

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 15TH DAY OF SEPTEMBER 2022 / 24TH BHADRA, 1944

WP(C) NO. 26014 OF 2019

PETITIONER/S:

- 1 CONFEDERATION OF CONSUMER VIGILANCE CENTRE
SREEKOVIL, KODUNGANOOR P.O., THIRUVANANTHAPURAM,
REPRESENTED BY ITS GENERAL SECRETARY, AYYAPPAN NAIR.**
- 2 SASIDHARAN.S.,
AGED 69 YEARS
S/O.SIVASANKARAN SANTHI BAHVAN, MARTHANDANKARA,
EZHAMKULAM P.O., THINKALKARIKAM, EROOR, KOLLAM, PIN-
691 312.**
- 3 MILAD SHERIF,
AGED 43 YEARS
S/O.NAINAN MOHAMMED, T.C.52/236, MULLUVILAKETHU
VEEDU, PAZHYAKARAKKAMANDAPAM, NEMAM P.O.,
THIRUVANANTHAPURAM, PIN-695 020.**

BY ADVS.

BLAZE K.JOSE

SMT.NIVEA LIZ PETER FERNANDEZ

SMT.SHEENAMOL VARGHESE

RESPONDENT/S:

- 1 BHARAT PETROLEUM CORPORATION LTD.
KOCHI LPG TERRITORY, B.P.C.L., AMBALAMUGAL, ERNAKULAM,
PIN-682 302, REPRESENTED BY GENERAL MANAGER.**
- 2 HINDUSTAN PETROLEUM CORPORATION,
KOCHI L.P.G. REGIONAL OFFICE, SEAPORT-AIRPORT ROAD,
IRUMPANAM, ERNAKULAM, PIN-682 309, REPRESENTED BY**

GENERAL MANGER.

- 3 INDIAN OIL CORPORATION,
KERALA STATE OFFICE, INDIAN OIL CORPORATION LTD.,
PANAMPILLY NAGAR, ERNAKULAM, PIN-682 036,
REPRESENTED BY THE GENERAL MANAGER(LPG).**
- 4 UNION OF INDIA,
REPRESENTED BY SECRETARY, MINISTRY OF PETROLEUM AND
NATURAL GAS, SHASTRI BHAVAN, NEW DELHI-110 001.**
- 5 ADDL. R5 IMPEADED:
ELDHO PHILIP,
AGED 31 YEARS
S/O.PHILIP, 480/5, NECHUR, MANEED, ERNAKULAM-686 664,
SECRETARY, ASSOCIATION OF LPG DISTRIBUTORS IN KERALA,
REG. NO.EKM/TC/778/2019,(ALDK) 480, WARD NO.5,
MANEED, ERNAKULAM.**

**(ADDL. R5 IS IMPEADED AS PER ORDER DATED 27/01/2020
IN IA.3/2020 IN WPC.)**

**BY ADVS.
M. GOPIKRISHNAN NAMBIAR
Mr.B.PRAMOD, CGC
VEENA HARI
SRI.K.JOHN MATHAI
ASSISTANT SOLICITOR GENERAL
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.PAULOSE C. ABRAHAM
NIRMAL.S**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
22.08.2022, ALONG WITH WP(C) NOS. 27010/2019 & 22449/2022,
THE COURT ON 15.09.2022 DELIVERED THE FOLLOWING:**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 15TH DAY OF SEPTEMBER 2022 / 24TH BHADRA, 1944

WP(C) NO. 27010 OF 2019

PETITIONER/S:

**1 THE KASARAGOD DISTRICT L.PG. CONSUMERS FEDERATION,
REPRESENTED BY ITS PRESIDENT SHRI. PADMANABHAN K.,
OPPOSITE KRISHI BHAVAN, KUTTAMATH NAGAR,
CHERUVATHUR (P.O), KASARAGOD DISTRICT, PIN-671 313.**

**2 LAKSHMIKANT K.L.
AGED 47 YEARS
S/O. LAKSHMANAN, RESIDING AT LAXMAN COMPOUND,
NELLIKUNNU, KASARAGOD, PIN-671 121.**

**BY ADVS.
JAWAHAR JOSE
SMT.CISSY MATHEWS
SRI.SARUN RAJAN
SRI.K.JAJU BABU (SR.)**

RESPONDENT/S:

**1 THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF PETROLEUM
AND NATURAM GAS, A-WING, SHASTRI RAJENDRA PRASAD
ROAD, NEW DELHI, PIN-110 001.**

**2 THE INDIAN OIL CORPORATION
REPRESENTED BY ITS CHAIRMAN, 3079/3, JB TITO MARG,
SADIQ NAGAR, NEW DELHI, PIN-110 049.**

**3 THE BHARAT PETROLEUM CORPORATION LIMITED
REPRESENTED BY ITS CHAIRMAN, BHARATH BHAVAN, 4 AND 6
CURRIMBOY ROAD, BALLARD ESTATE, MUMBAI,
MAHARASHTRA, PIN-400 001.**

**4 THE HINDUSTAN PETROLEUM CORPORATION LIMITED,
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR,**

**PETROLEUM HOUSE, 17, JAMSHEDJI TATA ROAD, MUMBAI,
MAHARASHTRA, PIN-400 020.**

5 ADDL R5, R6 & R7 IMPEADED:

**ELDHO PHILIP
AGED 31 YEARS
S/O.PHILP, 480/5, NECHUR, MANEED, ERNAKULAM-686 664,
SECRETARY, ASSOCIATION OF LPG DISTRIBUTORS IN KERALA,
REG NO.EKM/TC/778/2019, (ALDIC) 480, WARD NO. 5,
MANEED , ERNAKULAM**

**(ADDL R5 IMPEADED AS PER ORDER DATED 27-01-20 IN IA
NO. 1/20)**

**6 KOLLAMPARAMBIL AHAMED ABDUL MAJEED
AGED 72 YEARS
S/O.AHAMED, KOLLAMPARAMBIL HOUSE , ARAKAKADAVU
ROAD, VENNALA P.O, COCHIN- 68202, REPRESENTED BY
POWER OF ATTORNEY HOLDER OF SHANI KOLLAMPARAMBIL
ABDUL MAJEED**

**(ADDL.R6. IS IMPEADED AS PER ORDER DATED 29-09-2020 IN
IA NO.2/2020.)**

**7 ADDL. R7. M/S.AYSHA INDANE GRAMIN VITRAK,
GROUND FLOOR, 290/16B, VAZHAPPILLY, MALAVANA,
PUTHENVELIKKARA, ERNAKULAM-683 594, FIRM
REPRESENTED BY ITS MANAGING PARTNER AJMAL K.H., AGED
43 YEARS, S/O. HASSAN, RESIDING KALLEPURATH HOUSE,
KANGARAPADY JUNCTION, THRIKKARAKARA NORTH,
VADACODE P.O., ERNAKULAM-682 021.**

**(ADDITIONAL R7 IS IMPEADED AS PER ORDER DATED
07/10/2020 IN IA 3/2020)**

**BY ADVS.
SHRI.P.VIJAYAKUMAR, ASG OF INDIA
SRI.M.GOPIKRISHNAN NAMBIAR
NIRMAL. S
T.B.HOOD
C.R.REKHESH SHARMA
SRI.K.JOHN MATHAI
SMT.M.ISHA
SMT.VEENA HARI
SRI.JOSON MANAVALAN**

W.P.(C) No. 26014/2019

: 5 :

**SRI.KURRYAN THOMAS
SRI.PAULOSE C. ABRAHAM
S.MANU**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
22.08.2022, ALONG WITH WP(C) NOS. 26014/2019 & 22449/2022,
THE COURT ON 15.09.2022 DELIVERED THE FOLLOWING:**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 15TH DAY OF SEPTEMBER 2022 / 24TH BHADRA, 1944

WP(C) NO. 22449 OF 2022

PETITIONER/S:

**KASIM P.H
AGED 77 YEARS
S/O HAMEED,
PUTHANPURACKAL, KARTHIKAPURAM P.O,
ALAKKODE VIA, KANNUR DISTRICT, PIN 670 571.
CONVENOR, HILL AREA LPG CONSUMERS SAMITHI,
KARTHIKAPURAM P.O, ALAKKODE VIA, KANNUR DISTRICT, PIN
670 571, PIN – 670 571.**

BY ADV MANAS P HAMEED

RESPONDENT/S:

- 1 UNION OF INDIA
MINISTRY OF PETROLEUM AND NATURAL GAS,
REPRESENTED BY ITS SECRETARY,
SHASTRI BHAWAN, NEW DELHI, PIN – 110 001.**
- 2 INDIAN OIL CORPORATION
REPRESENTED BY ITS CHAIRMAN, 3079/3, JB TITO MARG,
SADIQ NAGAR, NEW DELHI, PIN – 110 049.**
- 3 BHARAT PETROLEUM CORPORATION LIMITED
REPRESENTED BY ITS CHAIRMAN, BHARATH BHAVAN,
4&C CURRIMBHOY ROAD, BALLARD ESTATE, MUMBAI,
MAHARASHTRA, PIN – 400 001.**
- 4 THE HINDUSTAN PETROLEUM CORPORATION LIMITED,
REPRESENTED BY ITS CHAIRMAN, PETROLEUM HOUSE,
17, JAMSHEDJI TATA ROAD, MUMBAI,
MAHARASHTRA, PIN – 400 020.**

BY ADVS.

**M.GOPIKRISHNAN NAMBIAR
ADARSH KUMAR
K.JOHN MATHAI
JOSON MANAVALAN
KURRYAN THOMAS
R2 TO R4 BY SRI. PAULOSE C. ABRAHAM
RAJA KANNAN
K.M.ANEESH
K.SANTHOSH KUMAR (KALIYANAM)
SHASHANK DEVAN**

**R2 TO R4 BY SRI. E K NANDAKUMAR (SR.)-
R1 by SRI. S MANU, ASGI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22.08.2022, ALONG WITH WP(C) NOS. 26014 & 27010 OF 2019, THE
COURT ON 15.09.2022 DELIVERED THE FOLLOWING:**

S. MANIKUMAR, CJ & SHAJI P. CHALY, J.

**W.P.(C) Nos. 26014 & 27010 of 2019
& 22449 of 2022**

Dated this the 15th day of September, 2022.

JUDGMENT

SHAJI P. CHALY, J.

The captioned writ petitions are Public Interest litigations filed, in respect of transfer of LPG connections from one distributor/agency to another without informing the customers/consumers, and challenging the orders thereto; and also a rival direction in respect of the implementation of the orders issued, and transfer of the LPG connections to the nearest distributor of the consumers at the earliest. Fundamental issues raised in the writ petitions, and the documents relied upon being a typical, narration of facts separately is not required.

2. The issue with respect to the transfer of consumers from one distributor to another was considered by this Court in several writ petitions filed by the distributors and had held that the Oil Marketing Corporations have got power and authority to port the consumers from one distributor to another.

3. W.P.(C) Nos. 26014 and 27010 of 2019 are filed by two

organizations said to be constituted to protect the interest of the gas consumers; whereas, W.P.(C) No. 22449 of 2022 is filed by an individual consumer seeking transfer of LPG connections to the nearest distributor of consumers by implementing the Unified Guidelines for Selection of LPG Distributor 2016 and Ext. P9 order of the Government of India, Ministry of Petroleum and Natural Gas, dated 23.06.2016 and 16.02.2018 respectively, whereby appropriate directions were issued to the Oil Marketing Corporations to close down the existing extension counters in various places, including the State of Kerala by 31.03.2018 and transfer the existing customers to the nearby distributor through intra company or inter company, as the case may be.

4. The paramount contention advanced by the Consumers' Associations against the guidelines and the Government Order is that the respondents have no authority to transfer the LPG connections of consumers without the knowledge of the consumers as per the convenience of the respondents. It is also submitted that the right to transfer a consumer from one distributor pertaining to LPG connection is left with the consumer and the Public Sector Oil Company has no right regarding the same. However, contrary to the right of

the consumers, the respondents have started a practice of transferring LPG connections in different parts of the State from one distributor to another without any consent or authorisation of the consumers and the said unauthorised act of the respondents have put the LPG consumers into a state of hardship and various inconveniences, is the contention.

5. That apart, it is submitted that due to the improper act of the respondents, the consumers are to suffer irregular services from the distributor and they are at far off places from their houses. According to the Consumers' Associations, consequent to the porting of the consumers, abnormal delay has occurred in respect of refilling the cylinders and therefore, the delay in supplying the gas cylinder is a chronic problem for consumers. It is also pointed out that even though affected consumers have made several requests to the respondents informing hardships faced by them, the respondents have not initiated any action to resolve their issue.

6. It is also submitted that the action of the respondents are arbitrary and illegal and thus, violative of Article 14 of the Constitution of India. That apart, in W.P.(C) No. 27010 of 2019, the petitioners therein have raised a contention that the right of the consumers to continue or not to continue with a dealer is

crystalized with the policy decision of the Union Government, as is evident from Ext. P3 dealing with the inter company portability and Ext. P4 LPG Portability Options dated 26.10.2015 and 24.06.2019 respectively.

7. In Ext. P3, it is stated that in order to have competition among distributors in the interest of customer service, it is felt that a portability system enabling customers to migrate between cluster of distributors, both intra and inter company, to be put in place; that in such a scenario, a customer, not satisfied with services of his parent distributor, can migrate to his chosen distributor within the cluster for better service; and that would result in better customer satisfaction and incentive for distributors for giving better service and thereby, the distributor, who would be losing customers, also would always look forward to woo the existing customers with prompt service. Paragraph 9 thereto specifies that the proactive electronic tracking of the portability request with escalation matrix and its closure is placed to ensure that a consumer does not have any difficulty in moving to the distributor of his choice.

8. Ext. P4 LPG Portability Options produced in W.P.(C) No. 27010 of 2019, reads thus:

“Ministry of Petroleum & Natural Gas

LPG Portability Options

Posted On: 24 JUN 2019 3:22PM by PIB Delhi

Portability option for transfer of LPG connection was launched across the country in 2013. Subsequently, the process of online transfer of connection within same market was made fully automatic for the transfers within the same Oil Marketing Company (OMC).

Through this initiative, the consumer is empowered to choose his/her destination distributor online from his registered login without the intervention of his parent distributor. In this process event the Transfer Subscription Voucher (TSV) is delivered at customer premises by the destination distributor and it does away for the consumer to physically approach both the distributors with a transfer request. The process of transfer of connection also entails email information to customer on each stage of transfer of connection.

In case of Inter Company Connection Transfer, both parent and destination distributor get advance intimation about consumer's transfer request with tracking options for customers. However, the Customer needs to visit the parent distributorship for surrendering of LPG equipments as accounting of

equipment and security deposit is involved.

OMCs have reported that since the launch of Scheme till 18.6.2019, more than 4.2 lakh consumers have used this option for getting their connection transferred to their preferred/required distributor online under the portability scheme. OMCs have reported that the complaints pertaining to portability scheme are resolved immediately and there are Nil established cases of complaints on portability. OMCs have reported that they have received suggestions on Portability scheme and in March, 2016, the process of online transfer of connection within same market was made fully automatic for the transfers within the OMC thereby doing away with the physical requirement of approaching the distributor with a transfer request. The portability scheme is now available across the country.

This information was given by the Union Minister for Petroleum and Natural Gas Shri Dharmendra Pradhan in a written reply in the Lok Sabha today.”

9. Therefore, the sum and substance of the contention advanced by the petitioners is that the rights crystallised to a consumer cannot be taken away by the orders of the Government or the Oil Marketing Corporations, and if at all the said right can be restricted or taken away, it can only be by

legislative intervention. In the absence of the same, the forcible migration of a consumer without their consent by the Oil Marketing Corporations, is illegal and arbitrary.

10. Insofar as W.P.(C) No. 22449 of 2022 is concerned, the petitioner therein submits that the Government as well as the Oil Marketing Corporations are liable to remove the difficulties faced by the consumers with respect to the access to LPG and that the consumers, especially from hill area, are unable to reach out their distributors which are functioning far away from their houses. It is also pointed out that the cylinders are not distributed directly to the houses of the consumers, but are stored at some shops of the area and therefore, the consumers are forced to make additional payment to the shop owners for receiving the cylinders.

11. It is further pointed out that the distributors are charging unauthorised transportation fee also and therefore, the Oil Marketing Corporations are liable to ensure that the guidelines for the purpose and the Government Order referred to in the said writ petition, namely Exts.P8 and P9, are effectively implemented in the interest of the public.

12. Oil Marketing Corporations have filed counter affidavits basically contending that the right of the Public

Sector Oil Marketing Companies to transfer the consumers of their LPG cylinders from one distributorship to another, has been upheld by various courts of law, including a Division Bench of this Court in *All India LPG Distributors Federation and Ors. v. Union of India and Ors.* [2003 (2) KLJ 451] and recently in *Vembanad Gas Agencies v. Union of India and Ors.* [judgment dated 03.12.2021 in W.A. No. 1785 of 2019]. That apart, it is pointed out that, in clause 2.(b)(ii) of Ext. R4(a)LPG Dealership Agreement produced along with the counter in W.P. (C) No. 27010 of 2019, and all other similar agreements the Corporation reserves the right to appoint one or more additional distributors within the territory of the existing distributor.

13. It is further submitted that as per the said clause, the Corporation is entitled to reduce, restrict, modify or alter the area of distribution of the existing distributors. The sum and substance of the contention of the Oil Marketing Corporations is that the reduction in the area of operation would automatically result in reducing the number of consumers registered with the dealer. It is also pointed out that the appointment of new dealers would automatically result in the reduction of the number of customers.

14. So also, it is submitted that no territory can be assigned without reference to the consumers and therefore, there can be no consumer in isolation without reference to the territory or area. Apart from the same, it is submitted that, a consumer's subscription is based on and pre-supposes the location where the product is to be delivered, and he cannot have an existence divorced from the area or environment within which he uses the LPG. Further, it is submitted that adequate safeguards have been provided while undertaking the transfer for protecting the interest of customers. Yet another contention advanced is that W.P.(C) No. 27010 of 2019 filed by the Consumers' Associations is at the behest of some of the LPG distributors, whose right to challenge such a transfer, has been negated by this Court, which can be observed from the date of registration of the society i.e., during August, 2019 and the writ petition was filed in September, 2019.

15. It is also contended that LPG is a controlled item, to mean that it is an essential commodity under the provisions of the Essential Commodity Act, 1955 and the entire production, distribution and sale of LPG is controlled by various orders passed under the provisions of Section 3 of the Act, 1955 and multiple policies formulated by the Government of India to

ensure that the essential/controlled commodity is distributed in a fair, reasonable and equitable fashion. Therefore, it is submitted that in line with the responsibility to cater to the needs of a consumer, it is the paramount obligation of the Oil Marketing Corporation to ensure that LPG is distributed in a fair, reasonable and equitable manner and further that the distribution is not affected in any manner.

16. It is also stated that the intention of the policy of appointment of new distributorship and transfer of customers from existing distributors is done to improve the services of supplying LPG cylinders to the public, and is done only in public interest. It is also the case of the Oil Marketing Corporations that even though cylinder home delivery charges are part of the commission paid by the Oil Companies, additional delivery charges as approved by the District Collectors are recoverable by the distributors from the customers, if the residence of the customer is more than 5 kms. away from the showroom of the distributor. Therefore, according to the Oil Corporations, when customers are transferred to the new distributorships nearer to the customers' residences, the same would result in reducing cost for procuring the LPG cylinders for those customers.

17. That apart, it is submitted that even if a consumer is

transferred from one distributorship to another, the customers cannot be said to have any grievance against the same as they are, as such, unaffected by such transfer due to the door to door delivery of the LPG cylinders. Other contentions are also raised and he seeks dismissal of the writ petitions filed by the Consumer Associations challenging the guidelines and the orders passed by the Government of India.

18. In the writ petition filed by the Consumers' Association, LPG Distributors' Association in Kerala have filed an impleading petition and arguments were advanced supporting the contentions raised by the Oil Marketing Corporations. The petitioners have filed a reply affidavit reiterating the stand adopted in the writ petition.

19. We have heard Sri. Jawahar Jose, Sri. Blaze K. Jose and Sri. Manas P. Hameed for the writ petitioners and the learned Senior Advocate Sri. E. K. Nandakumar and Sri. Poulose C. Abraham for the Oil Marketing Corporations, learned Assistant Solicitor General of India, Sri. S. Manu for the Union of India, Sri. Nirmal S for the Distributors' Association, Sri. T. B. Hood for one of the respondents supporting the contentions advanced by the Oil Marketing Corporations and Sri Adarsh for the distributor in the impleading application.

20. The basic contentions advanced by the rival parties are largely dependent upon the Unified Guidelines for Selection of LPG Distributorships issued by the Ministry of Petroleum & Natural Gas, Government of India in June, 2016. Clause 1.12. therein defines 200 'point Roster' to mean a set of serial numbers from 1 to 200, against which each serial number reservation category is allocated such that when 200 numbers of Distributors are planned in the Roster, the percentage reservation of each category is achieved. It further specifies that the principle will not apply for such locations which are considered beyond marketing plan or locations under Durgam Kshetriya Vitrak where distributorships are to be granted based on nomination basis to Government run Co-operative Societies/ Organizations. Clause 1.13 "dealing with an area of operation of LPG distributorship" is defined to mean an area consisting of Towns/villages in which the respective LPG distributor will market LPG cylinders as determined by the concerned OMC.

21. Clause 2 deals with 'identification of locations'. Clause 2.1 specifies that locations for setting up of LPG distributorship and it will be identified based on available refill sale potential that can sustain economically viable operation of

LPG distributorship; and it will also be based on data mining involving features of a particular geographical area and its demographic features. Clause 2.2 prescribes that 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. As per clause 2.3, in selecting locations, inputs will also be taken from State Government/Local Administration/Public Representatives. Further, as per clause 2.4, to the extent possible, new LPG Distributorship will be planned in the virgin location either of an existing market or virgin market as specified in the guidelines.

22. "Virgin Market" is defined under clause 1.11 to mean a town or a village where no LPG Distributorship is located and not serviced by any LPG distributor of OMC. Cluster of villages includes villages considered for working out refill sale potential for considering the feasibility for setting up of a Gramin Vitrak or Durgam Kshetriya Vitrak.

23. Clause 3 thereto deals with rostering of locations as per 200 point roster. Among others, it is specified therein that there will be three '200' point rosters maintained on an All India basis at the Head Office. That apart, clause 21 of the

Guidelines specifies that the selection guidelines will be applicable for the advertisements released for the selection of LPG Distributors from the date of notification of the Guidelines.

24. It is important to note that the order issued by the Government of India, Ministry of Petroleum & Natural Gas, New Delhi, on 16.02.2018, which is produced as Ext. P9 in W.P.(C) No. 22449 of 2022, clearly specifies that the extension counters which are operating in various States as well as Union Territories, including Kerala, shall be closed by 31.03.2018 and the existing customers be transferred to the nearby distributor through intra company or inter-company, as the case may be. This is clearly indicative of a fact that the existing distributors were managing the supply and serving the customers by devising a mechanism of starting extension counters and without which they were unable to manage supply and service.

25. Above all, one of the agreements produced by the Oil Marketing Corporation executed by and between the parties, along with its counter affidavit, makes it clear that, without any reference to or consent of the dealer, the Oil marketing Corporation is at liberty to appoint one or more additional dealers in the same territory as referred to in Clause 1(a) and such additional dealer or dealers shall be entitled to sell gas in

the same territory without any objection from the dealer and the dealer shall not be entitled to claim any overriding remuneration, commission or allowances for the purpose.

26. In fact, this question was considered by a Division Bench of this Court in *All India LPG Distributors Federation* (supra), in which it is held that transfer of LPG connections from one distributor to another on the basis of viability norms, is not arbitrary or illegal. This question was also considered in the appeal filed by *M/S Vembanad Gas Agencies* (supra) from the distributors' point of view and held that the Oil Marketing Corporations and the Government of India are vested with powers to transfer the LPG connections from the existing distributors to the new distributors appointed by the Oil Marketing Corporations. The same was the decision rendered by us in *K. Ashraf and others v. Bharat Petroleum Corporation Limited and others* [judgment dated 14.02.2022 in W.P.(C) No. 34439 of 2019 and batch]

27. To put it short, the sole question to be considered is whether there is any illegality or arbitrariness in transferring a consumer from one distributor to another appointed by the Oil Marketing Corporations. In our considered opinion, the guidelines and the agreement executed by and between the Oil

Marketing Corporations and the distributors would show that the consumers are under the direct supervision and control of the Oil Marketing Corporations and the consumer cannot turn around and say that they are entitled to continue with the existing distributors. The conditions contained under the guidelines would make it clear that the entire procedure, for appointment of distributors and the supplies to be made to the consumers are all streamlined and structured in a very emphatic and disciplined manner so as to avoid any complex situations in the business dealings by and between the parties.

28. The guidelines and policies are introduced by the Government of India and the Oil Marketing Corporations to render better services to the consumers of LPG connections, taking into account the distance between the consumer and the distributor, the feasibility and viability of the supply, efficient services and cost effective methods in order to protect the interest of the consumers. When the distribution of the LPG cylinders is regulated and controlled under the Essential Commodity Act, 1955, and the Oil Marketing Corporations are controlling the appointment of the distributors and the supply of LPG Gas cylinders; it is for the Oil Marketing Corporations to take into account the necessary and required viable aspects for

effectively and safely supplying gas cylinders and rendering services to the consumers.

29. Moreover, no right is vested with the consumer in objecting to the porting done by the Oil Marketing Corporations/Government of India under any guidelines issued with respect to the LPG portability. The object of the Company portability Guidelines discussed above granting liberty to the consumer is to protect the interest of the consumer by the consumer themselves, which means that if a consumer wants to migrate, they are entitled to do so; but that will not stand in the way of the Oil Marketing Corporations implementing the guidelines/orders issued by the Government of India by appointing new distributors for better service to the consumers, and to port the LPG connections to new distributors or existing distributors to attain the required results envisioned by the government.

30. Moreover, merely because such a provision is made in the Inter-company Portability Guidelines, that cannot be, in any manner, interpreted as a right conferred on the consumer to object to the porting done by the Oil Marketing Companies, when new distributors are appointed. To put it otherwise, the portability principles are introduced by the Government of

India through the Oil Marketing Corporations with the sole object of protecting the interest of the consumers and thus, protecting the public interest by providing cost effectiveness, easy access, services, and safety, in the matter of supply of LPG cylinders from door to door. Moreover, LPG cylinders are to be supplied by the distributors at the door steps of the consumers. Therefore, the consumer is not at all affected, in any manner, in the matter of supply of the LPG cylinders. Above all, these are all the policy decisions taken by the Government of India and the Oil Marketing Corporations with the avowed object of rendering principled and maximum services bearing in mind the convenience of the people, and therefore, interference with such policies by courts exercising the powers conferred under Article 226 of the Constitution of India, is also limited in nature. Thus to say, that can be done, only if any arbitrariness or illegality, or whimsicality is detected in the process of drawing up and implementing the policy.

31. After due deliberation of the facts and the law as discussed above, we are of the considered opinion that there is no illegality or arbitrariness, or other legal infirmities in the action of the Government of India and the Oil Marketing Corporations porting the consumers from one distributor to

another. In our view, such a course of action adopted by the Government and the Oil Marketing Corporations would only enure to the benefit of the consumers, and by no stretch of imagination, it can be visualised and presumed that the shifting of consumer from one distributor to another, would, in any manner, prejudice the consumer.

32. Taking into account all the above aspects, we have no hesitation in saying that the writ petitions filed by the Consumers' Association against the transfer of the consumers from one distributor to another cannot be sustained at all, and they are not entitled to get any reliefs as are sought for. Therefore, the said writ petitions have no legal sustenance. Insofar as W.P.(C) No. 22449 of 2022 is concerned, in view of the findings rendered by us above in the writ petitions filed by the Consumers' Associations, we are of the view that the Guidelines and the orders issued by the Government of India referred to therein as Exts.P8 and P9 are to be implemented in its letter and spirit at the earliest possible time.

33. We are also of the view that the findings rendered by the Division Benches of this Court in *All Indian Distribution Federation* (supra), *Vembanad Gas Agencies* (supra) and *K. Ashraf and others v. Bharat Petroleum Corporation Limited*

would squarely apply to the facts and circumstances of these cases in all respects, except the fact that therein the question considered was with respect to the transfer of consumers from the distributor from the distributor's point of view.

34. The Managing Partner of Vembanad Gas Agencies has filed I.A. No. 1 of 2022 in W.P.(C) No. 22449 of 2022, seeking to get itself impleaded as additional respondent No.5, basically stating that in the earlier writ petition, the entire aspects and law relating to the porting was not brought to the notice of the court.

35. However, we are of the considered opinion that the transfer of a consumer from one distributor and the consequences arising therefrom to the distributor is already settled by this Court in the judgments referred to above and therefore, it has no *locus standi* or *any right* to get itself impleaded in the writ petition in question, opposing the reliefs sought for by a consumer to implement the guidelines and the orders issued by the Government of India and the Oil Marketing Corporations. Therefore, I.A. No. 1 of 2022 seeking impleadment will stand dismissed.

36. To sum up, W.P.(C) Nos. 26014 of 2019 and 27010 of 2019 are dismissed and writ petition 22449 of 2022 is disposed

of directing the Oil Marketing Corporations to implement Exts.P8 and P9 guidelines and orders issued by the Government of India dated 23.06.2016 and 16.02.2018 respectively, at the earliest possible, if it is not already done.

All other pending IAs would stand closed accordingly.

**sd/-
S. MANIKUMAR,
CHIEF JUSTICE.**

**sd/-
SHAJI P. CHALY,
JUDGE.**

Rv

APPENDIX OF WP(C) 26014/2019

PETITIONERS' EXHIBITS:

- EXHIBIT P1** A TRUE COPY OF THE COMPLAINT RECEIVED FROM THE AFFECTED L.P.G. CONNECTION HOLDERS OF THE RESPONDENTS.
- EXHIBIT P2** A TRUE COPY OF THE COMPLAINT SUBMITTED BY THE 1ST PETITIONER ORGANIZATION BEFORE THE 1ST RESPONDENT DATED 24.06.2019.
- EXHIBIT P3** A TRUE COPY OF THE COMPLAINT SUBMITTED BY THE 1ST PETITIONER ORGANIZATION BEFORE THE 2ND RESPONDENT DATED 24.06.2019.
- EXHIBIT P4** A TRUE COPY OF THE COMPLAINT SUBMITTED BY THE 1ST PETITIONER ORGANIZATION BEFORE THE 3RD RESPONDENT DATED 24.06.2019.
- EXHIBIT P5** A TRUE COPY OF THE JUDGMENT OF WA NO.964 OF 2018 DATED 06.08.2018.
- EXHIBIT P6** A TRUE COPY OF THE TERMS AND CONDITIONS GOVERNING THE LOAN OF INDANE CYCLINDER AND REGULATORS TO CUSTOMERS.
- EXHIBIT P7** A TRUE COPY OF THE BRIEF OF FACILITIES PUBLISHED IN THE WEBSITE OF INDANE OIL CORPORATION.

RESPONDENT EXHIBITS:

- EXHIBIT R1(a)** TRUE COPY OF THE SHOWCAUSE NOTICE ISSUED TO ONE M/S KANDARUMADATHIL AGENCIES ON 30.12.2019
- EXHIBIT R1(b)** TRUE COPY OF THE CIRCULAR ISSUED BY THE MINISTRY OF PETROLEUM & NATURAL GAS DATED 16.2.2018.
- Exhibit R2(A)** TRUE COPY OF THE JUDGMENT DATED 03/12/2021 IN W.A. NO. 1785/2019.
- EXHIBIT R5(a)** TRUE COPY OF THE ORDER PASSED BY THE STATE LEVEL COORDINATOR OF HTE OIL MARKETING COMPANIES DATED 21.05.2021.
- EXHIBIT R5(b)** TRUE COPY OF CIRCULAR NO.3/2021-22 DATED 25.06.2021.

W.P.(C) No. 26014/2019 : 30 :

**EXHIBIT R3(a) TRUE COPY OF THE JUDGMENT DATED 03.12.2021
IN WRIT APPEAL NO.1785 OF 2019.**

**EXHIBIT R2(a) TRUE COPY OF JUDGMENT DATED 03.12.2021 IN
WRIT APPEAL NO. 1785 OF 2019.**

True Copy

PS To Judge.

rv

APPENDIX OF WP(C) 27010/2019

PETITIONERS' EXHIBITS:

- EXHIBIT P1** TRUE COPY OF THE BYE-LAW OF THE 1ST PETITIONER SOCIETY.
- EXHIBIT P2** TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE 1ST PETITIONER SOCIETY.
- EXHIBIT P3** TRUE COPY OF THE PORTABILITY SCHEME INTRODUCED BY OIL MARKETING COMPANIES.
- EXHIBIT P4** TRUE COPY OF THE INFORMATION DATED 24.6.2019 GIVEN BY THE UNION MINISTER FOR PETROLEUM AND NATURAL GAS.
- EXHIBIT P5** TRUE COPY OF THE LETTER DATED 5.4.2013 ISSUED BY THE INDIAN OIL CORPORATION TO THE UNION GOVERNMENT AND THE REPLY DATED 14.8.2013 GIVEN BY THE UNION GOVERNMENT TO THAT LETTER.
- EXHIBIT P6** TRUE COPY OF THE JUDGMENT DATED 6.8.2018 IN W.A.NO.964/2018 OF THIS HON'BLE COURT.
- EXHIBIT P6** TRUE COPY OF THE JUDGMENT DATED 30.9.2019 IN WPC NO.8753/2018 OF THE BOMBAY HON'BLE COURT.
- EXHIBIT P7** TRUE COPY OF REPRESENTATION SUBMITTED BY THE 1ST PETITIONER BEFORE THE HON'BLE MINISTER FOR PETROLEUM AND NATURAL GAS.
- EXHIBIT P8** TRUE COPY OF REPRESENTATION SUBMITTED BY THE 1ST PETITIONER BEFORE THE HON'BLE SECRETARY FOR PETROLEUM AND NATURAL GAS.
- EXHIBIT P9** TRUE COPY OF REPRESENTATION SUBMITTED BY THE 1ST PETITIONER BEFORE THE CHAIRMAN, INDIAN OIL CORPORATION.
- EXHIBIT P10** TRUE COPY OF REPRESENTATION SUBMITTED BY THE 1ST PETITIONER BEFORE THE CHAIRMAN, BHARATH PETROLEUM CORPORATION.
- EXHIBIT P11** TRUE COPY OF REPRESENTATION SUBMITTED BY THE 1ST PETITIONER BEFORE THE CHAIRMAN, HINDUSTAN PETROLEUM CORPORATION.

RESPONDENTS' EXHIBITS:

- EXHIBIT R5 (a) TRUE COPY OF THE UNIFIED SELECTION GUIDELINES 2016.**
- EXHIBIT R5 (b) TRUE COPY OF THE INTER COMPANY TRANSFER OF CONNECTIONS GUIDELINES DATED 30.11.2018**
- EXHIBIT R5 (c) TRUE COPY OF THE SUBSCRIPTION VOUCHER ISSUED BY THE 2ND RESPONDENT.**
- EXHIBIT R1(a) TRUE COPY OF THE SHOWCAUSE NOTICE ISSUED TO ONE M/S. KANDARUMADATHIL AGENCIES ON 30.12.2019.**
- EXHIBIT R1(b) TRUE COPY OF THE CIRCULAR ISSUED BY THE MINISTRY OF PETROLEUM & NATURAL GAS DATED 16.02.2018.**
- EXHIBIT R4(a) TRUE COPY OF THE LPG DEALERSHIP AGREEMENT DATED 14.01.2021 EXECUTED BY THE 4TH RESPONDENT WITH AN LPG DISTRIBUTOR.**
- EXHIBIT R4(b) TRUE COPY OF JUDGMENT DATED 20.11.2019 IN W.P.(C) NO. 27010 OF 2019.**
- EXHIBIT R2(a) TRUE COPY OF JUDGMENT DATED 03.12.2021 IN WRIT APPEAL NO. 1785 OF 2019.**

True Copy

PS to Judge.

APPENDIX OF WP(C) 22449/2022

PETITIONER'S EXHIBITS:

- Exhibit P1** TRUE COPY OF LETTER DATED 26.07.2020 OF COORDINATOR, STATE OFFICE, BHARAT PETROLEUM CORPORATION LTD COMMUNICATED TO THE PETITIONER UNDER RTI ACT.
- Exhibit P2** TRUE COPY OF LETTER DATED 13.08.2020 SENT BY THE PUBLIC INFORMATION OFFICER, INDIAN OIL CORPORATION LTD TO THE PETITIONER UNDER RTI ACT.
- Exhibit P3** TRUE COPY OF MASS PETITION DATED 22.09.2020 FILED BY THE PETITIONER BEFORE THE TERRITORY MANAGER, KOCHI, BHARAT PETROLEUM CORPORATION LTD.
- Exhibit P4** TRUE COPY OF PETITION DATED 01.03.2021 FILED BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, KANNUR FILED BY THE PETITIONER AND OTHER AGGRIEVED CONSUMERS ALONG WITH ITS ENGLISH TRANSLATION.
- Exhibit P5** TRUE COPY OF ORDER DATED 17.04.2021 PASSED BY THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, KANNUR IN C.C.NO.67/2021.
- Exhibit P6** TRUE COPY OF REPRESENTATION DATED 08.10.2020 FILED BY THE PETITIONER BEFORE THE TERRITORY MANAGER, KOCHI TERRITORY, BHARAT PETROLEUM CORPORATION LTD, ALONG WITH ACKNOWLEDGMENT CARD.
- Exhibit P7** TRUE COPY OF REPRESENTATION DATED 14.06.2022 SUBMITTED BY SMT. RATHA TO HILL AREA LPG CONSUMERS SAMITHI ON BEHALF OF THE CONSUMERS OF VENMANI AREA, THAVINHAL PANCHAYAT OF WAYANAD DISTRICT, ALONG WITH ITS ENGLISH TRANSLATION.
- Exhibit P8** TRUE COPY OF CIRCULAR NO.20019/2/2016-LPG DATED 23.06.2016 NAMELY 'UNIFIED GUIDELINE FOR SELECTION OF LPG DISTRIBUTOR 2016' ISSUED BY THE 1ST RESPONDENT.

Exhibit P9 TRUE COPY OF CIRCULAR NO.P-20019/56/2016-LPG DATED 16.02.2018 ISSUED BY THE 1ST RESPONDENT.

Exhibit P10 TRUE COPY OF JUDGMENT DATED 14.02.2022 PASSED BY THIS HONOURABLE COURT IN W.P.(C).NO.34439 OF 2019.

Exhibit P11 TRUE COPY OF JUDGMENT DATED 01.10.2019 PASSED BY THE HONOURABLE HIGH COURT OF ANDHRA PRADESH IN W.P.NO.12551 OF 2018.

RESPONDENT EXHIBITS:

Exhibit R6(A) A TRUE COPY OF THE LIST OF ACTIVE MEMBERS ON THE ROLLS OF ALL INDIA LPG DISTRIBUTORS FEDERATION (KERALA CIRCLE)

Exhibit R6(B) A TRUE COPY OF THE UNIFIED GUIDELINES FOR SELECTION OF LPG DISTRIBUTORS

Exhibit R6(C) A TRUE COPY OF THE COMMUNICATION DATED 10-08-2022 SENT TO THE REGISTRAR OF THE HON'BLE SUPREME COURT OF INDIA

Exhibit R6(D)a A TRUE COPY OF THE COMMUNICATION DATED 10-08-2022 ISSUED TO THE REGISTRAR, HON'BLE SUPREME COURT OF INDIA

True Copy

PS to Judge.