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CONSUMER RIGHTS

# Fleece the consumer and go scot-free

By B. Vaidyanathan

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Consumer Protection Council, Rourkela, which was formed in 1985, in the Rourkela Steel Township, Odisha, to safeguard consumer interests, took up several issues affecting a wide cross-section of the population. One such issue was the under-weighting of LPG-cooking gas refills affecting consumers across the country.

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Consumer Protection Council, Rourkela accidentally stumbled across short-weighting of cooking gas refills, through random sample surveys conducted in July 2000, after one of the residents of the Steel Township complained that he received an 'Indane' cooking gas refill, which had about 6kg less than what is stipulated (14.2kg). M/s Indian Oil Corporation as well as the Ministry of Consumer Affairs, Government of India, including the Director (Legal Metrology) were informed and requested to act. As a consequence, M/s IOC offered to conduct a joint survey. However, they excused themselves mid-way through the survey and did not even sign the papers.

M/s IOC kept assuring that their LPG bottling plants were fine and wanted the author, who was then the Secretary of the Council, to visit their plant for a firsthand knowledge. The author, on his visit in 2000, assessed that the bottling plant consisting of its semiautomated carousel machine was the root cause of the problem. The information was shared with the plant manager then and there. But he said that all the IOC's 120 bottling plants were having similar machinery. IOC was not willing to accept the fault nor was willing to negotiate. After giving sufficient time and even highlighting this problem in the Central Consumer Protection Council, a case was filed in July 2001, before the National Consumer Disputes Redressal Commission (NCDRC).

The NCDRC, based on the findings of the Professors of IIT, Kharagpur, and the Committee set up by the Ministry of Consumer Affairs, Government of India, concluded in October 2005 that in the prevailing LPG bottling system, consumers could get less than the stipulated weight of 14.2kg and hence as an interim measure directed IOC to adopt pre-delivery weight checking of the LPG refill at the consumer's premises and also to publicise this initiative, through advertisements, as was being done, in a prominent manner, by M/s Hindustan Petroleum.

Consumer Protection Act was amended from March 15, 2003 while the case was pending. Several important provisions that were relevant to this case, especially for awarding punitive damages, payment of a minimum penalty of 5 per cent of the value of the defective goods, when the defective good or deficient service affects large number of consumers and providing adequate cost to the litigant, were introduced and the Council in January 2004 itself sought the invocation of those provisions in this case.

IOC did not comply with the 2005 directives and NCDRC took on record such behaviour, in 2006 as well as in 2007, at the instance of the Complainant Council. But the final order of the NCDRC passed in July 2007 glossed over it and also the requests by the Council to award as per the amended Act, and did not even discuss about that in the final order. Council's review before the NCDRC evoked the following admissions by the NCDRC, in 2010:

"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."

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Hence, the Council appealed to the Supreme Court in 2010, against the final order of the NCDRC, made in July 2007, after a delay of 1,071 days. While the Supreme Court condoned the delay, it failed to address the issues raised in the appeal, which were hitherto not addressed by the NCDRC. The judgment of the Supreme Court said that the appeal was "infructuous" as both the government and M/s IOC had complied with the order of the NCDRC.

When an individual is dissatisfied with the order of the National Commission, he appeals to the Supreme Court, under sec. 23 of the Consumer Protection Act.

The Supreme Court had to conclude only whether the NCDRC order is defective in law or not, based on the facts placed before it. No appeal can become 'infructuous' unless it is filed under sec. 27A of the Act, where the implementation part is involved. The order of the Supreme Court was totally contrary to the facts of the case and the review sought by the Council was also promptly dismissed.

If the judiciary fails, where will the consumers go? The apex court was probably finding the issues raised were too big and the issues relating to 'punitive damages' had to be addressed for the first time, under the Consumer Protection Act and that too against a state undertaking. A cumulative value of Rs 65,000 crore of short-weighted cooking gas refills had been sold by M/s IOC till 2005, the time when an interim order was passed warranting it to pay at least Rs 3,250 crore to the Consumer Welfare Fund.

This year's theme of Consumer Day is Consumer Justice Now. Our experience aptly describes the predicament of the consumers and consumer organisations in this country.

Seldom a voluntary consumer organisation could take up such a major issue, prove it technically correct and provide tangible relief to unsuspecting housewives across the country. Of the 184 bottling plants, of the three Oil Marketing Companies (IOC, BP and HP), 180 have been automated as per the directions of the NCDRC and the balance will be done within the next financial year. The government (P&NG Minstry) was supposed to have spent around Rs 300 crore for this modernisation. Unfortunately, the NCDRC as well as the apex court of the country have not provided relief as mandated by the law.

So, a Fortune 500 Company after deceiving the consumers for several decades and having successfully adopted an Unfair Trade Practice, supplying Rs 65,000 crore worth of short-weighted cooking gas refills to the unsuspecting housewives, has walked scot-free. Thanks to the ineffective apex court, the consumers and the consumer organisation, which took up the issue, have been left high and dry.

**B. Vaidyanathan is the Chief Mentor of Consumer Protection Council, Rourkela and can be reached at [vaidya@advantageconsumer.com](mailto:vaidya@advantageconsumer.com)**

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