

(1997) 10 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

R.DAYALU

APPELLANT

Vs

BHAMBRI PRINTERS

RESPONDENT

Date of Decision : 10-10-1997

Acts Referred:

Citation : 1997 2 CPC 566 : 1997 3 CPJ 549 : 1997 3 CPR 322

Hon'ble Judges : J.B.Garg , Sada Nand , P.Ojha J.

Final Decision : Orders passed

Judgement

1. DR. R. Dayalu, retired Director Ayurveda, Haryana has filed this complaint stating that he is an M.B.B.S. and Bhishgacharya of Jaipur State and has worked in Medical College as Professor and Principal in Ayurvedic Colleges. He had been examiner of B.A.M.S., Ph. D. in various Universities and that after retirement he felt the need for an authoritative book on Ayurveda which could be useful for the students of Ayurveda. He had prepared a manuscript which he wanted to get published as a text book of about 250 pages of 20 cm X 30 cm comprising 30 chapters. In October, 1991 he approached the respondent, M/s. Bhambri Printers, Manimajra, Chandigarh for publication of his book and it was settled that he would pay a sum of Rs. 40,000/- to it for printing the book on the format of 20 x 30/8 which could constitute 250 pages comprising 30 chapters of the book. He further alleged that he paid Rs. 20,000/- to the respondent in the name of "Kamakshi the publisher of the book and receipts thereof were issued. The printing work was to be done by the respondent upto 18.3.1993 but he printed only ten bundles of manuscript of 8 pages each (total 80 pages) constituting 12 chapters. The repeated requests made to the respondent to finish the printing work were of no avail. The complainant was unable to bear the delay any longer offered to take back his manuscript and was even ready to pay Rs. 12.800/- the cost of the printed material. The complainant further alleged that respondent did not clear the account with the complainant and even failed to return the original manuscript taking the plea that the manuscript was lying with the typist finally the respondent returned the uncorrected plates of chapters 15-16-18. The original manuscript of remaining 15 chapters is still in possession of the

respondent and that he did not clear the account though the excess advance cheques were received. The failure on the part of the respondent to return the original manuscript to the complainant and not finishing the printing of the book inspite of receiving excess advance charges of printing, amounts to gross deficiency in service.

2. THE respondent has resisted the complaint. His preliminary objections are that the present complaint is not maintainable being barred by time. THE work of printing was entrusted by the complainant in the year 1991 and there has been no acknowledgement of the claim and hence the complaint is barred by time; that in order to get out of the plea of limitation averments have been made in para 8 of the complaint which are false and concocted. On merits it is stated that out of 30 chapters the respondent completed 17 chapters and has received only Rs. 20,000/- i.e. half the payment; that the complainant has not returned the proof of 5 chapters of manuscripts and has also not paid for the paper purchased by the answering respondent for the remaining chapters and that the complaint is frivolous and is liable to be dismissed with costs. THE answering respondent averred that he completed 17 chapters out of 30 and has purchased the paper for remaining chapters which is lying as waste with him. He also admits that 12 chapters have been printed and given to the complainant and also gave proof of 5 chapters. The parties have tendered their evidence by way of affidavits and documents before this Commission and they entered into witness box for cross-examination.

Coming to the preliminary objection the contention of the respondent that the complaint is barred by time and that the statement made in para 8 of the complaint is frivolous and concocted, has no force. A perusal of the delivery challan from M/s. Bhambari Printers dated 18.9.1995, Annexure C-4, addressed to Dr. R. Dayalu (S. No. 1135) shows that 10 sets of 1100 each were delivered to Dr. R. Dayalu on 18.9.1995. The dispute is for chapters to be delivered subsequent to the ones delivered on 18.9.1995. This brings the complaint within the limitation. The other objection that out of 30 chapters respondent printed 17 chapters and received only Rs. 20,000/- i.e. half payment and the present complaint is frivolous cannot be deemed to be a preliminary objection.

3. COMING to the evidence. Dr. R. Dayalu has stated in his affidavit that text book of about 250 pages of 20 cm X 30 cm comprising 30 chapters was prepared by him and he approached the respondent for its printing and it was settled at Rs. 40,000/- on the format of 20 x 30/8 and Rs 20,000/- was given as advance but the respondent on one pretext or the other did not complete the work. The evidence of Dr. R. Dayalu, complainant has been supported by him through his sworn affidavit. When he was cross-examined on 12.8.1997 he testified the facts contained in the complaint. There is only one discrepancy in his cross-examination with regard to the possession of the remaining chapters of manuscript which reads as under: "It is incorrect that I do not possess the manuscript of the remaining chapters." But this has been clarified by him

immediately when the next question was put to him and it is as under.: "Q If respondent is provided with the paper and manuscript the respondent is ready to print at the old rate. After 1991 there has been increase in price of paper old figure of Rs. 20,000/- is too low. A. I am prepared to supply and let the respondent print it at the old rate of Rs. 20,000/- but I clarify that the manuscript of the remaining chapters is not with me and it is with the respondent."

As against this the respondent has admitted in his reply that 12 chapters were printed and delivered to the complainant and proof of 5 chapters has also been sent to the complainant and that he purchased the paper for remaining chapters which is lying waste with the respondent. In his affidavit in para 3 the respondent also admitted that 12 chapters were printed and delivered and proof of 5 chapters had been sent to the complainant and on receipt of the proof the deponent purchased paper from the market by investing approximately Rs. 11,924.00 for which bills dated 25.10.1991 have been attached. It is further stated that the complainant refused to pay further advance and that besides 12 chapters mentioned above 5 chapters were not returned for printing because the complainant was not ready to pay balance amount for the remaining chapters and that the complainant was interested that the entire work should be completed with the advance so said that the deponent was not prepared for this deal as complainant was competent to refuse the work and in that case the paper and labour of the respondent could have gone waste. However in the cross-examination on 12.8.1997 the respondent has stated that it is incorrect that the entire book was expected to be of 30 chapters. This is very much against his own reply in para 4 as also in his testimony in his sworn affidavit dated 14th May, 97 wherein in para 2 of his affidavit he states that out of 30 chapters the answering respondent completed the printing of 17 chapters and has received Rs. 20,000/- i.e. half the payment.

4. THE fact that the respondent agreed to print the book of the complainant for a sum of Rs. 40,000/- consisting of 30 chapters is very much proved from the affidavit of the complainant, the reply of the respondent and even admission of this fact by the respondent in his affidavit. THE payment of Rs. 20,000/- by cheques as an advance payment for completing the work is also very much on record as admitted by the parties. THE delivery challan from M/s. Bhambri Printers dated 18.9.1995 proved that the alleged service was undertaken to be performed by the respondent. It is not all the case of the complainant that he is not willing to make the balance payment on completion of the work entrusted to the respondent. It is rather a supposed apprehension on the part of the respondent that complainant is interested that the entire work should be completed only against the advance so paid and that the respondent was not prepared for this deal as the complainant was likely to withdraw the work and in that case the printing paper and labour of the respondent would have gone waste as stated by him in the last line of para 3 of his affidavit. We have no reason to disbelieve the testimony of the complainant Dr. R. Dayalu supported by his sworn

affidavit that he handed over the manuscript of 30 chapters to the respondent and that the respondent neither carried out the work entrusted to him nor is willing to return the manuscript. In view of the above the respondent is held deficient in providing the service agreed to by them. In the circumstances of the case it is ordered that respondent shall deliver the remaining printed manuscript to the complainant within a period of four months of the date of pronouncement of this judgment. Since there has been overall rise in labour charges etc the complainant shall pay an additional sum of Rs. 10,000/- by means of a bank draft over and above the amount of Rs. 40,000/- already agreed to the respondent at the time the aforesaid printed manuscript is delivered. In case the respondent fails to complete printing as held above within the prescribed time it shall be liable to pay a sum of Rs. 80,000/- as damages to the complainant. Orders passed.