

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

FAO (D) No. 02/2023

Reserved On: 24th of August, 2023
Pronounced On: 1st of September, 2023.

Tabeen Mineral Water Private Limited,
Wussan, Kangan, District Ganderbal,
Through its Managing Director,
Imtiyaz Ahmad Khan
S/O Mohammad Ashraf Khan
R/O Gousia Colony, Bemina, Srinagar-190018.

... Appellant(s)

Through: -
Mr Sameer Khan, Advocate.

V/s

National Insurance Company Limited,
Through its Managing Director,
Exchange Road, Srinagar-190001.

... Respondent(s)

Through: -
Mr N. A. Dendroo, Advocate.

CORAM:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE**

(JUDGMENT)

[Chowdhary-J:]

01. This appeal, under Section 17 of the J&K Consumer Protection Act, 1987, has been directed against the Order dated 9th of June, 2023 passed by the J&K State Consumer Disputes Redressal Commission Srinagar (for short "the Commission") in application No.13/2019 titled '**Tabeen Mineral Water Private Limited v. National Insurance Company Limited**'.

02. The Appellant/ complainant claims to have filed a complaint against the Respondent before the learned Commission which was registered as complaint No.544/2016, having been aggrieved of the repudiation of a claim by the Respondent-Insurance Company arising out of insurance policy No. 421000/11/14/3100000047 with respect to the Mineral

Water Plant of the Appellant/ complainant. The Appellant/ complainant appears to have filed a complaint on 24th of June, 2015 and, on entertaining the claim and seeking reply thereto, the learned Commission had directed the Appellant/ complainant to adduce his evidence. Upon completion of the evidence by the Appellant/ complainant, the Respondent was directed to submit the proposal form and claim file pertaining to the case, which was also submitted before the Commission.

03. It was, however, alleged that before the Appellant/ complainant could lay a motion before the learned Commission for sending the proposal form to Forensic Science Laboratory, Srinagar for matching the signatures on the proposal form with that of the Appellant/ complainant, for consecutive absence of two hearings by its Counsel, the learned Commission consigned the complaint to records vide Order dated 24th of July, 2019.

04. The Appellant / complainant, on 24th of October, 2019, moved an application for retrieval of the complaint, when the situation arising out of the abrogation of Article 370 normalized a bit. The learned Commission, however, vide Order dated 9th of June, 2023, dismissed the application so filed by the Appellant/ complainant on the ground that the Commission had no power to review its own order and further held that the only remedy available to the persons aggrieved by the orders passed by the Commission was to prefer an appeal against such orders, under Section 17 of the J&K Consumer Protection Act, 1987, to the High Court within a period of 30 days from the date of the order.

05. The Appellant/ complainant has assailed the impugned Order, chiefly, on the ground that the impugned Order was unwarranted, inasmuch as the learned Commission has misdirected itself while understanding as well as appreciating the case of the parties before it and that the Order impugned was passed in a hot haste, without appreciating the law governing the subject and is liable to be quashed.

06. Learned Counsel for the Appellant has argued that the learned Commission has not applied its mind to the facts and circumstances of the case, inasmuch as the complaint of the Appellant had been simply dismissed in default and not dismissed on merits and, therefore, the learned Commission had all the powers to recall its order of dismissal of the complaint in default and restore the same for its disposal on merits. He has further argued that, as per the J&K Consumer Protection Act, 1987, the complaints have to be decided on merits and that there is no provision for dismissal of the complaints for non-prosecution and its retrieval did not mean that the Commission was applying its power to review its own order, which has been made a ground to reject the application moved by the Appellant/ complainant. Finally, the learned Counsel has prayed that the appeal be allowed and the impugned order, whereby the application for retrieval of the complaint moved by the Appellant/ complainant had been dismissed, be ordered to be restored for its decision on merits.

07. Learned Counsel for the Respondent, *ex-adverso*, has argued that the application filed by the Appellant complainant for restoration/ retrieval was moved by it leisurely. He further argued that, though the Limitation Act is not applicable to the Commissions/ Tribunals, as the same is applicable to the Courts only, however, the principles governing the delay in filing Petitions/ applications before the Commissions have to be considered by the Commission/ Tribunals and that the Commission, though decided the application on lack of its power to restore the complaint, but the application moved by the Appellant/ complainant, after much delay, was otherwise not entitled to be allowed. He, therefore, prayed that the order passed by the learned Commission be maintained.

08. We have heard learned Counsel for both the parties, perused the pleadings on record and considered the matter.

09. The complaint sought to be restored before the learned Commission had been dismissed vide Order dated 24th of July, 2019, which, for purpose of convenience, is reproduced as under:

“24.07.2019: - Nemo for the complainant. OP’s present. Nobody has been appearing for the complainant for the last so many hearings nor has he produced further evidence. Consigned to records.”

10. It appears that the Appellant/ complainant had moved the application for restoration of the complaint on 24th of October, 2019, i.e., after a period of almost three months. The Appellant/ complainant had sought restoration of the complaint on the grounds that the Counsel for the Appellant/ complainant was not in a position to appear before the Commission on 24th of July, 2019 due to traffic jam. The learned Commission, while deciding the application moved by the Appellant/ complainant, vide impugned Order dated 9th of June, 2023, has held that the Commission had inherent powers to dismiss the cases for non-prosecution, however, it had no powers vested in it to review or recall its own orders and that the only remedy available with the aggrieved person was to file an appeal in terms of Section 17 of the J&K Consumer Protection Act, 1987.

11. Admittedly, the complaint had not been decided on merits, but it had been simply ordered to be ‘consigned to records’ by the Commission vide Order dated 24th of July, 2019, though the parties are stated to have led evidence in the case. The learned Commission, instead of consigning the case to records just for the absence of the complainant for two dates, should have decided the complaint on merits. Besides, there cannot be said to be much or inordinate delay on part of the Appellant/ complainant in seeking restoration of the complaint dismissed in default by the Commission. Strictly speaking, the Limitation Act does not apply to the proceedings before the statutory authorities, like the Commission, however, since the principles of the Limitation Act with regard to wilful and intentional delay have to be considered by these forums as well, but when an application had been moved by the Appellant/ complainant after three months, therefore, in the considered opinion of this Court, there is not much delay which has also been explained by the Appellant in its application that due to difficult conditions arising out of the abrogation of Article 370, the Appellant/ complainant had not been able to move at an early date for seeking retrieval of the complaint.

12. The question that whether the District Consumer Forums and the State Commissions have the power to set aside their own *ex-parte* orders, or in other words, have the power to recall or review their own orders came up for consideration before the Hon'ble Apex Court on several occasions. In a case titled '**Jyotsana Arvind Kumar Shah & Ors. v. Bombay Hospital Trust; (1999) 4 SCC 325**', it was held that the State Commission did not have the powers to review or recall its *ex-parte* order. However, in case titled '**New India Assurance Co. Ltd. v. R. Srinivasan; (2000) 3 SCC 242**', the Hon'ble Supreme Court took a contrary view and held that the State Commission could review or recall its *ex-parte* order. Subsequently, a 3-Judge Bench of the Hon'ble Apex Court in a case titled '**Rajeev Hitendra Pathak & Ors. v. Achyut Kashinath Karekar & Anr.**', reported as '**(2011) 9 SCC 541**', while discussing the earlier Judgments of the Hon'ble Apex Court, agreed with the view taken in Jyotsana Arvind Kumar Shah's case (**supra**) and held that the correct law has been laid, and disagreed with the later decision of the Hon'ble Apex Court in New India Assurance Co. Ltd.'s case (**supra**) as untenable and unsustainable. Therefore, the Hon'ble Apex Court finally held that the State Commission cannot review its own orders.

13. Vide the impugned Order, the rights of the parties had not been decided, neither the complaint was dismissed. Consigning a file to records, without decision of the case, should be conditional to certain facts. Restoration of such a case, 'consigned to records', without determination would neither fall within the purport of review nor would it amount to recalling of the order. In view of the law laid down by the Hon'ble Apex Court with regard to the jurisdiction of the Consumer Commissions, except that of the National Commission, that they have no power to review or recall their orders, coupled with the contextual interpretation of the Order dated 24th of July, 2019 passed by the learned State Commission and sought to be recalled by the Appellant herein, as complainant, is thus distinguishable. Consigning a matter to the records, without any order adverse to any party or determining the rights of any party and seeking restoration of the said matter, does not amount to either review or recalling

the order. The Commission, in such a situation, was under an obligation either to *suo motu* revive the matter which had been adjourned *sine die* or pass orders on the motion laid by either of the parties. For the aforesaid reasons, we are of the opinion that the learned Commission has misdirected itself in not allowing the motion laid down by the Appellant/ complainant for restoration of the matter for its determination on the merits of the case.

14. Given the admitted position that the complaint filed by the Appellant/ complainant has not been decided on merits and has only been 'consigned to records' for its absence and in view of the settled legal position that the cases should be decided on merits and not on mere technicalities, We are of the considered opinion that this Court, while exercising its Appellate jurisdiction, shall be within its competence to order restoration of the complaint dismissed in default, to the files of the learned Commission for its decision on merits, after hearing both the sides. We order, accordingly. The appeal is, thus, **allowed** and the impugned Order dated 9th of June, 2023 passed by the learned Commission is set aside. Consequently, the complaint filed by the Appellant/ complainant before the Commission is ordered to be restored to its original number, relegating the parties to the position before the passing of impugned Order, for further proceedings.

15. Parties, through their Counsel, are directed to appear before the learned Commission on 11th of September, 2023, for further orders. A copy of this Judgment be forwarded to the learned Commission, well in time, for information and compliance.

16. **Disposed** of on the above terms.

(M. A. CHOWDHARY)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR

September 1st, 2023

"TAHIR"

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| i. | Whether the Judgment is speaking? | Yes. |
| ii. | Whether the Judgment is reportable? | Yes. |