IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6375 of 2019

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LPG Vitrak Association (Bihar), an Assoication registerd under Society Registration Act, 1860 vide Registration No. 595/15-16 having its Office at Indira Nagar, Road NO. 1, Postal Park, P.O.- GPO, Dist.- Patna, Bihar-800001 through their Secretary Mr. Rakesh Kumar aged about 44 years, S/o Shivji Singh, Male, R/o Village and P.O.- Beriya, P.S.- Gopalpur, District-Patna, Bihar.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Minister of Petroleum and Natural Gas, Govt. of India, Shastri Bhawan, New Delhi- 110001.
2. The Chairman, Indian Oil Corporation Ltd., 3079/03 J.B. Tito Marg, Sadique Nagar, New Delhi- 110048.
3. The Executive Director, Indian Oil Corporation Limited (Marketing Division), Eastern Region Office, Regional Contract Cell, Indian Oil Bhavan,2 Gariahat Road (South), Dhakuria, Kolkata- 700068.
4. The Executive Director (LPG), Indian Oil Corporation Ltd., Registered Office- 5th Floor, Loknayak Jaiprakash Narayan Bhawan, Dakbunglow Road, Patna.- 800001.
5. The Dy. General Manager (LPG), Bihar State office, Indian Oil Corporation Ltd., Lok Nayak Jai Prakash Bhawan, 5th Floor, Dak Bungalow Chowk, Frazer Road, Patna- 800001.
6. The Chairman, Bharat Petroleum Corporation Ltd., having its registered office at Bharat Bhawan, 4 and 6 Currimbhoy Road, Ballard Estate, Post Box No. 688, Mumbai- 400001.
7. The General Manager, Bharat Petroleum Corporation Ltd., having its registered office at Bharat Bhawan, 4 and 6, Currimbhoy Road, Ballard Estate, Post Box No. 688, Mumbai- 400001.
8. Area Markeing Manager, Bharat Petroleum Corporation Ltd. 3rd Floor, Ashiana Chamber, Exhibition Road, Patna, Bihar- 800001.
9. The Chairman-cum-Managing Director, Hindustan Petroleum Corporation Ltd., 17, Jamshedji Tata Road, Mumbai- 400020.
10. The Senior Regional Manager, Hindustan Petroleum Corporation Ltd., Patna LPG Regional Office, 6th Floor, Lok Nayak Jai Prakash Bhawan, Dak Bunglow Chowk, Patna.
11. Suraj Kumar, Son of Shri Janardan Singh, Resident of Village- Indira Nagar, Atardih Mushahari, P.S. Sadar, District- Muzaffarpur, Proprietor, Shambhupur Indane Gramin Vitrak, At Shambhupur Kuari, Bhagwanpur, District- Vaishali.
12. Smita Kumari, Wife of Rajeev Kumar Singh, Residing at Deep Niwash, Near Manash Apartment, P.O. Rajendra Nagar, P.S. Kadamkuan, District-Patna, Proprietor of M/s. Vinayak Bharat Gas Gramin Vitrak, Bakhra, Saraiya, District- Muzaffarpur.
13. Rajeev Kumar, Son of Ram Chandra Chaudhary, Resident of Village-

Siwaisinghpur, P.O. Siwaisinghpur, P.S. Mohiuddin Nagar, District- Samastipur, Partner of M/s. Ram Chandra Indane, Kashipur, Samastipur Town, District- Samastipur.

14. Basuki Nath Son of Ram lakhan Rai, Resident of House No. 14/310, Road No. 14A, Ashok Nagar, P.O. Lohia Nagar, P.S. Kankarbagh, District- Patna, Proprietor of M/s. Basuki Bharat Gas Gramin Vitrak, Sahtha, Bhagwanpur, District- Vaishali.

15. Kumari Shubhangini, Wife of Mukesh Kumar, Resident of Yogendra Sadan, House No. B/8 3773/2855, West Ashok Nagar, P.O. Lohia Nagar, P.S. Kankarbagh, District- Patna. Proprietor of M/s. Shakun H.P. Gas, Kadirganj, District- Nawada.

16. Chandan Kumar, Son of Lakhindra Prasad Yadav, At and P.O.- Chhitrauli, P.S. Maniyari, District- Muzaffarpur, Proprietor of M/s. H.P. Gas Gramin Vitrak, At Chak Pahar District- Samastipur.

17. Surbhi Kumari, Wife of Nehal Kumar Gunti No. 03, Brahampura, Kushwana Kunj, Rahul Nagar, Mlt, Muzaffarpur Nehal Kumar, Son of Prabhu Prasad, Kushwaha Kunj, Brahmpura, MIT, Muzaffarpur, Partner of M/s. Nageena Indane Gramin Vitrak, Turki, Block Kurhani, District- Muzaffarpur.

18. Kanta Kumari, D/o Gaya Prasad Chaudhary, Wife of Sri Shambhu Prasad Chaudhary, Resident of At and P.O. Mahnar, P.S. Mahnar,District- Vaishali, Proprietor of M/s. Atharva Indane Gramin Vitrak, At Jhakhara, District- Samastipur.

19. Sonam Kumari, Wife of Sushil Kumar Resident of Village- Chirai, Block- Purnahiya, District- Sheohar, Proprietor of M/s. Samyak Indane Gramin Vitrak, Bakhar Chandiha, Purnahiya, District- Sheohar.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 14607 of 2019

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1. Badal Kumar Nag S/o Bindhu Bhushan Nag, R/o Road No.3 A, Bajrangpuri, Shahid Bhagat Singh Lane, Bairia,Patna-800007

2. Sanjiv Goswami S/o Kedar Lal Goswami R/o Rithi Gali,Gur Kie Mandi,Arfabad,Patna City,Patna,Bihar-800007

3. Sujit Kumar Paswan S/o Ram Babu Paswan R/o Bajrangpuri,Shahid Bhagat Singh Lane,Bairia,Patna City,Patna-800007

4. Indu Devi W/o Deo Kumar Vidyarthi, R/o B.H. Colony,Bhootnath Road,Patna,Bihar

5. Amitesh Kumar nag, S/o Badal Kumar Nag R/o Road No.3 A, Barjangpuri,Shahid Bhagat Singh Lane,Bairia,Patna-800007

... ... Petitioner/s

Versus

1. The Union of India Ministry of Petroleum and Natural Gas Govt. of India,Shastri Bhawan,New Delhi-110001

2. The Chairman, Oil Corporation Ltd.3079/03 J.B. Tito Marg,Sadique Nagar,New Delhi-110048
3. The Executive Director(LPG), Indian Oil Corporation Ltd. Registered Office-5th Floor,Loknayak Jaiprakash Narayan Bhawan,Dakbunglow Road,Patna-800001
4. The Chairman,Bhatat Petroleum Corporation Ltd., having its registered office at Bharat Bhawan, 4 and 6, Currimbhoy Road,Ballard Estate, Post Box No.688, Mumbai-400001
5. Area Marketing Manager, Bharat Petroleum Corporation Ltd. 3rd. Floor Ashiana Chamber,Exhibition Road,Patna,Bihar-800001
6. The Chairman-cum-Managing Director, Hindustan Petroleum Corporation Ltd. 17,Jamshedji Tata Road,Mumbai-400020
7. The Senior Regional Manager, Hindustan Petroleum Corporation Ltd.Patna LPG Regional Office 6th.Floor,Lok Nayak Jai Prakash Bhawan,Dak Bunglow Chowk,Patna

... ... Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 6375 of 2019)

For the Petitioner/s	:	Mr. P. N. Shahi, Sr.Adv.
		Mr. R.B. Singhal, Sr.Adv.
		Mr. Puneet Siddhartha, Adv.
		Mr. Sandeep Sahi, Adv.
		Mr. R.K.Singh, Adv.
		Mr. Aryan Sinha, Adv.
For BPCL	:	Mr. Siddhartha Prasad, Adv.
		Mr. Prakash Kumar, Adv.
		Mrs. Charchika, Adv.
For IOCL	:	Mr. K.D. Chattergee, Sr.Adv.
		Mr. Amlesh Kumar Verma, Adv.
		Mr. Ankit Katriar, Adv.
For HPCL	:	Mr. Sanjay Kumar Mishra, Adv.
For Intervenor	:	Mr. P.K. Shahi, Sr.Adv.
		Mr. Sanjeev Kumar, Adv.
For UOI	:	Mrs. Kanak Verma, Adv.

(In Civil Writ Jurisdiction Case No. 14607 of 2019)

For the Petitioner/s	:	Mr.Tej Pratap Singh
For the Respondent/s	:	Mr.Siddhartha Prasad

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 16-09-2019

These two writ applications involve common questions for consideration and as such on the prayer of learned counsel for the parties both the writ applications have been heard together.

2. Mr. R.B. Singhal, learned senior counsel has represented the petitioner in CWJC No.14607 of 2019 and his statement has been recorded in the order dated 24.07.2019 saying that the said writ application required no separate pleadings and it may be disposed off with the first case on the basis of the pleadings available on the record of the said case.

3. Petitioner in CWJC No.6375 of 2019 is LPG Vitrak Association is said to be a Registered Association of the LPG Distributors under the Society Registration Act, 1860. The petitioners have belatedly in order to fill up the deficiency filed supplementary affidavit giving the name of the members of the Association and separate court fees have been paid on their behalf. The petitioner while filing the writ application no.6375 of 2019 prayed for the following reliefs:-

> *"(A) A writ in the nature of Certiorari or any other appropriate writ/s, order/s direction/s quashing the following:*
> *(i) The Guidelines for Inter Company Transfer of Connections dated 30.11.2018 (hereinafter referred to as 'impugned guidelines') issued by Respondent No.2 to 10, wherein, the customers of the LPG Distributors are being transferred to other LPG Distributors without any show cause or chance of hearing and without taking into consideration the huge investments made by the LPG Distributors for enrolling their hard earned customers and forming a goodwill in the market.*
> *(B) A writ in the nature of mandamus or any other appropriate writ/s, order/s direction/s for the following reliefs:*

(i) To call for all the records of Guidelines for Inter Company Transfer of Connections dated 30.11.2018, showing the procedure followed by the Respondent authorities for framing of such guidelines.
(ii) To restrain the respondent authorities from giving effect to the Guidelines for Inter Company Transfer of Connections dated 30.11.2018, till disposal of the instant case.
(C) To any other relief/s to which the petitioner is found entitled to."

4. During the pendency of the writ application by filing I.A. No.2 of 2019 some newly appointed non-viable LPG Distributors of Oil Companies prayed for their impleadment on the ground that quashment of the guidelines for Inter Company Transfer of connections dated 30.11.2018 issued by the respondent Oil Corporations would adversely affect their interest, hence they should be heard.

5. I.A. No.2 of 2019 was allowed and the intervenors have been added as party respondent nos.11 to 19.

6. Writ petitioner has filed I.A. No.3 of 2019 for amendment of the writ application. In the I.A. the petitioner has raised some more grounds and prayed for allowing amendments in paragraph 1 of the writ application by adding one prayer no.1(A) (ii) in the following terms:-

"(ii) To quash Clause 1.b.(iii) and 1.b.(iv) of the Distributorship Agreement entered between Respondent Corporation and LPG Distributors being illegal, contradictory to other clauses of the

Agreement, oppressive, arbitrary and ultra vires the Agreement as well the Constitution of India."

7. Parties have made their respective submissions. Mr. P.N. Shahi, learned senior counsel, Mr. R.B. Singhal, learned senior counsel and Mr. Sandeep Kumar, learned counsel assisted by learned advocates on record have argued for the petitioner in both the writ applications whereas Mr. K.D. Chatterjee, learned senior counsel assisted by Mr. Siddhartha Prasad and Ankit Katriar, learned advocates have defended the Oil Companies. Mr. P.K. Shahi, learned senior counsel assisted by Mr. Sanjay Kumar, learned advocate has led the argument on behalf of the intervenor-respondents. Mrs. Kanak Verma, learned advocate has appeared on behalf of the Union of India.

8. It is the case of the petitioner in CWJC No.6375 of 2019 that the LPG Distributors connected with the Oil Manufacturing Companies (OMCs) are being deprived of their hard earned customers whom they have enrolled by virtue of their hard work and investments for several years. They have relied upon the verbal instructions and written directions which are said to be in form of promises made by OMCs. In this connection, reliance has been placed on Annexure-2 and Annexure-7 to the writ application to submit that in terms of clause 16 of Annexure-2 which is Indane (Liquefied Petroleum Gas) Distributorship

(Domestic & Commercial) Agreement it is the Distributor who shall at his own cost maintain adequate trained and competent staff, to do installation work and for connecting appliances to cylinders. The Distributor has been made responsible to bear all expenses of and in connection with the business including administration, office, insurance premium, showroom, telephone, transport, storage, rents and outgoing of every kind connected with the said business. Referring to Annexure-7, it is contended that the distributors were being motivated to win over the customers so that you win over the customers and they remain with you, come what may. It is submitted that the guidelines dated 30.11.2018 has given rise to confusion among the LPG distributors and their consumers as they are facing troubles due to transfer of their connections without their consent.

9. It is submitted that the LPG distributors have made huge investments regularly by way of enhancing their infrastructure , focus on new connections, increase sales by giving wide publicity through audio/video publicity, compete aggressively with other OMC's for getting new customers in large numbers, employing additional manpower and also raising the infrastructure requirement, purchasing more delivery vehicles, upgrade their offices with latest technologies by way of

computerization and make extra counters for customers etc. It is submitted that the Hindustan Petroleum Corporation Limited has regularly entered into yearly Memorandum of Association (MOU) with their LPG distributors by way of giving targets to them to be achieved and such targets have been increased from time to time. Cost of the infrastructure required for increasing the sales are to be duly borne by the LPG distributors themselves. Annexure-5 and 6 to the writ applications have been referred showing that the Indian Oil Corporation had also been issuing instructions for increasing the sales growth by 20% by way of enrolling more customers etc. To abide by these instructions the LPG distributors, it is submitted, brought more money in business and provided adequate facilities by bearing the cost thereof from their own resources.

10. The petitioner has relied upon Annexure-11 to the writ application which is an interim order passed by the Hon'ble Bombay High Court in Writ Petition No.8753 of 2018 wherein vide order dated 11.09.2018 the Hon'ble Division Bench have been pleased to stay the similar policy contained in circular dated 04.01.2018 on the principle of Promissory Estoppel.

11. In course of argument emphasis has also been given on the submission that no consideration to the choice of customers of LPG distributors who are to be transferred has been given. It is

submitted that the customers are to be transferred without their consent or approval. Thus, the terms of the impugned guidelines are absolutely arbitrary, against public interest, unreasonable, unworkable and have been made with malafide intentions.

12. By way of examples it has been provided that about 5600 customers of M/s Indraprabha, Mithapur, Patna have been transferred to M/s Patligram, Ramkrishna Nagar, Patna and about 2000 customers of M/s Jyotikalash, Gaighat, Patna have been transferred to M/s Anupma Indane, Chotipahadi, Patna. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Ramana Dayaram Shetty Vs. International Airport Authority of India and Ors**. reported in **(1979) 3 SCC 489** with special reference to the observations made in paragraph 12 of the said judgment. Reliance has also been placed on the judgment of the Hon'ble Apex Court in the case of **M/s Motilal Padampat Sugar Mills Company Ltd. Vs. State of Uttar Pradesh & Ors.** reported in **(1979) 2 SCC 409** wherein it has been held if the State or instrumentality of the State makes a promise to a citizen and on basis of the said promise, if the citizen has changed his position to his detriment then in such situation State or instrumentality would not be permitted to resile from the promise so made. Paragraphs 22, 23, 24 and 33 of the judgment have been relied upon. The

other judgments relied upon are that of the Hon'ble Supreme Court in the case of **Delhi Cloth & General Mills Ltd. Vs. Union of India** reported in **(1988) 1 SCC 86**, **Union of India Vs. Godfrey Phillips India Ltd.** reported in **(1985) 4 SCC 369**, **Kasinka Trading and Anr. Vs. Union of India** reported in **(1995) 1 SCC 274**. All these judgments have discussed the doctrine of promissory estoppel and the crux thereof is that the doctrine of promissory estoppel or equitable estoppel is well established principles in administrative law and it represents a principle evolved by equity to avoid injustice. It is submitted that where a party to contract has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct and the other party acted upon on the basis of the said promise, assurance or representation and has altered his position to his detriment or promise, the party on whose promise the other party has changed his position should not be permitted to go back as it would be inequitable to allow him to do so having regard to the dealing between the parties.

13. The petitioner has also pleaded the principles of legitimate expectation and principles of wednesbury unreasonableness. In this connection, reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of

Navjyoti Corporation Group Housing Society Vs. Union of India reported in **(1992) 4 SCC 477** wherein the Hon'ble Supreme Court has been pleased to hold that the existence of legitimate expectation may have different consequences and one of that would be that the authority ought not act to defeat the principle of legitimate expectation and it has been further indicated that the doctrine of legitimate expectation imposes an essence of duty on public authority to act fairly taking into consideration of all relevant fats. It is submitted that in the case of **Union of India Vs. G. Ganayuthum** reported in **(1997) 7 SCC 463** and **Tata Cellular Vs. Union of India** reported in **(1994) 6 SCC 651**, the Hon'ble Supreme Court extensively discussed the law relating to wednesbury unreasonableness and proportionality in England and held that wednesbury unreasonableness will be guiding principle in India and the government decisions are not only be tested on principles of wednesbury unreasonableness but must be free from arbitrariness not affected by malafide.

14. It is contended that under the guidelines the list of transfer of consumers is prepared at the discretion of the Field Officer who has been given an arbitrary power to find customers and area which are to be put under the ambit of inter-company restructuring. No opportunity or scope to dispute the findings or

actions of Field Officer has either been provided to the LPG distributors or the consumers. Thus, it is contended that the method of transfer of consumers is against the principles of natural justice. Lastly it is submitted that even if the thought behind reaching and providing LPG cylinders to every home is very noble, but the way new LPG distributorship were opened without analyzing the market requirements, the policy of opening LPG distributorship has miserably failed because there is no such requirement of so many extra LPG distributorship and in no case customers choice to remain with the good performing LPG distributorship in comparison to non-performing and non-viable LPG distributorship may be allowed to be taken away.

15. The new LPG distributorship, according to petitioner, has to be opened on the basis and conditions mentioned in "Unified Guidelines for Selection of LPG Distributorship 2016". Clause 2 i.e. Identification of Locations duly stipulates the conditions. Criteria for the same are; 2.1 says that Location for setting up of LPG distributorship will be initiated based on available refill sale potential that can sustain economically viable operation of LPG distributorship. In terms of clause 2.2 the refill sale potential will be based on several factors including

population, population growth rate, economic prosperity of the location and the distance from the existing nearest distributor.

16. It is submitted that the OMCs have gone ahead to open huge number of LPG distributorship and on failure to implement the same, now they have come up with the impugned guidelines.

17. The petitioner(s) have attempted to assail certain clauses under the agreement such as clause 1.b(iii) and 1.b.(iv) which according to them are in conflict with other clauses in the agreement and those are completely arbitrary, unjust, unequal, oppressive, excessive and overriding other clauses of agreement. These are clauses on which the respondent Corporation are relying to justify their action of transferring the customers. It is submitted that these clauses are violative of Article 14 and 19(1)(g) of the Constitution of India. The petitioner(s) rely upon the judgment of the Hon'ble Supreme Court in the case of **Saghir Ahmad Vs. State of U.P.** reported in **AIR 1954 SC 728, M.C. Mehta Vs. Union of India** reported in **(1987) 1 SCC 395** and **Central Inland Water Transport Corporation Ltd. Vs. Brojo Nath Ganguly and Another** reported in **(1986) 3 SCC 156** to contend that the OMCs being in a stronger position to introduce conditions of their choice cannot be permitted to push the petitioner(s) who are

weaker to the wall. It is submitted that following these principles, this Court would not allow the respondent OMCs to enforce the unfair and unreasonable clauses of the contract entered into between the parties because the petitioner(s) were not equally in bargaining power.

CWJC No.14607 of 2019

18. The petitioners are customers of M/s Jyoti Kalash i.e. LPG distributorship for Indian Oil Corporation Ltd. They claim that after due diligence and analysis of the goodwill of LPG Distributors, the petitioners enrolled themselves as customer of M/s Jyoti Kalash, Gaighat, Patna. In their application form they have not given any mandate to shift them by way of such transfer to another LPG distributor but without taking prior consent of the customers they are being transferred to other non-performing or non-viable LPG distributor. Relying upon the judgment of the Hon'ble Supreme Court in the case of **LIC of India and Another Vs. Consumer Education & Research Centre and Others** reported in **(1995) 5 SCC 482** it has been contended that action of the respondent OMCs in the present case is not taking care of public interest inasmuch as they have chosen to put a customer in the transfer list without seeking his consent and a customer would come to know about his transfer of distributorship to another

agency only after he stands transferred. The paragraph 23 and 27 of the judgment in the case of **LIC of India** (supra) have been referred to and it is submitted that the respondent OMCs should act being guided by public interest.

<u>Stand of the Respondent OMCs</u>

19. A written notes of argument has been filed on behalf of the respondent nos.2 to 5 (Indian Oil Corporation). It is their submission that that the writ applications are not fit to be entertained within the scope of judicial review under Article 226 of the Constitution of India as applicable in commercial matters. It is submitted that the limited grounds on which the Courts interference may be attracted are totally absent and further that the policy is reasonable and benevolent and does not suffer from vice that would render the policy unconstitutional. Relying upon the judgment of the Hon'ble Apex Court in the case of **Michigan Rubber (India) Ltd. Vs. The State of Karnataka** reported in **(2012) 8 SCC 216** (paragraph 24) and in the case of **Jagdish Mandal Vs. The State of Orissa** reported in **(2007) 14 SCC 517** learned senior counsel representing the Indian Oil Corporation has submitted that neither the process adopted nor decision made by the authority is malafide or intended to favour someone. It cannot be either said to be arbitrary and irrational so as to Court can

conclude that “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.” It is further contended that the policy in question is not even affecting the public interest. Learned senior counsel has further argued that in view of the judgment of the Hon’ble Supreme Court in the case of **Air India Vs. Cochin International Airport** reported in **(2000) 2 SCC 617** no interference of this Court is required merely on the making out of a legal point unless the Court finds it in public interest to interfere. In his submissions the materials on record do not disclose that the petitioners have come out with a case of judicial interference in policy matters. On contrary, according to learned senior counsel for the respondent nos.2 to 5 the public interest lies in favour of the implementation of the impugned policy which is aimed at extending 100% coverage of LPG to households across the country. This policy to extend 100% coverage of LPG to households has been sought to be achieved by extending the policy as ‘restructuring’ i.e. transfer of surplus customers (above 75% of the prescribed ceiling limit) of an existing distributor to a newly commissioned distributor to enable the latter to reach at 50% of the ceiling limit.

20. It is submitted that the policy of restructuring (transfer of customers) has been in vogue since long, but as under

the policy existing then, it was applicable to intra-company transfers only. Necessity for extending the same to the new distributors of other oil companies arose in order to achieve 100% coverage and hence the guidelines dated 30.11.2018 has been brought in existence.

21. It is submitted that the main grievance of the petitioner in CWJC No.6375 of 2019 is with regard to an adverse impact on their revenues/profits resulting from transfer of customers to another distributor. In this connection, learned senior counsel has relied upon a judgment of the Hon’ble Apex Court in the case of **Rayalaseema Paper Mills Ltd. Vs. State of Andhra Pradesh** reported in **(2003) 1 SCC 341** to submit that the plea of financial loss has been negatived by the Hon’ble Apex Court by holding that even if there is demonstrable injury to the affected party, the executive decision will still be valid if the same is shown to be fair and reasonable and in public interest. Thus it is contended that the financial injury is not the sole ground for invalidating an executive/policy decision.

22. It is further submitted that from the policy guidelines itself it will be evident that sufficient care has been taken to ensure that existing distributors do not suffer loss on account of transfer of some of its’ customers to a newly commissioned dealer. The

policy ensures the distributors right to receive reasonable returns from his investments. Learned senior counsel submits that the present policy is in accordance with the directive principles of the State as contained in Article 39(b) of the Constitution of India which provides that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

23. It is submitted that in the present case there is neither any infringement of fundamental right nor statutory right of the petitioner hence no writ under Article 226 of the Constitution be issued. This Court has also been informed that the Hon'ble High Court at Hyderabad has considered the transfer policy in WP No.32909 of 2016, WP No.35195 of 2017, 11083 of 2017, 12794 of 2017 and other analogous matters. By a common order dated 19.01.2018 the Hon'ble High Court has held that the existing distributors of LPG have no right to question the new policy for inter-company transfer of customers. The Hon'ble Court relied upon clause 1(a), 1(b)(i) and clause 1(b) (iii) of the agreement and held that the Corporation at its sole discretion can reduce, restrict, modify or alter the area of distributorship territory and the decision

of the Corporation shall be final and binding on the distributor. Since the distributors could not draw the attention of the Court to a clause in the distributorship agreement where the right of distribution to continue to retain all consumers is conferred, the Court held that the Corporation has not given guarantee of area and at the same time retained right to sell directly or indirectly to Central/State governments etc. without reference to distributor, reserved right for appointment of additional distributors and also retained discretion to reduce, restrict, modify or alter the area of distributorship territory. A reading of the said judgment of the Hon'ble High Court at Hyderabad would show that the same was in respect of the Unified Guidelines 2016 which has been declared as comprehensive and it has been held that under the said guidelines the distributors have no right to claim retention of the consumers of Corporation, for the distributorship agreement enables the distributor to sell LPG cylinder to consumers of Corporation in an identified locality and this arrangement is subject to other rights and privileges retained by Corporation. No discrimination was thus found in the implementation of the policy.

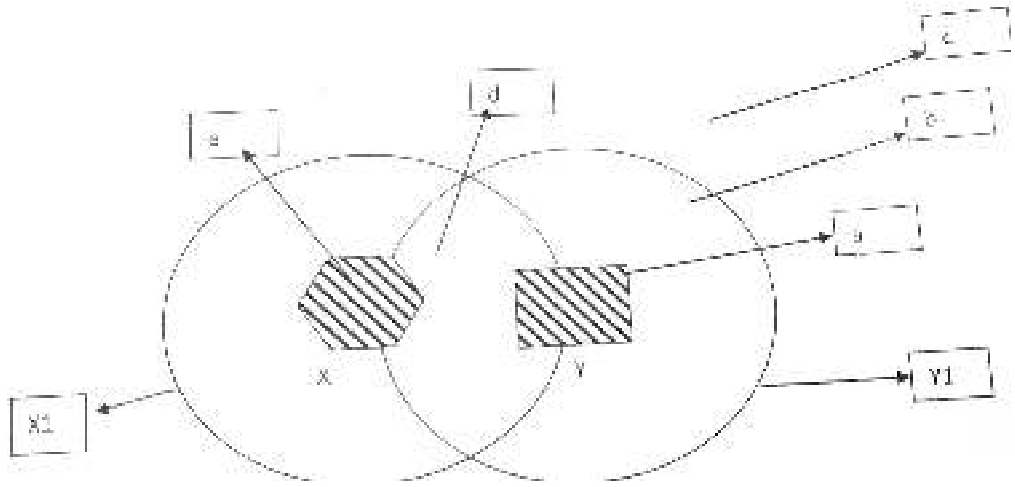
Submissions against plea of the Consumers

24. Replying to CWJC No.14607 of 2019 the respondent nos.2 to 5 have contended that the issue raised by the petitioners

who are consumers cannot be agitated before this Court under Article 226 of the Constitution of India and appropriate remedy lies before the Consumer Courts. It is however simultaneously stated that so far as the policy is concerned, the consumers can have no grievance as the consumer has the right to remain with the distributor of his choice. They have relied upon their statement made in paragraph 32 of the counter affidavit.

25. Coming to the fairness aspect of the policy guidelines, learned senior counsel submits that the policy guidelines were meticulously framed in 2016 in so far as intra-company transfers are concerned. The subject policy dated 30.11.2018 is merely an extension of the same to inter-company transfers. Discussion on features of guidelines have been made in paragraphs 10 and 11 of the counter affidavit of the respondent IOC. The following diagram from the impugned policy dated 30.11.2018 has been referred to:-

> *"1) Criteria for Identification of customers for transfer.*
> *. Field Officers of all 3 companies will define the customers/area which are under intercompany restructuring.*
> *. Decision of transfer will be based on the following parameters.*



"X" is the Donor Distributor having Core area denoted by hexagon & the Trading Area enclosed by the circle "X1".

"Y" is the Recipient Distributor having Core Area denoted by square and the Trading Area enclosed by circle "Y".

Action to be taken in following order:

Step 1: Customer type "a":- Falling within the Core Area of Y, action for transfer to be initiated compulsorily.

Step 2: Customer type "b":- Falling outside the Core Area of X& Y and Trading Area of X however is within Trading Area of Y: action for transfer to be initiated.

Step 3: Customer type "c:- Falling outside the core area & trading area of both, action for transfer to be initiated only if "X" is not able to make home delivery. Pre-condition for step 3:-

- "Y" is still not Viable after completion of intra-company restructuring & completion step 1st & 2nd above. &

- Ensuring "X" not going below 75% of the Ceiling.

Step 4: Customer type "d":- Falling outside the Core Area of X & Y but in the Trading Area of both distributors:-No action for inter-company transfer

Step 5:- Customer type "e":- Who is falling within the Core Area of X:- No action for inter-company transfer."

26. Learned senior counsel has argued that in the diagram the core area is the area of advertised location as per definition at page 41 and those are marked by shaded hexagon ‘X’ and shaded rectangle ‘Y’ to indicate the donor distributor and the recipient distributor i.e. the transferor and the transferee respectively. From step 5, it is clear that customer type ‘e’ falling in the core area of X will not be transferred. In other words, the core area of an existing distributor will remain intact without a single customer being transferred therefrom, even in cases where the distributor has far exceeded the ceiling limit of refill sale of 75%. In such cases the margin of the distributor’s profits, howsoever excessive, will not be affected. An existing distributor is also exempted from transfer in respect of customer ‘Y’ who falls outside the core area of X & Y but in the trading area of both X and Y. It is submitted that these safeguards protect the existing distributors X from the loss of their hard earned customers.

27. Learned senior counsel further elaborated his submissions saying that the illustrative diagram sets out the scope of the transfer policy. Only customer type “a” and type “b” will be earmarked for transfer compulsorily. Customer type “a” is one who falls within the core area of the newly commissioned distributor Y which is the advertised location for which he has

been selected (marked by shaded rectangle Y). Such customers falling outside the core area of the existing distributor were previously serviced by the said existing distributor. He will now be attached with the new distributor. Customer type “b” is one who falls outside the core area of both X & Y and trading area of X (the existing distributor) but is within the trading area of Y (the new distributor). He will also be attached to the new distributor. It is stated that if any individual customer prefers to remain with the distributor of his choice he is free to do so. The customer’s option may be exercised online. Regarding customer type “c” it is stated that they are to be transferred only on contingencies arising as specified in the guidelines. The policy, therefore, according to respondent nos.2 to 5 ensures that the new distributor is able to achieve viability of at least 50% in the initial stages of his business while the existing distributor’s hard earned profits from his investments will not be adversely impacted. It clearly provides for transfer of the surplus customers of an established distributor to a new distributor to help him stand on his feet and the method adopted for this purpose is carefully balanced for protecting the interest of the established as well as those of the new distributor. In any view of the matter, the policy further ensures that the transfer shall not bring about a fall in the customer base of the existing distributor below 75% level of its viability. In many cases occasion for transfer of customers may not arise if the newly commissioned distributor immediately achieves the viability limit of 50%,. On these grounds, it is submitted that since the intra-company transfer policy has been in existence since long and the present policy is only an extension of the unified guidelines 2016 making the same principles applicable in the case of inter-company transfer, there is no reason to interfere with the same.

Submissions of the Intervenors-Respondents

28. At this stage, this Court would also take note of the submissions of the intervenor-respondents who have been impleaded as respondent nos.11 to 19. It is their case that the Ministry of Petroleum and Natural Gas announced new policy for appointment of LPG distributor vide Circular No.20019/2/2016-LPG dated 23.06.2016 called as "Unified Guideline for Selection of LPG Distributor 2016" which provided for restructuring of the LPG distributorship categorized in four types of distributorship i.e. (i) Sheheri Vitrak (ii) Rurban Vitrak (iii) Gramin Vitrak and (iv) Durgam Kshetriya Vitrak. The object was the expansion of distributorship network to penetrate the rural and semi-urban areas for supply of LPG gas and to ensure availability of LPG to each and every household. The copy of the Unified Guidelines, 2016

has been brought on record as Annexure-IP-1. It is submitted that in tune with the new Unified Guidelines for selection of LPG distributorship, the petroleum companies (IOCL, BPCL and HPCL) published advertisement dated 17.06.2017 for appointment of LPG Distributors/Gramin Vitrak in the State of Bihar at 974 new Locations. The said advertisement dated 17.06.2017 came to be challenged before this Court by the same association who is writ petitioner before this Court vide CWJC No.12282 of 2017. The writ petition bearing CWJC NO.12282 of 2017 along with CWJC No.14040 of 2017 came to be dismissed by order dated 17.11.2017 passed by this Hon'ble Court holding that "in matter of policy, the scope for judicial review is rather limited". The submissions of the petitioners that fresh selection of LPG distributors/Gramin Vitraks is likely to impact their business adversely cannot be allowed to override or undermine the larger public interest, furtherance of which the OIL Companies are required to ensure by acting in a manner that ensure supply and availability of LPG to each and every household. A business concern must decide its own viability based on commercial considerations, therefore no case for interference is made out.

29. A Letters Patent Appeal bearing LPA No.1682 of 2017 was also dismissed vide order dated 20.12.2017. It is

submitted that almost similar issues are being raised in the present writ application regarding transfer of existing connection to another distributor. They have also relied upon a judgment a copy of the said judgment has been brought on record as Annexure-IP-3 to I.A. No.2 of 2019. In course of argument, Mr. P.K. Shahi, learned senior counsel for the intervenor-respondents have defended the Guidelines of 2018 in similar terms as have been done by Mr. K.D. Chatterjee, learned senior counsel representing the Indian Oil Corporation. The other learned counsel representing the Oil Companies have endorsed the arguments of Mr. K.D. Chatterjee and Mr. P.K. Shahi, the learned senior advocate who have led the argument in opposition to the writ petition.

Consideration

30. Having heard learned counsel for the parties and on perusal of the records, this Court finds that Annexure-2 is the copy of the agreement executed between the distributors and Indian Oil Company Ltd. (IOCL). Annexure-3 is the agreement between distributors and Bharat Petroleum Corporation Limited (BPCL). A perusal of Annexure-2 shows that the IOCL has appointed distributor on principal to principal basis for sale of the Corporation's Liquefied Petroleum Gas (LPG) known as " Indane" in the territory or distribution area of the distributor. The

appointment is subject to the conditions enumerated under clause 1(b) (i) (ii) (iii) (iv) (v) and (vi) which are quoted hereunder for a ready reference:-

> *"1(b) The aforesaid appointment is subject to the following:-*
> *(i) The Corporation reserve the right at all times during the continuance of this Agreement to make direct sales of Indane to Central or State, Government Departments, Government Companies, Railways, Military, Municipal authorities and other public bodies and authorities without any reference to the Distributor and on such direct sales the Distributor shall not be entitled to any remuneration, commission or allowance of whatsoever nature.*
> *(ii) The Corporation reserves the right, without any reference to or consent of the Distributor, to appoint one or more additional distributors in the same territory referred to in Clause 1 (a) above and such additional distributor or distributors shall be entitled to make sales of Indane in the same territory without any objection from the Distributor and the Distributor shall not be entitled to claim any over-riding remuneration, commission or allowance for the purpose.*
> *(iii) Without prejudice to the above the Corporation shall also be entitled to require the Distributor to effect minimum sales of indane in accordance with the policy that may be formulated from time to time by the Corporation and shall be further entitled at its sole discretion to reduce, restrict, modify or alter the area of the Distributorship territory and the decision of the Corporation shall be final and binding on the Distributor. The Corporation shall further be entitled to notify, without any legal obligation to do so, from time to time to the Distributor in writing the minimum number of LPG Filled Cylinders which the Distributor shall be required to uplift in*

each month. The Corporation shall also be entitled to require the Distributor to maintain during the duration of the Agreement such minimum stock as to meet the customers requirements.
(iv) The Distributor will during this continuance of the Agreement confine himself to effect the sales in the area or territory specified hereinabove but the Corporation shall be entitled without the consent of the Distributor to enlarge, reduce, increase or modify such area or territory to such other place as may from time to time be authorized by the Corporation in writing.
(v) The Distributor shall make his best efforts for enrolling customers and canvassing business and for developing and increasing the sale of LPG within the area allotted to him.
(vi) During the continuance of this Agreement, the Distributor shall not directly or indirectly engage or interest himself in the said area in any other business competing with the distributorship of LPG granted to him under this agreement other than the product supplied by the Corporation. This clause shall not affect or over-ride any other obligation of the Distributor under this Agreement."

31. On perusal of the aforesaid conditions, it would appear that the IOC has reserved its right to appoint one or more additional distributor in the same territory and they shall be entitled to make sales of indane in the same territory without any objection from the distributor. Further the IOC may give a target to the distributor to effect the minimum sales of indane in accordance with the policy from time to time and shall also be entitled to reduce, restrict, modify or alter the area of the distributorship territory and the decision of the IOC shall be final and binding on

the distributor. The Corporation shall also be entitled to notify, without any obligation to do so to the distributor in writing the minimum number of LPG filled cylinders which the distributor shall be required to uplift in each month. The Corporation (IOC) shall also be entitled to require the distributor to maintain during the duration of the agreement such minimum stock as to meet the customers requirements. The distributor has been asked to confine himself to effect the sales in the area or territory specified under clause 1(a) i.e. distributorship area of distributor but the IOC/Corporation shall be entitled with the consent of the distributor to enlarge, reduce, increase or modify such area of territory to such other place as may from time to time be authorized by the Corporation in writing. It is this condition contained under clause 1(iv) which is in vogue in the present case of inter-company transfer because what is being done under the inter-company transfer Guidelines of 2018 is that the customer type “a” who are falling within the core area of Y are required to be transferred and customer type “b” who are falling outside the core area of donor and recipient distributor and trading area of the donor but are falling within the trading area of Y action for transfer is to be initiated.

32. Thus, in effect what is being done is that the core area which is the area of advertised location of a distributor is not being disturbed. Even the customer type “d” falling outside the core area of donor and recipient distributor but in the trading area of both distributors no action for inter-company transfer is being taken. Trading area are the area beyond the core area, permitted by the parent company to service the unrepresented area and this has also been defined as maximum 15 kms from boundary limits for Gramin and Rurban Vitrak.

33. Under step 1 it is only those customers falling in type “a” who are falling within the core area of recipient area for the area for which recipient distributor has been appointed and that is the area of advertised location the action for transfer is to be initiated. In terms of the agreement the IOCL/Corporation has reserved its right to appoint additional distributor and further to reduce the area or territory allotted to the distributors under the agreement, therefore what is being necessarily done is that in case the recipient distributor has been appointed for an advertised location and any customer falling within the area of advertised location is being serviced by the donor distributor, action for transfer of that customer/consumer will be taken to the recipient distributor, therefore to that extent the area of service of donor

distributor shall get reduced but without affecting his core area. Similarly in respect of the customer type "b" if such customers are falling outside the core area of donor and recipient distributor and trading area of donor distributor but they are within the trading area of recipient distributor, they would be transferred to the recipient distributor. By virtue of this again it is only those customers who are falling the outside core area of donor and trading area of donor but are being served by the donor distributor will get transferred to the recipient distributor in whose trading area the customers will fall. Again this Court finds no difficulty in this manner of transfer. Both the donor as well as receipient donors have got to work within their respective trading areas but not in the core areas of each other. Customer type "c" are those who are falling outside the core area and trading area of donor as well as recipient distributor. In their cases again transfer is to be initiated only if the donor distributorship is not able to make home delivery. There are two pre-conditions for transfer of customer type "c" the first condition is that this kind of transfer is to be affected only when the recipient distributor is still not viable after completion of inter-company restructuring and completion step one and two kind of transfers. The second condition is that before ensuring such transfer of customer type "c" it must be ensured that the donor distributor is not going below 75% of the ceiling. The writ petitioner association and its members are not even able to demonstrate from their pleadings that how even after maintaining their customers not going below 75% of the ceiling, the new policy is likely to make them unviable. There is another safeguard under the new Policy Guideline dated 30.11.2018 which provides as under:-

> *“ **Before intercompany Customer transfer of OMC distributor following to be ensured:***
> *i) The customer transfer is to be done only up the numbers to make Recipient Distributor “Y” reach viability limit.*
> *ii) OMC Field Officers shall jointly record the customer strength, refill sale & status of physical transfer of connections of the donor & recipient distributors under joint signature of field officers and distributors.*
> *iii) List to be reviewed from the point of view as to whether any dead customers appear in the old list and the equal number of live customers to be added in the list by the donor company distributor.”*

<u>Procedures relating to transfer of consumers</u>

34. The modalities of transfer action are also provided wherein the OMC Field Officers shall jointly record the customer strength, refill sale and status of physical transfer of connections of the donor and recipient distributors under joint signature of field officers and distributors of respective OMCs. The list so prepared has to be reviewed from the point of view as to whether any dead

customer appears in the old list and the equal number of live customers to be added in the list by the donor company distributor. Thereafter based on the agreed list, donor distributor shall prepare the provisional bulk customer transfer list (PBTL) having the details of the customers in one document. This list will be approved by the field officer of donor distributor in system. Under clause 2(d) the following information shall be available in the PBTL:-

> *"i. SV details of consumers*
> *ii. Customer master (name, address, mob no, scheme type, family details for ujjwala, village mapping etc)*
> *iii. Cash transfer information (Aadhaar, Bank a/c)*
> *iv. Equipment type (14.2 & 5 kg), and exchanged status*
> *v. Quota eligible & consumed*
> *vi. Security deposit of all kind*
> *vii. Loan ledger and recovery pending.*
> *viii. PA status*
> *ix. GiveitUp/HIG Status & date.*
> *x. Deferred subsidy count in PMUY"*

<u>Customers transfer – Blocked for further supplies</u>

35. Clause 2 (e) (f) (g)(h)(i)(j)(k)(l)(m)(n)(o)(p) and (q) are providing for the further procedures to be followed to give effect to the transfer of customers to the recipient donors. Under Clause 2(e), on preparation of 'PBTL' by donor distributors, said customers will be blocked for further supplies by donor distributor.

Under Clause 2(f), the PBTL will be electronically available through the system to recipient distributor with all details. It will be the responsibility of the recipient OMC distributor to contact these bulk out customers and prepare a subscription voucher. This subscription voucher is named as “OSV” (OMC Subscription Voucher) to be prepared customer wise by selection from the list. Then in terms of clause 2(g) the recipient distributor ‘Y’ on receipt of the list, will inform the consumers by way of letters, SMS, press advertisement etc. with regard to the change of distributorship, the process to be followed thereafter and requirements if any. The consumer has to contact the recipient distributor ‘Y’ when the customer’s refills get over and thereafter the recipient distributor will handle the complete process.

36. This Court finds that from the stage of the preparation of the PBTL till its transfer to the recipient distributor the consumer gets no information but on preparation of ‘PBTL’ by donor recipient, the customers will be blocked for further supplies by the donor distributor. Guidelines nowhere provide that simultaneously with the blockade of said customer he would be informed of the same with name, address and contact number of the recipient distributor rather it has been left as responsibility of the recipient distributor to contact these blocked out customers.

What is the infrastructure of the recipient distributor and how much time will be taken by them in preparation of OMC subscription voucher in respect of the tranferred customers and then issuing letters, SMS/fresh advertisement etc. with regard to change of distributorship are not provided in the Guidelines.

37. In case of a sincere customer friendly recipient distributor the information may be furnished to the transferred consumer on the very next day of the transfer and in case of an inefficient and time taking recipient distributor it may take a week or month in reaching to the customer. Perhaps realizing this issue now in the counter affidavit the respondent nos.2 to 5 have come out with a statement in paragraph 32. The following statements have been made:-

> *"32. That, eventually, ultimate choice lies with the customer inasmuch as it always has the option of switching to a distributorship of his/her choice by using the online option of portability. This option can be exercised by the customer even after he is transferred from one distributorship to another. Therefore, even after the customer is transferred from one distributorship to another, he /she can always choose to go back to her original distributor if he/she is happy with the old distributor. Thus, eventually, it boils down to customer service and the distributorship giving the best services would be the most sought after."*

38. Thus, the stand of the respondent-Corporation is that by using the option of portability online the customer even after his transfer to the recipient distributor may go back to the donor distributor if he is happy with the old distributor. Here this Court would take a view that although the modalities of inter-company transfer provide for a joint consideration between the field officers and the donor distributor and the 'PBTL' is to be provided by the donor distributor, the condition that on preparation of 'PBTL' by the donor distributor the said customers will be blocked for further supplies by the donor distributor seems to be unreasonable and unmind the right of the consumer to know before they are being transferred to the establishment of the recipient donor. Blocking a consumer simultaneously with preparation of the 'PBTL' even without knowledge to the consumer as to what is going on between the field officer and the donor distributor would be highly arbitrary, prejudicial to the interest of the consumer and at times it may result in a huge difficulty for a customer particularly the villagers who are still living at the far distant places, not well connected with the roads and lack means and modes of communication and to those old aged people who have no manpower to find out as to what exactly has happened with regard to their LPG connections and what are those reasons because of

which they are unable to get supply of their cylinder which they cannot wait without facing enormous difficulties. Further the customer will have, during all these period no occasion to think of opting the ‘Portability’ because he would come to know about his transfer only after being ‘blocked’. He will have to wait to know the descriptions of the recipient distributor.

39. This Court is, thus, not ready to accept the contention of the respondent-Oil Corporation to this extent that online portability option would alone be an answer to this lacuna in the modalities of the transfer.

40. The New Guidelines dated 30.11.2018 in so far as it provides that with preparation of ‘PBTL’ customers will be blocked for further supplies by the donor distributor does not serve the public interest and therefore Clause 2 (e) in it’s present form is unilateral and acts against the public interest.

41. In the opinion of this Court simultaneously with the preparation of ‘PBTL’ by the donor distributor each of those customers whose name are there in the list are required to be informed by way of letters, SMS and fresh advertisement etc. with regard to change of their agency/distributorship. Untill the recipient distributor(s) contact these bulk out customers and prepare the “OSV” the bulk out customers cannot be blocked.

Once the “OSV” (One Subscription Voucher) are prepared and the same is informed to the donor distributor, the donor distributor shall block those customers. During the period between prepration of “PBTL” and “OSV” the donor distributor would be required to serve those customers. In the opinion of this Court, Clause (e) and (f) of the policy dated 30.11.2018 are required to be suitably altered in public interest. This Court finds that sub-clause (c) under clause 2 of the policy talks of provisional bulk transfer customer, the word ‘provisional’ itself presupposes that it is not final and therefore in the opinion of this Court the blockade of customers without any information to them only on preparation of provisional bulk transfer list by the donor distributor would be contrary to public interest and in the present days circumstance where people are so much dependent on LPG, blockade of their supply would be violative of Article 21 of the Constitution of India.

42. Learned senior counsel for the petitioner in CWJC No.14607 of 2019 has rightly relied upon the judgment of the Hon’ble Supreme Court in the case of **LIC of India** (supra). Paragraphs 23 and 27 thereof are quoted hereunder for a ready reference:-

“23. Every action of the public authority or the person acting in public interest or any act that gives rise to public element,

should be guided by public interest. It is the exercise of the public power or action hedged with public element (sic that) becomes open to challenge. If it is shown that the exercise of the power is arbitrary, unjust and unfair, it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens, simpliciter do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by reasons. The Administrative Law by Wade, 5th Edn. at p. 513 in Chapter 16, Part IV dealing with remedies and liabilities, stated thus:

"Until a short time ago anomalies used to be caused by the fact that the remedies employed in administrative law belong to two different families. There is the family of ordinary private law remedies such as damages, injunction and declaration; and there is a special family of public law remedies particularly certiorari, prohibition and mandamus, collectively known as the prerogative remedies. Within each family the various remedies can be sought separately or together or in the alternative. But each family had its own distinct procedure."

At p. 514 it was elaborated that "this difficulty was removed in 1977 by the provision of a comprehensive, 'application for judicial review', under which remedies in both facilities became interchangeable". At p. 573 with the heading "Application for Judicial Review" in Chapter 17, it is stated thus:

"All the remedies mentioned are then made interchangeable by being made available 'as an alternative or in addition' to any of them. In addition, the court may award damages if they are claimed at the outset and if they could have been awarded in an ordinary action."

The distinction between private law and public law remedy is now settled by this Court in LIC v. Escorts Ltd. [(1986) 1 SCC 264 : 1985 Supp (3) SCR 909] by a Constitution Bench thus: (SCC p. 344, para 102)

"If the action of the State is related to contractual obligations or obligations arising out of the tort, the court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances."

***27.** In the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner i.e. fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or appear arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest."*

43. In the case of **Lucknow Development Authority Vs. M.K. Gupta** reported in **(1994) 1 SCC 243** while considering the jurisdiction of the consumer forums and the question as to against whom a complaint can be entertained, the Hon'ble Supreme Court held that the test is nature of duty or function performed. If it is service, then the provider of the service, irrespective of whether the same is a private body or a statutory or

public authority, would be amenable to the provisions of the Act. While considering the issue of an arbitrary State action and holding that the State liable to pay compensation for loss or injury caused to a citizen as a result of its arbitrary action, the Hon'ble Supreme Court held that the definition of the word 'consumer' is a comprehensive expression and the Act meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as a network of rackets or a society in which producers have secured power to rob the rest and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. It has been held to be a milestone in history of socio-economic legislation and is directed towards achieving public benefit.

44. The petitioners in CWJC No.14607 of 2019 have mainly contended before this Court that they are being transferred from good-performing LPG distributors to non-performing LPG distributors of their choice without their consent and they have

been transferred to another agency without any prior information and to those who are not of their choice. This Court is of the considered opinion that by suitably amending sub-clause (e) & (f) of clause 2 of the policy in the light of the discussions made hereinabove, the grievance of the consumers-petitioners may be redressed. Once the recipient distributor(s) contact the customers and prepare their "OSV", thereafter in case the customers are not satisfied with the service of recipient distributor(s), they may use the portability facility and would be free to opt the old distributor or any other distributor of their choice.

45. Although learned senior counsel for the petitioner has referred and relied upon a number of judgments of the Hon'ble Apex Court on the applicability of the principles of promissory estoppel or equitable estoppel, this Court finds itself in agreement with the judgment of the Hon'ble High Court at Hyderabad to the extent that the distributors have no right to claim retention of the consumers of the Corporation and on the face of the terms and conditions of the agreement, according to this Court they cannot be allowed to contend that the OMCs had at any point of time given them an assurance that no customer will be taken out from the distributor.

46. In the opinion of this Court, the reliance placed by the petitioner on the line of cases dealing with the principle of promissory estoppel would not help the petitioner in contending that the transfer of customer by way of inter-company transfer distributorship per se would be contrary to the promises made in the agreement.

47. To this Court, at this stage any challenge to some of the clauses of the agreement on the ground that the OMCs being the stronger side made the distributors to sign on the dotted lines would also not succeed as it is too late in the day to take a plea in this regard when the distributors had no compulsion to sign the agreement but they signed it, acted upon it and have derived the benefits out of it.

48. This Court fully agrees with the submissions of Mr. K.D. Chatterjee and Mr. P. K.Shahi, learned senior counsel that the purpose of the New Guideline of 2018 is to provide equal distribution of natural resources to the community in such a way that it subserves the common good. This Court also agrees with the submission that the scope of interference in the policy matters are very limited. The ratio of the judgments of the Hon'ble Supreme Court in the case of Michigan Rubber and Jagdish Mandal (supra) as also Air India (supra) are all limiting the scope of interference

unless the public interest is affected. The respondents have also contended that the public interest is the overriding consideration and it is only when the Court is compelled to act in public interest that it should interfere in the policy matters.

49. This Court is persuaded to rely upon the judgment of Hon'ble High Court at Hyderabad because not only the Court agrees with the reasoning and rationale of the said judgment but also finds that the judgment is final whereas the order of Hon'ble Bombay High Court is an interim order only. Between the two judgments/orders the judgment which is final should be followed. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in the case of **Orissa Lift Irrigation Corporation Ltd. Vs. Rabi Sankar Patro & Ors.** reported in **AIR 2017 SC 5179=(2018)1 SCC 468**.

50. In ultimate analysis this Court comes to a conclusion that so far as the broad policy of inter-company transfer of consumers dated 30.11.2018 is concerned, save and except the views expressed by this Court on the modalities of transfer of consumer and in the matter of blockade of supplies to them which are required to be suitably altered/amended, there is nothing against public interest rather the whole purpose behind it is in public interest. In fact in the Hyderabad judgment the issues from

the consumer's point of view had not fallen for consideration, therefore no view has been taken on that aspect of the matter. Sub-clause (e) and the subsequent sub-clauses wherever required are to be suitably couched in order to save the valuable right of the consumers and make the policy serves the public interest.

51. By virtue of the stand taken by the respondent OMCs, the petitioners who were enrolled with M/S Jyoti Kalash, Gaighat, Patna and who have complained that without taking their prior consent they are being transferred to other non-performing or non-viable LPG distributor shall have opportunity to opt for the old distributor or any other of their choice using the 'Portability' facility. The respondent OMCs shall, in tune with the observations and directions of this Court provide uninterrupted supply of refill cylinders to those customers who are placed in the 'PBTL' by the donor distributor but had not been informed about the recipient distributor and their OSVs are yet to be prepared.

52. Both the writ applications as well as all I.As are disposed of with the observations and directions made above.

arvind/- **(Rajeev Ranjan Prasad, J)**

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