

(1994) 10 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : C.I.M.A. No. 53 of 1992

Union of India

APPELLANT

Vs

President, Divisional Forum and Others

RESPONDENT

Date of Decision : 24-10-1994

Acts Referred:

Jammu and Kashmir Consumer Protection Act, 1987 — Section 15

Citation : (1995) JKLR 447 : (1984) KashLJ 484 : (1995) SriLJ 108

Hon'ble Judges : V.K.Gupta, J

Bench : Single Bench

Advocate : V.R.Wazir, S.S.Nanda, G.R.Asgar , D.C.Raina, B.Singh, A.K.Sawhney,
Advocates appearing for the Parties

Judgement

1. This appeal has purportedly been filed and styled under section 17 of the Jammu and Kashmir Consumers Protection Act, 1987 against the

order dated 29.5.1992 passed by the State Consumers Protection Commission constituted under the aforesaid Act. The Order impugned in the

present appeal in this Court was passed by the said Commission in exercise of its appellate jurisdiction because the appellant, herein, had moved

the said Commission against the order passed by the Divisional Forum.

2. Learned Counsel for the respondents has raised a preliminary objection to the maintainability of this appeal in this court on the ground that under

section 17 of the Act appeals in High court lie only against the orders passed by the State Commission in exercise of its powers under section 15

(a) (i) of the Act. Section 15 of the Act reads thus:

15. Jurisdiction of the State Commission: Subject to the other provisions of this Act, the State Commission shall have jurisdiction :

(a) to entertain :

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees fifty thousand but does not exceed

rupees ten lakhs; and (ii) appeal against the orders of Divisional Forum within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending between or has been decided by any Divisional

Forum within the State, where it appears to the State Commission that such Divisional Forum has exercised a jurisdiction not vested in it by law, or

has failed to exercise its jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity".

The expression 'Complaint' has been defined in section 2 (8) of the Act which reads as under:

(c) "Complaint" means any allegation in writing made by a complainant that:

(i) as a result of any unfair trade practice adopted by any trader, the complainant has suffered loss or damage; (ii) the goods mentioned in the

complaint suffer from one or more defects; (iii) the services mentioned in the complaint suffer from deficiency in any respect;

(iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in

force or displayed on the goods or any package containing such goods, with a view to obtaining any relief provided by or under this Act.

3. After hearing learned counsel for the parties and perusing the record, I am convinced that on a plain reading of Sections 17, 15 and 2 of the

Act, appeal in the High Court can lie only against the orders passed by the State Commission while it is deciding the matter on the original side in a

complaint filed before it under section 15 (a) (i) of the Act by a complainant and not when it is deciding either an appeal filed by a person

aggrieved by an order passed by the Divisional Forum or even while deciding an application for condonation of delay in filing the appeal.

4. The definition of the expression "complaint" has relation also to the expression "complainant" defined in section 2 (b) of the Act, according to

which a complainant means either a consumer or a voluntary consumer association or the Government, if it makes a complaint. A combined

reading of the two definitions of the "complaint" and "complainant" occurring in section 2 of the Act, the jurisdiction of the State Commission defined

in section 15 of the Act and the provisions for filing of appeals contained in section 17 of the Act, therefore, leaves no one in any doubt that the

intention of the Legislature in prescribing the High Court as a forum for appeals under the Act was restricted and confined only to such matters

which were decided by the State Commission while exercising its jurisdiction on the original side in entertaining the complaints where the value of

the goods etc. exceeded Rupees Fifty thousands. It was only in these cases, that the Legislature provided that the appeals shall lie to the High

Court against the orders passed by the State Commission. It was not intention of the Legislature that the orders passed by the State Commission

under section 15 (a) (ii) shall be appealable to the High Court.

5. The right of appeal is always traceable to a statute because it is a well established principle of law that the appeal is the creation of a statute. The

right of appeal is neither to be found inherent in any court nor can it be inferred by any implication etc. If the statute does not provide for an appeal

against a particular order, on a plain reading and simply speaking, the appeal does not lie and is not maintainable. In the present case, one cannot

dispute that the Legislature by enacting the Jammu and Kashmir Consumer Protection Act, 1987 clearly intended that no appeal shall lie against an

order passed by a State Commission, except if the order was passed under section 15 (a) (i) of the Act.

6. The order challenged and impugned in the appeal before us has clearly been passed by the State Commission not in the exercise of its original

jurisdiction as contemplated under section 15 (a) (i) of the Act, but has undoubtedly been passed in the exercise of its appellate jurisdiction under

section 15 (a) (ii) of the Act. Mr. Sawhney's contention that the order was not passed by the Commission while disposing of the main appeal itself

and that it was passed only in a matter relating to an application in that appeal for condonation of delay is wholly fallacious and totally

misconceived. The application for condonation of delay in a time barred appeal is a step in the appeal itself and any order passed in that

application by the State Commission is the order in the appeal itself and can, by no stretch of imagination be considered to be an order passed by

the Commission on the original side of its Jurisdiction. Equating an application for condonation of delay in an appeal filed under the Act with the

complaint filed by a complainant on the original side of the Commission's jurisdiction is not only a gross misunderstanding of the clear provisions of law, but also proceeds on a fallacy of the submissions. Without there being an appeal, there cannot be an application for condonation of delay, as both the appeal and the application are directly interlinked with each other and terming the order passed in the application for condonation of delay as an order on the original side is wholly incorrect and totally against the provisions of the Act.

7. There is one more angle to the issues involved. The Act clearly intends to provide for only one appeal against the order of the Divisional Forum to the State Commission. As already observed the appeal being the creation of statute, if the statute intended to provide for only one appeal, a party cannot be allowed to have recourse to the remedy of a second appeal because such a remedy not being provided for in the statute, is not available to the party. First having appealed against the order of the Divisional Forum before the State Commission, and having failed there because of the appeal being time barred, the appellant cannot be allowed to file a second appeal, as has been sought to be done. Permitting the appellant to file a second appeal will amount to defeating the very purpose of the enactment and the intention beyond it.

8. For the foregoing reasons, therefore, I find no merit in the appeal. The appeal accordingly not being maintainable is dismissed. No order as to costs.