

**TEXT OF LIST OF DATES & CIVIL APPEAL FILED
BEFORE THE SUPREME COURT OF INDIA,
AGAINST THE ORDER OF THE NCDRC,
IN THE LPG UNDER-WEIGHTMENT CASE**

Consumer Protection Council, Rourkela, in the larger interests of the consumers and the consumer movement has appealed to the Supreme Court, against the order of the National Consumer Disputes Redressal Commission, in the LPG under-weightment case. This initiative of the Council was instrumental in seeking relief to crores of housewives across the country, who without their own knowledge were being duped by the IOC. Initiatives of this nature, will remain a flash in the pan, unless the provisions of the law (Consumer Protection Act, in this case) are invoked in the right spirit, to support and award those who took the initiative and penalise those who, without any inhibition, caused damage (loss) to the crores of unsuspecting consumers (IOC). Obviously, there are many such Unfair Trade Practices, by the marketers of goods and providers of service, which are still flourishing, It is in this context, the Council preferred its Appeal (Civil Appeal D 27150 OF 2010) before the Hon'ble Supreme Court of India. The text of the List of Dates and the Civil Appeal have been reproduced below, for the benefit of the readers.

- Editor

SYNOPSIS AND LIST OF DATES

That the Appellant, Consumer Protection Council, Rourkela, a Voluntary Consumer Organisation, has been functioning since 1985. Through its committed work since inception, it endeared itself to the local population. The residents of the Rourkela Steel Township and the adjoining areas had so much of faith in the Appellant that they freely visited the office on Sundays to share their problems and to utilize the 'Free' counseling on consumer issues.

- 02.06.2000 The Appellant herein received a complaint from a "Indane" LPG consumer of Rourkela Steel Township that he had received a LPG refill which was 4 kg less than the stipulated weight.(14.2 kg).
- 14.06.2000
To 21.06.2000 First Survey was conducted by the Appellant, covering 48 households, who were consumers of *Indane* LPG. The survey revealed that only 12.5% of the refill cylinders weighed were within the tolerance range of \pm 150 gms. The consumers on an average were getting only 12.74 kg, losing on an average Rs. 24/- per refill cylinder, as per the price existing then, at Rourkela, Orissa.
- 22.06.2000 The Appellant wrote to Director, Legal Metrology, GOI (Respondent No. 6), Chairman, IOC (Respondent No. 1) and others, vide letter no. CP/IOC/108/2000-01, dated 22.06.2000, seeking their intervention to safeguard the interests of the consumers.

- 22.07.2000 Second Survey was conducted by the Appellant, jointly with the Respondent No. 5. Mid-way through the Survey (after covering 18 households), Respondent Company's representative walked away. This sample revealed that only 22.2% of the *Indane* LPG refill cylinders conformed to the stipulated weight of 14.2 kg \pm 150 gms. Thus the consumers on an average were receiving only 12.59 kg, losing about Rs. 25.50 per refill cylinder, as per the price existing then, at Rourkela. The Appellant thereafter informed Respondent Nos. 6, 1, and others concerned, vide letter no. CP/IOC/ 143/2000-01, dated 01.08.2000.
- 26.08.2000 The then Secretary of the Appellant Council visited the LPG Bottling Plant, at Balasore, Orissa, of the Respondent Company, at the invitation of the Respondent Nos. 3, 4 & 5. There he studied the Carousel Machine and assessed the deficiencies in the existing systems of the LPG Bottling Plant.
- 30.08.2000 The Appellant informed Respondent No.6, Respondent No.1 and others, vide letter no. CP/IOC/179/2000-01, dated 30.08.2000, about the inherent shortcomings in the LPG bottling process, at Balasore and requested them to take appropriate action so that the consumers may get the right quantity of LPG, in the *Indane* refills.
- 08.11.2000 The Appellant raised the under-weighment of LPG refills, in the XX Meeting of the Central Consumer Protection Council, held at Vigyan Bhavan, New Delhi. The Appellant's plea made in the Meeting, was

circulated in the Minutes, No. 2(8)/2000-CPU, dated 5th March, 2001, in paragraph 42.f.

- APR-JUN 2001 Third Survey was conducted by the Appellant, covering 56 households consuming *Indane* LPG refills. The Survey revealed that while only 32.1% of the refills had the requisite LPG, the consumers on an average were getting 0.54 kg less per refill, losing on an average Rs. 10/- per cylinder, as per the price existing then (Rs. 253/- per refill), at Rourkela, Orissa.. Total estimated loss to the consumers in the whole country was Rs. 750 crores per year.
- 20.07.2001 The Appellant sought the intervention of the National Consumer Disputes Redressal Commission (NCDRC), to safeguard 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 Appellant, so that it may spend the money for Consumer Protection activities.
- 04.12.2002 NCDRC 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 Consumer Protection Act (62 of 2002) became effective. Some of the sub-sections introduced were relevant to the instant case. 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 was to sec. 14(1)(d), which 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 that *“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.”*

- | | |
|------------|--|
| 23.06.2003 | Professors of IIT, Kharagpur, visited the LPG Bottling Plant, at Balasore, made their study and collected the data. |
| 25.07.2003 | Report of the Professors of IIT, Kharagpur, received in NCDRC. 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 <i>“Promise yahi, weight</i> |

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.

- 05.09.2003 Respondent No. 6 informed a consumer activist, vide letter no. WM 26(1)/2003-pt, that the machines used for filling LPG at bottling plants need improvement and the present procedure needed to be automated, similar to the suggestions put forward by the Appellant in 2000 itself.
- 11.09.2003 Respondent No. 8 constituted a Committee to identify problems relating to short filling of LPG in domestic cylinders and to suggest suitable remedial measures. Appellant Council was also nominated in this Committee.
- 12.09.2003 Hon’ble National Consumer Disputes Redressal Commission awarded a payment of Rs. 7,500/- to the Appellant, by the Respondent No.1, as cost towards adjournment.
- 29.01.2004 Hon’ble NCDRC heard the Appellant’s Reply to the objections, on the Report of Experts of IIT, Kharagpur, filed by the Respondent Company and directed the Appellant to file its Consolidated Submissions.
- 05.03.2004 Government of India amended the Consumer Protection Rules, and introduced Rule 10A, to Credit the fine awarded under sec. 14(1)(hb), when the consumers are not identified conveniently, into the Consumer Welfare Fund.

- 03.04.2004 The Appellant filed the Consolidated Submissions. The Appellant 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 Appellant 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%.
- 19.10.2005 Hon’ble NCDRC directed the Respondent Company to issue advertisement in the pattern done by Hindustan Petroleum and should 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 presence of the consumers. The said directions were to become effective from 01.11.2005.

The Commission also directed the Registry to issue notices 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 Appellant through an 'Affidavit' brought to the notice of NCDRC that the Respondent Company 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 Hon'ble NCDRC 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. It was further 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.
- 07.02.2007 Hon'ble National Consumer Disputes Redressal Commission once again took cognizance of the non-compliance of its orders, with respect to insertion of

advertisements and pre-delivery checking of weighment and directed Respondent No.1 to file an affidavit, as to why earlier direction made on 13.9.2006 was not complied with, in all States.

16.08.2007

Hon'ble NCDRC delivered its final Judgment / Order. The Hon'ble Commission appreciated the good work done by the Appellant 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 errors in the Order, relating to:

(i) Summary Report of the Professors of IIT, Kharagpur;

(ii) failure to take note of 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) rejecting the pleadings of the Appellant 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 to it;

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

- 22.09.2007 The Appellant, as provided under Section 22(2) of the Consumer Protection Act, sought Review of the Order, before the Hon'ble NCDRC, for rectification of the mistakes, vide Miscellaneous Application No. 257 OF 2007.
- 25.11.2009 The Appellant computed the total value of under-filled (defective) refills, sold to the consumers, as Rs. 65,764 crores. Thus a minimum sum of Rs. 3,288 crores becomes payable to the Consumer Welfare Fund, as per sec. 14(1)(hb).
- 29.07.2010 Hon'ble NCDRC passed the Order dismissing the Review, stating that as per Sec. 22(2) it cannot examine the case in detail.
- 27.08.2010 HENCE THIS CIVIL APPEAL IS BEING FILED.

IN THE SUPREME COURT OF INDIA

(Order XX-F)

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL D 27150 OF 2010

(Under Section 23 of the Consumer Protection Act, against the Order of the Hon'ble National Consumer Disputes Redressal Commission, New Delhi, in Original Petition No. 224 of 2001)

BETWEEN:

POSITION OF THE PARTIES

Before the Hon'ble National Consumer Disputes Redressal Commission	In this Hon'ble Court
---	-----------------------------

Consumer Protection Council,
Rourkela (A Voluntary
Consumer Organisation,
Registered under the Societies
Registration Act, Regn. No.
SGD-617-103/87-88,
represented through its Chief
Mentor, Mr. B.Vaidyanathan,
10/18, 40th Street
Nanganallur, Chennai-600061.)

Complainant

Appellant

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

Opposite Party
No.1

Respondent
No.1

- | | | |
|---|---|---------------------------------------|
| <p>2) General Manager (LPG-MO)
 Indian Oil corporation Ltd.
 Regd. Office: 'Indian Oil Bhavan'
 G-9, Ali Yavar Jung Marg
 Bandra (East)
 MUMBAI – 400051.</p> | <p>Opposite Party
 No.2</p> | <p>Respondent
 No.2</p> |
| <p>3) Sr. Manager (LPG)
 Orissa State Office
 Indian Oil Corporation Ltd. (MD)
 304, Bhoi Nagar
 Janpath
 BHUBANESWAR – 751022</p> | <p>Opposite Party
 No.3</p> | <p>Respondent
 No.3</p> |
| <p>4) Mr. H.S.Dua
 Area Manager
 Indian Oil Corporation Ltd.
 (Marketing Division)
 Indane Area Office
 Alope Bharati (3rd Floor)
 Sahid Nagar
 BHUBANESWAR – 751007</p> | <p>Opposite Party
 No.4</p> | <p>Respondent
 No.4</p> |
| <p>5) Mr. B.Minz/Mintz
 Asst. Manager (LPG)
 Indian Oil Corporation Ltd.
 HIG-B/19, Phase-III
 Chhend
 ROURKELA – 769015</p> | <p>Opposite Party
 No.5</p> | <p>Respondent
 No.5</p> |
| <p>Government of India represented through</p> | | |
| <p>6) Director
 Legal Metrology
 Govt. of India
 Deptt. Of Consumer Affairs
 Krishi Bhavan
 NEW DELHI – 110001</p> | <p>Opposite Party
 No.6</p> | <p>Respondent
 No.6</p> |
| <p>7) Dy. Director
 Legal Metrology
 Govt. of India
 Deptt. Of Consumer Affairs
 Regional Reference Standards
 Laboratory
 Khandagiri
 BHUBANESWAR. ORISSA</p> | <p>Opposite Party
 No.7</p> | <p>Respondent
 No.7</p> |

<p>8) Addl. Secretary Department of Consumer Affairs Ministry of Consumer Affairs & Public Distribution Krishi Bhavan NEW DELHI – 110001</p>	<p>Opposite Party No.8</p>	<p>Respondent No.8</p>
<p>Govt. of Orissa, represented by</p>		
<p>9) The Controller Legal Metrology Govt. of Orissa Food, Supplies & Consumer Welfare Department BHUBANESWAR</p>	<p>Opposite Party No.9</p>	<p>Respondent No.9</p>
<p>10) Secretary M/s R.W.C.C.S. Ltd. C/o SAHAYOG LPG (Indane) Distributor Big Shop No. 28, Big Market Sector-18 ROURKELA – 769003</p>	<p>Opposite Party No.10</p>	<p>Respondent No.10</p>

ALL ARE CONTESTING RESPONDENTS

**CIVIL APPEAL UNDER SECTION 23 OF THE CONSUMER
PROTECTION ACT**

To
The Hon'ble Chief Justice of India
And His Companion Judges of the
Supreme Court of India

The Civil Appeal of the Appellant above named MOST RESPECTFULLY
SHOWETH:

1. It is most respectfully submitted that this Civil Appeal is filed against the final judgment and order dated 16.08.2007, passed by the Hon'ble

National Consumer Disputes Redressal Commission (NCDRC), in Original Petition No. 224 OF 2001, whereby the prayer for awarding compensation as prescribed by Section 14(1)(hb) and 14(1)(d), of the Consumer Protection Act, was not allowed.

2. That this Civil Appeal has been necessitated for:
 - (i) upholding consumer interests across the country;
 - (ii) discouraging Trade & Industry from being insensitive to genuine consumer concerns;
 - (iii) making a beginning for the elimination of Unfair Trade Practices from this country;
 - (iv) strengthening the enforcement of provisions of law, which are being overlooked; and
 - (v) strengthening fair business practices and the consumer movement; and

raises the following important questions of law, for the consideration of this Honourable Court:

Questions of Law

- a) Whether The Consumer Protection (Amendment) Act, 2002 (62 of 2002), which was introduced with effect from 15.03.2003, is 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, is it not a fit case for the award of 'Punitive Damages', as provided in Section 14(1)(d) of the Consumer Protection Act ?

- c) When the Hon'ble National Consumer Disputes Redressal Commission concluded 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 Consumer Protection Act and awarded the penalties as provided therein (5% of the value of defective goods sold / services provided) ?
- d) When crores of consumers are affected across the country and suffered losses estimated at Rs. 750 crores per year, a voluntary organization espousing their cause and advocating for them relentlessly, should be given appropriate relief or not, as provided under Sections 14(1)(i) of the Consumer Protection Act?
- 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 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 Appellant, 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) If the Apex Consumer Court will not interpret the Act in favour of the consumers and the consumer organization, who else will?

3. The Appellant states that no other petition seeking leave to appeal has been filed by the Petitioner against the impugned final judgment and order dated 16.08.2007, passed by the Hon'ble National Consumer Disputes Redressal Commission, in Original Petition No. 224 OF 2001.

4. Brief facts of the Case

- (a) That the Appellant, Consumer Protection Council, Rourkela, a Voluntary Consumer Organisation, has been functioning since 1985. Through its committed work since inception, it endeared itself to the local population. The residents of the Rourkela Steel Township and the adjoining areas had so much of faith in the Petitioner that they freely visited the office on Sundays to share their problems and to utilize the 'Free' counseling on consumer issues.
- (b) The Appellant herein received a complaint from an "Indane" LPG consumer of Rourkela Steel Township, on 2.06.2000, that he had received a LPG refill which was 4 kg less than the stipulated weight.(14.2 kg). True Copy of this letter is filed herewith and marked as **ANNEXURE P.1** [Page No. 59].
- (c) For ascertaining whether the consumers were being supplied short-filled LPG refills, in general, as was exposed by the lone complainant referred to above, the Appellant organized a random survey of households, in the Rourkela Steel Township, through its volunteers. The first such Survey was conducted by the Appellant, between 14.06.2000 to 21.06.2000 covering 48 households, who

were consumers of *Indane* LPG, which is manufactured and marketed by the Respondent Company. The survey revealed that only 12.5% of the refill cylinders weighed were within the tolerance range of ± 150 gms. The consumers on an average were getting only 12.74 kg, losing on an average Rs. 24/- per refill cylinder, as per the price existing then, at Rourkela, Orissa.

- (d) On 22.06.2000, the Appellant wrote to Director, Legal Metrology, GOI (Respondent No. 6), Chairman, IOC (Respondent No. 1) and others, vide letter no. CP/IOC/108/2000-01, dated 22.06.2000, seeking their intervention to safeguard the interests of the consumers. True Copy of this letter is filed herewith and marked as **ANNEXURE P.2** [Page No. 60-61].
- (e) The Respondent Company wanted to participate in a Joint Survey, since they claimed that there was no problem in their Bottling Plant wherein the LPG is filled in the refill cylinders.
- (f) In consultation with Respondent No.5, a Joint Survey was planned commencing from 22.07.2000. This Second Survey was conducted by the Appellant, jointly with the Respondent No. 5. Mid-way through the Survey (after covering 18 households), Respondent Company's representative walked away. This survey revealed that only 22.2% of the *Indane* LPG refill cylinders conformed to the stipulated weight of 14.2 kg ± 150 gms. Thus the consumers on an average were receiving only 12.59 kg, losing about Rs. 25.50 per refill cylinder, as per the price existing then, at Rourkela. The Appellant thereafter

informed Respondent Nos. 6, 1, and others concerned, vide letter no. CP/IOC/143/2000-01, dated 01.08.2000. True Copy of this letter is filed herewith and marked as **ANNEXURE P.3** [Page No. 62-64].

- (g) On 26.08.2000, the then Secretary (presently the Chief Mentor) of the Appellant Council visited the LPG Bottling Plant, at Balasore, Orissa, of the Respondent Company, at the invitation of the Respondent Nos. 3, 4 & 5. There he studied the Carousel Machine and assessed the deficiencies in the existing systems of the LPG Bottling Plant.
- (h) On 30.08.2000, the Appellant informed Respondent No.6, Respondent No.1 and others, vide letter no. CP/IOC/179/2000-01, dated 30.08.2000, about the inherent shortcomings in the LPG bottling process, at Balasore and requested them to take appropriate action so that the consumers may get the right quantity of LPG, in the *Indane* refills. True Copy of this letter is filed herewith and marked as **ANNEXURE P.4** [Page No. 65-67].
- (i) On 8.11.2000, the Appellant raised the under-weighting of LPG refills, in the XX Meeting of the Central Consumer Protection Council, held at Vigyan Bhavan, New Delhi. The Appellant's plea made in the Meeting, was circulated in the Minutes, No. 2(8)/2000-CPU, dated 5th March, 2001, in paragraph 42.f. True copy of this relevant portion of the Minutes is filed herewith and marked as **ANNEXURE P.5** [Page No. 68-69].
- (j) After allowing six months, the Appellant conducted the Third Survey, between April to June 2001, covering 56

households consuming *Indane* LPG refills. The Survey revealed that while only 32.1% of the refills had the requisite LPG, the consumers on an average were getting 0.54 kg less per refill, losing on an average Rs. 10/- per cylinder, as per the price existing then (Rs. 253/- per refill), at Rourkela, Orissa.. Total estimated loss to the consumers in the whole country was Rs. 750 crores per year. True copies of two sample letters, of the 56 nos. received have been filed herewith and marked as **ANNEXURE P.6** [Page No. 70]

- (k) On 20.07.2001, the Appellant sought the intervention of the Hon'ble National Consumer Disputes Redressal Commission (NCDRC), to safeguard 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 Appellant, so that it may spend the money for Consumer Protection activities. True Copy of the Complaint Petition is filed herewith and marked as **ANNEXURE P.7** [Page No. 71-99].
- (l) On 04.12.2002, through an Order, the Hon'ble National Consumer Disputes Redressal 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". True Copy of this Order is filed herewith and marked as **ANNEXURE P.8** [Page No. 100-101].

- (m) The Consumer Protection (Amendment) Act (62 of 2002) became effective on 15.03.2003. Some of the sub-sections introduced were relevant to the instant case.

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 was to sec. 14(1)(d), which 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 that *“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.”*

The relevant amendments, referred to above have been filed herewith and marked as **ANNEXURE P.9** [Page No. 102-103]

- (n) On 23.06.2003, Professors of IIT, Kharagpur, visited the LPG Bottling Plant, at Balasore, made their study and collected the data.
- (o) Report was submitted by the Professors of IIT, Kharagpur and a copy of this Report was made available to the Appellant and Respondents, by the Hon'ble National

Consumer Disputes Redressal Commission, on 25.07.2003. The Report concluded that the Plant (carousel and its accessories) cannot bottle the correct weight of LPG at its normal production rate. True Copy of this Report is filed herewith and marked as **ANNEXURE P.10** [Page No. 104-117].

- (p) On 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. True Copy of this advertisement is filed herewith and marked as **ANNEXURE P.11** [Page No. 118].
- (q) On 05.09.2003, Respondent No. 6 informed a consumer activist, vide letter no. WM 26(1)/2003-pt, that the machines used for filling LPG at bottling plants needed improvement and the present procedure needed to be automated, similar to the suggestions put forward by the Appellant in 2000 itself. True copy of this letter is filed herewith and marked as **ANNEXURE P.12** [Page No. 119].
- (r) On 11.09.2003, Respondent No. 8 constituted a Committee to identify problems relating to short filling of LPG in domestic cylinders and to suggest suitable remedial measures. Appellant Council was also nominated in this Committee. True Copy of this Order is filed herewith and marked as **ANNEXURE P.13** [Page No. 120].

- (s) On 12.09.2003, Hon'ble National Consumer Disputes Redressal Commission, awarded a payment of Rs. 7,500/- to the Appellant, by the Respondent No.1, as cost towards adjournment. True Copy of this Order is filed herewith and marked as **ANNEXURE P.14** [Page No. 121].
- (t) On 29.01.2004, Hon'ble National Consumer Disputes Redressal Commission heard the Appellant's Reply to the objections, on the Report of Experts of IIT, Kharagpur, filed by the Respondent Company and directed the Appellant to file its Consolidated Submissions.
- (u) On 05.03.2004, Government of India amended the Consumer Protection Rules, and introduced Rule 10A, to Credit the fine awarded under sec. 14(1)(hb), when the consumers are not identified conveniently, into the Consumer Welfare Fund. The relevant amendment, referred to herein has been filed herewith and marked as **ANNEXURE P.15** [Page No. 122].
- (v) On 03.04.2004, the Appellant 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 Appellant

therefore prayed for award of 5% of the loss suffered by the consumers, in a year (Rs. 750 crores). True copy of the Supplementary Petition with Consolidated Submissions is filed herewith and marked as **ANNEXURE P.16** [Page No. 123-136].

(w) On 04.02.2005, 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 Appellant had made similar observations, after visiting the LPG Bottling Plant, at Balasore, Orissa (**ANNEXURE P.4**). True copy of this Report is filed herewith and marked as **ANNEXURE P.17** [Page No. 137-145].

(x) On 19.10.2005, Hon'ble National Consumer Disputes Redressal Commission directed the Respondent Company to issue advertisement in the pattern done by *M/s Hindustan Petroleum* and should 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 presence of the consumers. The said directions were to become effective from 01.11.2005. True Copy of this Order is filed herewith and marked as **ANNEXURE P.18** [Page No. 146-148]. The Commission also directed the Registry to issue notices to the Ministry of Petroleum &

Natural Gas, Government of India, through the Secretary, to decide the issues raised in the complaint effectively.

- (y) On 11.04.2006, the Appellant through an 'Affidavit' brought to the notice of Hon'ble National Consumer Disputes Redressal Commission that the Respondent Company had not adhered to the directives of the Commission, issued on 19.10.2005. True Copy of the Affidavit is filed herewith and marked as **ANNEXURE P.19** [Page No. 149-161].
- (z) On 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. True Copy of the Affidavit is filed herewith and marked as **ANNEXURE P.20** [Page No. 162-163] and a copy of the advertisement is marked as **ANNEXURE P.21** [Page No. 164].
- (aa) On 13.09.2006, Hon'ble National Consumer Disputes Redressal Commission took cognizance of the lapses, on the part of Respondent Company and again directed it to file compliance. True Copy of this Order is filed herewith and marked as **ANNEXURE P.22** [Page No. 165-167].
- (bb) On 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. It was further 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. True Copy of the Affidavit is filed herewith and marked as **ANNEXURE P.23** [Page No. 168-172].

(cc) On 07.02.2007, Hon'ble National Consumer Disputes Redressal Commission once again took cognizance of the non-compliance of its orders, with respect to insertion of advertisements and pre-delivery checking of weighment and directed Respondent No.1 to file an affidavit, as to why earlier direction made on 13.9.2006 was not complied with, in all States. True Copy of this Order is filed herewith and marked as **ANNEXURE P.24** [Page No. 173-174].

(dd) On 16.08.2007, the Hon'ble National Consumer Disputes Redressal Commission passed its final Judgment/Order. The Hon'ble Commission appreciated the good work done by the Appellant 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, **ANNEXURE P.14**, 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 errors in the Order, relating to:

(i) Summary Report of the Professors of IIT, Kharagpur;

(ii) failure 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) rejecting the pleadings of the Appellant 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 to it;

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

(ee) On 22.09.2007, well within the Period of Limitation, the Appellant, as provided under Section 22(2) of the Consumer Protection Act, sought Review of the Order, before the Hon'ble National Consumer Disputes Redressal Commission, for rectification of the mistakes, vide Miscellaneous Application No. 257 OF 2007.

(ff) On 25.11.2009, the Appellant computed the total value of under-filled (defective) refills, sold to the consumers, as Rs. 65,764 crores. Thus a minimum sum of Rs. 3,288 crores becomes payable to the Consumer Welfare Fund, as per sec. 14(1)(hb). Details have been furnished in the attached Tables, which are filed herewith and marked as **ANNEXURE P.25** [Page No. 175-179].

(gg) On 29.07.2010, Hon'ble National Consumer Disputes Redressal Commission passed the Order dismissing the

Review, stating that as per Sec. 22(2) it cannot examine the case in detail.

5. Aggrieved by the impugned final judgment and order dated 16.08.2007, passed by the Hon'ble National Consumer Disputes Redressal Commission, in Original Petition No. 224 OF 2001, the Appellant is filing this Civil Appeal on following grounds among other:

GROUND

- (i) The order of the National Commission (NCDRC) is contrary to law.
- (ii) That the amendments to Consumer Protection Act (62 of 2002) came into effect from 15.03.2003. Several sub-sections were inserted through those amendments (Sections 14(1)(d), 14(1)(hb), 14(1)(i) and 22(2), relevant to the instant case, have been reproduced in **ANNEXURE P.9**). The consumers continued to suffer loss even in 2004, as the interim order of the Commission below was passed in October 2005 (**ANNEXURE P.18**), as prayed for by the Appellant (Prayer (b) – **ANNEXURE P.7**) for pre-delivery checking of the weight of the refill cylinder, at the doorstep of the household. But these relevant sections of the Consumer Protection Act introduced to act as a deterrent to those who indulge in Unfair Trade Practices affecting large number of consumers were not invoked, in spite of the Appellant repeatedly bringing these points of law to the consideration of the Commission below.
- (iii) Consolidated written Submissions of the Appellant, was filed on 03.04.2004 (**ANNEXURE P.16**), as was directed by the Commission below, on 29.01.2004. In those Submissions, the Petitioner citing the newly introduced sub-Sections of the Consumer Protection Act prayed

for payment of 5% of the amount unduly collected from the consumers through under-weighment, to it so that it may utilize the same for taking up more consumer protection activities. This important prayer was neither mentioned in the order of the Commission below, nor the reasons were given for not granting the relief as was sought, in the order dated 16.08.2007.

(iv) That as per section 14(1)(hb): “*to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:*

Provided that the minimum amount of sum so payable shall not be less than five per cent of the value of such defective goods sold or services provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;”

The order of the Commission below, made on 19.10.2005, directing the Respondent Company to start making pre-delivery checking of LPG refills at the doorstep of the households and to advertise widely in the media, in the pattern of Hindustan Petroleum (ANNEXURE P.18), clearly shows that it had concluded that a large number of consumers had been suffering loss. Even after concluding so, it avoided providing relief, as envisaged in section 14(1)(hb) of the Act.

(v) That as per Sec. 14(1)(hb) of the CP Act, if the Forum determines that loss or injury had been suffered by a large number of consumers who are not identifiable conveniently, a minimum of 5% of the value of such defective goods sold or services provided, as the case may be, to such consumers and that amount as per Rule 10A of the Consumer Protection Rules (ANNEXURE P.15) should be credited to the Consumer Welfare Fund. To facilitate calculation of this amount, the

Appellant estimated this amount from the website of Ministry of Petroleum & Natural Gas and submitted the same to the Commission below. The total value of under-filled (defective) refills, sold to the consumers, was Rs. 65,764 crores. It was further stated in the Petition that a minimum sum of Rs. 3,288 crores becomes payable to the Consumer Welfare Fund, as per sec. 14(1)(hb) (**ANNEXURE P.25**). But the Commission failed to take notice of the submissions.

(vi) That commencing from June 2000, the Appellant had been impressing upon the Respondent Company about the under-filled *Indane* LPG refills and the loss suffered by the consumers (**ANNEXURES P.2, P.3, P.4, P.5**). Since the Respondents were not responding to rectify the defects in their LPG Bottling Plants, the Appellant, who had no financial muscle but the zeal to fight against the Unfair Trade Practice, filed and sustained the Original Petition, against all odds, since 20.07.2001. Even the Public Interest Class Petition did not make the Respondents to act. The Professors of IIT, Kharagpur, submitted their Report on 25.07.2003 and unequivocally concluded that the Bottling Plant and its systems were incapable of delivering the stipulated weight of 14.2 ± 0.15 kg. That also did not move the Respondents. One of the Oil Marketing Companies, Hindustan Petroleum, introduced pre-delivery checking of weight of LPG refills, at the doorstep of the households (**ANNEXURE P.11**) and gave widespread media publicity during 2003. That also did not prompt the Respondent Company into any action to safeguard the consumer interests. The Committee constituted by Respondent No. 8, came out with its findings in a Report in Feb. 2005. That Report also noted the existing LPG Bottling Plants were not capable of delivering the correct weight due to shortcomings in the tare neutralization system. That also did not make the Respondent Company to act. Even the directive of the Commission below on 19.10.2005 was ignored by the Respondent Company till 2007 (**ANNEXURES P.20, P.22, P.24**).

The inexplicable indifference to the consumer welfare for such a long duration has been overlooked and the Commission below was unwilling to invoke the provisions of section 14(1)(d) of the Consumer Protection Act and award ‘*punitive damages*’.

- (vii) The preamble to Consumer Protection Act says that it as “*An Act to provide better protection of the interests of consumers*”. Keeping this philosophy in view, several judgments have reiterated the point that the Act should be interpreted in favour of the consumer. In *Lucknow Development Authority vs. M.K.Gupta*, AIR 1994 SC 787, this Hon’ble Court observed: “*The provisions of the Act thus have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit oriented legislation. The primary duty of the court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to attempted objective of the enactment.*”

In *Charan Singh vs. Healing Touch Hospital & Ors.*, Civil Appeal No. 767 of 2000, AIR 2000 SC 3138, this Hon’ble Court stressed the need for writing a reasoned judgment. It said: “*Consumer Protection Act is one of the benevolent pieces of legislation intended to protect a large body of consumers from exploitation. The Act provides for an alternative system of consumer justice by summary trial. The authorities under the Act exercise quasi judicial powers for redressal of consumer disputes and it is one of the postulates of such a body that it should arrive at a conclusion based on reason. The necessity to provide reasons, howsoever brief, in support of its conclusion by such a forum, is too obvious to be reiterated and needs no emphasising. Obligation to give reasons not only introduces clarity but it also excludes, or at any rate minimizes, the chances of arbitrariness and the higher forum can test the*

correctness of those reasons.” Similar views were expressed in *Omar Usman Chamadia vs Abdul and Anr. (JT 2004 (2) SC 176)*. In the impugned Order, against which this Appeal has been made, neither the facilitating provisions of the Act for protecting the consumer interests have been invoked, nor the reasons for not doing so have been elucidated.

- (viii) The public apathy in this country necessitates the consumer organisations to look upon the government or funding agencies for their sustenance. Though there are several instances in which an individual consumer suffers a loss, because of the quantum of loss at the individual level being low and since majority of them do not have the technical expertise to pursue the matter, the government expected the consumer organisations to fill the void. It was probably because of this ground reality and also to encourage voluntary consumer organisations to file Public Interest Cases, affecting large number of consumers, the Consumer Protection Act was amended in 2003 and section 14(1)(hb) was introduced. Unfortunately the legal mandate had been ignored and the order of the National Commission simply did not mention anything about the vital prayer of the Council, neither in the 28 pages discussion, nor in the operative part of the judgment. Only in the introductory part of its Order, it did make a mention that the Council had prayed for 1% of the loss suffered by the consumers in a year, quantified at Rs. 750 crores. Should the Unfair Trade Practices flourish in this country? Even when a voluntary consumer organization, with all its limitations, brought forward precisely the shortcomings in the system, the loss suffered by the consumers across the country and also provided a workable solution which was ultimately accepted and implemented, should it be denied its dues, in spite of the legal mandate?

6. MAIN PRAYER

It is therefore, most respectfully prayed that your lordships may graciously be pleased to:

- a) allow this appeal against the order of the Hon'ble National Consumer Disputes Redressal Commission, in Original Petition No. 224 OF 2001;
- b) to pass any other or further order(s) which Your Lordships may deem fit and proper in the facts and circumstances of the instant case.

AND FOR THIS ACT OF KINDNESS THE APPELLANT AS IS DUTY BOUND SHALL EVER PRAY.

DRAWN AND FILED BY

NEW DELHI
Filed on: 27.08.2010

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