

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 21.08.2025

Pronounced on: 26.08.2025

WP(C) No.3186/2023

Kewal Krishan Kohli age 77 years S/o Late Sh. Shanti Saroop Kohli
R/o Proper Banihal, Tehsil Banihal District Ramban.

...Petitioners(s)

Through:- Mr. R.K.S.Thakur, Advocate

Versus

1. J& K State Consumer Dispute Redressal Commission, Jammu
2. Bajaj Allianz General Insurance Company Ltd., GE Plaza
Airport Road, Yarawad Pune-411006
3. General Manager, Bajaj Allianz General Insurance Company
Ltd., Canal Road, Jammu
4. The Jammu and Kashmir Bank Ltd. through its Branch Office,
Banihal.

...Respondent(s)

Through:- Mr. Sunny Mahajan, Advocate for R-2
and 3

Mr. Raman Sharma, Advocate for R-4

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Sanjeev Kumar “J”

1. Instant petition under Article 226 of the Constitution of India is instituted by Sh. Kewal Krishan Kohli to assail an order dated 15th June, 2023 passed by the Jammu & Kashmir State Consumer Disputes Redressal Commission, Jammu [“the Commission”] in MA No.955 of 2018 titled *Kewal Krishan v. Bajaj Allianz and others*, whereby the Commission has

dismissed the miscellaneous application filed by the petitioner seeking restoration of appeal titled *Kewal Krishan v. Bajaj Allianz and others*, dismissed in default on 28th November, 2018, on the ground that the Commission constituted under the Jammu and Kashmir Consumer Protection Act, 1987 [“the Act of 1987”] did not contain any provision for reviewing, setting aside of an ex-parte order or restoration of appeal dismissed for non-prosecution.

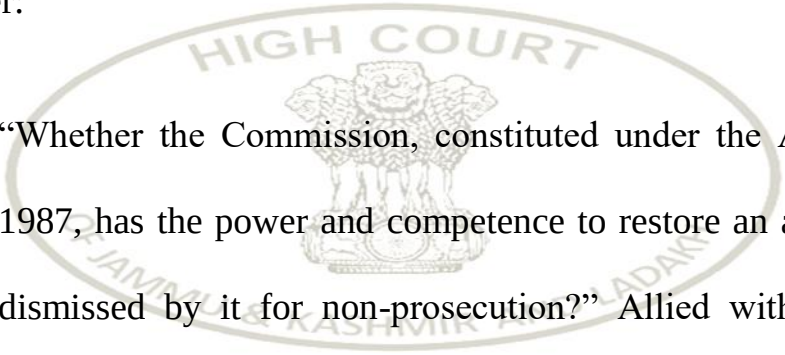
2. Before we advert to the grounds of challenge urged by Mr. R.K.S.Thakur, learned counsel appearing for the petitioner, to throw challenge to the impugned order passed by the Commission, a brief look at the factual antecedents leading to the filing of this petition would be desirable.
3. The petitioner, who had allegedly suffered damage in his shop, which along with other adjoining shops got gutted in fire due to electrical short-circuit on the intervening night of 11th/12th of June, 2004, approached the respondent-Insurance Company claiming an amount of Rs.3,61,900/- in terms of the Insurance Policy, he had obtained in respect of the shop and the goods stored therein. When the claim was not settled by the respondent-Insurance Company, the petitioner filed a complaint before the Divisional Consumer Forum, Jammu under the Act of 1987. The complaint was dismissed by the Divisional Consumer

Forum, Jammu on merits. The judgment passed by the Divisional Consumer Forum was assailed by the petitioner by way of an appeal before the Commission. Since the appeal was belated, as such, separate application was filed by the petitioner for condonation of delay. The Commission vide its order dated 24th February, 2010, dismissed the application for condonation of delay and also held the appeal filed by the petitioner meritless.

4. The petitioner challenged the judgment of the Commission dated 24th February, 2010 before this Court in OWP No.590/2010, which was allowed by a Division Bench of this Court vide judgment dated 29th May, 2018. The delay in filing the appeal was condoned and the matter was remanded to the Commission for deciding the appeal of the petitioner on merits.
5. On remand, the appeal was taken up by the Commission and when the Commission found that the parties had not been appearing in the matter and had lost interest, it passed an order dated 28.11.2018 consigning the file to record. Immediately, the petitioner filed an application for restoration of the appeal on 26th December, 2018, which was taken up by the Commission along with similar other applications. The Commission dismissed the application for restoration in terms of the order impugned not on merits but on pure question of law that the Commission had no competence to restore the appeal once

dismissed in default or consigned to record. It is in this backdrop, the petitioner has approached this Court invoking extraordinary writ jurisdiction vested in this Court under Article 226 of the Constitution of India to quash and set aside order dated 15th June, 2023.

6. Having heard learned counsel for the parties and perused the material on record, the question that squarely falls for consideration in this petition can be set out in the following manner:



“Whether the Commission, constituted under the Act of 1987, has the power and competence to restore an appeal dismissed by it for non-prosecution?” Allied with it is another question that is, “what is the difference between a matter dismissed in default and a matter consigned to record?”

7. The Commission is undoubtedly created and constituted under the Act of 1987 and, therefore, its functioning, jurisdiction, power or competence is governed by the provisions of the Act of 1987 and the Rules framed thereunder. Unlike Civil Courts, which possess inherent powers to act *ex debito justitiae*, the Commission exercises the power and jurisdiction conferred upon it by the Statute under which it is created.

8. Section 13 of the Act of 1987 makes a provision for filing appeal by the aggrieved person against an order made by the District Forum before the Commission and prescribes a limitation of thirty days to file such appeal in such form and manner as may be prescribed. The Government has, in the exercise of power conferred by Section 24 of the Act of 1987, framed Rules known as The Jammu and Kashmir Consumer Protection Rules, 1987 [“the Rules of 1987”]. Rule 10 of the Rules of 1987 lays down procedure for hearing the appeal by the Commission, for facility of reference, relevant portion of which is set out below:

“10. Procedure for hearing the appeal.

.....
.....
.....

(vi) On the date of hearing or on any other day to which hearing may be adjourned, it shall be obligatory for the parties or their agent to appear before the State Commission. If appellant or his agent fails to appear on such date, the State Commission may, on its discretion, either dismiss the appeal or decide *ex-parte* on merits. If the respondent or his agent fails to appear on such date, the State Commission shall proceed *ex-parte* and shall decide the appeal on merits of the case.”

9. From a reading of Clause (vi) of Rule 10, it is evident that if on a date fixed by the Commission in the appeal for hearing, the appellant or his agent fails to appear, the Commission has a discretion either to dismiss the appeal or decide it *ex-parte* on merits. The Commission is also conferred the power to proceed *ex-parte* and decide the appeal on merits, if the respondent or his agent fails to appear on the date fixed by the Commission for

hearing of the appeal. There is, however, no provision either in the Act of 1987 or the Rules framed thereunder conferring upon the Commission the power to re-admit/restore the appeal dismissed in default of appearance of the appellant or his agent. There is also no power conceded to the Commission to set aside either ex-parte proceedings or the decision taken ex-parte in the appeal.

10. As is clarified herein above, the Commission being a creature of the Statute i.e. the Act of 1987, exercises only such powers, as are specifically conferred upon it by the Act, and does not enjoy the inherent powers which are enjoyed by the Courts of law to act *ex debito justitiae*. In the view we have taken, we are supported by a judgment of the Supreme Court in **Rajeev Hintendra Pathak and others v. Achyut Kashinath Karekar and another, 2011 (9) SCC 541**. The question that was posed for consideration before the Supreme Court in the aforesaid case was, whether District Consumer Forums or State Commissions have the power to set aside their own ex-parte order or, in other words, have the power to recall or review their own orders. After considering the case law on the subject including the judgments rendered by it in the cases of **Jyotsana Arvind Kumar Shah and others v. Bombay Hospital Trust, 1999(4) SCC 325** and **New India Assurance Company Ltd. v. R.**

Srinivasan, 2000 (3) SCC 242, in paragraph Nos. 35 and 36 of the judgment, the Supreme Court concluded thus:-

“35. We have carefully scrutinized the provisions of the Consumer Protection Act, 1986. We have also carefully analyzed the submission and the cases cited by the learned counsel for the parties.

36. On careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the Statute and derive their power from the express provisions of the Statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and power of review and the powers which have not been expressly given by the Statute cannot be exercised.”

11. In view of the clear dictum of law laid down in the case of **Rajeev Hitendra Pathak** (supra), it is no more open to argue that the Commission enjoys inherit powers other than those conferred upon it expressly by the Statute. In the aforesaid judgment, the contrary view taken by the Supreme Court in the case of **R.Srinivasan** (supra) was not approved.
12. This brings us to the argument of Mr. R.K.S.Thakur, learned counsel for the petitioners, that in the instant case the Commission, in terms of its order dated 28th November, 2018, had not dismissed the appeal in default but had simply consigned it to records and, therefore, what was sought for by the petitioner in his application made before the Commission was not the restoration of the appeal rather it was only for revival of a

pending appeal simply consigned to records. To appreciate this argument, we deem it necessary to set out order dated 28th November, 2018 herein below:

“28.11.2018.

None is present for the parties.

File be consigned to records.”

13. The expression “consigned to record” needs to be understood before we embark upon analyzing the argument of Mr. Thakur. “Consigned to record”, as is understood in common parlance would generally mean that a file or case is being sent to the designated record room for storage and preservation, often after a legal case has been concluded. Such consignment of a pending case to record may also be resorted to when because of an appeal or revision pending before the higher Court/Forum, it is not possible to conduct proceedings in the matter by the trial Court. Instead of keeping the matter pending and listing it time and again, it is thought desirable to consign such case to record to be revived only after the decision of a pending appeal or revision before the higher Court/Forum.
14. The expression “consign to record” is neither traceable to the Code of Civil Procedure nor is the expression used anywhere in the Act of 1987. The expression “consign to record” in reference to a file is like closing the file for statistical purposes or for the

purposes we have explained above. The proceedings in the file, therefore, do not terminate when the file is consigned to record.

15. In the instant case, the Commission in terms of its order dated 28th November, 2018 noted that the parties had failed to appear and thus, consigned the file to record. The expression used by the Commission was, essentially, in lieu of dismissing the file for non-prosecution and then consign it to record room. It is not the phraseology used by the Commission that really matters but the sum and substance of the order that is material. Whatever be the terminology used, it is for the Court to ascertain the true import having regard to the circumstances under which a particular order has been made. Whether the Court intended to finally terminate the proceedings or it did not intend to do so is a question to be seen in the context in which the order has been made.
16. Viewed, thus, we are of the considered opinion that the order dated 28th November, 2018 was, essentially, an order dismissing the appeal for the failure of the appellant to appear on the date fixed for hearing by the Commission. Such dismissal of an appeal in default of appearance of the appellant is traceable to the provisions of Rule 10(vi) of the Rules of 1987, which we have reproduced herein above.

17. In the absence of any procedure for consigning the file to record and without there being any provision for revival of such matter, it is difficult for us to accept the argument of Mr. R.K.S.Thakur, Advocate that the Commission has the power to consign pending cases to record in lieu of and in place of dismissing them under Clause (vi) of Rule 10 of the Rules of 1987.
18. A Division Bench judgment of this Court in the case of *Tabeen Mineral Water Private Limited v. National Insurance Company Limited*, FAO(D) No.02/2023 decided on 01.09.2023 is distinguishable on its facts. In the aforesaid case what was dismissed by the Commission was a complaint and not the appeal and, therefore, the provisions of Rule 10 of the Rules of 1987 were not applicable. Indisputably, under the Act of 1987, there is no power given to the Commission/Divisional Forum to dismiss a complaint in default whereas in the case of an appeal, such power is specifically conferred by Clause (vi) of Rule 10 of the Rules of 1987.
19. In the case of *Akona Engineering Private Ltd. v. Pal Construction and another*, OWP No.680/2013 decided on 15th December, 2022, a Division Bench of this Court has categorically held that the Commission under the Act of 1987 is devoid of any power to restore the complaint dismissed for non-prosecution. This judgment which was rendered on 15th

November, 2022 appears to have escaped the attention of Division Bench, which decided the case of *Tabeen Mineral Water Private Limited* (supra) on 1st September, 2023.

20. For the foregoing reasons and the conclusion arrived at herein above on the questions of law framed, we are of the considered opinion that the impugned order passed by the Commission is in tune with the settled legal position and does not call for any interference.

21. The writ petition is, therefore, found to be without any merit and the same is, accordingly, dismissed.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
26.08.2025
Vinod, PS

Whether the order is speaking : Yes
Whether the order is reportable: Yes