

For the benefit of the readers, given below is the text of the Review Petition filed in the Supreme Court, on 4th Jan. 2013, seeking review of its Order dated 5.12.12, disposing CPC, Rourkela's Civil Appeal, in the LPG under-weight case, as infructuous.

- Editor

SYNOPSIS / LIST OF DATES

This Appeal Petition involves determination of whether the Order of the National Consumer Disputes Redressal Commission (in short the National Commission) was defective in law and whether it was right in overlooking several important questions of law, viz.

- a) Whether the provisions of the Consumer Protection (Amendment) Act, 2002 (62 of 2002), in short the Act, which became effective from 15.03.2003, are applicable to the instant case or not?
- b) When the Respondents herein have shown scant regard to consumer interests, for several years, even after the loss suffered by them were highlighted, and also wilfully disregarded the orders of the National Commission, in spite of the Commission taking cognizance of the same, is it not a fit case for the award of 'Punitive Damages',

as provided under Section 14(1)(d) of the Act ?

c) When the National Commission concluded that huge number of consumers had suffered loss due to the under-weighted *Indane* LPG refills, is it not mandatory that it should have invoked Section 14(1)(hb) of the Consumer Protection Act and awarded the penalties as provided therein (5% of the value of defective goods sold / services provided) ?

d) What should be considered as adequate cost to be awarded to the Petitioner Voluntary Consumer Organisation, when crores of consumers are affected across the country and suffered losses estimated at Rs. 750 crores per year, and advocated for them through the National Commission situated at over 1600 kms away, for about 7 years, and through 29 sittings, as provided under Section 14(1)(i) of the Act? The National Commission itself awarded Rs. 7,500/- as cost to the Petitioner, for the adjournment of one sitting.

- e) When the Respondent Company have unduly enriched themselves by selling Rs. 65,764 crores worth of under-filled LPG refills and inflicted thousands of crores of monetary loss on the unsuspecting consumers across the country, should they not have paid a minimum of Rs. 3,288.21 crores, as provided under Section 14(1)(hb), to the Consumer Welfare Fund ?
- f) Taking the provisions of Section 14(1)(d), 14(1)(hb) and 14(1)(i) into consideration and the case in totality, should the prayer of the Petitioner, for the award of 5% of loss suffered by the consumers in a year, amounting to Rs. 750 crores should have been awarded or not ?
- g) Given the facts and circumstances of the case, whether the order in the instant case should have been reviewed by the National Commission or not, as provided under Section 22(2) of the Consumer Protection Act?
- h) Does the provision “error apparent on the face of the record”, stated in Section 22(2) of the Consumer Protection Act, deemed to

mean only simple errors or serious errors as well in the judgment/order, involving judicial fallibility?

i) The Appeal Petition also involves determination of whether the Order of the National Commission is contrary to law.

Jun.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 underweighed 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.

20.07.2001 The Petitioner sought the intervention of the National Commission, 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.

04.12.2002 The National Commission requested Director, IIT, Kharagpur, West Bengal, to nominate appropriate Faculty Member to visit the LPG Filling 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”.

15.03.2003 **Amendments to the Act introduced.** 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 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 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.”***

25.07.2003 Report of the Professors of IIT, Kharagpur, received in National Commission. The Report concluded that the Plant (carousel and its accessories) cannot bottle the correct weight of LPG at its normal production rate.

25.07.2003 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.

11.09.2003 Respondent No. 8 (Addl. Secretary, Department of Consumer Affairs, GOI)

constituted a Committee to identify problems relating to short filling of LPG in domestic cylinders and to suggest suitable remedial measures. Petitioner Council was also nominated in this Committee.

12.09.2003 NCDRC awarded a payment of Rs. 7,500/- to the Petitioner, by the Respondent No.1, as cost towards one adjournment.

29.01.2004 NCDRC heard the Petitioner's Reply to the objections, on the Report of Experts of IIT, Kharagpur, filed by the Respondent Company and directed the Petitioner to file its Consolidated Submissions.

05.03.2004 Government of India amended the Consumer Protection Rules, and introduced sec. 10A, to Credit the fine awarded under sec. 14(1)(hb), and when the consumers are not identified conveniently, into the Consumer Welfare Fund.

03.04.2004 The Petitioner filed the Consolidated Submissions. 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. It also pleaded that in contrast to Hindustan Petroleum, which had started pre-delivery weighment 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 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).

05.02.2005 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. The Report wanted the Respondent Company to urgently consider changes in the method of (LPG refill) tare neutralization. It was further stated 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.

19.10.2005 The National Commission directed the Respondent Company (Indian Oil Corporation Ltd.) to ensure that weighing scale was made available to the delivery-men, 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 it 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.

11.04.2006 The Petitioner 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.

- 24.04.2006 The Respondent Company, through an "Affidavit" stated that advertisements, which are far less prominent than the one issued by Hindustan Petroleum, were published only in eight states of the country, predominantly in the Eastern Region.
- 13.09.2006 The National Commission took cognizance of the lapses, on the part of Respondent Company and again directed it to file compliance.
- 13.10.2006 Director(Marketing), Ministry of Petroleum & Natural Gas, Govt. of India, New Delhi, in an "Affidavit" filed before the NCDRC narrated the steps that were being initiated to overcome the short-filling of LPG cylinders. 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.
- 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 weight and directed Respondent No.1, as

to why earlier direction was not complied with, in all States.

16.08.2007 The National Commission delivered its 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 pleaded by the Ministry of Petroleum & Natural Gas.

There were several mistakes in the Order, relating to:

(i) Summary Report of the Professors of

IIT, Kharagpur;

(ii) 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;

(iii) non-inclusion of the pleadings of the Petitioner to invoke sec. 14(1)(hb) and 14(1)(d) and to direct the Respondents to pay 5% of the loss inflicted on the consumers, etc.

(iv) ignoring the Prayers without assigning any reason, etc.

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 (Miscellaneous Application No. 257/2007).

05.10.2009 The Petitioner pointed out before the National Commission that certain important provisions of the Act relating to award of “punitive damages” (sec. 14(1)(d)), award of compensation under sec. 14(1)(hb) as “large number of consumers were affected” and award of “adequate cost” (sec. 14(1)(i)) have not been invoked, in spite of the Petitioner

Council repeatedly pleading for them, while at the same time the Order did not explain the reasons for not invoking them. In that context, the petitioner submitted a copy of the Judgment, of the Hon'ble Supreme Court, in Criminal Appeal No. 1122 of 2007, *Sudha Verma vs State of UP & Anr.* In that judgment, the decision in the case of Omar Usman Chamadia vs Abdul and Anr. (JT 2004 (2) SC 176), was referred. In para 10, it was observed as follows: ***“The reasons need not be very detailed or elaborate, lest it may cause prejudice to the case of the parties, but must be sufficiently indicative of the process of reasoning, leading to the passing of the impugned order. The need for delivering a reasoned order is a requirement of law which has to be complied with in all appealable orders.”***

25.11.2009

The Petitioner submitted a Petition detailing the total value of under-filled (defective) refills, sold to the consumers, as Rs. 65,764.15 crores. It was further stated in the Petition that a sum of Rs. 3,288.21 crores becomes

payable to the Consumer Welfare Fund, as per sec. 14(1)(hb).

27.01.2010 For the Union of India, Ministry of Petroleum & Natural Gas, it was argued that an Appeal, in the guise of a Review should not be allowed. It was also pleaded that sec. 22(2) of the Act provided for a Review only when there is an error apparent on the face of the record. The Petitioner pointed out the observation of the Supreme Court, in Civil Appeal Nos. 1968-69 of 1972, *M/s Northern India Caterers (India) Ltd. vs Lt. Governor of Delhi*, (1980) 2 Supreme Court Cases 167, the bench observed: “***But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility***”. The Petitioner argued that after the National Commission concluded that the Carousel Machine and Bottling Plant were not capable

of delivering the stipulated weight of LPG to crores of consumers across the country, it directed insertion of advertisements and pre-delivery checking of the weight of LPG. Having concluded that huge number of consumers were affected, the National Commission ought to have invoked the provisions of sec. 14(1)(hb) of the Act. A simple reading of the Act makes it abundantly clear that the Forum after it concludes that large number of consumers are affected, it has to provide relief under sec. 14(1)(hb). Since that was not done, that amounts to an error/mistake and can come under judicial fallibility, for which the Commission had to Review.

29.07.2010 The National Commission passed the Order, 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.

27.08.2010 Petitioner filed Civil Appeal No. 10126/2010 in this Hon'ble Court.

13.02.2012 Petitioner Council files the Statement of the Case, in this Hon'ble Court, along with

Interlocutory Application seeking permission for filing additional Annexures.

30.08.2012 Petitioner Council files the Rejoinder to Counter Affidavits of Respondents 6, 7, 8 and 11 along with Interlocutory Application seeking permission for filing the Rejoinder.

12.09.2012 This Hon'ble Court directs that an Officer of the Respondent, Indian Oil Corporation, conversant with the weighment of the gas in the cylinders, to remain present in the next date of 'Hearing', to be held on 16.10.2012.

03.10.2012 Petitioner Council files the Supplementary Rejoinder to Counter Affidavits of Respondents 6, 7, 8 and 11 along with Interlocutory Application (No. 4) seeking permission to file the Supplementary Rejoinder.

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 these will 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.

05.12.2012 The Petitioner Council, as was submitted before this Hon'ble Court and agreed upon on 3.10.2012, 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 after the pronouncement the Petitioner pleaded before this Hon'ble Court that this Hon'ble Court had assured that it will address the provisions Sec. 14(1)(d), 14(1)(hb) and 14(1)(i) of the Consumer Protection Act.

04.01.2013 Hence this Review Petition is being filed.

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

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

**REVIEW PETITION AGAINST THE ORDER DATED
05.12.2012, IN CIVIL APPEAL NO. 10126/2010
PASSED BY THIS HON'BLE COURT**

To

The Hon'ble Chief Justice of India

And His Companion Judges of this

Hon'ble Court

The humble petition of the above named Petitioner

MOST RESPECTFULLY SHOWETH AS UNDER:

1. That this is Petitioner's petition for Review against Judgment dated 05.12.2012 of this Hon'ble Court in Civil Appeal No. 10126/2010 by which this Hon'ble Court was pleased to dispose the Civil Appeal as infructuous, on the ground that steps had been taken by the Government of

India and the oil companies, and that no further direction is required to be issued in the matter.

2. That the Petitioner has not filed any other Review Petition against the Order dated 05.12.2012 of this Hon'ble Court.
3. That the Civil Appeal was against the Order of the Hon'ble National Consumer Disputes Redressal Commission, in short the National Commission, for not invoking certain important provisions of the Consumer Protection Act, in short the Act, relating to award of punitive damages (Sec. 14(1)(d)), award of compensation after concluding that the Respondent Company had rendered deficient service affecting a large number of consumers (Sec. 14(1)(hb)) and awarding adequate costs (Sec. 14(1)(i)).
4. That the Civil Appeal was neither against the Omissions and Commissions of the Government of India nor the Oil Companies, as is made out by this Hon'ble Court's impugned Order.
5. That the Civil Appeal was filed as the provisions of the law, the Act, had not been followed by the National Commission.
6. That the Civil Appeal was not an Execution Petition (for non-compliance with the National Commission's Order), but was against the Order of the National Commission,

which was defective and bad in law. Had there been an issue of Execution, the Petitioner would have approached the National Commission itself, under sec. 27 of the Act.

7. That the Civil Appeal did not pray for any direction from this Hon'ble Court to neither the Government of India nor the Oil Companies, for non-compliance with the Orders of the National Commission.
8. That in the Civil Appeal, prayer was made to this Hon'ble Court to settle the issues of law relating to certain important provisions of the Act, so that the consumers of this country may be protected and the consumer organisations are strengthened to sustain their mission of safeguarding the consumers against unfair trade practices. The issues of law relate to:
 - a. Whether the provisions of the Consumer Protection (Amendment) Act, 2002 (62 of 2002), in short the Act, which became effective from 15.03.2003, are applicable to the instant case or not?
 - b. When the Respondents herein have shown scant regard to consumer interests, for several years, even after the loss suffered by them were highlighted, and also wilfully disregarded the orders of the National Commission dated 19.10.2005, in spite of the Commission taking

cognizance of the same on 13.09.2006 and again on 07.02.2007, is it not a fit case for the award of 'Punitive Damages', as provided under Section 14(1)(d) of the Act ?

c. When the National Commission concluded on 19.10.2005 that huge number of consumers had suffered loss due to the under-weighed *Indane* LPG refills, is it not mandatory that it should have invoked Section 14(1)(hb) of the Act and awarded the penalties as provided therein (5% of the value of defective goods sold) ?

d. What should be considered as adequate cost to be awarded to the Petitioner Voluntary Consumer Organisation, when crores of consumers are affected across the country and suffered losses estimated at Rs. 750 crores per year, and advocated for them through the National Commission situated at over 1600 kms away, for about 7 years, and through 29 sittings, as provided under Section 14(1)(i) of the Act? The National Commission itself awarded Rs. 7,500/- as cost to the Petitioner, for the adjournment of one sitting.

e. When the Respondent Company had unduly enriched itself by selling Rs. 65,764 crores worth of under-filled LPG refills and inflicted thousands of

crores of monetary loss on the unsuspecting consumers across the country, should they not have paid a minimum of Rs. 3,288.21 crores, as provided under Section 14(1)(hb) of the Act, to the Consumer Welfare Fund ?

- f. Taking the provisions of Section 14(1)(d), 14(1)(hb) and 14(1)(i) into consideration and the case in totality, should the amended prayer of the Petitioner (Prayer (d) of the Original Petition sought 1% of the loss suffered), for the award of 5% of loss suffered by the consumers in a year, amounting to Rs. 750 crores be awarded or not ?
- g. Given the facts and circumstances of the case, whether the order in the instant case should have been reviewed by the National Commission or not, as provided under Section 22(2) of the Act?
- h. Does the provision “error apparent on the face of the record”, stated in Section 22(2) of the Consumer Protection Act, deemed to mean only simple errors or serious errors as well in the judgment/order, involving judicial fallibility?
- i. The Appeal Petition also involves determination of whether the Order of the National Commission is contrary to law.

9. That the Petitioner during the arguments put forth all these issues before this Hon'ble Court and also placed before it through the Civil Appeal, Statement of the Case, and the Interlocutory Applications.

10. That this Hon'ble Court, on 12.09.2012, wanted to know, "Whether providing the LPG refill of right weight is important? Or Advertising was important?" To which the Petitioner submitted through I.A. 4, as follows:

10.1 "Providing the right weight of the LPG refill is the mandate of the law. Under the Standards of Weights and Measures (Packaged Commodity) Rules, every LPG refill is supposed to contain 14.2 Kg \pm 150 gms. The Respondent is bound by Law to supply the right weight. Any deviation will attract the penal provisions of the said Rules, in addition to being an Unfair Trade Practice, as defined under the Consumer Protection Act, inviting penalties under Sec. 14(1)(hb). So, for the Respondents there is no option but to supply the right weight of LPG in the refill cylinders. The consumers in general and the Appellant in particular, as a matter of right will not be satisfied unless the Respondent supplies the right weight of LPG in the refill cylinders. Hence, providing the

right weight of LPG in the Refills is not only important, but a duty of the Respondents and they are obliged to do under the law.

10.2 The Hon'ble National Commission after having concluded logically, based on the Random Sampling Survey of the Appellant, Report of the Professors of IIT, Kharagpur and the Report of the Committee set up by the Department of Consumer Affairs, Government of India, directed the Respondents, on 19.10.2005, to ensure pre-delivery weighment checking of the refill cylinders, in the presence of the consumers, as prayed for by the Appellant (Prayer (b)) in the Original Petition.

10.3.1 That the Hon'ble Commission below was seized with the enormity of the undue enrichment of the Respondents, at the cost of the consumers. This is evident from the Final Order, pages 25-26 of the Civil Appeal, wherein the Commission has observed **"....while seeing the loss which is being caused to the customer a sum of Rs. 250 crores is just one third of the amount of unjust enrichment, if the Commission goes by the estimate of the Complainant Council."** Hence it directed the Respondents

to ensure pre-delivery checking of weight of the LPG refills, commencing from 1.11.2005.

10.3.2 That the Hon'ble Commission below, obviously, to protect the consumers' interest wanted the Respondents to give adequate publicity through the print and electronic media, as was being done by M/s Hindustan Petroleum, across the country, about this action of the Respondents so that the consumers could safeguard their interests, by demanding such weighment from the deliverymen while they delivered LPG refills. In the absence of such publicity, the consumers continued to remain ignorant, as is evident from the representation received from a cross-section of the consumers of Chennai. The said representation to the Appellant had been filed along with the Statement of the Case. Thus the Respondents would have continued to get enriched even after 1.11.2005, at the cost of the gullible consumers. So, advertising regarding the pre-delivery LPG refill weighment was essential to ensure the right weight of LPG refills, in the circumstances in which the Respondents were

operating their LPG bottling Plants, with mechanical Tare neutralisation. In the absence of such advertising and publicity, the consumers would have continued to remain ignorant to demand such weighment of the refill at the time of delivery, thereby having to accept whatever was offered by the deliveryman, ie., even refills of lesser weight. Non-advertising regarding pre-delivery weight checking in spite of clear directives was nothing but an effort by the Respondents to continue to deny the consumers their dues and to fail in their legal obligation to ensure correct weight of the refills to the paying consumers. Thus, in the circumstances of the case advertising was also important and essential.”

11. That this Hon’ble Court, on 12.09.2012, desired to know the evidence for the quantified loss. To which the Petitioner submitted through I.A. 4, as follows:

11.1 “The loss suffered by the consumers were ascertained by:

Random sampling survey conducted thrice; during June 2000, a Joint Survey with Respondent No. 5, on 22nd July 2000, and the third during 2001.

(a) While the first Survey revealed that as against 14.2 Kg. of LPG, the consumers on an average were getting only 12.74 Kg, losing on an average Rs. 24 per refill of *Indane*. Copy of the letter communicating this information to the Respondents, had been filed with the Civil Appeal.

(b) The second, Joint Survey conducted along with Respondent 5, revealed that the consumers on an average were getting only 12.59 Kg, losing on an average Rs. 25.50 per refill of *Indane*. Copy of the letter communicating this information to the Respondents, had been filed with the Civil Appeal. Instead of accepting the issue on hand, the Respondent gave totally false reasons for discontinuing the Survey mid-way. A copy of the letter received from General Manager, Orissa State Office, Indian Oil Corporation Ltd. (Marketing Division), Bhubaneswar, had been filed with the Civil Appeal. A comparison of the ANNEXURES filed with the Civil Appeal, will clearly show that the households visited were

different, and the spring balances have not been barred by the Department of Legal Metrology, Govt. of India. As a matter of fact, the Respondents, for pre-delivery checking of the weight of LPG refills were only utilising spring balance. Even the advertisement of the Respondents depicts the use of spring balance. (A copy of the advertisement was reproduced and enclosed with the Civil Appeal.)

(c) After giving sufficient opportunity to the Respondents, the third Survey was conducted in 2001. The Survey revealed that the consumers on an average were getting 0.54 Kg less, losing on an average Rs. 10 per refill of *Indane*, at the prevailing price of Rs. 253/- per refill.

(d) That the Deputy Director, Legal Metrology, Regional Reference Standards Laboratory, Government of India, Bhubaneswar, visited Rourkela, during October 2000. He inspected all the documents associated with the Appellant's LPG refill weighment Survey and also held discussions about the findings. Later he wrote to Respondent No. 9, informing him that findings of the Appellant were genuine.

(e) That though the loss per LPG refill was estimated during the 3 Surveys varied between Rs. 10/- to Rs. 25.50, Appellant preferred the Original Petition based on the lowest figure, as the minimum loss suffered by the consumers across the country.

(f) That the Appellant visited the LPG Bottling Plant of the Respondents, on 26th August 2000, and got 6 of the refills randomly checked in the on-line weighing machine. As many as three were found under-weighed by 0.5 Kg to 1 Kg (roughly 50% of the output). Having understood that root cause of the problem is the carousel machine and the cumbersome manual operations, the Appellant was further shocked to be informed by the Plant Officer that all the LPG bottling plants of the Respondent Company, numbering around 100 across the country, were similar. This was communicated to the Respondents on 30th August 2000. Hence, the quantified loss from hundred such LPG Bottling Plants, as Rs. 750 crores per year.

(g) The Appellant's quantified loss was in a way substantiated by the findings of the Professors of IIT, Kharagpur. Their Report categorically

stated that the LPG Bottling Plant and its accessories cannot bottle the correct weight. (A copy of the Report was filed with the Civil Appeal, and also the Executive Summary.)

(h) The Report of the Committee set up by the Department of Consumer Affairs, Government of India, to identify the problems of short filling of LPG in domestic cylinders and to suggest suitable remedial measures, on the lines of findings of the Appellant observed that *within a few minutes of operation, fatigue sets in, resulting in large error as high as 30-40%* (Page 140). (Copy of the Report was filed with the Civil Appeal.)

(i) Incidentally, no other estimate contrary to the one filed by the Appellant was placed by the Respondents before the Hon'ble National Commission.

(j) That the Hon'ble National Consumer Disputes Redressal Commission had accepted this quantified loss. It has been stated in the impugned order, at Pages 25-26: ***"...while seeing the loss which is being caused to the customer a sum of Rs. 250 crores is just one third of the amount of unjust enrichment, if***

this Commission goes by the estimate of the Complainant Council.”

(k) That based on the percentage of short-filled LPG refills, computed based on the figures arrived at through the Random Sampling Survey, the value of short-filled LPG refills (Rs. 65,764 crores) sold by the Respondent was computed. The petroleum products sales turnover, including LPG sales data and other relevant particulars had been obtained from the website of Ministry of Petroleum and Natural Gas, Government of India, <http://petroleum.nic.in>. These details were also filed before the Hon'ble Commission below.”

12. That on 16.10.2012, while this Hon'ble Court was trying to ascertain the steps taken / proposed to be taken by the Government of India and the Oil Companies for minimising under-weightment of LPG refills, the Petitioner pointed out that the Appeal was intended to address the issues relating to non-invoking of the provisions of the Consumer Protection Act by the National Commission and that the major concern of under-weightment had already been addressed by automating the Tare Neutralisation. It was further pointed out by the Petitioner that the undue enrichment of the Respondent

Oil Company need to be addressed. In that context a recent judgment of this Hon'ble Court, in *M/s Nagpur Golden Transport Company (Regd.) Versus M/s Nath Traders & Ors.* (Civil Appeal No. 3546 of 2006) was cited. The Petitioner pointed out that this Hon'ble Court in the said case, even for non-payment of the scrap value of goods worth about Rs. 3 lakhs, had categorised it as undue enrichment and ordered that value ought to be compensated. Whereas in the Civil Appeal goods worth over Rs. 65,000 crores was involved. This Hon'ble Court then assured that all the issues of law would be addressed in the judgment. In spite of such assurances, this Hon'ble Court was pleased to dispose of the Appeal as infructuous.

13. That even while this Hon'ble Court was spelling out its Order, in Open Court, on 05.12.2012, the Petitioner once again submitted that provisions relating to sec. 14(1)(d), 14(1)(hb) and 14(1)(i) had not been addressed. However, this Hon'ble Court has been pleased to dispose of the Civil Appeal as infructuous, without discussing the substantive issues raised in the Appeal.

14. The Petitioner is submitting the following grounds for grant of Review Petition:

G R O U N D S

- A) The Civil Appeal was against the Order of the National Commission, which was defective and bad in law. Instead of addressing the substantive issues raised in the Appeal relating to the Order of the National Commission, dated 16.08.2007, the judgment seeks to address the compliance part (by the Government of India and Oil Companies). In the respectful submission of the Petitioner, there is an apparent error on the face of the record and hence is a fit case for grant of Review Petition.
- B) This Hon'ble Court has condoned a delay of 1071 days in filing the Civil Appeal, because the delay had been caused due to the Petitioner seeking a Review of its Order, before the National Commission, under sec. 22(2) of the Consumer Protection Act, in short the Act. The National Commission dismissed the Review Application and hence the Civil Appeal was filed before this Hon'ble Court. Thus, Civil Appeal raised all issues of law which were not addressed by the National Commission. But this Hon'ble Court instead of passing its verdict on the important provisions of the Act, associated with the Appeal, has established the compliance aspect of the Order of the National

Commission, by the Government of India and the Oil Companies. In the respectful submission of the Petitioner, there is an apparent error on the face of the record and hence is a fit case for grant of Review Petition.

C) The Petitioner, in case of non-compliance with the Order of the National Commission, either by the Government of India or the Respondent Oil Company, would have sought the Execution of its Order, under sec. 27 of the Act. But the issue was that the Order of the National Commission itself was defective and bad in law. That was the reason, a Review was sought under sec. 22(2). The National Commission's Order, dated 29.07.2010, in Miscellaneous Application No. 257 of 2007, dismissing the Review Application stated that its earlier Order which would require detailed examination is not permissible under Section 22(2) of the Act. This aspect of the Appeal had been overlooked. Thus disposing of the Appeal as infructuous amounts to error apparent on the face of the record and thus it is a fit case for Review being allowed.

D) This Hon'ble Court after having stated that the Appeal is directed against the Order dated 16.08.2007 of the National Commission, has not discussed the Order in any manner. Rather, it has observed the compliance aspect of the Order by the Government of India and the Oil Companies, which was not the issue for which the Civil Appeal was made. Thus disposing of the Appeal as infructuous amounts to error apparent on the face of the record and thus it is a fit case for Review being allowed.

E) The National Commission after concluding that there was sufficient scope for the Respondent Oil Company to supply under-weighed LPG refills to the consumers across the country, passed its interim order on 19.10.2005. This Order was to become effective from 01.11.2005. As per that Order of the National Commission, the Respondent Oil Company was to provide weighing scales to all its deliverymen, who will give delivery of domestic cylinders only after weighing them in presence of the consumers. In order to create awareness among the consumers, the National Commission also directed the Respondent Oil Company to give wide publicity to this by inserting advertisements in the media similar to the one given

by M/s Hindustan Petroleum. Even assuming that the consumers were protected after the implementation of the National Commission's Order, passed in 2005, the loss suffered by them till then, amounting to over Rs. 65,000 crores needs to be compensated as per sec. 14(1)(hb) of the Act. The National Commission did not address this issue in its final Order dated 16.08.2007. The Civil Appeal raised this issue, but that has remained unanswered. Thus disposing of the Appeal as infructuous amounts to error apparent on the face of the record and thus it is a fit case for Review being allowed.

F) There are no enabling provisions for some of the key sub-sections of the Act, in the Consumer Protection Rules. These include the interpretation regarding "punitive damages", sec. 14(1)(d) and awarding of "adequate costs", sec. 14(1)(i), thus makes invoking of these provisions arbitrary and non-uniform. In the instant case, the Respondent Oil Company wilfully ignored consumer interests for several years, even after the loss suffered by them was highlighted, and also wilfully disregarded the orders of the National Commission dated 19.10.2005, in spite of the Commission taking cognizance of the same on

13.09.2006 and 07.02.2007, and was a fit case for the award of 'Punitive Damages', as provided under sec. 14(1)(d) of the Act. The Civil Appeal prayed this Hon'ble Court to address such important questions of law and guide the consumer courts across the country. The Petitioner made this point even during the arguments. However, this Hon'ble Court was pleased to dispose of the Appeal as infructuous as the Government of India and the Oil Companies were taking adequate steps, without addressing the issues raised in the Appeal. There is error apparent on the face of the record and hence it is a fit case for Review.

G) The Petitioner's Appeal before this Hon'ble Court was not primarily made for violations or non-compliance of the National Commission's Order, by the Government of India or the Oil Companies, under Section 27A. of the Act, but was necessitated due to errors in the Order of the National Commission. Thus the Appeal was made under Section 23 of the Act. Whereas the Order of this Hon'ble Court appears to have been passed as though the Appeal had been preferred under Section 27A. of the Act. Thus, there is error apparent on the face of the record and hence is a fit case for Review.

H) Substantial reliefs are envisaged under Section 14(1)(d), 14(1)(hb) and 14(1)(i) of the Act, for curbing Unfair Trade Practices and to encourage the litigants like the Petitioner and the general public, to fight against such instances and to protect the consumer and the common man. These amendments to the Act became effective from 15.03.2003. The Petitioner prayed for reliefs under those sections and also stated these in the Consolidated Submissions, filed on 03.04.2004, before the National Commission, much before the Commission passed its interim order on 19.10.2005. The National Commission in its impugned order dated 16.08.2007, totally omitted to deal with those significant prayers and also did not elaborate the reasons for doing so. Hence the Petitioner filed the Civil Appeal before this Hon'ble Court. But, instead of dealing with substantive issues of law, as envisaged in the Act, this Hon'ble Court has dealt with the compliance part of the Government of India and the Oil Companies. Thus, disposing of the Appeal as infructuous amounts to error apparent on the face of the record and thus it is a fit case for Review being allowed.

PRAYER

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

- (a) to allow this Review Petition and set aside the Order dated 05.12.2012 of this Hon'ble Court in Civil Appeal No. 10126/2010; 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

NEW DELHI
Filed on: 04.01.2013

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