

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
CURATIVE PETITION (CIVIL) NO. OF 2013
IN
REVIEW PETITION (CIVIL) NO. 150 OF 2013
IN
CIVIL APPEAL NO. 10126 OF 2010

An Appeal under Article 142 of the Constitution of India

AND

IN THE MATTER OF:

Consumer Protection Council, Rourkela,
represented through its

Chief Mentor, Mr. B.Vaidyanathan

10/18, 40th Street

Nanganallur

CHENNAI – 600061

.... Petitioner

VERSUS

Indian Oil Corporation Ltd., represented through

1) Chairman

Indian Oil Corporation Ltd.

Regd. Office: 'Indian Oil Bhavan'

G-9, Ali Yavar Jung Marg

Bandra (East)

MUMBAI – 400051

2) General Manager (LPG-MO)

Indian Oil corporation Ltd.

Regd. Office: 'Indian Oil Bhavan'

G-9, Ali Yavar Jung Marg

Bandra (East)

MUMBAI – 400051.

3) Sr. Manager (LPG)
Orissa State Office
Indian Oil Corporation Ltd. (MD)
304, Bhoi Nagar
Janpath
BHUBANESWAR – 751022

4) Mr. H.S.Dua
Area Manager
Indian Oil Corporation Ltd.
(Marketing Division)
Indane Area Office
Aloke Bharati (3rd Floor)
Sahid Nagar
BHUBANESWAR – 751007

5) Mr. B.Minz
Asst. Manager (LPG)
Indian Oil Corporation Ltd.
HIG-B/19, Phase-III
Chhend
ROURKELA – 769015

Government of India represented through

6) Director
Legal Metrology
Govt. of India
Deptt. Of Consumer Affairs
Krishi Bhavan
NEW DELHI – 110001

7) Dy. Director
Legal Metrology
Govt. of India
Deptt. Of Consumer Affairs
Regional Reference Standards Laboratory
Khandagiri
BHUBANESWAR. ORISSA

8) Addl. Secretary
Department of Consumer Affairs
Ministry of Consumer Affairs &
Public Distribution
Krishi Bhavan
NEW DELHI – 110001

Govt. of Odisha, represented by

9) The Controller
Legal Metrology
Govt. of Odisha
Food, Supplies & 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 – 769001
Odisha

and

Union of India, represented by

11) Secretary
Ministry of Petroleum & Natural Gas
Govt. of India
Shastri Bhavan
NEW DELHI – 110001

... Respondents

CURATIVE PETITION CHALLENGING THE
CORRECTNESS OF THIS HON'BLE COURT'S ORDER
DATED 12.02.2013, IN REVIEW PETITION (CIVIL) NO.
150 OF 2013 AND ORDER DATED 05.12.2012, IN CIVIL
APPEAL NO. 10126 OF 2010.

To

Hon'ble the Chief Justice of India
AND His Companion Judges of this
Hon'ble Court

The humble petition of the above named Petitioner

MOST RESPECTFULLY SHEWETH AS UNDER:

1. The Petitioner above named is filing this Curative Petition challenging the correctness and validity of the Order of this Hon'ble Court dated 12.02.2013, in Review Petition (Civil) No. 150 of 2013 and Order dated 05.12.2012, in Civil Appeal No. 10126 of 2010, by which Petitioner's Review Petition was dismissed and the Civil Appeal was disposed off as "*infructuous*", by this Hon'ble Court.
2. That no other Curative Petition has been filed against the impugned order.

3. That no new grounds have been taken in this Curative Petition. All the grounds mentioned herein had been taken in the Review Petition, which was dismissed by circulation.
4. That the brief facts leading to this Curative Petition are as under:
 - (i) 2000-01: Based on complaints received from the consumers, three field Surveys were conducted by the Petitioner, covering consumers of *Indane* LPG. The surveys consistently revealed that substantial number of consumers were being supplied under-weighed domestic LPG refills. The root cause of the problem was found to be LPG Bottling Plants, which were operating with Manual Tare Neutralisation procedure. The Respondent, Indian Oil Corporation Ltd. was repeatedly informed. They simply preferred to ignore.
 - (ii) The Petitioner sought the intervention of the National Commission, on 20.07.2001, to safeguard the consumers, vide Original Petition No. 224/2001. One of the Prayers, (d) listed before the Commission was to award 1% of the loss suffered by the consumers across the country, estimated at Rs. 750 crores, in a year, to the Petitioner, so that it

may spend the money for Consumer Protection activities.

- (iii) The National Commission requested Director, IIT, Kharagpur, West Bengal, on 04.12.2002, to nominate an appropriate Faculty Member to visit the LPG Bottling Plant, at Balasore, Orissa and report “Whether the existing Carousel Machine and its working system is capable of delivering the correct weight of 14.2 kg of LPG”.
- (iv) Amendments to the Consumer Protection Act were introduced on 15.03.2003.

Sec. 14(1)(hb) was introduced. As per this, *“if it (the Forum) is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently, it shall issue an order to the Opposite Party (Respondent Company), to pay such sum, which shall not be less than five per cent of the value of defective goods sold or services provided, as the case may be.”*

Another amendment to the Act introduced, sec. 14(1)(d) said *“Provided that the District forum shall have power to grant punitive damages in such circumstances as it deems fit;”*

Yet another amendment introduced in the Act, sec. 14(1)(i) asked the Forum *“to provide for adequate*

costs to parties.”

Similarly the amendment introduced in the Act, sec. 22(2) provided for “*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.*”

- (v) Report of the Professors of IIT, Kharagpur, received in National Commission, on 25.07.2003. The Report concluded that the LPG Bottling Plant (carousel and its accessories) cannot bottle the correct weight of 14.2 kg LPG at its normal production rate.
- (vi) On the same day, to safeguard consumer interests, one of the Oil Marketing Companies, M/s Hindustan Petroleum, published an advertisement “*Promise yahi, weight sahi*”, exhorting the consumers to check the weight of the LPG refill, if they so desire, as the delivery man will carry a weighing scale.
- (vii) Respondent No. 8 (Addl. Secretary, Department of Consumer Affairs, Government of India) constituted a Committee, on 11.09.2003, to identify problems relating to short filling of LPG in domestic cylinders and to suggest suitable remedial measures.

Petitioner Council was also nominated in that Committee.

- (viii) NCDRC awarded a payment of Rs. 7,500/- to the Petitioner by the Respondent No.1, on 12.09.2003, as cost towards one adjournment, as the adjournment was necessitated due to the Respondent.
- (ix) NCDRC heard the Petitioner's Reply to the objections on the Report of Experts of IIT, Kharagpur, filed by the Respondent Company, on 29.01.2004. The Petitioner also drew the attention of the National Commission to the amendments that have been introduced in the Consumer Protection Act and prayed for providing relief as per the amended Act. The Commission directed the Petitioner to file its Consolidated Submissions.
- (x) Government of India amended the Consumer Protection Rules with effect from 05.03.2004, and introduced sec. 10A, requiring to Credit the fine awarded under sec. 14(1)(hb), and when the consumers are not identified conveniently, into the Consumer Welfare Fund.
- (xi) The Petitioner filed the Consolidated Submissions before the National Commission, on 03.04.2004. The Petitioner pleaded that as per *sec. 14(1)(hb)*,

when the Forum is of the opinion that the loss or injury has been suffered by a large number of consumers, a minimum of 5% of the value of defective goods or services should be awarded. Petitioner also pleaded that in contrast to Hindustan Petroleum, which had started pre-delivery weighing of LPG refills, the Respondent Company was yet to take any initiative to safeguard consumer interests and hence as per sec. 14(1)(d) deserves the consideration of the Commission, for the award of “punitive damages”. The Petitioner therefore prayed for award of 5% of the loss suffered by the consumers, in a year (Rs. 750 crores) to the Petitioner Council, as against 1% that was prayed for initially.

- (xii) Report of the Committee set up by Respondent No.8, to identify problems relating to short-filling of LPG in domestic cylinders and to suggest suitable remedial measures, was circulated by Respondent No. 6, on 05.02.2005. The Report wanted the Respondent Company to urgently consider changes in the method of (LPG refill) tare neutralization. The Report warned that in the existing system, operator fatigue sets in within a few minutes, resulting in large error, as high as 30-40%. The Petitioner had

made similar observations, after visiting the LPG Bottling Plant, at Balasore, Orissa, in August 2000 itself.

- (xiii) On 19.10.2005, the National Commission directed the Respondent Company (Indian Oil Corporation Ltd.) to ensure that weighing scale was made available to the deliverymen; who would deliver the domestic cylinders to the customers only after weighing them in the presence of the consumers, as per Prayer (b) of the Petitioner, in the Original Petition. The Commission further directed the Respondent to issue advertisement in the pattern done by Hindustan Petroleum, as solicited by the Petitioner. The said directives were to become effective from 01.11.2005. The Commission also directed the Registry to send a copy of the Order to Press Trust of India, for wide publicity and to issue notice to the Ministry of Petroleum & Natural Gas, Government of India, through the Secretary, to decide the issues raised in the complaint effectively.
- (xiv) The Petitioner, on 11.04.2006, through an 'Affidavit' brought to the notice of the National Commission that the Respondent Company (IOCL) had not adhered to the directives of the Commission, issued on 19.10.2005.

- (xv) On 24.04.2006, the Respondent Company agreed, through an "Affidavit" that advertisements, which were far less prominent than the one issued by Hindustan Petroleum, were published only in eight states of the country, predominantly in the Eastern Region.
- (xvi) On 13.09.2006 the National Commission took cognizance of the lapses, on the part of Respondent Company and again directed it to file compliance.
- (xvii) Director(Marketing), Ministry of Petroleum & Natural Gas, Govt. of India, New Delhi, in an "Affidavit" filed before the NCDRC, on 13.10.2006, narrated the steps that were being initiated to overcome the short-filling of LPG cylinders. He also stated that the modernization of the Bottling Plants of the Oil Marketing Companies (OMCs) would involve a sum of Rs. 250 crores and would take 4 years to complete.
- (xviii) On 07.02.2007, the National Commission once again took cognizance of the non-compliance of its orders, with respect to insertion of advertisements and pre-delivery checking of weightment and directed Respondent No.1, as to why earlier direction was not complied with, in all States.

(xix) On 16.08.2007, the National Commission delivered its final Order. The Hon'ble Commission appreciated the good work done by the Petitioner and awarded a cost of Rs. 50,000/- towards meeting the expenses of the case and to further protect the interests of the consumers. (Incidentally, the Hon'ble Commission awarded Rs. 7,500/- for a single adjournment, while the Original Petition was heard over 29 sittings.) Further, it directed the Respondents to provide weighing scales to all the deliverymen, who will do pre-delivery checking of the weight of the LPG refill at the doorstep of the household. Since consumers across the country were affected, it directed for insertion of advertisements in both print and electronic media. The Commission also allowed 4 years' time for the modernization of all the LPG Bottling Plants, as was requested by the Ministry of Petroleum & Natural Gas. There were several mistakes in the Order, the major ones being:

(I) non-invoking the provisions introduced through amendments in the Consumer Protection Act, from 15.03.2003, relating to section 14(1)(d), section 14(1)(hb) and section 14(1)(i) and to

direct the Respondents to pay 5% of the loss inflicted on the consumers;

(II) ignoring the Prayers of the Petitioner without assigning any reason;

(III) failing to take note the non-compliance of its Orders of 19.10.2005, by the Respondent Company, in respect of insertion of advertisements and providing weighing scale to the deliverymen; and

(IV) error in recording the Summary Report of the Professors of IIT, Kharagpur.

- (xx) On 22.09.2007, the Petitioner sought Review of the Order, under sec. 22(2) of the Act, before the National Commission, for rectification of the mistakes pointed out above, vide Miscellaneous Application No. 257/2007.
- (xxi) On 29.07.2010, the National Commission passed the Order on the Application for Review, after nearly 3 years and about 10 sittings, dismissing the Review, stating that as per Sec. 22(2) it was impermissible to re-examine the case.
- (xxii) Petitioner filed Civil Appeal No. 10126/2010 in this Hon'ble Court on 27.08.2010.
- (xxiii) Petitioner Council filed the Statement of the Case, in this Hon'ble Court on 13.02.2012, along with additional Annexures.

- (xxiv) Petitioner filed the Rejoinder to Counter Affidavits of Respondents 6, 7, 8 and 11, on 30.08.2012.
- (xxv) On 12.09.2012, this Hon'ble Court directed that an Officer of the Respondent, Indian Oil Corporation, conversant with the weighment of LPG in the cylinders, to remain present on the next date of 'Hearing', to be held on 16.10.2012.
- (xxvi) Petitioner Council filed the Supplementary Rejoinder to Counter Affidavits of Respondents 6, 7, 8 and 11, on 03.10.2012.
- (xxvii) On 16.10.2012, while this Hon'ble Court was discussing the ways and means of safeguarding the consumers from under-weighed LPG refills, the Petitioner while appreciating the concern of the Hon'ble Court, pointed out that the major lacuna in the LPG Bottling Plant was the Manual Tare Neutralisation – the method by which the LPG refill's tare weight was set. The Petitioner had prayed before the National Commission for automation of the LPG Bottling Plants (Prayer (a) of the Original Petition). As directed by the National Commission, and as submitted by the Respondent 11, all the LPG Bottling Plants have been provided with Electronic Filling System. The weighment of LPG refills should be better now, the Petitioner pointed out. The Petitioner further offered to conduct Random Sampling Surveys, to

ascertain LPG refill weights, at Chennai and Rourkela. This Hon'ble Court gave its verbal consent. The Petitioner then pointed out that the Civil Appeal had been filed before this Hon'ble Court as some of the important provisions of the Consumer Protection Act had not been invoked by the National Commission, relating to Sec. 14(1)(d), 14(1)(hb) and 14(1)(i) of the Act. This Hon'ble Court assured that all those would be discussed in its Order. The Petitioner then quoted a recent judgment of this Hon'ble Court, M/s Nagpur Golden Transport Company (Regd.) Versus M/s Nath Traders & Ors., Civil Appeal No. 3546 of 2006, involving the scrap value of motors worth Rs. 3 lakhs, which would be less than Rs. 1 lakh. Even for such a nominal value of the goods involved, this Hon'ble Court termed it as "undue enrichment" and ordered that value should be compensated. Whereas in the instant case, more than Rs. 65,000 crores worth of LPG refills were involved, the Petitioner argued. At this, Hon'ble Justice G.S.Singhvi said that the Petitioner should become an advocate.

(xxviii) On 05.12.2012, the Petitioner, as was submitted before this Hon'ble Court and agreed upon on 16.10.2012, tried to place the Additional Supplementary Rejoinder to the Counter Affidavits, containing details of its Random Sample Surveys conducted at Chennai and Rourkela,

during Oct.-Nov. 2012, to determine the effect of the automation of the LPG Bottling Plants by the Respondent Company (IOCL). In spite of repeated requests, the Hon'ble Court did not wish to accept the said Affidavit along with Interlocutory Application seeking permission for submitting additional Annexure containing details of Survey regarding Safety Testing of LPG refills, as provided by the Chief Controller of Explosives (CCOE), Nagpur. (Incidentally, the Petitioner's Authorised Representative lost his mother after a brief illness, on 29th Oct. 2012; his daughter got married on 11th November '12 and she left the country on 23rd Nov. '12 early morning and all these major events prevented him from preparing and despatching these documents earlier by post.) However, this Hon'ble Court disposed off the case as "infructuous". Even during the abrupt pronouncement of the Order by Hon'ble Justice G.S.Singhvi, the Petitioner reminded that he had assured to address the provisions Sec. 14(1)(d), 14(1)(hb) and 14(1)(i) of the Consumer Protection Act, which were not invoked by the National Commission.

(xxix) Since this Hon'ble Court had erred completely in delivering justice by misinterpreting the "GROUNDS OF APPEAL", Review Petition (Civil) No. 150 of 2013 was filed in this Hon'ble Court, on 04.01.2013.

(xxx) This Hon'ble Court dismissed the Review Petition, on 12.02.2013, after the same was circulated among the Hon'ble Judges for consideration.

5. That the present Curative Petition involves the determination of the following important questions of law of far reaching public importance and as per the guidelines laid down in *Writ Petition (Civil) 509 of 1997, Rupa Ashok Hurra Vs. Ashok Hurra & Anr.* This Curative Petition is being filed by the Petitioner on the following Grounds, which were there in the Review Petition, which was dismissed by circulation:

G R O U N D S

(A) NATURAL JUSTICE DENIED: The Lordships of this Hon'ble Court have failed to appreciate that there is a total contravention of the doctrine of natural justice to the Petitioner by totally ignoring the submissions of the Petitioner made orally during the hearings and through written submissions made through: right from the Listing Pro-forma, the Civil Appeal, Statement of the Case, Rejoinder and Supplementary Rejoinder to the Counter Affidavits of Respondents 6, 7, 8 and 11. Though notice had been given to the Petitioner and the hearings were held in Petitioner's presence, technically fulfilling the requirements of the Court, respectfully, the

Lordships not only did not record his submissions but totally ignored his submissions, thereby practically denying natural justice to the Petitioner. As a matter of fact, the Petitioner during the course of the 'Hearing', on 16.10.2012 did point out the gross error committed by the Hon'ble Lordships in omitting to take notice of the 'Grounds of Appeal' and concentrating elsewhere. The Petitioner during the said 'Hearing' pointed out that the issues relating to short-weighment of LPG refills had already been taken care by the NCDRC and due to the automation of the LPG bottling plants, the situation in the field should be much better in terms of weight of LPG in the refills. The Petitioner also pointed out to the Lordships that the Council had appealed to this Hon'ble Court only because the NCDRC had not invoked the provisions of the Consumer Protection Act, as Prayed by the Petitioner in 2004 itself, in respect of award of punitive damages, section 14(1)(d), award of penalty amounting to a minimum of 5% of the value of the defective goods sold, when such goods affect a large number of consumers, section 14(1)(hb), and awarding of adequate costs, section 14(1)(i), which were introduced through amendments to the Act, in March 2003. Those crucial submissions which were the backbone of the Civil Appeal and brought categorically

in the 'Grounds' of the Civil Appeal, were not recorded in the impugned Order dated 05.12.2012, though Hon'ble Justice G.S.Singhvi assured during the hearing on 16.10.2012, that all these provisions of the Act would be addressed in the final order. Respectfully, unfortunately, such fair considerations have not been made part of the impugned Order and respectfully, the legal impartiality of their Lordships of this Hon'ble Court has become a victim. Thus the doctrine of natural justice having been denied, is conspicuous by its absence from the impugned Order of 12.02.2013 and 05.12.2012 and therefore liable to be set aside, while allowing this Curative Petition, by this Hon'ble Court; and unless this is done, it will have the effect of denying the relief for the loss suffered due to unfair trade practice/fraudulent deficiency of the Respondent.

(B) INTEGRITY OF JUSTICE COMPROMISED BECAUSE OF UNINTENTIONAL LEGAL BIAS: It appears, respectfully, the Hon'ble Lordships who passed the impugned Order had unintentional legal bias making them abruptly pass the final order, on 05.12.2012, without even allowing the Appellant to complete his arguments on the Grounds of Appeal. This is evident even from the Court's proceedings recorded on 16.10.2012. As per the 'Record of Proceedings', the Respondents were supposed to come

prepared on 05.12.2012, with concrete suggestions on the issues of checking weight of LPG refill cylinders, giving wide publicity in print and electronic media about the rights of the consumers to be supplied with the LPG of correct weight and obtaining cylinders of standard specifications, so that consumers may not be misled about the quantity of gas. Copy of the Record of proceedings of 16.10.2012 has been filed herewith and marked as ANNEXURE CP.1 (page nos. 43 to 45). Reports which appeared in English newspapers such as '*The Hindu*' and linguistic newspapers such as '*Dina Thanthi*' (Tamil), about the observations of the Lordships in the instant Appeal, were published across the country, on 18.10.2012, as the News Report was circulated by the PTI (Press Trust of India) and are filed herewith and marked as ANNEXURE CP.2 (page nos. 46 to 54). But on 05.12.2012, respectfully, the Hon'ble Lordships appeared to have come without keeping in mind the doctrine of natural justice, having a legally biased view to close the instant Appeal. There was no follow-up or discussion about the issues; instead Hon'ble Justice G.S.Singhvi started dictating the Order, when the case item was called by the Court Master, without even allowing the Petitioner to place his submissions. Even while Hon'ble Justice G.S.Singhvi

was dictating the order, the Petitioner made a mention, but in vain to remind him that he had assured to discuss the relevant sections of the Consumer Protection Act. Thus, it is clearly the case of pronouncement of the impugned Order, made with a legally biased intention to ignore the doctrine of natural justice, as envisaged in *Writ Petition (Civil) 509 of 1997, Rupa Ashok Hurra Vs. Ashok Hurra & Anr.* case judgment. Hence, this Curative Petition deserves to be allowed by setting aside the impugned Orders.

(C) AN APPEAL NECESSITATED DUE TO NATIONAL COMMISSION'S REFUSAL TO ADJUDICATE ON A POINT OF LAW CANNOT BECOME INFRUCTUOUS: How an Appeal, which was necessitated due to the NCDRC's order in the Review (Miscellaneous Application No. 257 of 2007), that the Commission was unable to go into the details, as that was impermissible under section 22(2) of Consumer Protection Act can become "infructuous"? The Petitioner Council had preferred an Appeal in this Hon'ble Court, as provided under section 23 of the Consumer Protection Act, as the Petitioner is aggrieved by the order of the National Commission (NCDRC). The National Commission had failed to invoke certain important provisions of the Act, introduced through amendments in 2003 and applicable to the facts of the

instant case, in spite of the Petitioner praying for the same, as early as January 2004, much before even the interim orders were passed, in Oct. 2005, viz., the provisions relating to punitive damages (sec. 14(1)(d)), payment of penalty when large number of consumers are affected (sec. 14(1)(hb)) and payment of adequate costs (sec. 14(1)(i)). This Hon'ble Court could have allowed the Appeal and held the NCDRC was indeed wrong in not invoking those provisions or could have disallowed it based on technical or other grounds, as permissible under the law. Instead, the Hon'ble Lordships, respectfully, after making their own assumptions and not even considering the implementation of the NCDRC order in totality, which in any case was not the reason for approaching this Hon'ble Court, held that the Petitioner's Appeal is "infructuous", in their impugned order. In this context the Petitioner would like to draw the kind attention of this Hon'ble Court in respect of non-compliance of the Order of the National Commission and the representation received from 37 "Indane" LPG consumers and residents of Chennai, as late as Feb. 2011, which was submitted as evidence and placed before the Lordships, as part of the "Statement of the Case", ANNEXURE SC.3 (page nos. 37-41), on 13.02.2012. Rather, even till date, the non-compliance

continues and the Petitioner would like to file herewith the representation received from 60 residents of Chennai and Rourkela, who are “Indane” LPG consumers, and marked as ANNEXURE CP.3 (page nos. 55 to 64). It is apparent, respectfully, the Lordships either, with obvious legal bias overlooked the “GROUNDS” of the Civil Appeal or had avoided answering the difficult questions of law placed before them, which has the effect of favouring the giant corporate IOC, involving thousands of crores of public money and issues pertaining to dispensation of justice by the quasi-judicial machinery formed under the Consumer Protection Act. A paradigm shift is essential to address the critical issues faced by the consumers and the voluntary consumer organisations. Though, now the law enables such a shift, respectfully, the Lordships did not want to find a path away from the oft beaten track. Thus, respectfully, the Lordships had avoided considering the “GROUNDS” of Appeal and the terms of reference was assumed by the Lordships. Had the Lordships considered the “GROUNDS” of Appeal, they could have never concluded the Appeal as “infructuous”. Thus, this Hon’ble Court has denied justice to the Petitioner, in the ‘Appeal’ as well as in the ‘Review’, resulting in a fraudulently committed unfair trade practice involving

sale of over Rs. 65,000 crores, getting an unfair encouragement. To restore justice, to eliminate the Unfair Trade Practices from the market and to strengthen the consumer justice system, it is imperative that this Curative Petition is allowed by this Hon'ble Court.

(D) GROUNDS OF APPEAL IGNORED RESULTING IN GROSS MISCARRIAGE OF JUSTICE: The Hon'ble Lordships have failed to take note that irreparable injustice has been caused to a Voluntary Organisation espousing the cause of the consumers and to the Indian Consumer Movement, by totally overlooking the 'Grounds of Appeal' and the provisions of the Consumer Protection Act. While the Petitioner sought relief in this Hon'ble Court, through the Civil Appeal, against the deficient Order of the National Consumer Disputes Redressal Commission (NCDRC), under section 23 of the Consumer Protection Act, this Hon'ble Court, respectfully, ignored the 'Grounds of Appeal' and the provisions of the Act with unintentional bias, but instead assumed on their own as though the Petitioner had Appealed seeking relief for non-compliance of the Order of the NCDRC (under section 27A. of the Act). How such a gross error, respectfully, amounting to bias of the Hon'ble Lordships, resulting in unfair adjudication

and unjust Order denying the rightful relief to a large number of ignorant consumer community occurred, is beyond comprehension. While the impugned Order of 05.12.2012 did begin by stating that the Appeal is directed against the order dated 16.08.2007, passed by the NCDRC, respectfully, immediately thereafter the Lordships start discussing about the compliance of the Order by the Government and the Oil Companies. Respectfully, how such a gross failure occurred unless there was some unintentional legal bias in favour of the corporate giant (IOC). Incidentally, on 16.10.2012, the Petitioner finding that the Lordships were missing the real issues which needed to be addressed by them in the instant Appeal, submitted that the Appeal had been filed because the NCDRC had failed to provide relief under sections 14(1)(d), 14(1)(hb) and 14(1)(i) and not for shortcomings in the Execution of the Order. The Petitioner even quoted the Order of this Hon'ble Court in *M/s Nagpur Golden Transport Company (Regd.) Vs. M/s Nath Traders & Ors., Civil Appeal No. 3546 of 2006*, decided on 07.12.2011, wherein this Hon'ble Court held that non-payment of value of the scrap of motors worth around Rs. 3 lakhs as undue enrichment, whereas the Respondents in the instant case had sold under-weighed LPG refills worth over Rs. 65,000 crores. The Petitioner

further submitted before the Lordships that as per section 14(1)(hb) of the Consumer Protection Act, the Respondent Oil Company was bound to pay over Rs. 3,250 crores as penalty, to the Consumer Welfare Fund, as once the National Commission concluded that the defective goods (short-weighted LPG) affected a large number of consumers, it is mandatory that it awarded a minimum of 5% of the value of such defective goods sold in the market. On hearing the case law and the submissions of the Petitioner, Hon'ble Justice G.S.Singhvi, in Open Court, observed that the Petitioner should become an Advocate and assured that all the relevant sections would be discussed in the Final Order. After all these, it is unimaginable how the Lordships, respectfully, passed an Order which is totally inconsequential with the huge cumulative loss arising out of selling short-weighted refills worth over Rs. 65,000 crores, inflicted on the consumers and the weaker sections of the society, across the country, and therefore bad in fact and law and further therefore legally biased in favour of the Corporate giant, viz., Indian Oil Corporation Ltd.. After every hearing in this Hon'ble Court, the petitioner had made it a practice to circulate a Report among the Executive Committee members of the Petitioner Council, highlighting the day's

proceedings. The Report circulated by the Petitioner in respect of the proceedings of 16.10.2012 is filed herewith and is marked as ANNEXURE CP.4 (page no. 65 to 67). This further strengthens, respectfully, that the impugned Order of the Lordships could have been biased, resulting in the loss afore mentioned. Hence, this Curative Petition deserves to be allowed by this Hon'ble Court.

(E) BY NOT EXERCISING DUE DILIGENCE PUBLIC CONFIDENCE IN JUDICIAL SYSTEM IS WEAKENED: By not exercising due diligence while disposing the Appeal, the impugned Order apparently did injustice by not compensating the public injury and a huge loss to the poor consumers, who were sold over Rs. 65,000 crores worth of short-weighted domestic LPG refills. While in the impugned Order, the Lordships have highlighted the affidavit filed by Respondent No. 11, Smt. Sushma Rath, about the steps taken by the oil Companies to provide portable weighing scales to the deliveryman, issuing advertisements in newspapers and the electronic media, their Lordships remained silent about the submissions of the Petitioner's Rejoinder to the Counter Affidavits of Respondents 6, 7, 8 and 11 (para 2., 3., 4., 5., 6., 7., 8. and 9., page nos. 2-3 of the Rejoinder to Counter Affidavits), and also the submissions of the Petitioner

made through the Supplementary Rejoinder to the Counter Affidavits of Respondents 6, 7, 8 and 11. The Supplementary Rejoinder to the Counter Affidavits became necessary as the Lordships posed some fundamental questions to the Petitioner, on 12.09.2012, viz., Hon'ble Justice Sudhansu Jyoti Mukhopadhaya wanted to know "Whether providing the LPG refill of right weight is important or advertising about consumer education is important?" and Hon'ble Justice G.S.Singhvi wanted to know "How the quantified loss was calculated?". The Petitioner though answered the Lordships during the course of the hearing itself, held on 12.09.2012, considering the importance of the questions and to facilitate the Lordships in deciding the Appeal, filed the Supplementary Rejoinder to the Counter Affidavits of 6, 7, 8 and 11, and this has also been mentioned in the Office Report, ANNEXURE CP.5 (Page Nos. 68 to 70). Though, the implementation of the NCDRC order was not the subject of Appeal, it is on Record that the National Commission itself had taken cognizance of its orders not being carried out by the Respondents, passed on 19.10.2005, filed along with the Appeal, ANNEXURE P.18 (page nos. 146-148), on 13.09.2006, ANNEXURE P.22 (page nos. 165-167) and on 07.02.2007, ANNEXURE P.24 (PAGE NOS. 173-174).

Thus, what was stated by Respondent No. 11, Smt. Sushma Rath, is nothing beyond what was already filed before the National Commission, in 2006 and which the Commission itself found to be grossly inadequate, vis-à-vis what was directed to be done, on 19.10.2005. After all these, can justice be denied by this Hon'ble Court, respectfully, by overlooking the "GROUNDS" of Appeal, with obvious bias resulting in favour of the Respondent Corporate giant? Hence, the Petitioner craves the kind attention of this Hon'ble Court, to rectify the unjust and improper impugned Order by allowing this Curative Petition.

(F) THIS HON'BLE COURT HAS TO STRENGTHEN THE CONSUMER JUSTICE SYSTEM: It is the duty of this Hon'ble Court to strengthen the consumer justice system, so that the provisions of the consumer law are appropriately enforced, for eliminating Unfair Trade Practices and for better consumer protection. Restoration of fairness and justice in the impugned Order will have far reaching impact in curbing Unfair Trade Practices and for better consumer protection. The Petitioner is committed to safeguard the consumer welfare, for the past 28 years. Fraudulent Unfair Trade Practices have been flourishing and individual gullible and poor consumers hardly have the wherewithal to

counter such unhindered anti-consumer behaviour. It is in this context that several far reaching amendments were introduced in the Consumer Protection Act, in 2003. But the consumers and Voluntary Consumer Organisations are hardly able to take advantage of such provisions in the Act, due to inherent technical and financial shortcomings. For the first time, the Petitioner Council could discover and take up an issue involving an essential commodity, which affected every household tangibly, across the country. Further, to the credit of the Petitioner, the precise technical reason for the serious deficiency was highlighted right at the inception, which was later confirmed and the lacunae (short-weighted LPG refills) removed, thereby tangibly benefitting crores of consumers. Thus an Unfair Trade Practice was addressed at the initiative of a Voluntary Consumer Organisation, hardly with any resources. In the fitness of things, it would have been appropriate if this Hon'ble Court would have invoked the provisions of the Consumer Protection Act, as prayed by the Petitioner, and provided relief as per law. That would have sent a strong message across the country that Unfair Trade Practices would not be tolerated and consumers or groups who can initiate such action will be suitably rewarded and at least not penalised. One

can visualise how much good it will do for the common man and how far such an Order will boost the morale of the consumer groups, like the Petitioner's, who will persevere to make the industry and market more and more consumer friendly. Further, since there are no enabling provisions for administering section 14(1)(d) (punitive damages) and section 14(1)(i) (providing adequate costs), in the Consumer Protection Rules, a clear directive from this Hon'ble Court would have substantially helped the District Fora and the Commissions to enforce the Consumer Protection Act in an appropriate manner, thereby strengthening the consumer justice system. Hence, the present Curative Petition deserves to be allowed.

(G) HUGE INTENTIONAL DEFRAUDING OF THE UNSUSPECTING HOUSEWIVES SHOULD NOT GO UNPUNISHED: The huge intentional defrauding of the unsuspecting housewives across the country, amounting to selling over Rs. 65,000 crores worth short-weighted LPG refills, by a corporate entity should have been well appreciated by the Hon'ble Bench; but its unintentional legal bias favoured the Respondent corporate body with undue enrichment beyond imagination and hence it is imperative that this Curative Petition is allowed.

PRAYER

The Petitioner, therefore, prays that this Hon'ble Court may be pleased:

- (a) to allow this Curative Petition and set aside the Order dated 12.02.2013, in Review Petition (Civil) No. 150 of 2013, and Order dated 05.12.2012 in Civil Appeal No. 10126/2010 of this Hon'ble Court; and
- (b) to pass such further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

DRAWN AND FILED BY

B.VAIDYANATHAN
CHIEF MENTOR
Consumer Protection Council,
Rourkela
Authorised Representative of the Appellant

NEW DELHI

Filed on: 19.12.2013