

Government of Jammu and Kashmir
Department of Food, Civil Supplies and Consumer Affairs
Civil Secretariat, J&K Jammu.

Notification

Jammu, the 22nd February, 2023.

S.O. 93 :- In exercise of the powers conferred by sub-section (1) and clauses (p) and (q) of sub section (2) of section 102 of the Consumer Protection Act, 2019(35 of 2019), the Government hereby makes the following rules; namely:-

1. **Short title, extent and commencement:-** (1) These rules may be called the Jammu and Kashmir Consumer Protection Mediation Rules, 2023.

(2) These rules shall come into force from the date of publication in the official Gazette.

2. **Definitions:-** In these rules, unless the context otherwise requires:-

a) **"Act"** means the Consumer Protection Act, 2019(35 of 2019);

b) **"Commission"** means the District Commission or the State Commission, as the case may be;

c) **"Government"** means the Government of Jammu and Kashmir;

d) **"Mediation Cell"** means a consumer mediation cell established under subsection (1) of section 74 of the Act;

e) **"Parties"** means parties to a dispute;

f) **"President"** means the President of the State Commission or the District Commission, as the case may be;

g) **"Settlement"** means a settlement arrived at in the course of a mediation proceeding in respect of all or some of the issues involved in a consumer dispute pending before a Consumer Commission.

(2) The words and expressions used in these rules but not defined and defined in the Act shall have the same meaning assigned to them in the Act.

3. **Mediation Cell:-** (1) Every Mediation Cell set up in a Commission, shall have a panel of mediators on the recommendation of a selection committee consisting of the President and a member of that Commission.

(2) The Mediation Cell shall have such support staff as may be decided by the President of that Commission in consultation with the Government and the Government shall provide all administrative assistance and infrastructure facilities required by the Commission.

4. **Eligibility for empanelment as mediator:-** The following persons shall be eligible to be empanelled with a Mediation Cell:-

- a) retired District and Session Judges, or other retired judicial officers of the Judicial Services of the Jammu and Kashmir;
- b) retired Members of a Consumer Commission;
- c) an advocate with a minimum experience of ten years at Bar;
- d) the mediators empanelled with the Mediation Cell of High Court or a District Court;
- e) a person having experience of at least five years in mediation or conciliation;
- f) experts or other professionals or retired officer of J&K Government with at least fifteen years' experience in administration.

5. **Disqualifications for empanelment:-** 1) The following persons shall be disqualified for being empanelled as a Mediator, namely:-

- a) a person who has been adjudged as insolvent;
- b) person against whom criminal charges involving moral turpitude are framed by a criminal court and are pending;
- c) a person who has been convicted by a criminal court for any offence involving moral turpitude;
- d) a person against whom disciplinary proceedings have been initiated by the appropriate disciplinary authority and are pending or have resulted in a punishment.

2) A person who is or has been interested in or connected with the subject matter of the consumer dispute or is related to or has been associated or connected in any manner, including in a professional capacity, with any of the parties to the consumer disputes or any of their associates, affiliates, promoters,

holding companies, subsidiaries companies, partners, directors or employees, shall be disqualified for being nominated as a mediator in that case.

Establishment of Mediation Cell, and Procedure for empanelment

6. of Mediator:-

- 1) The Mediation Cell attached to State Commission shall be headed by the President of the State Consumer Commission.
- 2) In the State Commission, Mediators shall be nominated by the President.
- 3) The Mediation Cell attached to each District Commission shall be headed by the President of that District Consumer Commission.
- 4) In the District Commission, Mediators shall be nominated by the President of the respective District Commission.
- 5) Each Consumer Commission shall invite applications from eligible persons for empanelment as mediators, by publication of a notice in at least one English and one vernacular newspaper widely circulated in its jurisdiction.
- 6) The applications received by the Mediation Cell of State District Commission for empanelment as mediator shall be scrutinized and the list of eligible applications shall be placed before the selection committee constituted under sub-section (1) of section 75.
- 7) The Selection Committee consisting of the President and a member of that Commission shall determine its procedure for making its recommendation and, after taking into account the suitability, integrity as well as relevant experience of the candidates, recommend a panel to be maintained by the Mediation Cell.
- 8) The consent of the persons whose names are included in the panel shall be obtained before empanelling them.
- 9) The panel of mediators prepared shall be valid for a period of five years.

7. Fee of Mediator:- (1) A consolidated fee, in a successful mediation shall be paid to the mediator, who conducts the mediation proceedings, from the time of reference till their conclusion.

(2) The fee of the mediator empanelled with a State Consumer Commission and District Commission including costs of secretarial assistance and other ancillary expenses, shall be fixed by the President of the State Commission case wise, considering the nature of the dispute, in consultation with the Government.

(3) In an unsuccessful mediation, half of the aforesaid fee shall be paid to the mediator.

(4) The fee of the mediator shall be shared equally by the two sets of parties.

(5) The mediator who successfully conducts part of the proceedings shall be paid such fee as may be fixed by the President of the State Consumer Commission.

(6) The fee shall be deposited in advance with the Mediation Cell.

(7) If a party does not deposit his share of the fee or the cost of mediation, the Consumer Commission may, on the application of the mediator or any other party, direct the party in default to deposit the same within a week, and if:-

- a) he fails to deposit such fee or cost, the Consumer Commission may permit the other parties to deposit the same and recover the said amount, from the party in default, in the manner prescribed for the execution of a money decree by a Civil Court;
- b) no other party deposits the share of the party in default, the Consumer Commission may terminate the mediation proceedings.

8. **Removal of mediator:-** If a mediator is discovered to be disqualified or he in any manner misconducts himself as a mediator or he is otherwise found unsuitable to continue as a mediator, the Mediation Cell may remove his name from the panel of mediators after giving an opportunity of hearing to him.

9. **Re-empowerment of mediator:-** Only such mediators shall be eligible for re-empowerment who, in the opinion of the Mediation Cell, have successfully and efficiently discharged their functions as empanelled mediators and such re-empowerment is made on the basis of the recommendation of the Selection Committee.

10. **Training:-** The mediators shall be given appropriate training in conducting mediation by such experts as may be nominated by the Mediation Cell and it shall be obligatory for them to attend such training.

11. **Code of conduct:-** (1) The empanelled mediators shall not communicate, directly or indirectly with any of the parties or their associates, affiliates, promoters, holding companies, subsidiaries companies, directors, partners or employees or with any of their counsel during pendency of the mediation proceedings, except during the course of the mediation, in the presence of the parties or their counsel.

(2) The empanelled mediator shall not accept any gift or hospitality from any of the parties or their associates, affiliates, promoters, holding companies, subsidiaries companies, directors, partners or employees or any of their counsel.

(3) In addition to the disclosure required under clauses (a) and (b) of section 77 each mediator shall disclose the following information before commencement of the mediation in a case assigned to him, namely :-

- a) whether he has or in the past had any personal, business or professional relationship or connection with any of the parties to the consumer dispute or other proceedings or any person associated or connected in any manner, to any of the parties or their associates, affiliates, parent companies, subsidiaries companies, directors, partners or employees;
- b) whether there exists any circumstance which may give rise to reasonable doubt as to his independence and impartiality.

(4) Any person who is empaneled in any mediation cell in the State shall not practice in any State or District Commission as a lawyer or otherwise during his tenure as a mediator.

12. Mediation proceedings:- (1) The mediation shall be conducted in the presence of the parties or their authorised representatives or counsel.

(2) The mediation shall stand terminated on expiry of three months from the date of first appearance before the mediator unless the time for completion of mediation is extended by the Consumer Commission, in which case it shall stand terminated on expiry of such extended time.

(3) The parties shall be entitled to appear before the mediator in person or through their respective counselor authorised representatives.

(4) The mediator shall be guided by the principles of natural justice and fair play but shall not be bound by the provisions of the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

(5) If a party does not participate in the mediation proceedings, the Consumer Commission may direct such a party to participate in the proceedings.

(6) The parties shall provide all such information to the mediator as may be reasonably required by him for conducting the mediation proceedings.

(7) The record of the proceedings shall be prepared by the mediator on every date and shall be signed by the parties or their Counsel, authorised representatives or Attorneys.

(8) The agreement executed between the parties shall be submitted by the mediator, to the Consumer Commission, in a sealed cover, with a forwarding letter. The mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission.

(9) If no agreement is executed between the parties, within the time prescribed in these regulations, the mediator shall intimate so, to the Consumer Commission, without in any manner disclosing as to what transpired during the mediation proceedings, what was the stand taken by the parties or why the agreement could not be reached.

13. Mediation Proceedings through video conferencing:- The State Commission and District Commissions may allow mediation proceedings to take place, entirely or in part, through video conferencing, in such a platform as specified by the Government.

14. Role of mediator:- (1) The mediator shall attempt to facilitate a voluntary resolution of the disputes between the parties, assist them in removing the misunderstandings, if any, and generating options to resolve their disputes, but shall not impose any term or any settlement upon the parties.

(2) The mediator shall explain the terms of the agreement, to the parties, before obtaining their respective signatures on it.

15. Confidentiality:- (1) The parties and the mediator shall maintain confidentiality in respect of the events that transpire during the mediation proceedings and shall not use or rely upon any information, document etc. produced, the proposals and admissions made or the views expressed during the mediation proceedings.

(2) There shall be no audio or video recording of the mediation proceedings.

16. Communications:- The mediator shall not communicate with the Consumer Commission except by way of his report, with copies to all the parties.

17. Immunity:- (1) No mediator shall be liable for any civil or criminal proceedings, for any act done or omitted to be done bonafidely by him, in his capacity as a mediator.

(2) The mediator shall not be summoned by a party to appear in a Court or other forum, to testify in regard to any information received or the action taken by him during the mediation proceedings.

18. Reports:- (1) Every Mediation Cell shall submit a quarterly report to the District Commission or the State Commission to which it is attached, containing the following information, namely:-

- a) a list of its empanelled mediators, including experience and qualifications of each of them;
- b) the number of cases pending before it at the beginning of the quarter;
- c) the number of cases referred to it during the quarter;
- d) the number of cases disposed of during the quarter;
- e) the number of cases pending at the end of the quarter;
- f) the number of cases assigned to each mediator, the number of cases disposed of by him during the quarter and the number of cases in which the mediation referred to him was successful;
- g) the number of cases in which the mediation was not successful;
- h) the fee paid to each mediator during the quarter.

(2) The report shall be submitted within one month of the end of each quarter.

19. Matters not to be referred to mediation:- The following matters shall not be referred to mediation, namely:

- (a) the matters relating to proceedings in respect of medical negligence resulting in grievous injury or death;
- (b) matters which relate to defaults or offences for which applications for compounding of offences have been made by one or more parties;
- (c) cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion;
- (d) cases relating to prosecution for criminal and non-compoundable offences;
- (e) cases which involve public interest or the interest of numerous persons who are not parties before the commission: Provided that, in any case other than those mentioned in this rule, the Commission before which the Case is pending may choose not to refer it to appears to the Commission that no elements of a settlement exist which may be acceptable to the parties or that mediation otherwise not appropriate

having regard to the circumstances of the case and the respective positions of the parties.

20. Refund of fee:- Where the Commission refers the parties to mediation, the complainant shall be entitled to receive full amount of application fee paid in respect of such complaint, if a settlement is reached between such parties.

21. Resort to arbitral or judicial proceedings:- The parties shall not initiate any arbitral or judicial proceedings in respect of a matter which is the subject matter of the mediation and also when such parties have expressly undertaken not to initiate any such proceeding.

22. Settlement agreement not to be discharged by death of party thereto:- (1) A settlement agreement shall not be discharged by the death of any party thereto and shall be enforceable by or against the legal representative of the deceased party.

(2) Nothing in this rule shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

By order of the Government of Jammu and Kashmir

Sd/-

(Zubair Ahmad) JKAS

Commr./Secretary to the Government

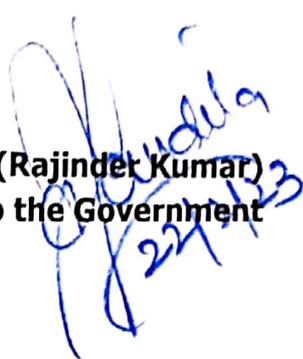
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Copy to the:-

1. President State/District Consumer Commissions, J&K.
2. Secretary, Department of Consumer Affairs, GoI.
3. Financial Commissioner (Addl. Chief Secretary) Finance Department.
4. Principal Secretary to the Hon'ble Lieutenant Governor, J&K.
5. Principal Secretary to Hon'ble the Chief Justice, Jammu & Kashmir and Ladakh High Court.
6. Joint Secretary (J&K Affairs) MHA, GoI.
7. Divisional Commissioner, Kashmir/Jammu.
8. Director, Department of Food, Civil Supplies & Consumer Affairs Jammu/Kashmir.
9. Additional Secretary to Chief Secretary for information.

10. Private Secretary to Commissioner/Secretary to the Government, General Administration Department for information of Commissioner Secretary.
11. Private Secretary to Commissioner/Secretary to the Government, Department of Food Civil Supplies & CA for information of Commissioner Secretary.
12. Private Secretary to Secretary to the Government, Department of Law, Justice & Parliamentary Affairs for information of Secretary.
13. Incharge website.
14. Stock file (w2sc).


(Rajinder Kumar)
Under Secretary to the Government