

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
ERNAKULAM**

Dated this the 10th day of February, 2023

Filed On: 24/11/216

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member

Smt.Sreevidhia.T.N

Member

C. C. No. 655/2016

Between

COMPLAINANT

Thomas George, S/o M.M. George, 1 C, Concert 'O' Castle, Main Avenue, Panampilly Nagar, Kochi-682036.

VS

OPPOSITE PARTY

Peter Job, Proprietor, Theresa Offset Printers & New India Press, Kidangoor P.O., Angamaly, 683572.

FINAL ORDER

D.B.Binu, President.

1) **A brief statement of facts of this complaint is as stated below:**

The complaint was filed under Section 12 (1) of the Consumer Protection Act, 1986. The brief facts, as averred in the complaint, are that the complainant is an author and has written a book titled "History & Science of Numbers" (English version of his book titled "*Akkangalude Charithram*"). The opposite party is doing the printing business. On 16th July 2016, the opposite party submitted a quotation offering the complainant that he would print 500 copies of the book for a cost of Rs. 31,690/-. The complainant accepted the offer of the opposite party on the same day and placed an order for printing 500 copies of the book vide return e-mail. The acceptance mail clearly states that the matter would be sent in "word format" and that the printed books should be delivered by the end of July 2016. In his reply email, the opposite party demanded payment of Rs. 15,000/- as advance. As per the agreement, the complainant sent the matter to be printed in "word format" to the opposite party's e-mail id newindiapress@gmail.com on 17th July 2016. The opposite party repeated his demand for an advance amount on 18th July 2016. Against the terms of the agreement, the opposite party telephoned and demanded that the word format of

the book had to be converted into "page-maker" format and demanded an additional amount of Rs. 5,000/- for the conversion. Though the complainant is not liable to convert the format of the matter, he spent an additional Rs. 4,000/- to convert the matter from "the word format of the book to "the page-maker format at Ernakulam, and sent the page-maker" format of the book to the opposite party on 26th July 2016. The opposite party assured the complainant that he requires less than one week to complete the work and would hand over 500 printed copies of the book within 2nd August 2016. On 28th July 2016, the opposite party asked the complainant to come to the press of the opposite party at Angamaly for clearing some doubts about the file. Accordingly, the complainant went to the press of the opposite party at Angamaly and cleared the doubts of the opposite party. The printing of the book was already four days past the promised delivery date. Since there was no other alternative or any time to look for another printer, the complainant was compelled to pay the amount hiked by the opposite party, though under protest On 11th August 2016, the complainant paid an amount of Rs. 34,150/- and took the delivery of the books and went to Goa on the same night. The opposite party encashed the second cheque on 12th August 2016. The complainant accepted the quotation of the opposite party only for Rs. 31,690/-. But due to the default of the opposite party, the complainant had spent Rs. 12,460/- towards an additional printing charge and Rs. 4,000/- towards a charge for conversion to "page-maker" format. In total, the complainant was forced to spent an additional Rs. 16,460/-. The complainant was constrained to pay the arbitrarily hiked charges (which were hiked after the promised delivery date) to the opposite party only because he had no other option. The book was scheduled for presentation at a major function attended by the Governor of Goa. The complainant had approached the Commission seeking an order directing the Opposite party to pay Rs. 16,460/- towards the additional cost incurred by the complainant, to pay Rs.10,000/- towards mental agony and hardship suffered by the complainant, to pay a sum of Rs. 15,000/- towards deficiency in service and unfair trade practice committed by the opposite party and to pay Rs. 10,000/- towards the cost of the proceedings.

2) Notice

Notice was issued from the Commission to the opposite party. The opposite party received the notice and enter the appearance before the

Commission. Even though the opposite party entered an appearance in the above case, he did not file his version and thereafter this Commission set the opposite party ex-parte.

3). Evidence

The complainant had filed a Proof affidavit and 14 documents that were marked as Exhibits-A-1- to A-14.

Exhibit A-1. The true copy of the Retail invoice No. B 018 dated 11-8-2016 issued by the opposite party to the complainant.

Exhibit A-2. The true copy of the Lawyer Notice dated 8-9-2016 issued by the complainant to the opposite party.

Exhibit A-3. The true copy of the Acknowledgment card of the lawyer notice dated 8-9-2016.

Exhibit A-4. The true copy of the program schedule of the Conference was held from 12/08/2016 to 14/08/2016.

Exhibit A-5. The true copy of the Cash receipt dated 28/07/2016 was issued by the opposite party.

Exhibit A-6. The Computer printout of the Email letter dated 16/07/2016 was sent at 1:56 PM by the opposite party from his email id newindiapress@gmail.com to the email id thomasgeorgem@gmail.com of the complainant.

Exhibit A-7. The Computer printout of the Email letter dated 16/07/2016 was sent at 2:25 PM by the complainant from his email id thomasgeorgem@gmail.com to the email id newindiapress@gmail.com of the opposite party.

Exhibit A-8. The computer printout of the Email letter dated 16/07/2016 was sent at 9:19 PM by the opposite party from his email id newindiapress@gmail.com to the email id thomasgeorgem@gmail.com of the complainant.

Exhibit A-9. The computer printout of the Email letter dated 17/07/2016 sent at 10:34 PM by the complainant from his email id thomasgeorgem@gmail.com to the email id newindiapress@gmail.com of the opposite party attaching the word format of the book Akkangalude Charithram.

Exhibit A-10. The computer printout of the Email letter dated 26/07/2016 sent at 2:07 AM by the complainant from his email id thomasgeorgem@gmail.com to the email id newindiapress@gmail.com of the opposite party attaching the

pagemaker version of the book Akkangalude Charithram and the matter for cover in word format.

Exhibit A-11. The computer printout of the Email letter dated 04/08/2016 was sent at 9:54 PM by the complainant from his email id thomasgeorgem@gmail.com to the email id newindiapress@gmail.com of the opposite party.

Exhibit A-12. The computer printout of the Email letter dated 05/08/2016 was sent at 11:59 AM by the opposite party from his email id newindiapress@gmail.com to the email id thomasgeorgem@gmail.com of the complainant.

Exhibit A-13. The computer printout of the Email letter dated 06/08/2016 was sent at 10:13 AM by the complainant from his email id thomasgeorgem@gmail.com to the email id newindiapress@gmail.com of the opposite party.

Exhibit A-14. The computer printout of the Email letter dated 06/08/2016 was sent at 3:48 PM by the opposite party from his email id newindiapress@gmail.com to the email id thomasgeorgem@gmail.com of the complainant attaching the letter.

4) The main points to be analysed in this case are as follows:

- i) Whether the complaint is maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iv) Costs of the proceedings if any?

5) The issues mentioned above are considered together and are answered as follows:

The complaint was filed under Section 12 (1) of the Consumer Protection Act, 1986. As per Section 2 (1) (d), a consumer is a person who buys any goods or hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment.

The complainant had produced a copy of Retail invoice No. B 018 dated 11-8-2016 issued by the opposite party to the complainant and the true copy of the Cash receipt dated 28/07/2016 was issued by the opposite party. (**Exhibit A-1 and A-5**). Therefore, we are only to hold that the complainant is a

consumer as defined under the Consumer Protection Act, of 1986. (Point No. i) goes against the opposite party.

In the present case in hand, the complainant has written a book titled "History & Science of Numbers". On 16th July 2016, the opposite party submitted a quotation offering the complainant that he would print 500 copies of the book for a cost of Rs. 31,690/-. The complainant accepted the offer of the opposite party. The opposite party assured the complainant that he requires less than one week to complete the work and would hand over 500 printed copies of the book within 2nd August 2016. Against the terms of the agreement, the opposite party demanded that the "word" format of the book had to be converted into "page-maker" format and demanded an additional amount of Rs.5,000/- for the conversion. The printing of the book was already four days past the promised delivery date. Since there was no other alternative or any time to look for another printer, the complainant was compelled to pay the amount hiked by the opposite party, though under protest on 11th August 2016, the complainant paid an amount of Rs. 34,150/- and took the delivery of the books and went to Goa on the same night. The complainant accepted the quotation of the opposite party only for Rs. 31,690/-. But due to the default of the opposite party, the complainant had to spent Rs. 12,460/- towards an additional printing charge and Rs.4,000/- towards a charge for conversion to "page-maker" format. In total, the complainant was forced to spent an additional Rs.16.460/-. The above case has been filed by the complainant to direct the opposite party to pay Rs.16,460/- towards the additional cost incurred by the complainant, to pay Rs.10,000/- towards mental agony and hardship suffered by the complainant, to pay a sum of Rs.15,000/- towards deficiency in service and unfair trade practice committed by the opposite party and to pay Rs. 10,000/- towards the cost of the proceedings.

The complainant sent a lawyer notice dated 8-9-2016 to the opposite party, demanding the return of an amount of Rs.12,460/- received by the opposite party in excess of the agreed amount and compensation of 14,000/- along with the cost of the notice (**Exhibit A-2**). The opposite party neither paid the amount nor sent any reply (**Exhibit A-3**).

The complainant submitted that by Exhibits A1 and A5, it will be clear that the complainant has paid the said amounts to the opposite party. Moreover, the deficiency in service and unfair trade practices are well clear from Exhibits A6 to A14.

The complainant further submitted that the opposite party assured the complainant that he would deliver the book in time and took an advance of Rs. 10,000/- from the complainant vide cheque No. 259647 of SBT, Panampilly Nagar. The cheque was encashed on 30th July 2016 by the opposite party. The opposite party did not keep its promise to deliver the printed books on time. On 4/8/2016, two days after the promised delivery the complainant asked for delivery at least by 6th August 2016. Instead, the opposite party sent an e-mail to the complainant on 5th August 2016 stating that he can deliver the book only after another week, i.e., on Friday, 12/08/2016. But the complainant reminded the opposite party that he required the book for a very important presentation to be held in Goa and was scheduled to leave for Goa on 9th August. The opposite party told the complainant that he can deliver the book only on 11/08/2016. So, the complainant was forced to reschedule his travel to the 11th of August 2016 night. The complainant was under tremendous stress since the opposite party failed to deliver the book even days after the promised delivery date. He feared that he would miss the important function scheduled at Goa. On 6/8/2016 the opposite party, in violation of his promise, demanded a hike in the printing cost of the book from Rs. 31,690/- to Rs. 44,150/- and refused to print the book if the complainant did not agree.

The complainant who had availed the services of the opposite party was made to suffer due to the deficiency of service on part of the opposite party. The opposite party is liable to compensate the complainant for the deficiency of service on their part. The complainant placed the order to the opposite party by attracting his promise to deliver the books by the end of July 2016. The main purpose of the complainant is to distribute the said copies to the audiences who were present in the conference scheduled from 12/08/2016 to 14/08/2016 at Goa free of cost. The complainant had produced the program schedule of the Conference held from 12/08/2016 to 14/08/2016. **(Exhibit A-4.)** The demand of the opposite party for additional charges is highly illegal and unjustifiable. The action of the opposite party amounts to a deficiency in service and unfair trade practice on his part.

We have also noticed that Notice was issued from the Commission to the opposite party. The opposite party received the notice and entered the appearance before the Commission. Even though the opposite party entered an appearance in the above case, he did not file his version and thereafter the Commission set the opposite party ex-parte.

The complainant has filed the Proof Affidavit and 14 documents which are marked as Exbt.A-1 to A-14. All in support of his case.

The opposite parties' conscious failure to file their written versions in spite of their having received the Commission's notice to that effect amounts to an admission of the allegations leveled against them. **The Hon'ble NC held a similar stance in its order cited 2017(4) CPR page 590 (NC).**

The Opposite Party has inadequately performed the service as contracted with the complainant and hence there is a deficiency in service, negligence, and failure on the part of the Opposite Party in failing to provide the Complainant desired service which in turn has caused mental agony and hardship, and financial loss, to the Complainant.

We find the issue Nos. (II), (III) and (IV) in favour of the complainant for the serious deficiency in service that happened on the side of the opposite party. Naturally, the complainant had suffered a lot of inconvenience, mental agony, hardships, financial loss, etc. due to the negligence and lethargic attitude on the part of the opposite party. The complainant had proved deficiency of service and unfair trade practice from the side of the opposite party's and therefore the complainant is eligible to get compensation.

In view of the above facts and circumstances of the case, we are of the opinion that the opposite party is liable to compensate the complainant.

Hence the prayer is partly allowed as follows:

- i. The Opposite Party shall pay Rs. 16,460/- (Rupees sixteen thousand four hundred sixty only) towards the additional cost incurred by the complainant,
- ii. The Opposite Party shall pay Rs.10,000/- (Rupees ten thousand only) to the complainant towards mental agony and hardship suffered by the complainant.
- iii. The Opposite Party shall also pay the complainant Rs.5,000/- (Rupees five thousand only) towards the cost of the proceedings.

The above-mentioned directions shall be complied with by the Opposite Party within 30 days from the date of the receipt of a copy of this order, failing which the amount ordered vide above (i), (ii) shall attract interest @5.5% from the date of receipt of a copy of this order till the date of realization.

Dictated to the Confidential Assistant Smt. K.P. Liji transcribed and typed by her corrected by me and pronounced in the Open Commission dated this 10th day of February, 2023.



Sd/-

D.B.Binu, President

Sd/-

V.Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Forwarded/by Order

[Signature]
Assistant Registrar

APPENDIX

COMPLAINANT'S EVIDENCE

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OPPOSITE PARTIES' EVIDENCE

Nil

Despatch date:

By hand: By post

kp/



CC No. 655/2016

Order Date: 10/02/2023