

IN THE SUPREME COURT OF INDIA

CURATIVE JURISDICTION

CURATIVE PETITION NO. _____ OF 2013

IN

REVIEW PETITION (CIVIL) NO.150 OF 2013

(Decided on 12.02.2013)

IN

CIVIL APPEAL NO. 10126 OF 2010

(Decided on 05.12.2012)

[Arising out of the final Judgement and Order dated 16.08.2007 passed by the National Consumer Disputes Redressal Commission at New Delhi in Original Petition No. 224 of 2001 read with the order dated 29.07.2010 passed in Misc. Application No. 257/2007 therein]

IN THE MATTER OF :-

Consumer Protection Council, Rourkela,
Represented through its Chief Mentor ,
Mr. B. Vaidyanathan
10/18, 40th Street, Nanganallur,
CHENNAI- 600 061

...PETITIONER

VERSUS

Indian Oil Corporation Ltd., represented
through

1) Chairman
Indian Oil Corporation Ltd.
Regd. Office: 'Indian Oil Bhawan'
G-9, Ali Yavar Jung Marg
Bandra (East)
MUMBAI- 400 051

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- 2) General Manager (LPG-MO)
Indian Oil Corporation Ltd.
Regd. Office: 'Indian Oil Bhawan'
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Bandra (East)
MUMBAI- 400 051
- 3) Sr. Manager (LPG)
Orissa State Office
Indian Oil Corporation Ltd.
304, Bhoi Nagar, Janpath,
BHUBANESWAR- 751 022
- 4) Mr. H.S. Dua
Area Manager,
Indian Oil Corporation Ltd. (Marketing
Division)
Indane Area Office
Third Floor, Alope Bharati,
Shahid Nagar
BHUBANESWAR- 751 022
- 5) Mr. B. Minz
Asst. Manager (LPG)
Indian Oil Corporation Ltd.
HIG-B/19, Phase- III
Chhend
ROURKELA- 769 015

Government of India represented through

- 6) Director
Legal Metrology
Govt. of India
Deptt. Of Consumer Affairs
Krishi Bhawan
NEW DELHI- 110 001
- 7) Dy. Director
Legal Metrology
Govt. of India
Deptt. Of Consumer Affairs
Regional Reference Standards

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Laboratory,
Khandagiri
BHUBANESWAR, ORISSA

- 8) Addl. Secretary
Deptt. Of Consumer Affairs
Ministry Of Consumer Affairs And Public
Distribution
Krishi Bhawan
NEW DELHI- 110 001

Government of Odisha represented by

- 9) The Controller
Legal Metrology
Govt. of Odisha
Food, Supplies And Consumer Welfare
Department
BHUBANESWAR

The Local Indane Gas Dealer represented by

- 10) Secretary
M/s R.W.C.C.S. Ltd.
Nanda Bhawan
Main Road
ROURKELA- 769 001

AND

Union of India represented by

- 11) Secretary
Ministry of Petroleum and Natural Gas
Govt. of India
Shashtri Bhawan
NEW DELHI- 110 001

... RESPONDENTS

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SENIOR ADVOCATE'S CERTIFICATE

1. I have gone through the Curative Petition/ Review Petition, the Civil Appeal and the judgement and order passed by the National Consumer Disputes Redressal Commission at New Delhi read with order in Miscellaneous Application passed by the Commission, and the orders dated 12.02.2013, 05.12.2012, 29.07.2010 and 16.08.2007 respectively passed therein. I have also gone through the pleadings, grounds and the other relevant record made available to me.
2. That having gone through the orders and records mentioned hereinabove as also the law laid down by this Hon'ble Court in the case of Rupa Ashok Hurra vs. Ashok Hurra & Anr. reported in **(2002) 4 SCC 388** and Para 49 to 52 thereof in particular, I certify that :-
 - A. The present Curative Petition is not being filed on any of the grounds as mentioned in para 51 of the above judgment. However the present Curative Petition seeks to cure gross miscarriage of justice as is obvious from the grounds set out in the Curative Petition against the order dated 12.02.2013 whereby the Review Petition has been rejected by circulation after the grant of permission on the same date to the petitioner to file the Review Petition by the present petitioner as the Chief Mentor and Authorised Representative of the Consumer Protection Council,



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Rourkela against the order dated 05.12.2012 passed by this Hon'ble Court in the Civil Appeal No. 10126/2010.

- B. That it is averred in Para 3 of the Curative Petition that no new grounds have been taken in this Curative Petition and all the grounds mentioned therein had been taken in the Review Petition which was dismissed by Circulation. I find these averments to be correct. I also find from the contents of the Curative Petition that it fulfils the requirements of para 49, 50 and 52 of the judgment of this Hon'ble Court in Rupa Ashok Hurra's case (*supra*).
- C. That from the perusal of the judgments, orders and the records made available to me I find that the Consumer Protection Council, Rourkela has been pursuing a common grievance of the Consumers at national level in the matter of under weighing the gas cylinders by the India Oil Corporation Limited as mentioned before the National Consumer Disputes Redressal Commission and to award compensation/damages for the same.
- D. That this common grievance of the consumers was based on a survey conducted by the volunteers of the Consumer Protection Council, Rourkela as stated in Para 3.5 of the application made under section 21 of the Consumer Protection Act, 1986 before the National Commission, wherein it was also mentioned on the basis of the surveys that consumers were losing on an average ₹ 24/- per

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refill of Indane as per the prices existing at that time. The Government of India and its concerned functionaries as also the Government of Orissa and the Dealer, i.e., Rourkela Wholesale Consumer Co operative Society (RWCCS) had also been impleaded therein. The prayer made in this Application under section 21 may be perused at Page 79 of the Civil Appeal and the final order passed in the Original Petition No. 224/2001 dated 16.08.2007 is available for perusal at page 1-28 of the Civil Appeal. The operative part of the order dated 16.08.2007 is reproduced as under :-

"1. The Ministry of Petroleum is given four years time as prayed for, in terms of the submissions and our observations mentioned hereinabove.

2. The Ministry of Petroleum as well as the Ministry of Consumer Affairs shall ensure that all Marketing Companies do issue necessary instructions that the Distributors will provide to deliveryman proper weighing scale for the purpose of weighing LPG Gas Cylinder in the presence of customers and they will give it due publicity by publishing the same in the vernacular language of each and every state as well as in English and each and every State as well as in English and Hindi newspapers apart from giving similar type of advertisement in TV for information of the consumers."

E. That during the pendency of the Appeal before this Hon'ble Court in response to the orders passed by this Hon'ble Court from time to time, the steps taken by the various Oil Companies to modernise LPG bottling plants and instructions issued by them to the distributors and the directions issued to the dealers so as to ensure

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the carrying of weighing machines by the deliveryman at the time of the delivery of cylinders.

F. That the Appeal was disposed of as in-fructuous in view of the steps taken by the Government of India and the Oil Companies and it was also observed that no further direction was required.

G. That the very reading of the 2nd para of the order dated 05.12.2012 (after the reproduction of the operative part of the order dated 16.08.2007) shows that the matter has been treated as if it was a Special Leave Petition whereas it was a direct Appeal before this Hon'ble Court under section 23 of the Consumer Protection Act, 1986. The very opening of this para is as under :-

"During the pendency of the special leave petition out of which this appeal arises"

It was not a case of any Civil Appeal converted as an Appeal after grant of Leave in any Special Leave Petition but a statutory appeal as mentioned hereinabove and it is the trite law that the scope of a statutory appeal is much wider than that of a Special Leave Petition under Article 136 of the Constitution of India.

H. That it is a dismal fact that, yet, in the order under review the Hon'ble Court has felt convinced that the order of which the review

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has been sought does not suffer from any error apparent warranting its reconsideration.

- I. That while reviewing the order dated 05.12.2012 it has not been noted that the steps taken by the Government of India and the Oil Companies as mentioned in the order were hardly sufficient to dispose of the Appeal as in-fructuous in view of the prayer made in the application under section 21 because such steps and directions as mentioned in the order were wholly inadequate and incomplete to the relief sought by the Consumer Protection Council, Rourkela. In the order dated 05.12.2012 the Court has referred to the Affidavit filed by Smt. Sushma Rath in August 2012 before this Court. A perusal of this affidavit shows that it is based on the several newspaper cuttings upto the period when the matter was pending before the National Commission and the National Commission had already taken notice of the same. The mention about this material is found upto Para 12 of this affidavit. Before this Hon'ble Court what was deposed by Mrs. Sushma Rath, contained nothing new and such steps as are mentioned therein were not found to be enough by the National Commission itself. This affidavit virtually amounted to old material in a new bottle and the same had been used before this Hon'ble Court to get the Civil Appeal disposed of as in-fructuous.



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J. That none of the steps or the directions as mentioned in the body of the order dated 05.12.2012 show that the prayer at clause (d) of the application under section 21 of the Consumer Protection Act, 1986 at page 79 of the Civil Appeal have been taken care of and in absence of any such terms or directions or the adjudication of the matter in this regard the Appeal could not be disposed of as infructuous. The adjudication of the grievances with reference to clause (d) at page 79 was all the more necessary because the Consumer Protection Council, Rourkela had sought the review of the order dated 16.08.2007 from the National Commission but the Commission had rejected the review, i.e., M.A. No. 257/2007 on 29.07.2010 by observing with regard to the prayer made in clause (d) which was deemed to have been declined and not maintainable under section 22(2) of the Act with the further observation that it would require a detailed examination of the case which is impermissible under section 22 of the Act and application was dismissed as such while leaving it open to the complainant to have redressal of its grievances as may be permissible under law. Despite a challenge to the order dated 16.08.2007 (with the mention of the order dated 29.07.2010 on the basis of which delay in filing the Appeal had been condoned), the Court had disposed of



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the Appeal without any adjudication in this regard and yet in the order dated 12.02.2013 it has been mentioned that the order dated 05.12.2012 does not suffer from any error apparent warranting reconsideration though it is transparently visible that the order, dated 05.12.2012 passed by this Hon'ble Court while disposing of the Statutory Appeal suffers from the vice of non adjudication of the prayer as mentioned herein above, i.e, clause (d) at page 79 of the Civil Appeal.

- K. That the impugned orders right from the first order dated 16.08.2007 upto order which has now been passed by this Hon'ble Court in the Civil Appeal and Review thereof are all oblivious of the amendments which have taken place in the Consumer Protection Act, 1986 since 15.03.2003 to which the reference had been made before the National Commission as well as this Hon'ble Court. The impact of these amendments has been left unnoticed and unadjudicated.
- L. That in the above backdrop, a gross miscarriage of justice including the violation of the principles of natural justice has taken place in this case.



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M. That these facts constitute sufficient reasons to entertain this petition seeking reconsideration of order dated 12.02.2013 dismissing the Review Petition (C) No. 150/2013 and the order dated 05.12.2012 passed by this Hon'ble Court in Civil Appeal No. 10126 of 2010

CERTIFIED ACCORDINGLY

DATE: 18.12.2013
PLACE: NEW DELHI



M.R. CALLA,
Sr. Advocate

JUSTICE (Retd.)
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