

By SPEED POST

Consumer Protection Council, Rourkela (Regd.)

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An aware Consumer is an Asset to the Nation

Ref. No.: CM/SC/IOC/ 18 /2014-15

Date: 14th Jul. 2014

16th

Hon'ble Mr. Justice R.M.Lodha
Chief Justice of India
Supreme Court
NEW DELHI - 110001.

Sub: Suggestion to change the procedure for considering Curative Petitions.

Ref : Curative Petition (Civil) No. 84 of 2014, arising out of Review Petition (Civil) No. 150 of 2013 and Civil Appeal No. 10126 of 2010.

Respected Sir,

It is with deep regret that I am placing before you this instance of grave injustice that has been done to the consumer movement in this country.

That the Council (Consumer Protection Council, Rourkela) filed Original Petition No. 224 of 2001, before the National Consumer Disputes Redressal Commission (National Commission) against M/s Indian Oil Corporation Ltd. & Others, for supplying under-weighted LPG refills to the consumers, across the country, with an estimated loss of ₹ 750 crores per year. The Original Petition was necessitated as the said Oil Marketing Company did not own the problem and was not willing to take any action to overcome the said problem created due to the shortcomings in their LPG Bottling Plants. The National Commission agreed with the allegations of the

Council, and directed M/s IOC to adopt pre-delivery weighing of the LPG refills, in presence of the consumers, as was prayed by the Council, as an interim measure, commencing from 1st Nov. 2005.

One of the Prayers made before the National Commission, Prayer (d) in the Original Petition was to award 1% of the estimated loss suffered by the consumers to the complainant Council, so that it may utilize for furthering the consumer protection activities. Further, Consumer Protection Act was amended from 15th March 2003, incorporating certain new provisions in "Sec. 14 - Finding of the District Forum", "Sec. 22(2) - Power to Review", among others. The Council accordingly prayed for relief under the new amendments of "Sec. 14(1)(d) - punitive damages", "Sec. 14(1)(hb) - payment of penalty when the goods/services affect large number of consumers" and "Sec. 14(1)(i) - payment of adequate cost" in Jan. 2004 itself and later in writing in April 2004, much before the first interim order was passed in Oct. 2005, relating to steps to be taken for safeguarding the consumers against delivering under-weighed LPG refills.

M/s IOC did not comply with the directives of the National Commission. This was brought to the notice of the National Commission in 2006 as well as in 2007. M/s IOC did accept the violations and the National Commission also took cognizance of the said violations. The National Commission finally passed its order in August 2007 without addressing Prayer (d) of the Complainant and the relief sought under Sec. 14(1)(d), 14(1)(hb) and 14(1)(i). Hence, the Council sought a review under Sec. 22(2), of its Order by the National Commission, in Sept. 2007. Though, the National Commission could have decided the matter by

circulation, it had 10 sittings, over a period of about 3 years, and finally said in its order, in July 2010 that the case cannot be re-examined as per the provisions of Sec. 22(2). But, in the said Order, the National Commission did admit that it had not addressed Prayer (d) of the Complainant Council.

Thus after a delay of 1071 days, the Civil Appeal No. 10126 was filed before the Supreme Court, against the final Order, for the non-adjudication of the relief by the National Commission. The bench which heard the matter while condoned the huge delay, termed the appeal as infructuous and dismissed it on 5th Dec. 2012.

The basic question as to why a delay of 1071 days was condoned will obviously demonstrate the glaring error in the judgment. The huge delay was condoned because the Council had sought review of the order of the National Commission for the apparent errors, including but not limited to non-invoking the provision of Sec. 14(1)(hb), etc. of the Consumer Protection Act after having concluded that a large number of consumers were affected by the under-weighted refills delivered by M/s IOC. But the judgment after having observed that the appeal is against the order of the National Commission, has failed to discuss the order in any manner. Instead, the impugned judgment discusses the compliance part of the government and the oil marketing companies, which was not the reason for which the appeal was preferred.

That, in addition to the Statement of the Case, Rejoinder and Supplementary Rejoinder to the Counter Affidavits were filed by the

Appellant, during the course of the hearing and the last one (Additional Supplementary Rejoinder) was not taken on record in spite of the Appellant pleading for allowing him to submit the same on 5th Dec. 2012. In all these documents the Appellant repeatedly prayed for considering the original prayers which were not adjudicated by the National Commission.

In this background, the Judgment of this Hon'ble Court dated 5.12.2012 will glaringly show its total irrelevance to the issues for which this Appellant approached this Hon'ble Court.

The Review sought on the Order, vide Review Petition (Civil) No. 150 of 2013, highlighting the above said glaring shortcomings was also dismissed in Feb. 2013.

Since we were quite confident that the gross miscarriage of justice will be rectified and the consumer movement would be able to start a new chapter in the elimination of Unfair Trade Practices, filed the curative petition (Curative Petition (Civil) No. 84 of 2014). The Petition was duly certified by the learned Shri M.R.Calla, ex-Justice of the Gujarat & Rajasthan High Courts, who is also a designated Sr. Advocate of the Supreme Court. The Certificate provided by him highlights the blatant errors and the miscarriage of justice and natural justice, for which the apex court stands for.

Quoting the **Rupa Ashok Hurra** case, the said Curative Petition has also been rejected.

After having been exposed to the consumer courts and other courts of law for well over 25 years, I have a few humble suggestions to make for your respectful consideration, to prevent national wastage of time, efforts and other resources as well as to save valuable resources of the Hon'ble Supreme Court:

SUGGESTION-1:

1. Since the guidelines provided in the **Rupa Ashok Hurra** case should decide the outcome of the Curative Petitions, as is extensively noticed in all the dismissed Curative Petitions (which account for more than 98%), but for the LGBT Case (Sec. 377 IPC) and the like, procedure for curing major defects in the judgments can be modified.
2. Registry could circulate a format, having two major questions, viz., whether (a) "Hearing" in the case was conducted without due notice – YES/NO and (b) Are you alleging that Member(s) of the Bench which decided the case/passed the judgment had concealed any pecuniary or other interests related with the case – YES/NO.
3. Those who are aggrieved by the Order and the Review thereafter, could be asked to file the format, before the designated Registrar.
4. The Registrar could then decide whether the matter should be looked into by the Judiciary constituted for the purpose.
5. The litigant could place the proof of his allegation, before the Bench constituted for the purpose. Vexatious Petitions could be dealt by the Bench so constituted.

While the litigants will be saved of substantial wastage of resources and the Hon'ble Court will be devoid of botheration to dismiss nearly 98% of the Curative Petitions filed. Thus, the Court will be left with more precious time

to attend to other pending cases. After all, a voluntary organisation like ours hardly have any resource even to engage more than one semi-skilled staff on a part-time basis, and the only landline telephone had to be surrendered due to paucity of funds, even after nearly 29 years of service to the community.

SUGGESTION-2:

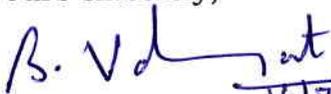
The Hon'ble Court may also consider allowing the system of Review Petitions only in case of the Government and Government sponsored institutions like the National Commission for Women (NCW) as invariably such Petitions are dismissed straight away, as, may be, the same Bench considers such Review Petitions. This will again minimise the Hon'ble Court's work and is likely to speed up dispensation of justice in other matters.

Let the Act and the Rules remain on paper and we will educate our people to live with that reality.

Respectfully submitted.

With regards,

Yours sincerely,


16/7/14
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(B.VAIDYANATHAN)
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Encl.: Copy of Sr. Advocate, Shri M.R.Calla's Certificate.

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