

(1997) 12 J&K CK 0011
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 1058 Of 1997

National Insurance Co. Ltd.	Vs	APPELLANT
State of J. and K. and Others		RESPONDENT

Date of Decision : 31-12-1997

Acts Referred:

Constitution of India, 1950 — Article 14
Jammu and Kashmir Consumer Protection Act, 1987 — Section 11(2), 11(3)

Citation : AIR 1998 J&K 71

Hon'ble Judges : N.A. Kakru, J

Bench : Single Bench

Advocate : Nisar Ahmad Dandroo, for the Appellant; H.I. Hussain, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Kakru, J.—The case of the respondent No. 3 is that he owned a house situated at Gulab Bagh, Zakura Srinagar which was razed to ground during the night intervening 7th and 8th of September, 1992. It is contended that the house was insured with the petitioner under Policy No. 421003/48/92. A surveyor was deputed by the petitioner to assess the loss, assessment was made, a report was submitted. It is further contended that the investigation conducted by the police also substantiated the contention of the respondent No. 3. The respondent No. 3 demanded disbursement as per the assessment. The claim of the respondent No. 3 was not settled despite the fact that the claim was preferred before the petitioner in the year 1992 and ultimately the claim was repudiated in June, 1995, being aggrieved, the respondent No. 3 filed a complaint before the J. & K. Consumer's Protection Commission at Srinagar. The respondent No. 3 adduced evidence in support of his claim, but the petitioner

could not produce more than one witness in rebuttal, despite opportunity, consequent upon, the Commission closed evidence by its order dated

15-7-1997, which is reproduced hereunder:

Counsel for parties present. O. P. has not kept any other witness present. O. P.'s evidence is closed. List for arguments on 13-8-97.

2. This order has the effect of closing the evidence of the opposite party, petitioner herein, therefore, the petitioner assails this order on a sole

ground, that the evidence has been closed without affording adequate opportunity, therefore, the order is bad in law.

3. Is this averment of the petitioner sufficient to seek the intervention of the court through the medium of writ petition, seeking a writ of certiorari?

This question calls for an answer.

4. One cannot afford to lose sight of the fact that the very purpose of enactment of the J. & K. Consumer Protection Act, 1987 is to ensure better

protection of the interests of consumers, which impliedly connotes welfare of consumers, but it does not make available power to the Commission

to accept the claims of the consumers without proof, equally is the commission bound to allow the opposite party to refute the complaint by

evidence, but, by no stretch of imagination can it be said that an opposite party can prolong the his till eternity. Once an opportunity has been

provided and it is not availed of, the Commission is not bound to provide further opportunity and a party having failed to avail of an opportunity,

cannot plead denial of an adequate opportunity. That apart, fact remains that a reasonable opportunity stands provided to the petitioner and the

mandate of law has been complied with. Thus challenge thrown to the order impugned by the petitioner on the strength of averment reflected in

para No. 2 above cannot sustain a writ against the order of the Commission.

5. No doubt Commission cannot exercise judicial discretion arbitrarily but yet it cannot grant an adjournment for production of evidence on mere

asking. Undoubtedly it is within its powers to order an adjournment for production of evidence, provided cogent and tangible reasons are

advanced for non-production of evidence and in case reasons are tenable and justifiable, adjournment is warranted.

6. Yet another question arises as to whether a writ of certiorari can be granted on the ground of denial of adequate opportunity to produce

evidence. To deal with this question, it is important to bear in mind that in a writ of certiorari. Court is not to sit in appeal on the judgment of the

Commission but what is to be seen is :

i) has the Commission acted without jurisdiction or in excess of it or has failed to exercise it.

ii) does the order suffer from a patent error of law on the face of record.

iii) has the Commission acted grossly in violation of principles of natural justice.

7. As regards lack of jurisdiction, it is not the case of the petitioner that the Commission has acted without jurisdiction. It is also not the case of the

petitioner that there is patent error on the face of record. The main rather only plank of the petitioner's case is that he has been denied an adequate

opportunity which hints at violation of principles of natural justice, but is such a bald assertion sufficient to render an order liable to be quashed, if it

would be so, then no order can attain finality, therefore, the petitioner has to be specific enough to point out as to how the principles of natural

justice have been violated which he could not and has failed miserably to discharge this onus. It being so, a bald assertion cannot vitiate the

impugned order. Moreso, the procedural properties envisaged under the J. & K. Consumer Protection Act, 1987 have been adhered to by the

Commission. Thus I have come to an irresistible conclusion that the assertion of the petitioner is unfounded.

8. That apart, the Legislature has provided the procedure to be followed by the Commission and once the statute provides the procedure which is

not under challenge before the Court, is this plea available to the petitioner. To deal with this question, reference to Section 11, Sub-section (3) of

the Act is necessitated which is reproduced as under:

(3) No proceedings complying with the procedure laid down in Sub-sections (1) and (2) shall be called in question in any Court on the ground

that the principles of natural justice have not been complied with.

9. The Sub-section (3) provides in unambiguous terms that once the procedure established under Sub-sections (1) and (2) is complied with, the

proceedings cannot be called in question in any Court on the ground of non-observance of principles of natural justice.

10. The facts of the case emphatically make it clear that the Commission has observed the procedure laid down in Sub-sections (1) and (2) of

Section 11, therefore, plea of violation of principles of natural justice is not available to the petitioner and such plea cannot be pressed into motion

when procedure established under statute is followed.

11. Viewed thus, it is a valid judicial discretion which the Commission has exercised considering the facts of the case and there is no failure of

justice.

12. On the reasons enumerated hereinabove, the writ petition is dismissed. No order as to costs.

13. However, the parties have entered into an agreement as under:

The parties shall appear before the Commission on 15th of January, 1998 and in case the Commission does not meet on the said date, for any

reasons, in such eventuality, they (parties) will report before the Commission on the following working day and the learned counsel for the

petitioner shall produce his evidence in full on the same day. They have agreed further that in case the petitioner fails to produce the evidence as

has been undertaken by the petitioner, the agreement so arrived at by learned counsel for the parties shall be deemed to be non est.