

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

M.A. No. 257 of 2007

in

Original Petition No. 224 OF 2001

Consumer Protection Council, Rourkela ... Complainant
Versus

Indian Oil Corporation Ltd. & Ors. ... Opposite Parties

BEFORE:

HON'BLE MR. JUSTICE K.S. GUPTA, PRESIDING MEMBER
HON'BLE MR. JUSTICE R.K. BATTI, MEMBER

For the Complainant : Mr. B. Vaidyanathn, Chief Mentor,
C.P.C., Rourkela

For Opp. Party No.1 : Mr. H.K. Puri, Advocate (I.O.C.)

For Opp. Parties 1 to5 : Mr. S.K. Sharma, Advocate

For Opp. Parties 6 to8 : Mr. Mohan Jain, Addl. Solicitor General

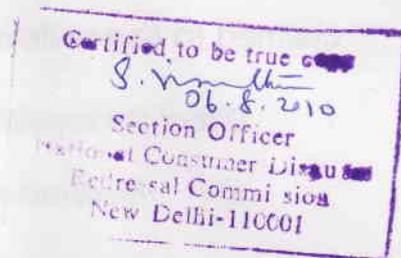
Mr. Prabhat Kumar, Advocate

Ms. Rohini Mukherjee, Adv. for Union of
India

Mr. Rakesh Joshi, AD(LM)-U.O.I.

For Opp. Party No.9 : Ms. Kirti Mishra, Adv.

Pronounced on 29th July, 2010



ORDER

JUSTICE K. S. GUPTA, MEMBER

Complainant has filed this application under Section 22(2) of the Consumer Protection Act, 1986 (for short 'the Act') for review of



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CHIEF MENTOR
CONSUMER PROTECTION COUNCIL,
ROURKELA,
NO. 10/13, 40th STREET,
NANGANALLUR, CHENNAI-61.

the order dated 16th August, 2007 by which the complaint was finally disposed of by this Commission. It is alleged that by way of prayer (d) in the complaint, direction was sought to be issued to pay 1% of the amount unduly collected in a year from the consumers through under-weighment from across the country, to the complainant council so that it may use the fund for doing more surveys, studies and consumer protection activities. However, neither specific ruling has been given on this prayer (d) nor the reasons recorded for not conceding this relief. After the amendment of the Act w.e.f. 15th March 2003, the complainant filed consolidated written submission on 3.4.2004 in which for above prayer (d) award of compensation @ 5% instead of 1% was sought. The IOC- opposite party right from 2000 till 2007 had consistently disregarded the consumer's interest and it is a fit case for awarding 'punitive damages' against it. The reliefs claimed in the review application are as under:-

1. *Direct the opposite parties to:*
 - a) *modernize the left over 120 LPG bottling plants within 4 years commencing from 16th October 2006;*
 - b) *to insert advertisements in vernacular, English and Hindi newspapers and also in TV about pre-delivery weighment checking*



of LPG refills in presence of the customers, as was publicized by M/s. Hindustan Petroleum;

- c) *to pay 5% of the amount unduly collected in a year from the consumers, estimated at Rs. 750 crores, through under-weighting, from across the country, to the complainant council, so that it may use the fund for doing more such surveys, studies and consumer protection activities;*
- d) *to pass any other order deemed necessary, like inclusion of IIT professors' summary report;*

for which act of kindness, the complainant shall, as is duty bound, ever pray.

Opposite party Nos. 1 to 5 represented by Shri S.K. Sharma, Adv., opposite party Nos. 6 to 8 represented by Shri Mohan Jain, Additional Solicitor General and opposite party No. 9 represented by Ms. Kirti Mishra, Adv. have opposed the application.

Vide aforesaid order dated 16th August, 2007 – O.P. No. 224 of 2001 was disposed of with the following directions:-

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



Devi & Ors. vs. Sumitri Devi & Ors. – 1997(8) SCC 715; Meera Bhanja (Smt.) vs. Nirmala Kumari Choudhury (Smt.)- 1995(1) SCC 170; J. Rangaswamy vs. Government of Andhra Pradesh & Ors. – 1990 (1)SCC 288 and M/s. Northern India Caterers (India) LTE vs. Lt. Governor of Delhi – 1980 (2) SCC 167.

Counsel of other set of opposite parties have adopted the submission advanced by Shri Jain, ASG. On the other hand, Shri B. Vaidyanathan, Secretary of the complainant while controverting the said contention has relied on the decisions in *Omar Usman Chamadia vs. Abdul and Anr. (JT 2004 (2) SC 176); Lucknow Development Authority vs. M.K. Gupta- AIR 1994 SC 787 and United India Insurance Co. Ltd. vs. Mohan Lal & Sons [1986-96 Consumer 1685 (NS)]*. Aforesaid sub-section (2) of Section 22 says that without prejudice to the provisions contained in sub-section (1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record. On 'error apparent' para No. 22 of Kamal Sengupta's case (supra) has bearing and the same is reproduced below:-

"The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1



CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision".

Applying this ratio to the facts of present case, we are of the view that review application for consideration/grant of said prayer (d) which will be deemed to have been declined, is not maintainable under Section 22(2) of the Act. Otherwise also this would require detailed examination of the case which is impermissible under Section 22 (2) of the Act. Application is dismissed as such. It will be open to the complainant to have redressal of its grievance as may be permissible under the law.



Sd- J.
(K.S. GUPTA)
PRESIDING MEMBER

Sd- J.
(R.K. BATTÀ)
MEMBER

