

(2025) 02 KL CK 1263
In the High Court Of Kerala
Case No : Writ Petition (C) No. 2119 OF 2025

Suresh Nathan

APPELLANT

Vs

State Consumer Dispute Redressal Commission

RESPONDENT

Date of Decision : 11-02-2025

Acts Referred:

Consumer Protection Act, 2019 — Section 37B, 38, 49, 50

Citation : (2025) 02 KL CK 1263

Hon'ble Judges : C.S.Dias, J

Bench : Single Bench

Advocate : K.R.Arun Krishnan, Deepa K.Radhakrishnan, Sanal C.S Vishak K.V., Anu T.H., C.Dinesh, Vidya Kuriakose

Final Decision : Allowed

Judgement

C.S.Dias, J

1. The petitioner had filed C.C. No.102/2019 (Ext.P1 complaint) and C.C.No.103/2019 before the Kerala State Consumer Disputes Redressal Commission ('Commission', for brevity) on 5.8.2019, against the respondents 2 to 6. Respondents 2 to 6 had entered appearance in the two complaints and filed their versions. The complaints were posted together on 8.4.2020. On the said day, the complaints were adjourned to 04.06.2024. On 04.06.2024, the Commission adjourned Ext.P1 complaint to 17.10.2024. However, on the said posting date, by Ext.P3 order, the complaint was dismissed for non-prosecution. Immediately, the petitioner filed Ext.P4 application under Section 50 of the Consumer Protection Act, 2019 ('Act', for short) to review Ext.P3 order. But, by Ext.P5 order, the Commission dismissed Ext.P4 review petition. Exts.P3 and P5 are illegal and erroneous. Hence, the writ petition.

2. Heard; the learned counsel for the petitioner and the learned counsel appearing for the respondents 2 to 6.

3. When the writ petition came up for consideration on 20.1.2025, this Court had

called for the proceedings sheet of Ext.P1 complaint from the Commission, which was transmitted to this Court.

4. On a perusal of the proceedings sheet, it is seen that the petitioner had filed Ext.P1 complaint on 14.8.2019. The Commission had issued notice to the opposite parties and adjourned the case to 8.4.2020. On 8.4.2020, the Commission adjourned Ext.P1 complaint by notification to 4.06.2024 i.e., after four years. On 4.6.2024, the Commission recorded no representation for either side and adjourned the complaint to 17.10.2024. On 17.10.2024, the Commission dismissed the complaint for non-prosecution.

5. Even though the petitioner had preferred Ext.P4 application to review Ext.P3 order, the Commission dismissed the the review petition by Ext.P5 order, holding that there is no error apparent on the face of the order.

6. For the determination of the writ petition, it is necessary to advert to Sections 37-B, 38 and 49 of the Consumer Protection Act, 2019, which reads as follows:

37-B. Recording settlement and passing of order. -(1) The District Commission or the State Commission or the National Commission, as the case may be, shall, within seven days of the receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and dispose of the matter accordingly.

(2) Where the consumer dispute is settled only in part, the District Commission or the State Commission or the National Commission, as the case may be, shall record settlement of the issues which have been so settled and continue to hear other issues involved in such consumer dispute.

(3) Where the consumer dispute could not be settled by mediation, the District Commission or the State Commission or the National Commission, as the case may be, shall continue to hear all the issues involved in such consumer dispute.]

38. Procedure on admission of complaint.-(1) The District Commission shall, on admission of a complaint, ³[***] proceed with such complaint.

(2) Where the complaint relates to any goods, the District Commission shall,-

(a) refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by it;

(b) if the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, proceed to settle the consumer dispute in the manner specified in clauses (c) to (g),

(c) if the complaint alleges a defect in the goods which cannot be determined

without proper analysis or test of the goods, obtain a sample of the goods from the complainant, seal it and authenticate it in the manner as may be prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory to make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Commission within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by it;

(d) before any sample of the goods is referred to any appropriate laboratory under clause (c), require the complainant to deposit to the credit of the Commission such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question:

(e) remit the amount deposited to its credit under clause

(d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, it shall forward a copy of the report along with such remarks as it may feel appropriate to the opposite party;

(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, require the opposite party or the complainant to submit in writing his objections with regard to the report made by the appropriate laboratory;

(g) give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 39.

(3) The District Commission shall, if the complaint admitted by it under sub-section (2) of section 36 relates to goods in respect of which the procedure specified in sub-section (2) cannot be followed, or if the complaint relates to any services,-

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Commission:

(b) if the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, it shall proceed to settle the consumer dispute-

(i) on the basis of evidence brought to its notice by the complainant and the

opposite party, if the opposite party denies or disputes the allegations contained in the complaint, or

(ii) ex parte on the basis of evidence brought to its notice by the complainant, where the opposite party omits or fails to take any action to represent his case within the time given by the Commission;

(c) decide the complaint on merits if the complainant fails to appear on the date of hearing.

(4) For the purposes of sub-sections (2) and (3), the District Commission may, by order, require an electronic service provider to provide such information, documents or records, as may be specified in that order.

(5) No proceedings complying with the procedure laid down in "sub-sections (2) and (3) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

xxx xxx xxx

49. Procedure applicable to State Commission. -(1) The provisions relating to complaints under sections 35, 36, 37, 38 and 39 shall, with such modifications as may be necessary, be applicable to the disposal of complaints by the State Commission.

(2) Without prejudice to the provisions of sub-section (1), the State Commission may also declare any terms of contract, which is unfair to any consumer, to be null and void.

This clause provides that the provisions under clauses 35,36,37,38 and 39 shall, with such modifications as may be necessary, be applicable for the disposals of disputes by the State Commission and that the State Commission will deal with matters relating to declaring any terms of contract, which is unfair to any consumer, to be null and void (Notes on Clauses).

(emphasis supplied)

7. A co-joint reading of the Sections 37-B and 38 of the Act mandates that the District Commission has to hear all issues involved in the consumer dispute and decide the complaint on merits, even if the complainant fails to appear on the hearing date.

8. By virtue of Section 49 of the Act, Section 38 is made applicable to the State Commission. Therefore, the State Commission is not empowered to dismiss a complaint for default or non-prosecution, but is obliged to decide the complaint on its merits.

9. In view of the statutory stipulation under the above referred provisions, the dismissal of Ext.P1 complaint for non-prosecution is erroneous and wrong. Certainly, there is an error apparent on the face of Ext.P3 order. As there is an infraction of the statutory provisions, notwithstanding the alternative remedy

provided under the Act, I am convinced that the writ petition is to be allowed by exercising the extraordinary powers of this Court.

In the result, the writ petition is allowed in the following manner:

(i) Exts.P3 and P5 orders are set aside.

(ii) Ext.P1 complaint is restored to file.

(iii) The petitioner and the respondents 2 to 6 are directed to appear before the Commission on 19.3.2025. The Commission shall consider and dispose of the complaint in accordance with law and as expeditiously as possible, at any rate, with an outer time period of six months from the date of production of a certified copy of this judgment.