
(2003) 03 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

VIPUL TRAVELS

APPELLANT

Vs

ASHKARANBHAI MEGHRAJBHAI SONI

RESPONDENT

Date of Decision : 10-03-2003

Acts Referred:

Citation : 2003 2 CPJ 499

Hon'ble Judges : M.S.Parikh , M.K.Joshi J.

Final Decision : Appeal partly allowed

Judgement

1. COMPLAINANTS alleged to have entered into a contract of tour programme of Ahmedabad-Goa-Mahabaleshwar-Bombay-Ahmedabad with the opponent Vipul Travels for the period 7.11.1991 commencing at 6.30 p.m. to 17.11.1991 ending at 7 a.m. and made payment by way of deposit of Rs. 15,000/- and further payment of Rs. 5,000/- in two breaks, in all Rs. 25,000/-. Balance agreed amount of Rs. 30,000/- was to be paid during the tour as and when required. An amount of Rs. 5,000/- was however paid as the opponent required it for payment of RTO tax saying that the bus would not be provided if such payment was not made. List of passengers was also provided to the opponent. The opponent also informed that bus bearing registration No. GJ-1-T-5245 would be made available. Yet, the opponent failed to send the bus on 7.11.1991 as agreed. The complainants have alleged telephonic and personal communication between complainant No. 1 Shri Ashkaranbhai Soni and opponent's concerned person. Yet, the bus could not be arranged till 9.11.1991 and, therefore, the complainants alleged to have suffered great hardship and to have arranged another tour of places like Udaipur, Shrinathji in Rajasthan. The complainants, therefore, alleged to have suffered loss and prayed for compensation in the sum of Rs. 52,000/- and return of the amount paid by them to the opponent over and above cost quantified at Rs. 10,000/- for another tour undertaken by the complainants. The opponent resisted the complaint inter alia on the ground that the amount was accepted by the opponent as per the terms and conditions printed overleaf the receipt issued by the opponent. The opponent also informed the complainants that bus would be provided subject to its arrival from Junagadh/

Dhari and that too after the list of passengers was received from the complainants. After such list was received, opponent obtained permit from the RTO (Regional Transport Office). The opponent accordingly denied the allegation with regard to actual fixation of time of arrival of bus at 6.30 p.m. on 7.11.1991. However, as the bus did not arrive from Junagadh for making it available to the complainants on 7.11.1991, the opponent suggested alternative to the complainants for travel by daily bus service from Ahmedabad to Nasik with a further offer that the opponent would send the bus to Nasik on 9.11.1991 with a view to continue the tour programme. The opponent also obtained permit upon payment of Rs. 4,800/- to the RTO, paid Rs. 10,000/- as deposit and Rs. 1,000/- for making arrangement of cook. The opponent made payment for good food and hotel booking by making payment of Rs. 5,000/- and Rs. 10,000/- respectively. The complainants, however, obtained writing on 9.11.1991 from the opponent under duress/threat. The opponent asserted that the bus could not be utilised for a period of 10 days and, therefore, the opponent sustained loss in the sum of Rs. 30,000/-. Thus, the opponent would not be answerable to the claim in the complaint whereas the complainants would be answerable to the loss sustained by the opponent, who alleged that the complainants would be liable to pay to opponent Rs. 81,000/- in all.

2. IT transpires that complainant's evidence was recorded before the learned Forum. However, on the last date of recording of the evidence, no one was present for the opponent and, therefore, the matter went ex parte. Since there was no supporting evidence for the case put up by the opponent, the learned Forum directed the opponent to pay total compensation of Rs. 57,500/- inclusive of return of the amount paid by the complainant and interest at the rate of 18% p.a. from 1.12.1991 and cost quantified at Rs. 2,500/-. By consent of the learned Advocates for the parties, they were permitted to adduce evidence before this Commission instead of remanding the matter to the learned Forum. Accordingly, the opponent placed necessary documents with affidavit on the record of this Commission. The complainant's witness was permitted to be cross-examined. The opponent's witness was also permitted to be cross-examined. It may be noted that the complainant No. 1 had represented the cause of complainants all throughout and he was cross-examined before this Commission.

We have gone through the material placed on record. We have gone through the respective affidavits and the evidence in the form of cross-examination of the aforesaid witnesses and the documents placed on record. At the outset, it may be noted that the parties did enter into a contract of tour programme of Ahmedabad-Goa-Mahabaleshwar-Bombay-Ahmedabad for the period 7.11.1991 to 17.11.1991. We need not refer to the documents which are placed on record as this fact is an admitted fact. Even in the cross-examination of the opponent's witness this fact surfaces. Similarly, payment of Rs. 25,000/- is also not in dispute. It has also been admitted that the tour programme was fixed for the consideration of Rs. 55,000/- out of which Rs. 25,000/- were paid and Rs. 30,000/- were to be paid. The dispute insofar as initial communications between

the parties are concerned centres round the fact about the arrival of the bus on 7.11.1991. It is in this connection that reference has been made on behalf of the opponent to the conditions overleaf the receipts issued by the opponents in favour of the complainants. One of the conditions would indicate that if the vehicle does not arrive or is not available on account of circumstances beyond the control of the opponent, the opponent would not be responsible for such lapse or failure. This is Condition No. 4. Mr. Ashkaranbhai Soni in his cross-examination has admitted that he had an occasion to go through the conditions printed overleaf the receipts and he had also admitted that the conditions were true and were also read by the other tourists who were to join the complainant No. 1 in the said tour. It is in this respect that the whole difficulty arose at the relevant point of time. There are detailed allegations of facts of what orally transpired between the parties with regard to the arrival of the bus. We need not enter into this part of the allegation of facts for the simple reason that the complainants had the occasion to go through the printed conditions overleaf the receipts. It is true that they had already planned and arranged their tour programme and upon non-arrival of the bus on 7.11.1991 they obviously must have suffered a great deal of hardship. However, since it was agreed between the parties that if the bus did not arrive for the reasons which were beyond the control of the opponent, the opponent would not be responsible. This is one part of the matter. We also need not go to the detailed allegations of facts with regard to the communication between the parties till 9.11.1991, when, according to the opponent, the bus was made available and opponent had to incur a great deal of expenses for seeing that the bus was made available for the tour programme which was postponed and rescheduled to commence the tour on 9.11.1991. It is in this connection that document which has been produced by the opponent and stated to have been signed by the opponent or on behalf of the opponent under threat will need consideration as it will have great deal of impact on the case of both the parties. It is on the letterhead of opponent Vipul Travels. The complainants have produced xerox copy of the document with list Exh. 20. This document has not been in dispute between the parties. What is alleged on behalf of the opponent is that this document has been obtained or has seen the light of the day on account of threats which the complainants or some one on behalf of the complainants had demonstrated to concerned person of the opponent. It is in Gujarati and it recites that "a contract of tour programme was entered into between Mr. Ashkaranbhai Meghrajibhai Soni on behalf of the complainants with M/s. Vipul Travels (opponent) and the opponent could not arrange for the vehicle and, therefore, the amount of Rs. 25,000/- received by the opponent by way of deposit would be repaid in two breaks namely, Rs. 15,000/- between 4 to 6 of the evening of 16.11.1991 and Rs. 10,000/- between 4 to 6 of the evening of 21.11.1991. Now, this document has been signed by the concerned person on behalf of the opponent Vipul Travels. The complainant Mr. Ashkaranbhai Soni and co-complainant Prakashchandra and another co-complainant have signed the same on behalf of the complainants. In our considered opinion, the parties answered to the respective hardships on account of the failure of the tour

programme on 9.11.1991 and thus the matter ended between the parties as per the aforesaid writing entered into between them on 9.11.1991. It would appear that the opponent yet precipitated the matter by issuing notice dated 6.12.1991. But for the issuance of the notice, probably, the matter would not have gone to the Court of Law or the learned Forum. However, the opponent opted to issue notice through learned Advocate Mr. Hariprasad Joshi, inter alia alleging that the writing dated 9.11.1991 was entered into between the parties under threats issued by the concerned complainant at the office of the opponent and obtained the signatures wrongfully. Opponent making several allegations of facts called upon the complainants to pay to the opponent Rs. 81,000/- by way of damages. It appears that the complainant replied this notice on 13.12.1991 and the opponent gave reply to this reply on 24.12.1991. We reiterate that we do not propose to deal with several allegations of facts which centre round the oral communications between the parties right from the time when initial contract of tour programme was entered into till the point of time when the aforesaid writing was entered into between the parties. We propose to rely on the writing dated 9.11.1991 for passing appropriate order in this matter. It is an admitted fact that the opponent Vipul Travels has not taken any action pursuant to the allegations with regard to obtaining of writing dated 9.11.1991 under threats although a detailed notice correspondence has ensued between the parties. Therefore, the broad facts which can be hardly disputed between the parties are : (1) parties did enter into a contract for the tour programme which was to commence on 7.11.1991; (2) for various reasons on either side, the commencement of the programme did not go through; (3) parties entered into contract for return of the amount of Rs. 25,000/- as stated in the writing dated 9.11.1991 but with a view to back out from the aforesaid writing the opponent Vipul Travels issued notice dated 6.12.1991; (4) the complainant also retaliated and filed complaint; (5) there clearly appears to be deficiency in service on the part of the opponent in not returning the amount and instead challenging the writing dated 9.11.1991 which relates to the aforesaid tour programme which was entered into between the parties.

3. OBVIOUS result of what is stated above would be to allow the complaint to the extent of return of the amount with reasonable rate of interest which would compensate the complainants. Even if the matter is viewed from a different angle, the amount of Rs. 25,000/- remained with the opponent M/s. Vipul Travels and on the principle of quantum meruit, opponent would be liable to return the amount with reasonable rate of interest. Be that it may, it would be in the interest of justice to pass following order. ORDER The opponent Vipul Travels is directed to pay to the complainant Rs. 25,000/- with running interest @ 12% p.a. from the date on which the amount of Rs. 25,000/- was paid namely, from 1.1.1991 till 30.11.1999 around which time the opponent deposited the amount. The amount of interest has been worked out and it comes to nearly Rs. 25,000/-. The opponent has deposited Rs. 50,000/- in this Commission. Office to verify the amount and pay the same by Account Payee Cheque to the complainants through

complainant No. 1 upon the complainant No. 1 producing appropriate authority/ receipts from other complainants also. This appeal is accordingly partly allowed with no further order as to costs. Office to note that the amount is stated to have been deposited in Civil Misc. Application No. 145 of 1999. Appeal partly allowed.