



GAHC010259922019

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7848/2019

M/S. I.S. ENTERPRISE

A PROPRIETORIAL CONCERN HAVING ITS OFFICE AT SARASWATI VIHAR,
NEAR NRL PETROP PUMP, R.G. BARUAH ROAD, GUWAHATI, ASAM,
-781005, AND IS REP. BY ITS PROPRIETOR, SMT. INDU AGARWA, W/O
KAMAL AGARWAL, R/O SARASWATI VIHAR, NEAR NRL PETROP PUMP,
R.G. BARUAH ROAD, GUWAHATI, ASSAM-781005

VERSUS

UNION OF INDIA AND 6 ORS.

REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF
PETROLEUM AND NATURAL RESOURCES, NEW DELHI

2:INDIAN OIL CORPORATION LTD.

A GOVT. OF INDIA ENTERPRISE REP. BY ITS CHAIRMAN HAVING ITS
REGISTERED OFFICE AT G-9
ALI YAVAR JUNG MARG
BANDRA (EAST MUMBAI-51

3:CHIEF GENERAL MANAGER (LPG-OPS)

INDIAN OIL CORPORATION
G-9

ALI YAVAR JUNG MARG
BANDRA (EAST) MUMBAI-51

4:GENERAL MENAGER

(LPG-OPS)
INDIAN OIL AOD
INDIAN OIL CORPORATION
INDIAN OIL BHAWAN
SECTOR -III



NOONMATI
GUWAHATI-781020
ASSAM

5:DEPUTY GENERAL MANAGER
(LPG-OPS)
INDIAN OIL AOD
INDIAN OIL CORPORATION
INDIAN OIL BHAWAN
SECTOR -III
NOONMATI
GUWAHATI-781020
ASSAM

6:THE COMMITTEE
REP. BY DEPUTY GENERAL MANAGER
(LPG-OPS)
INDIAN OIL AOD
INDIAN OIL CORPORATION
INDIAN OIL BHAWAN
SECTOR -III
NOONMATI
GUWAHATI-781020
ASSAM

7:DEPUTY GENERAL MANAGER
(LPG-OPS)
SARPARA BOTTLING PLANT
INDIAN OIL CORPORATION
NH37
BIJOYNAGAR
GOALPARA
GUWAHATI RD. MIRZA
SARPARA
ASSAM-78112

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM



JUDGMENT AND ORDER (CAV)

Date : 12-02-2021

Heard Mr. G. N. Sahewalla, learned senior counsel assisted by Mr. M. Sahewalla, learned counsel appearing for the writ petitioner. Also heard Mr. D. K. Sarmah, learned Standing Counsel, Indian Oil Corporation Ltd., appearing for the respondent Nos. 2 to 7. None has appeared for the respondent No. 1.

2. The writ petitioner, M/S I. S. Enterprise is represented by its sole proprietor Smti. Indu Agarwal, who is a woman entrepreneur and her enterprise is also registered with the Ministry of Micro, Small and Medium Enterprises. As per the case projected in the writ petition, the petitioner is engaged in the business of providing vehicle services which includes supplying Tanker Trucks (TT) to the respondent Indian Oil Corporation (AOD). Aggrieved by the order dated 01.08.2019, by means of which, the prayer made by the petitioner seeking extension of time to place the two TTs at the Sarpara Bottling Plant (BP) of the respondents was rejected, the present writ petition has been filed.

3. The facts necessary for disposal of this writ petition, shorn off unnecessary details, may be noticed herein below. In response to the e-tender notice published on 21.01.2018 inviting offers/quotation for transportation of bulk LPG by road, the writ petitioner herein had submitted bids in respect of four TTs. Upon consideration of the petitioner's bid, the same were found to be responsive and accordingly, a provisional Letter of Intent (LoI) dated 04.10.2018 was issued by the respondent No.5 whereby,

the petitioner was informed that her offer in respect of the four vehicles bearing Registration Nos.AS25CC9625, AS25CC9628, AS25CC9954 and AS25CC9962 have been accepted. In the provisional Lol dated 04.10.2018 it was also mentioned that all the Trucks should report to the respective location of the Corporation within 30 days failing which, the Trucks will be rejected for consideration and the EMD shall be forfeited.

4. Upon receipt of the Lol dated 04-10-2018, furnished security deposit for an amount of Rs.7,50,000/- in the form of Bank Guarantee and also executed formal agreement with the authority. Thereafter, on 27.10.2018, a provisional work order was issued in favour of the writ petitioner by allocating two different locations for the four trucks (TTs) awarded to her in the following manner :-

Truck Regst. No as per LOI	Capacity (in MT)	Mfg. Year	Engine No.	Chasis No.	Own/Attached	Name of BP
AS25CC9625	18.0	2017	VAHZE14446	MA1UAAPHDH6E49395	0	N GUWAHATI BP
AS25CC9628	18.0	2017	VAHZE14460	MA1UAAPHDH6E49474	0	N GUWAHATI BP
AS25CC9954	18.0	2018	VAJZC13160	MA1UAAPHDJ6C99615	0	SARPARA BP
AS25CC9962	18.0	2018	VAJZC12774	MA1UAAPHDJ6C99614	0	SARPARA BP

5. It is the admitted position of fact that In terms of the work order dated 27.10.2018, the petitioner had placed two TTs for the North Guwahati Bottling Plant (BP) within the prescribed time and accordingly, the same were also accepted by the authorities. However, in so far as the other two TTs meant for Sarpara BP is concerned, there was delay of about two weeks in placing the two tgrucks bearing Nos. AS-25CC 9954 and AS-25CC 9962. As a result of such delay, the two TTs were not



accepted by the authorities. Situated thus, the writ petitioner had submitted a representation dated 20.12.2018 addressed to the respondent No.5 with a request for extension of time for placement of the two tanker trucks (TTs) on the ground that due to the serious ailments suffered by her brother-in-law Sri. Ashok Agarwal, there was delay in placing the two trucks in the prescribed location. When the respondents did not consider the prayer made in the representation dated 20.12.2018, the petitioner had submitted another representation dated 31.07.2019 renewing her prayer for extension of time to place the tanker trucks at Sarpara BP. The application submitted by the petitioner along with other similar petitions were placed before a Special Committee constituted for the purpose. By the impugned decision dated 01.08.2019, the prayer for extension of time made by the petitioner for placement of two LPG bulk trucks was rejected while allowing similar application submitted by the ten other suppliers. Aggrieved thereby, the present writ petition has been filed.

6. By referring to the materials available on record, Mr. Sahewalla, learned senior counsel appearing for the writ petitioner, submits that Sri Ashok Agarwal is the brother-in-law of the petitioner and they live in the same household. The petitioner was very disturbed due to the sudden ailment of her brother-in-law and she had to look after her ailing brother-in-law during the relevant period of time. It was under such sudden and unforeseen circumstances that the petitioner could not manage her business properly as a result of which, there was delay in placing the two tanker trucks at the disposal of the respondent No.5 in the Sarpara Bottling Plant (BP). Mr. Sahewalla submits that Sri Ashok Agarwal himself was one of the supplier of tankers with the IOCL (AOD) but even he could not place his tanker trucks before the respondent



authorities on time due to the sudden ailments suffered by him. However, subsequently, on an application made by Sri Ashok Agarwal seeking extension of time on the ground of serious health problem faced by him, the respondents had allowed his prayer and accepted his trucks but had rejected similar prayer for extension of time made by the petitioner on the same ground. It is also the submission of Mr. Sahewalla that out of the 11 applications filed by different contractors/suppliers seeking extension of time to place their vehicles (TTs), 10 of those, including the one submitted by Sri Ashok Agarwal as proprietor of M/S Horizon Marketing, have been allowed by the authorities but only the petitioner's application has been rejected.

7. Contending that his client, had purchased those tanker trucks by making heavy investments by obtaining bank loans and she is also required to pay monthly installments in excess of Rs.1,37,000/-. Mr. Sahewalla submits that the petitioner would suffer irreparable loss and injury if the two TTs are not accepted by the authorities despite the explanation furnished by the petitioner.

8. Referring to the decision of the Supreme Court rendered in the case of **Swiss Ribbons Private Ltd. & another Vs. Union of India & others** reported in **(2019) 4 SCC 17** Mr. Sahewalla submits that the Supreme Court has already held that the micro, small and medium enterprises (MSMEs) are the backbone of the Indian economy and therefore, such enterprises should not be pushed into liquidation as it would adversely affect the livelihood of employees and workers working thereunder. Mr. Sahewalla submits that the writ petitioner here-in also falls in the MSME category of enterprises and therefore, the respondents were not justified in rejecting her prayer in such an



arbitrary fashion.

9. By placing reliance on two decisions of the Supreme Court rendered in the case of **Baldev Sahai Bangia Vs. R. C. Bhasin** reported in **(1982) 2 SCC 210** and in **K. V. Muthu Vs. Angamuthu Ammal** reported in **(1997) 2 SCC 53** Mr. Sahewalla submits that since the petitioner lives in a common household with Sri Ashok Agarwal and in a composite family, the serious ailments suffered by a member of the family would undoubtedly create disturbance in the minds of the family members. Since there is no dispute about the fact that Sri Ashok Agarwal was, in fact, critically ill during that period, the petitioner's application for extension of time, ought to have been accepted by the authorities.

10. Mr. Sahewalla has also argued that in this case, by failing to extend equal treatment to the petitioner along with the 10 other applicants, the respondents have meted out discriminatory treatment to the writ petitioner thus acting in clear violation of the principles laid down in Article 14 of the Constitution of India. In support of his above argument Mr. Sahewalla has relied upon a decision of the Supreme Court rendered in the case of **IOCL Vs. Nilofar Siddiqui & others** reported in **(2015) 16 SCC 125**. The learned senior counsel for the petitioner submits that the two TTs purchased by the petitioner is presently lying idle causing serious injury to the interest of his client. Therefore, the impugned decision be set aside and a writ of mandamus be issued to the respondent authorities to accept the two tanker trucks (TTs) offered by the petitioner.

11. Responding to the above arguments, Mr. D. K. Sarmah, learned counsel for the



respondents, submits that apart from failing to furnish proper explanation for the delay, the petitioner had also made deliberate mis-statement in the representation dated 20.12.2021 wherein it has been stated that due to the ailment of Sri Ashok Agarwal she herself was bed ridden but later on, it turned out that the same was not correct. Since the petitioner had failed to approach the authorities with clean hands, her request for extension of time was liable to be rejected by the Special Committee on such count alone. Mr. Sarmah has further argued that at this point of time the IOC does not have requirement for engaging any further TTs and therefore, the prayer made by the petitioner cannot be considered. In support of his above arguments, Mr. Sarmah has placed reliance on two decisions of the Supreme Court rendered in the case of **Dalip Singh Vs. State of Uttar Pradesh and others** reported in **(2010) 2 SCC 114** [paras 1, 2, 4, 7, 10, 20 and 24] and **Municipal Corporation, Ujjain and another Vs. BVG India Limited and others** reported in **(2018) 5 SCC 462** [para 45] to contend that in order to seek relief in equity the petitioner must come with clean hand. Since the decision of the Special Committee is based on cogent reason, no interference in the matter is called for by this Court. Mr. Sarmah has also produced the records in support of his aforesaid contention.

12. I have considered the arguments advanced by the learned counsel for both the parties and have also gone through the materials available on records.

13. The basic facts are not in dispute in this case. It is the admitted position of fact that out of the four TTs, as mentioned above, the petitioner had placed two Tanker Trucks (TTs) at the North Guwahati BP within the prescribed time. The delay was only in



respect of the two TTs meant for the Sarpara BP. According to the petitioner, the delay in placing the TTs before the Sarpara BP was purely on account of sudden ailment suffered by her brother-in-law Ashok Agarwal who lives in the same household. As per statements made in paragraph 10 of the writ petition, the petitioner had stated in her representation dated 20.12.2018 that her brother-in-law was diagnosed with diseases such as Liver Cirrhosis and GI Sepsis Deep Vein Thrombosis and that he was admitted in the Intensive Care Unit (ICU). Since her brother-in-law was critically ill, the petitioner had to attend to her sick brother-in-law as result of which, the TTs could not be placed on time. As such, the petitioner had prayed for extension of time for placement of the Tank Trucks in the designated plant. Since the controversy involved in this proceeding primarily revolves around the contents of the representation dated 20.12.2018 annexed to the writ petition, the same is reproduced herein below for ready reference :-

“Date 20-12-2018

To

The DGM (LPG-OPS)

Indian Oil Corporation Ltd.,

IO AOD State Office,

LPG Department, 2nd Floor,

Noonmati, Guwahati-781020

Sub : Request for extension for placement of Tank Trucks.

Ref : IOAODSO/LPG/BULK/TT/IOC/AS/2018/199 dated 25-10-2018.

Dear Sir,

In reference to the subject cited above, I would like to bring to your



notice that due to severe health reasons of my own brother-in-law, Sri Ashok Agarwal, he had been admitted to the hospital thrice firstly from 10th July 2018 to 12th July 2018, secondly from 11th September 2018 to 15th September 2018 and thirdly from 20th September 2018 to 3rd October 2018 and was also under Intensive Care Unit (ICU) for more than a week due to various chronic medical condition resulting in severe weakness, low blood pressure and high tendency of external/internal bleeding. He was diagnosed with Liver Cirrhosis with a history of ulcerative colitis, Celiac Disease, GI Sepsis Deep Vein Thrombosis (DVT) with a tendency to bleed due to high INR rate in blood due to his movement was restricted and was bed ridden for several months and also IV fluids were being administered on regular basis and I personally had to take care of the family due to which I was unable to place the tank trucks at the designated plants within the specified time period as they were being used under a private organization.

Due to the above reasons, I have not been able to place the tank trucks at the designated plants, thereby I request you to please grant me an extension of time for the placement of tank trucks at your designated plants, for which I shall be ever grateful to you.

Thanking You,

Yours Sincerely,

For I S Enterprise."

14. In response to the averments made in paragraph 10 of the writ petition, the respondent Nos. 2 to 7 have made the following statements in paragraph 12 of the counter-affidavit :-

"12. That with regard to the statements and averments made in paragraph 10 & 11 of the writ petition the answering deponent while



denying the same begs to state that M/S I.S. Enterprise failed to place 02 nos. of TTs bearing registration no: AS25CC9954 & AS25CC9962 at Sarpara BP out of 04 nos. of TTs awarded to them within the stipulated time frame of 30 days from the date of issue of LOI. However, they placed 02 nos. of TTs bearing registration no. AS25CC9625 & AS25CC9628 in North BP within the stipulated time frame of 30 days from the date of issue of LOI & these 02 TTs are currently running under the contract in North Guwahati BP. It may be mentioned herein that the IOCL Authority had duly received the representation dated 20.12.2018 preferred by Smt. Indu Agarwal, proprietor of M/S I.S. Enterprise whereby it was stated that due to the prolonged illness of her brother-in-law, she could not place her TTs in time. As per the content of the letter, her brother-in-law was severely ill, but she had mentioned that she was bed ridden for several months. It was not understood as to how the bidder Smt. Indu Agarwal was bed ridden while actually her brother-in-law was ill and there is not any problem whatsoever she herself was facing in that period of time. All the medical certificates attached with her representation belong to her brother in law. In fact, her brother in law Sri Ashok Agarwal, who is also a bidder/transporter in the said tender (In the name & style of M/S Horizon Marketing, Guwahati & he being the sole proprietor), could not also place all the TTs allotted to him by IOCL (43 nos. of TTs) in the said tender within the stipulated time frame of 30 days. He also submitted a representation dated 20.12.2018 (ANNEXURE-V) to DGM (LPG-O), IOAOD SO requesting extension of time for placement of his TTs at the designated plants. Since Sri Ashok Agarwal, the sole proprietor of the firm M/S Horizon Marketing was seriously ill, his request of time extension was granted by IOCL based on the recommendation by an Empowered Committee.

15. The fact that the petitioner has submitted representation dated 20-12-2018 is admitted by the respondents. Record produced by the learned counsel for the



respondent Nos.2 to 7, however, reveals that the representation dated 20.12.2018 was rejected by the Special Committee on the ground that the petitioner could not furnish any specific cause for delay. The observation made by the Special Committee in its meeting held on 02.04.2019, are reproduced here-in-below for ready reference :-

“The bidder could not furnish any specific cause of delay other than the cause furnished by M/s Horizon Marketing stated above. M/S I.S. Enterprise is a different vendor with proprietor Ms. Indu Agarwal and proprietor of M/S Horizon Marketing is her brother in law. Committee could not find any merit to consider M/s I S Enterprise and hence the committee is of the opinion not to consider the delay.”

16. From the remarks of the Special Committee it is evident that the ground of illness suffered by the brother-in-law of the petitioner was not considered to be sufficient for granting extension of time for placing the two vehicles (TTs) by the petitioner. There is no other reason mentioned in the minutes dated 02-04-2019. However, in the counter-affidavit filed by the respondent Nos.2 to 7, mis-statement made by the petitioner has also been cited as an additional ground for rejection of her prayer.

17. It is also not in dispute that the impugned order dated 01-08-2019 is the outcome of the decision recorded in the meeting of the Special Committee held on 02-04-2019. As noticed above, the said decision mentioned only one ground i.e. insufficiency of explanation as the ground for rejection of the petitioner's prayer. Mis-statement/false statement made by the petitioner has not been shown to be the ground for rejection of her prayer for extension of time.



18. After the decision of the Hon'ble Apex Court in the case of **Moinder Singh Gill & another Vs. The Election Commissioner, New Delhi & others** reported in **(1978) 1 SCC 405** law is well settled that the public orders, publicly made in exercise of statutory authority cannot be explained or supplemented by fresh reasons in the shape of affidavit or otherwise. The respondent No 2 Indian Oil Corporation is a "State" within the meaning of Article 12 of the Constitution of India and the respondent NOs 3 to 7 are its officials. Therefore, the said respondents are also public authorities and the impugned order was evidently passed in exercise of their public duty. As such, the ratio of the aforesaid decision, in the opinion of this court, would be squarely applicable in this case. If that be so, although Mr. Sarmah has argued that the reason for rejection of the petitioners representation was the in-correct statement made by her to the effect that she was bed-ridden for several months, the legality and validity of the impugned order dated 01-08-2019 would have to be judged by this court on the bases of reasons recorded in the minutes of the meeting of the committee held on 02-04-2019 and not on the basis of statements made subsequently in the counter-affidavit filed by the respondents.

19. It is to be noted here-in that there is no controversy in this case about the fact that Sri. Ashok Agarwal is the brother-in-law of the writ petitioner and they live in the same house-hold. It is also not in dispute that Sri. Ashok Agarwal was critically ill during the relevant period of time. The Special Committee has also accepted the said factual position which is evident from the minutes dated 02-04-2019. But the delay on the ground of illness of Sri Ashok Agarwal cited by the petitioner was not found acceptable by the respondents. That is probably on account of the fact that the

Special Committee had failed to consider that the petitioner and her brother-in-law lived in the same house-hold as one family when he was taken ill.

20. In the case of **Baldev Sahai Bangia** (*supra*), the Supreme Court has observed that the term "family" has to be given not a restricted but a wider meaning so as to include not only the head of the family but all members and descendants from the common ancestor who are living under the same head. It was further observed that in our country, blood relations do not evaporate merely because a member of the family leaves his household for some time.

21. Again, in the case of **K.V. Muthu** (*supra*) it has been observed that in its ordinary and primary sense, the term "family" signifies collective body of persons living in one house or under one head or one manager or one domestic government.

22. From a careful reading of the aforementioned judgments, this court is of the view that the observations made therein with regard to the term "family" was of general nature and therefore, the same would be applicable in the present case as well. In that view of the matter, there can hardly be any doubt about the fact that Sri. Ashok Agarwal is a family member of the writ petitioner. The writ petitioner has not only categorically stated that her brother-in-law was critically ill during the relevant period of time but the respondent authorities had even granted extension to Sri. Ashok Agarwal on the ground of his illness. If that be so, this court is unable to concur with the view expressed by the Special Committee in its meeting held on 02-04-2019 that the petitioner had failed to furnish proper reason for the delay. On the contrary, having regard to the facts and circumstances of the case, this court is of the



considered opinion that, the Special Committee had committed an error in holding that the ground of illness of petitioner's brother-in-law was not a valid ground to condone the delay and grant her the prayer for extension of time to place the two TTs. Merely because, Sri. Ashok Agarwal and the writ petitioner had relied on the same facts, that by itself could not have been a valid ground to reject the petitioner's prayer. As such, I am of the considered opinion that the impugned decision of the Special Committee dated 02-04-2019 suffers from the vice of complete arbitrariness, irrationality and non-application of mind and hence, is liable to be set aside by this court on such count alone.

23. Mr. Sarmah, learned counsel for the IOCL authorities, has argued that the petitioner is herself responsible for the adverse decision of the authorities since it was the proprietor Smt. Indu Agarwal who had deliberately made a false statement that she was bed-ridden for several months during that time. The said submission of Mr Sarmah does not commend for acceptance by this court for the following reasons. Firstly, as has been noticed above, no such ground has been mentioned in the minutes of the Special Tender Committee dated 02-04-2019 for rejection of petitioner's prayer.

24. Secondly, even if the said allegation is found to be true, the petitioner had brought the correct facts to the notice of the authorities along with supporting documents before the decision was taken on 02.04.2019. During the course of hearing, the petitioner's counsel has admitted that there was a mistake in the representation initially submitted by the petitioner where-in it had been erroneously

mentioned that she was bed ridden during the relevant time. However, the mistake was apparently rectified and correct fact were brought to the knowledge of the respondents. The said submission could not be denied by the respondent's counsel. Therefore, a question would also arise as to whether the decision of the Special Committee lacks balance and proportionality.

25. The meaning of Proportionality, as noted in paragraph 005.304 of Volume-I of Halsbury's Laws of India, reads as under :-

“The Principle of proportionality envisages that a public authority must maintain a sense of proportion between his particular goals and the means he employs to achieve those goals, so that this action impinges on the individual rights to the minimum extent necessary to preserve the public interest. Thus, administrative action must bear a reasonable relationship to the general purpose for which the power has been conferred.”

26. In the case of **A.P. Industrial Infrastructure Corporation Ltd vs S.N. Raj Kumar** reported in **(2018) 6 SCC 410** the Supreme Court has observed that in the realm of Administrative law "proportionality" is a principle where the court is concerned with the process, method or manner in which the decision maker has ordered his priorities and reached a conclusion or arrived at a decision. It was further observed that proportionality involves "balancing test" and "necessity test" which permits scrutiny of excessive penalty or infringement of rights or interest and a manifest imbalance of relevant considerations.

27. In another recent judgment rendered in the case of **Anuradha Bhasin Vs. Union of India and others** reported in **(2020) 3 SCC 637** the Supreme Court has observed



that in order to test the constitutionality of State action, proportionality would be relevant.

28. From the above, it would be evident that principle of proportionality in state action can be employed to test the reasonableness in the decision making process. Therefore, the principle of proportionality, in a limited sense, can also be treated as a facet of rational decision making process. Any action of the State or its instrumentality, if found to be disproportionate to the purpose it seeks to achieve, would be arbitrary and irrational and therefore, violative of the principle of equality enshrined under Article 14 of the Constitution of India. The nature and extent of application of the doctrine of proportionality would, however, depend on the facts and circumstances of each case.

29. Coming to the facts of this case, the petitioner had purchased four Tanker Trucks for deploying them under the respondents for transportation of LPG. It deserves mention here that Tanker Trucks a specially built transport vehicles which can only be used for certain specific purposes such as transporting LPG. The petitioner had purchased those Tanker Trucks by investing heavy amounts with the legitimate expectation that she would be able to deploy them under the respondent No. 2 for commercial gains. Therefore, if those TTs are not accepted by the respondent Nos 2 to 7 the same would lie idle which would obviously result into heavy loss and injury to the writ petitioner.

30. The petitioner has stated the reason for the delay which is the illness of a family member. Unless there were compelling reasons preventing her from placing those TTs



at the prescribed location within time, it would be wholly illogical to presume that the petitioner had deliberately delayed the placement of the TTs thereby exposing herself to the risk of cancellation of the allotment. The learned counsel for the respondents has also not been able to allege any other reasons for the delay in placing the two TTs by the writ petitioner. Therefore, viewed from any angle, the reason furnished by the petitioner for the delay in placing the two TTs appear to be genuine and there was no reasonable basis for the Special Committee to disbelieve the same.

31. The core issue arising in this writ petition is as to whether the petitioner had furnished sufficient explanation for the delay so as to justify her prayer for extension of time. The fact regarding illness of her brother-in-law was stated in the representation dated 20-12-2018. Those facts were required to be considered by the authorities. Therefore, the respondents cannot be permitted to side-track from the main issue merely by placing reliance on some mis-statement allegedly made in the representation dated 20-12-2018. However, even assuming that there was an incorrect statement in the representation dated 20-12-2018 to the effect that the petitioner was bed-ridden during the relevant period, having regard to the consequences that would ensue upon the petitioner due to the impugned order dated 01-08-2019, I am of the view that any decision to reject the application of the petitioner on the ground of a mere mis-statement, by ignoring all other relevant facts, would be hit by the doctrine of proportionality, and hence, would be unsustainable in law.



32. Since the respondents had allowed the prayer for extension of time to 10 other similarly situated applicants on one ground or the other, fairness demanded that similar consideration on equal parameters also ought to have been applied while considering the representation dated 20-12-2018 submitted by the writ petitioner, which was evidently not done in this case. Therefore, I find sufficient force in the submission of Mr. Sahewalla that the representation submitted by writ petitioner did not receive fair treatment from the respondent authorities.

33. Mr. Sarmah has also submitted that at present there is no need for his client to deploy any additional Tanker Truck over and above those which are already in service. The said submission of the learned counsel also cannot be countenanced. The impugned decision of the Special Committee having been found to be unsustainable in law, the right and entitlement of the petitioner has to be considered as existing on the date of the decision and not on the basis of subsequent developments. In any event, in this case we are concerned with only two Tanker Trucks whereas, the respondents are admittedly engaging a large number of such trucks for transporting LPG on regular basis.

34. For the reasons stated here-in above, this writ petition succeeds and is hereby allowed. The impugned decision dated 02-04-2019 in so far as it relates to the petitioner and the order dated 01-08-2019 are hereby set aside.

35. The respondent Nos.2 to 7 are, therefore, directed to give a fresh consideration to the prayer for extension of time made by the writ petitioner in the light of the observations made here-in-above and pass an appropriate order within two (2)



weeks from the date of receipt of a certified copy of this order redressing the grievance of the petitioner.

The writ petition stands disposed of accordingly.

There would be no order as to cost.

Records be returned back.

JUDGE

Comparing Assistant