

(2020) 08 PAT CK 0018

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17494 Of 2018

Kanchan Kumari

APPELLANT

Vs

General Manager And Ors

RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)(b), 33(2)(c)
Constitution Of India, 1950 — Article 136

Citation : (2020) 08 PAT CK 0018

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Shashi Bhushan Kumar, Anil Kumar Sinha

Final Decision : Allowed

Judgement

1. The present writ petition has been filed for quashing the order dated 21.08.2018 issued by the Deputy General Manager (LPG-S), Indane Area

Office, Pana, whereby and whereunder the candidature of the petitioner for the L.P.G. distributorships for the advertised location Murgawan, District-

Jehanabad, category-OBC (W), advertised on 18.06.2017, has been rejected and a sum of Rs. 30,000/-, deposited with the Corporation has been

forfeited on the ground that live overhead electric line was found passing through the land offered for the godown i.e. plot no. 568. It has been further

prayed to quash the fresh advertisement, inviting application for appointment of L.P.G Distributors, which has been published in the daily newspaper

â??Hindustanâ? on 26.08.2018, for the aforesaid location in question. It has also been prayed to direct the respondents to issue work order so as to

enable the petitioner to start L.P.G. distribution at Murgawan, Jehanabad. Lastly, the petitioner has prayed for quashing of the letter dated 26.10.2018,

whereby the representations of the petitioner dated 31.08.2018 and 13.09.2018, which were directed to be considered by this Court vide order dated

30.08.2018, has been rejected.

2. The brief facts of the case are that an advertisement was published on 17-18.06.2017 in the daily newspaper for allotment of L.P.G. distributorship

at Murgawan in the district of Jehanabad and the last date for applying for the same was fixed as 14.08.2017. The petitioner had applied for the same

and had also taken three plots on lease at the said location bearing plots no. 568, 569 and 570. Ultimately, the petitioner stood successful and was

allotted L.P.G. distributorship for Murgawan in the district of Jehanabad and vide letter dated 30.01.2018, the petitioner was requested to co-ordinate

with the local Block Office and confirm the date of joint verification and measurement of land within 07 working days. On 18.05.2018, the officer of

the respondent- Corporation had visited the land in question which was offered by the petitioner for construction of L.P.G. godown and the said

officer had raised an objection regarding the overhead electric wire passing through one portion of land i.e. over plot no. 568, whereupon the petitioner

was requested to offer alternative land for the godown in terms of the guidelines and advertisement. Thereafter, the respondent-Corporation vide letter

dated 21.05.2018 had granted two days' time to the petitioner to convey the availability of alternate land with supporting documents for godown

purpose, inasmuch as the land offered by the petitioner had not been found to be suitable for construction of L.P.G. godown as per the eligibility

criteria given in the advertisement and Brochures of Unified Guidelines for Selection of L.P.G. distributors, 2017. It is the case of the petitioner that

excluding the portion of the land from which overhead wire was passing, the remaining area of the land in question was sufficient for construction of

godown in terms of the guidelines. In fact, the petitioner had also requested the local electricity department for removal of the said wire and thereafter,

the same has also been removed from the land in question. It has also been stated that in pursuance to the aforesaid letter dated 21.05.2018, the

petitioner had requested the respondent- Corporation vide letter dated 02.07.2018 to give some more time so that the overhead wire can be removed.

Thereafter, the respondent-Corporation by the impugned letter dated 21.08.2018 had cancelled the candidature of the petitioner for grant of L.P.G.

Distributorship at Murgawan on the ground that upon field verification, it has been found that the land offered for godown does not meet the eligibility

criteria since live overhead power transmission line has been found to be passing through the offered land for godown which is in violation of Clause-8

of the Brochures of Unified Guidelines for Selection of L.P.G. distributorship, 2017. The respondent-Corporation has then issued a fresh

advertisement for allotment of distributorship for the aforesaid location in question.

3. The learned Senior Counsel for the petitioner, Sri N.K. Agrawal has submitted that after having applied for L.P.G. distributorship and having

offered leased land in question, the Electricity department had installed live overhead electric power transmission line over a portion of the same and

when the petitioner came to know about the same, she had asked the Electricity Department to remove the same and then, the said electricity

overhead line has been removed from over the aforesaid plot of the petitioner herein. It is submitted that the circumstance of installation of electricity

wire/ line by the Electricity Department over the plot of the petitioner was beyond her control and in fact, she had also written to the respondent-

authorities vide letter dated 02.07.2018 that she had already applied for removal of the aforesaid line and was trying hard for the same. The learned

Senior counsel for the petitioner has further submitted that no fresh appointment of L.P.G. distributors for the aforesaid location in question has been

made till date, hence it would be equitable to direct the respondents to grant the L.P.G. distributorship to the petitioner herein. In this connection, the

learned Senior Counsel has referred to a judgment reported in 2009(3) PLJR 591 (Niraj Kumar v. The Indian Oil Corporation and others,)paragraphs

no. 4, 6 and 10 whereof are reproduced herein below :

4. Final results having been published, now petitioner was empanelled much below in sixth position and the said Alok Ranjan Singh who is

Respondent No. 5 in the present writ petition was empanelled as the first candidate.

6. Mr. N.K. Agrawal learned senior counsel appearing on behalf of the petitioner submits that the mistakes which were committed by the Interview

Board on the first occasion have been repeated by the second Interview Board again. Elaborating this, he has submitted that the first Interview Board

had not taken into account certain papers with regard to purchase of land which grievance was noted while disposing of the first writ petition itself.

The second Interview Board also ignored the same. Thus the process stood vitiated. The second ground taken was that Respondent No. 5 is not the resident of Lalganj rather he is resident of Patna.

10. In my view, Mr. Chatterjee is correct, for a simple reason that once a party is required to make an application and lay claims on basis of certain

documents knowing fully well that the documents have to be evaluated, accordingly he makes an application then his right to be considered crystallizes

on the day the application is made and that cannot be altered subsequently because if that is permitted then all candidates would be changing their

basic papers at their free will, till the time of Interview. The cut off is the date when application is filed and subsequent documents cannot be looked

into.â??

Thus, it is submitted by the learned Senior Counsel that once the petitioner had made a bonafide application, her right has crystallised as on that date

i.e the date of making of the application and the same cannot be altered subsequently.

4. The learned Senior Counsel has next relied on a judgment reported in 2007(1) PLJR 150 (Usha Kumari v. The Union of Indian and others),

paragraphs no. 3, 4, 6 and 11 to 13 are reproduced herein below :-

â??3. The petitioner being physically handicapped made an application in this regard. While making an application she had filed an affidavit (part of

Annexure 2 series) clearly stated that she had made an application for grant of physical handicapped certificate on 06.06.2005 to the Civil Surgeon,

Darbhanga. She was informed that the next meeting of the Medical Board was scheduled only for the 5th of August, 2005 after which she would be

given the certificate. She accordingly by that affidavit undertook to produce the original certificate of physical handicapped at the time of interview

after it was generated by the Civil Surgeon, Darbhanga. The Corporation scrutinized her papers and did not reject it. I may mention here that item no.

10, the condition of the advertisement stipulated that Corporation would not be obliged to entertain any paper or document after submission of the

application by the date as fixed. The date was fixed as 18.07.2005.

4. As stated above, the corporation was well within its right to reject the

petitioner's application at that stage itself. It did not do so. It then proceeded to verify the land availability and other conditions, as disclosed in the application. Again it had right to reject the petitioner's candidature in absence of proper certificate of physical handicapped. It did not do so. The petitioner was then called for interview on 19.12.2005. Even at that stage petitioner's candidature could have been rejected but was not rejected. It is not in dispute that at the time of interview she produced physical handicapped certificate dated 5.12.2005 granted by Civil Surgeon-cum-Chief Medical Officer, Darbhanga and signed by the Board's members certifying her disability. On production of the same she was selected and informed on that day itself that she had been selected. These facts are not disputed.

6. Mr. D.K. Sinha, learned Senior Counsel in support of the writ application has stated that the petitioner did not conceal any fact. The petitioner did not mislead the Corporation. The petitioner made an application for grant of certificate to the State Authority, who was competent to grant. The State Authorities delayed the matter for which the petitioner cannot be made responsible as those authorities are neither under control of the petitioner nor under the control of the Corporation. The petitioner filed an affidavit it is not disputed disclosing the said fact along with her application. Her candidature was not rejected. Though, the Corporation had right to reject the candidature of the petitioner at several subsequent stages, they did not do so rather on production of original certificate at the time of interview itself she was admittedly selected.

11. In this connection, I may refer to the judgment of the Apex Court in the case of Mangalore Chemicals and Fertilizers Ltd. v. Deputy Commissioner of Commercial Taxes and others since reported in AIR 1992 SC 152 where their Lordships had noticed what Lord Denning had said in one of the cases.

“Now I know that a public authority cannot be estopped from doing its public duty, but I do think it can be estopped from relying on a technicality and this is a technicality.”

12. It is not in dispute that the petitioner is a physically handicapped person with hearing impairment. She did not mislead any person. The validity of the same was not questioned and as such cancellation of her selection would be on a ground which was too technical in the facts aforesaid.

13. In the result, I allow this application and quash Annexure 9 being the impugned order dated 7.7.2006 issued by the respondent-Corporation.

Respondent-Corporation will now proceed in accordance with law.

5. It is thus submitted that since the petitioner has not mislead anyone nor she has suppressed any fact nor any false information has been given,

equities are in her favour, hence compassion is required to be shown to her, hence she deserves appropriate relief from this Court on the ground of

equity. The learned Senior counsel for the petitioner has also relied on a judgment rendered by the Hon'ble Apex Court, reported in (2010) 9 SCC 291

(Moumita Poddar v. Indian Oil Corporation Ltd.), paragraphs no. 44 to 49, whereof are reproduced herein below :-

44. 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 Kedar Nath [(2004) 8 SCC 76] 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: (SCC p. 82, para 16) 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 [(1974) 1 SCC 675] , SCC p. 681, para 10.)¹(emphasis in original)

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

45. It appears to us that the learned Single Judge wrongly brushed aside the observations made by this Court in Rashpal Malhotra [(1987) 4 SCC 391]

wherein it is observed as follows: (SCC pp. 397-98, para 7)

²7. It has to be borne in mind that this is an appeal under Article 136 of the Constitution. This Court in Heavy Engg. Corpn. Ltd. v. K. Singh and

Co. [(1977) 2 SCC 515] expressed the opinion that although the powers of this Court were wide under Article 136 it could not be urged that because

leave had been granted the court must always in every case deal with the merits even though it was satisfied that the ends of justice did not justify its

interference in a given case. It is not as if, in an appeal with leave under Article 136, this Court was bound to decide the question if on facts at the

later hearing the court felt that the ends of justice did not make it necessary to decide the point. Similarly in Baigana v. Collector of Consolidation

[(1978) 2 SCC 461 : 1978 SCC (L&S) 370 : 1978 SCC (Cri) 273 t]his Court expressed the view that this Court was more than a court of appeal. It

exercises power only when there is supreme need. It is not the fifth court of appeal but the final court of the nation. Therefore, even if legal flaws

might be electronically detected, we cannot interfere save manifest injustice or substantial question of public importance. ³! It has to be borne in mind

that this Court in exercising its power under Article 136 of the Constitution acts not only as a court of law but also as a court of equity and must

subserve ultimately the cause of justice.⁴(emphasis supplied)

These observations are fully applicable to the present case.

46. Again in Municipal Board, Pratabgarh [(1982) 3 SCC 331 : 1983 SCC (L&S) 19] this Court observed as under: (SCC pp. 335-37, para 6)

⁵6. What are the options before us. Obviously, as a logical corollary to our finding we have to interfere with the judgment of the High Court,

because the view taken by it is not in conformity with the law. It is at this stage

that Mr Sanghi, learned counsel for the respondent invited us to consider the humanitarian aspect of the matter. The submission is that the jurisdiction of this Court under Article 136 of the Constitution is discretionary and, therefore, this Court is not bound to tilt at every approach found not in consonance or conformity with law but the interference may have a deleterious effect on the parties involved in the dispute. Laws cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. Undoubtedly, rule of law must prevail but as is often said, "rule of law must run akin to rule of life. And life of law is not logic but experience". By pointing out the error which according to us crept into the High Court's judgment the legal position is restored and the rule of law has been ensured its pristine glory. Having performed that duty under Article 136, is it obligatory on this Court to take the matter to its logical end so that while the law will affirm its element of certainty, the equity may stand massacred. There comes in the element of discretion which this Court enjoys in exercise of its extraordinary jurisdiction under Article 136. In approaching the matter this way we are not charting a new course but follow the precedents of repute. In *Punjab Beverages (P) Ltd. v. Suresh Chand* [(1978) 2 SCC 144 : 1978 SCC (L&S) 165], this Court held that the order of dismissal made by the appellant in that case in contravention of Section 33(2)(b) of the Industrial Disputes Act did not render the order void and inoperative, yet this Court did not set aside the order of the lower court directing payment of wages under Section 33(2)(c) and affirmed that part of the order. While recording this conclusion this Court observed that in exercise of the extraordinary jurisdiction this Court was not bound to set aside every order found not in conformity or in consonance with the law unless the justice of the case so requires. The Court further observed that demands of social justice are paramount while dealing with the industrial disputes and, therefore, even though the lower court was not right in allowing the application of the respondent, the Court declined to exercise its overriding jurisdiction under Article 136 to set aside the order of the Labour Court directing the appellant to pay certain amount to the workers. Following this trend in *State of M.P. v. Ram Ratan* [1980 Supp SCC 198 : 1980 SCC (L&S) 478], this Court while holding that the High Court was in error in directing reinstatement of the respondent in service, took note of the fact that

by passage of time the respondent superannuated. The Court paid him back wages till the day of superannuation in the round sum of Rs. 10,000. In

other words, while formally setting aside the order of the High Court directing reinstatement, treated the respondent in that case in service and paid

him back wages because physical reinstatement on account of passage of time was not possible. From the academic's point of view the later decision

is the subject-matter of adverse comment but we feel reasonably certain that it stems from narrow constricted view of the jurisdiction of the Court

under Article 136. We adhere to our view after meticulously examining the learned comment. Having noted that criticism, we still adhere to the view

that legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law it is to be tempered

with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, this Court would be failing in

its duty if it does not notice equitable considerations and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would

render this Court a normal court of appeal which it is not.â??

These observations leave no manner of doubt that the court would be failing in its duty if it does not take due notice of the equitable considerations and

mould the relief to do complete justice between the parties.

47. The aforesaid observations were reiterated in Tahera khatoon [(1999) 2 SCC 635] : (SCC p. 643, para 19)

â??19. We may in this connection also refer to Municipal Board, Pratabgarh v. Mahendra Singh Chawla [(1982) 3 SCC 331 : 1983 SCC (L&S) 19]

wherein it was observed that in such cases, after declaring the correct legal position, this Court might still say that it would not exercise discretion to

decide the case on merits and that it would decide on the basis of equitable considerations in the fact situation of the case and â??mould the final

orderâ??.â??(emphasis in original)

48. 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 1 ought not to result in

disqualification of Respondent 2 who was perhaps not properly guided. There are no allegations made that Respondent 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 the candidates at Nos. 2

and 3 of the panel have not challenged the selection and grant of dealership to Respondent 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. The entire infrastructure has been made available with the combined efforts of Respondents 1 and 2. Closure of

the dealership, at this juncture, would result in disastrous consequences to Respondent 2.

49. 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 2 have been made. Even leaving aside the loss which would be incurred by

Respondent 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 2.â??

6. Per contra, the learned counsel for the respondent IOCL, referring to the counter affidavit filed in the present case, has submitted that an

advertisement was issued for appointment of Gramin Vitrak at Murgawan, Dist-Jehanabad under OBC (W) category along with other locations on 17-

18/06/2017, whereafter, on-line draw was held on 28.12.2017 and 27 eligible applicants including the petitioner herein were declared selected in the

draw. Thereafter, field verification of the credentials of the candidates was conducted and as far as the petitioner is concerned, she has claimed in her

application dated 11.08.2017 that she is having land for godown bearing khata no. 42 (New), 05 (Old), Khesra no. 395(New), Plots no. 568, 569, 570

(old) at Mauza-Jagatpur (through registered lease deed no. 6494 dated 10.08.2017 in the name of Smt. Kanchan Kumari). During field verification, the

same was not found suitable for construction of LPG godown as an over head electric power line was found to have been passing through the subject

offered plot. It is submitted that the petitioner has also acknowledged and confirmed the factum of an electric overhead line passing over the offered plot, thus the said land does not comply with the eligibility conditions required for a suitable godown, as per the Selection Guideline- 2017. It is further submitted that as per the policy, the petitioner was given an opportunity to offer suitable alternate land vide letter ref. Pat/IOC/FVC/Murgawon dated 21.05.2018 and she confirmed vide her reply dated 02.07.2018 that she does not have any alternate land to offer. Therefore, it is established that the petitioner does not have a suitable land for godown as per the terms and conditions prescribed in the selection guidelines. Thus, after necessary approval from the competent authority, the petitioner has been intimated vide letter ref. no. PAT/FVC/MURGAWAN dated 21.08.2018 regarding rejection of her candidature for the advertised location i.e Murgawan, District-Jehanabad, clearly mentioning therein the reason for rejection. It is stated that the rejection of the petitioner is also in line with her declaration in para 6 of her application dated 11.08.2017. After rejection of the candidature of the petitioner, as per policy, re-draw has been conducted on 30.08.2018, among the rest of the eligible candidates for the advertised location Murgawan, District-Jehanabad and though one Jyoti Sinha has been declared selected in the draw, however no third party rights have been created yet.

It is also submitted by the learned counsel for the respondents that during the field verification, the aforesaid land offered by the petitioner for godown was not found suitable for construction of L.P.G. godown on account of passing of overhead electric power transmission line over the offered land. It is stated that the selection guidelines are very clear regarding the suitability of godown land and in case, the respondent-Corporation does not find it suitable then an offer for providing alternate land is given to the applicant, failing which the candidature is liable to be rejected and accordingly, two days' time was granted to the petitioner to offer an alternate land, however she failed to do so, hence her candidature was rejected. It is thus submitted that since the petitioner has intimated the respondent-Corporation vide her letter dated 02.07.2018 that she has got no alternative land, her candidature has been cancelled, hence there is no ambiguity in the decision of the respondent-Corporation.

7. I have heard the learned counsel for the parties and gone through the materials on record, from which it is apparent that at the time of applying for the L.P.G. distributorship on 11.08.2017, the land offered by the petitioner for godown was absolutely suitable as per the guidelines of the respondent-Corporation, inasmuch as at that moment of time, no overhead electricity line was passing through the said plot offered by the petitioner for godown, however it appears that after the month of April 2018, electricity line was laid over a portion of the plots in question i.e. over plot no. 568, out of three plots offered for godown i.e. plot nos. 568, 569 and 570, however, the petitioner had taken all steps for removal of the same by approaching the electricity department but unfortunately in the meantime, field verification was held in and around the month of May, 2018 approximately, (since the letter of the respondent corporation dated 21.05.2018 mentions therein that the land offered by the petitioner for godown, has not been found to be suitable for construction of L.P.G. godown, hence the petitioner is granted two days' time to check availability of an alternate land) and it was found that electricity wire was passing through a portion of the offered land for godown in violation of Clause 8(m) of the Brochure regarding Unified Guidelines for Selection of LPG Distributor's, June, 2017. This Court further finds that though it is true that initially no overhead line was passing through the plot in question as offered by the petitioner and this fact has also not been refuted by the respondent-Corporation but then during the interregnum period, when the field verification was held in the year 2018, it was found that live overhead power transmission line was passing through the offered land for godown, however it is the case of the petitioner that subsequently, the said electricity line has been removed and as on the date of filing of the present writ petition i.e. on 29.08.2018, no overhead electricity line is passing through the plot in question, inasmuch as the same has been removed from the offered land in question. Thus it is apparent that though the respondent corporation had conducted field verification in the month of May 2018 and found that live overhead power transmission line was passing through the offered land for godown, however, the same was removed prior to filing of the instant writ petition on 29.08.2018, thus apparently the unsuitability of the land offered by the petitioner for godown had existed only for a very brief period. Therefore, in view of the peculiar facts and circumstances of the instant case, it would be appropriate for this Court to

take into consideration the subsequent events, in order to do complete justice between the parties. In the judgment rendered by the Hon'ble Apex

Court in the case of Moumita Poddar (Supra), it has been held that a court of law may take into account subsequent events in cases where it is

necessary to take notice of subsequent events in order to shorten litigation or it is necessary to do so in order to do complete justice between the

parties. It is equally a settled law that in exercise of the extraordinary jurisdiction of this Court, this Court is not bound to set aside every order found

not in conformity or in consonance with the law unless the justice of the case so requires, the demands of social justice being paramount. It is also a

well settled Law that it is not obligatory on the Courts to take the matter to its logical end so that while the law will affirm its element of certainty, the

equity may stand massacred. Therefore, as far as the present case is concerned, equity demands that the candidature of the petitioner should be

considered by the respondent-Corporation for grant of L.P.G. distributorship at the location Murgawan, dist-Jehanabad, under the O.B.C. (W)

category, in the peculiar facts and circumstances of the present case, especially since the petitioner has taken three plots of land long back on lease

for godown, by a registered lease deed no. 6494 dated 10.08.2017 and moreover, admittedly no third party rights have been created in view of the

earlier order of this Court dated 30.08.2018 whereby and whereunder, the petitioner has been granted interim relief, inasmuch as it has been directed

that the fresh advertisement will be subject to and dependent upon the final outcome of the present writ petition as well as no third party rights would

be created till the final disposal of the present case. It is directed accordingly.

8. This Court further finds that the contention of the respondent-Corporation that since the petitioner has subsequently stated vide her letter dated

02.07.2018 that she has got no alternative land other than the offered land in question, her candidature has been rightly rejected by the impugned letter

dated 21.08.2018, is also not the correct depiction of the actual facts, inasmuch as upon the respondent-Corporation having given only two days' time

to the poor lady petitioner for checking availability of an alternate land vide letter dated 21.05.2018, the petitioner had replied thereto in writing, stating

that over a portion of the said land, electricity wire has been laid after applying for the L.P.G. distributorship as also upon taking the said land on lease,

in and around the month of April, 2018 and she is making all endeavours to get the said wire removed, information whereof shall be given very soon.

Thus, this Court finds that the action of the respondent- Corporation of granting only two days' time vide letter dated 21.05.2018, for checking

availability of alternate land for godown and informing the respondent corporation, cannot be, by any stretch of imagination be said to be reasonable

and adequate whereas on the contrary, the same not only amounts to denial of a reasonable opportunity to the petitioner but also appears to be

premeditated, in order to defeat the claim of the petitioner, hence the impugned act of the respondent-Corporation, whereby the candidature of the

petitioner has been rejected vide letter dated 21.08.2018, is in teeth of the principles of natural justice, thus not sustainable in the eyes of law. In this

regard it would be apt to refer to a Judgment rendered by the Hon'ble Apex Court in the case of Canara Bank v. Debasis Das, (2003) 4 SCC 557,

paragraphs No. 15 and 16 whereof are reproduced herein below:-

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body

embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well

settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard.

Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet.

Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such

reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any

adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The

concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of

this principle found its way into the Magna Carta. The classic exposition of Sir Edward Coke of natural justice requires to vocate,

interrogate and adjudicate. In the celebrated case of Cooper v. Wandsworth Board of Works [(1863) 143 ER 414 : 14 CBNS 180 : (1861-73) All

ER Rep Ext 1554] the principle was thus stated: (ER p. 420)

“Even God himself did not pass sentence upon Adam before he was called upon to make his defence. “Adam” (says God), “where art

thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?”

Since then the principle has been chiseled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

16. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual

against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those

rights. These rules are intended to prevent such authority from doing injustice.

9. This Court finds it worthwhile to refer to yet another Judgment, on the aforesaid issue, rendered in the case of Satish Chandra Khandelwal v. Union

of India, 1981 SCC OnLine Del 41 : AIR 1983 Del 1 w, herein the undisputed principles of Law has been elucidated by Hon'ble H.L. Anand J, in the

following words:-

III. REASONABLE OPPORTUNITY TO SHOW CAUSE

4. The first and the foremost question that is posed for decision is as to whether the Corporation was denied a reasonable opportunity of showing

cause against the proposed action.

5. The time-honoured rule of audi alteram partem, an essential component of the principle of natural justice and an integral part of the larger concept

of rule of law has been variously described as “substantial Justice”, “the essence of Justice”, “Fundamental Justice”, “universal

Justice”, “rational Justice”, “justice without any epithet” or “fairplay in action”. The rule expresses the close relationship between

common law and moral principles, has an impressive ancestry and may be legitimately considered as being of Divine origin. That no man is to be

judged unheard was a precept known to the Greeks, inscribed in ancient images, where justice was administered, proclaimed in Seneca's *Madea*,

enshrined in the scriptures, traced by the Supreme Court (4) to the *Arthshastra* in India, mentioned by Saint Augustine, embodied in Germanic as well

as African proverbs, ascribed in the year Books to the law of nature, asserted by Coke to be principle of divine justice and traced by an eighteenth

Century judge to the events in the Garden of Eden. Where the Lord himself asked of Adam and Eve if they had eaten of the forbidden fruit before

their fall from Heavens to earth.

6. The fundamental maxims of natural justice have now become deeply and indelibly engrained in the common consciousness of mankind as pre-

eminently necessary to ensure that the law is applied impartially, objectively and fairly. During the last two decades, the concept of natural justice has

made great strides in the field of administrative law. The law in India has kept pace with the development of law in England. The epoch making

decision of the House of Lords in *Ridge v. Baldwin* (6) had its parallel in India in the case of *Kariapack* (7) where the Supreme Court laid down that if

the purpose of rules of natural justice was to prevent miscarriage of justice, one failed to see why these rules should be made inapplicable to

administrative enquiries, and observed that arriving at a just decision is the aim of both the quasi-judicial enquiries as well as the administrative

enquiries and an unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry. It is now

well-established that the rule cannot be sacrificed at the altar of administrative convenience or celerity for, convenience and justice as Lord Atkin(8)

feliculously put it "are often not on speaking terms". More recent judicial thinking tends to the application of the rule and to the preservation of its

solemnity and core even where there is no express legislative recognition of it or a possible inference of its exclusion, as also in extraordinary and

emergent situations even though such extraordinary situation may justify situational modification, timeously or otherwise, of its application. It has also

been recognize that like the doctrines of *ultra vires* and public policy, natural justice is a branch of public law and is a formidable weapon which can be

wielded to secure justice to the citizen and a distinction has been drawn between its application to situations involving more right to property and those

involving fundamental liberties, civil and political rights and judicial thinking favours the further extension of its frontiers in cases involving fundamental

liberties and civil and political rights, including the right to self-government. The decision of the Full Bench of this Court in the case of *super-session* of

the New Delhi Municipal Committee (supra) and the majority opinion of this Court in the case of Swadeshi Cotton Mills (9) had raised some doubts

about the scope, content and limits of the rule but the recent decision of the Supreme Court in the cases of New Delhi Municipal Committee (supra)

and Swadeshi Cotton Mills (10) have not only reinforced the rule but also added new dimensions to it.

7. There has been considerable debate with regard to the scope and content of the requirement of a reasonable opportunity of showing cause and the

judicial annals are replete with precedents and principles which have determined the evolution of this requirement. It is, however unnecessary for us in

the present case to have recourse to these worries of wisdom because Parliament thought it necessary to make the requirement a statutory obligation

u/s 490 of the Act. It is an ample measure of the importance that Parliament attached to an order of super-session and the concern it had for a

reasonable opportunity of showing cause that the requirement was not left to the general application of the principle of *audi alteram partem* but was

made a statutory obligation and a condition precedent for the making of such an order. It was built into the Section by the proviso to it which runs

thus:-

“Provided that before making an order of supersession as aforesaid, reasonable opportunity shall be given to the Corporation to show cause why

such order of supersession should not be made.”

8. The statutory requirement, as indeed, the requirement of the principle of *audi alteram partem* is not a mere opportunity to show cause for a mere

opportunity could degenerate into a convenient facade, a mere public relations exercise, or a mere matter of form shorn of substance. An opportunity

must, therefore, be an effective and meaningful opportunity. It is for the reason that the statutory requirement, as indeed, the principle of natural justice

insist that the opportunity must be a “reasonable opportunity”. The concept of reasonable opportunity is essentially objective in the sense that the

opportunity must be reasonable in the context of the totality of the circumstances in which the person required to show cause is placed. It must be

reasonable having regards to the nature of the change he is called upon to meet, the magnitude of the work involved in understanding the charge,

having access to the record or material on which it is based, collecting and

collating information, data and material, which would justify a defence to the charge, adequate time to examine the material, apply mind to the material, seek advice, articulate his explanation and put it across to the authority for its consideration, if the charge is based on oral testimony of any person or the opinion of another person, an opportunity to cross-examine such a person and in a fit case to produce both oral and documentary evidence and, if such a course is justified an opportunity of an oral hearing to persuade the authority to his point of view. Whether an opportunity is reasonable or not would also, to an extent, depend on the nature of the charge, the nature of the power which is sought to be exercised, the ramification of the order, that is sought to be made, the rights and interests that are sought to be protected. Finally, the opportunity to show cause must not only be reasonable by all the objective criteria but must also appear to a reasonable person to be so. The appearance facet of the concept of reasonable important than the actual opportunity. At one time the requirement of appearance was thought of as being peculiar to the judicial process and it is axiomatic that justice must not only be done but must also manifestly appear to be done and considered to be its crowing glory. Recent juristic thinking has sought to introduce that facet of appearance even in the administrative process when it is commended that the reasonable opportunity to show cause even in exercise of executive power must also appear to be reasonable and it is heartening to note that this thinking was judicially recognized in the latest decision of the Supreme Court in the case of New Delhi Municipal Committee (supra) when the Supreme Court quoted with approval the observation of Jackson (11) thereby making it a mandatory requirement of law that the person affected must not only be given a reasonable opportunity to show-cause but it must also manifestly appear that a reasonable opportunity had been given before an adverse order was made. The reasonable opportunity satisfies the requirement of law but the manifest appearance of such an opportunity satisfies the bar of public opinion and raises executive action to a judicial pedestal. The requirement, both of the reality and the appearance becomes more imperative where the matter is not confined to individual rights, interest or property but extends to political and civil rights and have impact on the right of a mass of people to administer their civic affairs.

10. Considering the facts and circumstances of the case and for the reasons mentioned hereinabove in the preceding paragraphs, the writ petition stands allowed and the decision of the respondent-Corporation, rejecting the candidature of the petitioner herein, as contained in letter dated 21.08.2018 is set aside. Consequently, the consequential decision of the respondent-Corporation contained in letter dated 26.10.2018 is also quashed. The respondent-Corporation is accordingly directed to consider the candidature of the petitioner for grant of L.P.G. distributorship at the location Murgawan, District-Jehanabad, under the O.B.C. (W) category, afresh.