darbhanga district but he had shifted his residence to Village-Arer in the district of Madhubani for a substantial period of time to show that he intended to continue in the said residence then it must be held that he was eligible under the advertisement for the Distributorship in Madhubani District on the basis of the said facts as per the law laid down in Bhagwan Das's case (supra) .

41. The other evidence as brought forward by the Petitioner thus seen in the light of the reports of the Block Statistical Supervisor and the Panchayat Sewak, in fact bolster the case of the Petitioner. The deed of family arrangement notarized on 26.12.1995 and in which the fact of the Petitioner expressing his desire and intention to live with his father-in-law was noted, shows that it is not a mere chit of paper subsequently created. Even more significant is the deletion of the name of the Petitioner from the family ration card of his father at Darbhanga on 29.1.1999 which also is one year eight months prior to the issuance of the advertisement. The name in the ration card, in the year 1999, was not something which was easily surrendered as it was considered a strong proof of residence and identity at that time and deletion of name clearly goes to show the intention of the Petitioner not to at all return to Darbhanga for staying at his ancestral home. Further support is also to be found from the fact that the daughter of the Petitioner was admitted and studying in school in Village-Arer since January, 2000 for which necessary evidence had been produced.

42. Learned Counsel for the private Respondent has harped upon the fact that none of the proof of residence like ration card, driving licence, telephone bill, Mobile Bill, PAN Card, Electricity Bill, etc., has been produced by the Petitioner to show that he was residing at Village-Arer. In the factual background that the Petitioner was living at the home of his father-in-law, it is evident that most of those documents would not be or required to be with the Petitioner. The absence of the said documents can have no effect considering the fact that cancellation of the residence certificate has been made after getting a local verification by the Block and Panchayat officials and thus the order of cancellation has to be considered on the basis of the material before the Sub-Divisional Officer, Benipatti and these are not the reasons which had weighed with the Sub-Divisional Officer or even considered by him while passing the order of cancellation.

43. The other issue of the name of the Petitioner appearing in the voters' list of Darbhanga and not of Village-Arer again does not have much relevance as the voters' list of Darbhanga was of the year 1995 when the Petitioner was admittedly resident of Darbhanga and had shifted to Village-Arer only in January, 1996. The fact that he had not got himself enrolled in the voters' list of Village-Arer till the year 2000 or 2001, cannot be held against him as there is no dearth of persons who, upon their change of residence do not make effort to get themselves enrolled in the voters' list for many years. In this regard, learned Counsel for the Petitioner produced in Court a copy of the voters' list of Village-Arer of the year 2003 in which his name appears. Although no weight can be attached to any such document which is after the date of advertisement, yet this Court in the prevailing circumstances does not consider it unusual that a person did not get himself enrolled as a voter at his new place of residence as evidently in the present matter the Petitioner had opened the shoe and chappal shop of Bata at Sakri in Madhubani District and the explanation that being busy in his said business, he did not have the time for getting himself enrolled in the voters



list at Arer do not appear to be unreasonable.

44. So far as the reliance by learned Counsel for the Respondents on the certificate dated 9.4.1999 issued by the Commercial Taxes Officer in which the Petitioner has been shown as resident of Darbhanga and not Village-Arer is concerned, not much depends upon it, as the Petitioner has started his shoe shop after his marriage and the lease deed which has been brought on the record is also of March, 1995 and thus it does not appear to be unusual that at the time of opening his shoe shop since the Petitioner had not shifted his residence to Village-Arer, as such his residence as shown to the Commercial Taxes authorities is of Darbhanga and the same continued to be on the record as shown in the certificate of 1999.

45. From perusal of the order of the Sub-Divisional Officer it is evident that he has not considered any materials that were placed before him by the BDO, Benipatti alongwith his report and without applying his mind to the said materials he has passed the order of cancellation. This Court is also of the view that cancellation of the residence certificate affects valuable rights of the Petitioner and the same could not have been done by the Sub-Divisional Officer without issuing a show cause to the Petitioner and giving him a reasonable opportunity of being heard. Thus, for all the aforesaid reasons, this Court is of the view that the order of the Sub-Divisional Officer is unsustainable and fit to be quashed.

46. So far as the order of the Chairman, DSB is concerned, it is the case of learned Counsel for the Respondents that the Chairman, DSB has only to consider the residence certificate issued by the authorities of the State as required in the advertisement and guidelines and there being no residence certificate remaining after the cancellation of the same by the SDO, Benipatti, the order of the Chairman, DSB is unassailable! It has been urged that it was not for the Chairman, DSB to look into the illegality or infirmity of any order passed by the SDO cancelling the residence certificate and thus there is no arbitrariness in his order.

47. Learned Counsel for the Petitioner has also argued that the order of the Chairman, DSB is a dependent order and if the first order, namely, the order of the SDO, Benipatti goes then the subsequent order, i.e., the order of DSB would also become invalid, as held by the Supreme Court in the case of M/s Tomus Stephen & Co. Ltd., Quilon (supra) . That being the position, since this Court is of the view that the order of the Sub-Divisional Officer is unsustainable hence the order of the SDO is fit to be quashed as unsustainable and thus the subsequent order dated 20.6.2001 passed by the Chairman, DSB would also be equally fit to be quashed.

48. I may however, point out that I do not find any force in the submission of learned Counsel for the Petitioner that the Chairman has violated the procedure as contained in the guidelines dated 9.10.2000 under Clause 3.15 thereof. The said provision, according to me, left discretion to the Chairman on receipt of a

complaint on being forwarded to him to either decide the same or direct the Oil Company to get the matter investigated by its officials and report. In the first situation, if the Chairman decides to consider the complaint and pass order himself then the proper course for him is to hear the parties who would be affected by the order and the same having been done it cannot be said that the order suffers from any non-compliance of Clause 3.15 of the Guidelines.

49. It is a different matter however, that the order of the Chairman being based upon the cancellation of the residence certificate by the SDO, would also have to go once it has been held that the order of cancellation of residence certificate by the SDO is unsustainable.

50. Lastly it has to be considered as to even after setting aside the impugned orders, whether on the ground of equity this Court should stay its hands and not set aside the grant of Letter of Intent in favour of Respondent No. 7. In this regard reliance by learned Counsel for the Respondent No. 7 on the decision dated 30.7.2010 in the case of Moumita Podder (supra), does not seem to be appropriate. In that case it has been clearly held that the normal order that would be passed, if it is found that the dealership should be cancelled, is to offer the dealership to the next candidate on the panel but only on the ground that those candidates did not show any interest in the proceedings and also considering the other special facts and circumstances of that case, the Apex Court held that equities had arisen in favour of Respondent No. 2 therein who was granted the dealership, taking into consideration the exceptional circumstances that had arisen in the said case. In the present matter, the Letter of Intent was, as a matter of fact, issued in favour of the Petitioner and it was cancelled almost two months thereafter and in the meantime, the Petitioner had invested a substantial amount for setting up the distributorship.

51. It is true that thereafter the Letter of Intent has been issued in favour of Respondent No. 7 but the same has been done after the filing of the writ petition in which the Petitioner has challenged the cancellation of the Letter of Intent issued in his favour. It is thus evident that the rights of the Petitioner would stand on a higher footing than that of Respondent No. 7. It is well settled that equity steps in the absence of law. Where the law grants a right to a party which he continues to pursue before the Courts of law with all expedition and diligence then the rights of the said person cannot be defeated by mere passage of time. The fact that the Petitioner had also made substantial investments before his Letter of Intent had been cancelled, shows that equities arise equally in favour of the Petitioner as of the Respondent No. 7 and in case of equal equity the first in order of time, i.e., of the Petitioner must prevail. As a matter of fact, this Court is of the view that the Petitioner's legal rights cannot be taken away by the act of the Respondents subsequent to the filing of the writ petition and the Respondent No. 7 must have known at all times that whatever he has received would be liable to be taken away if the writ petition of the Petitioner succeeds. This Court also while admitting the writ petition by order dated 1.8.2001 had made it clear

that any further action taken in the matter shall be subject to result of the writ petition.

52. For the abovementioned reasons no benefit can be derived by the Respondents from the law laid down in Ramana Dayaran Shetty's case (supra) as the writ petition in that case had been filed belatedly, whereas that is not so in the present matter.

53. Thus, in the light of the aforesaid discussions, the writ petition is allowed. The orders dated 29.5.2001 passed by the Sub-Divisional Officer, Benipatti and 20.6.2001 passed by the Chairman, DSB are both quashed and set aside and consequentially the Letter of Intent issued in favour of Respondent No. 7 is also quashed. The Letter of Intent issued in favour of the Petitioner will therefore revive and the authorities of the Bharat Petroleum Corporation are directed to act accordingly.

54. It is stated by learned Counsel for the Petitioner that it will take him about three months time to set up his distributorship afresh. During the said period of three months from today or such further period as may be found necessary, the authorities of the Respondent-Bharat Petroleum Corporation may permit the Respondent No. 7 to continue with the distributorship.