

**Before the Tribunal constituted under section 10B of The Cost and Works
Accountants Act, 1959.**

In the matter between:

CMA Shri Ashish P Thatte
504, Juniper Everest World, Kolshet Road,
Near Dhohali Naha,
Thane (West) 400607.

..... Applicant

Versus

CMA Shri Ashok B. Nawal
701, Supriya Classic, Survey No. 112/1/3,
Baner Road, Baner,
Pune-411045.

..... Respondents

Quorum:

Shri Suresh Chandra, Presiding Officer;
Shri Devendra Kumar, Member;
Smt. Geeta Singh Rathore, Member.

Order

Date: 10.09.2018

The Central Government constituted a Tribunal under sub-section (1) of Section 10B of the Cost and Works Accountants Act, 1959 (CWA) vide Ministry of Corporate Affairs (MCA) Notification No. GSR 787 (E) dated 15 October, 2015 consisting of the three members viz; 1. Shri Suresh Chandra from Ministry of Law and Justice, Presiding Officer; 2. Shri N.K. Bhola and 3. Shri R. Asokan, Members, both from Ministry of Corporate Affairs to



decide the dispute having arisen out of the Election to the Councils of the Institute of Cost Accountants of India (ICAI) held on 2nd June, 2015. Subsequently, during the course of hearings two Members were replaced by new Members viz, Shri Devendra Kumar and Smt. Geeta Singh Rathore, both from Ministry of Corporate Affairs vide notification G.S.R. 39(E) dated 19.04.2017. The Tribunal conducted hearings on 02.02.2016, 04.03.2016, 02.4.2016, 19.6.2017, 27.5.2018 and 12.8.2018. Both the parties were heard and the documents submitted by them from time to time were taken on record.

1.2 The Tribunal in order to decide this case conducted first hearing on 2.2.2016 wherein the parties were asked to complete their pleadings by 29.02.2016 and adjourned the hearing to 04.03.2016. On 4.3.2016 after taking the documents on record the matter was fixed for hearing for 02.04.2016. However, due to change in the composition of members of the Tribunal, the hearings could not take place. After the re-constitution of the Tribunal with new members on 19.04.2017, the hearing was fixed for 19.6.2017. On 19.06.2017, the parties were heard and the next hearing was fixed for 06.01.2018, but due to surgery of the respondent as informed by him vide his email dated 25.12.2017, the hearing was postponed till further orders. Thereafter, the hearing was fixed for 19.5.2018 and the parties made a request to adjourn the same and thereafter, the same was adjourned on the request of the party vide order dated 9.5.2018 and the same was re-scheduled for 26.5.2018. On 26.05.2018 both the parties were again heard and the hearing was adjourned to 12.8.2018. On 12.8.2018, the hearing was conducted wherein the respondent was not present. Through email dated 30.07.2018, the respondent informed that he would not participate in further hearings. On 12.08.2018, the hearing was concluded in the absence of the respondent as he had informed that he would not participate in further hearings and the matter was reserved for order.

2. The brief facts of the case are that Shri Ashish P Thatte, the applicant preferred a complaint against Shri Ashok B Nawal (respondent) under section 10B of CWA Act, 1959 pertaining to the election for 19th Council of ICAI held on 2nd June, 2015 for the term 2015-2019, *inter alia* on the grounds that the respondent namely, Shri Ashok B. Nawal violated Election Code of Conduct (ECC) at numerous occasions including circulation of the printed manifesto having full page photograph and one more photograph of more than passport size; by making direct/indirect references in respect of five candidates including applicant; inclusion of



photographs other than that of respondent in the same manifesto; re-circulation of the revised manifesto by reducing the size of one photograph with other violations left uncorrected; declaration of date of election in Chairman's communiqué of WIRC before formal announcement of these dates by competent authority; circulation of agenda for WIRC meeting w.r.t. proposal for grant for new building of Kolhapur Chapter after enforcement of ECC; publication of compendium of his articles along with photograph, and by making of private circulation to the members under the name and banner of Bizsol India Services Pvt. Ltd.; after the enforcement of ECC by giving replies, in an interview through email, to the questions asked by one Shri Prakash Sevekari alleging involvement of the applicant and others in certain irregularities w.r.t. WIRC works, later this email interview was circulated to members at large; and by mentioning two different dates of advancement to Fellowship of ICAI in two separate nominations filed with ICAI. The Applicant *inter alia* prayed for declaring the election of respondent as null and void.

3. The respondent in his counter reply while refuting all the allegations levelled against him by the applicant, *inter alia* submitted that the application raising dispute related to election was submitted after the last date of filling the application as prescribed in Section 10A of the CWA Act; the respondent's printer inadvertently printed full page photograph on first page of manifesto and another photograph, larger than passport size, on other page; the respondent never intentionally violated the ECC; no names has been mentioned either in favour or against any other contesting candidates; Chairman of the regional council is not in any privy either to decide the date of election or to declare the date of election; it is the customary practice to write Chairman's communiqué in WIRC bulletin; it is the part of the duty of the Chairman to put any proposal before the council for approval and hence Kolhapur Chapter's proposal was included in the forth coming agenda; Bizsol India is an independent legal entity and publishing its monthly magazine "Bizsol Update" every month for their clients and prospects and circulation of the same is not limited to the CMA members or voters; certain questions were raised to respondent in the capacity of Chairman WIRC with respect to management of WIRC and the said mail was circulated to CMA members; giving the contact details is not the violation of the ECC. The respondent prayed that the application is devoid of merits and none of the alleged conducts violated the ECC and hence the application may be rejected.



4. The Tribunal heard both the parties, examined the documentary evidence submitted during the course of hearing and also perused the records available.

4.1 The first issue relates to the limitation period: as to whether the application was received within the stipulated statutory period? The respondent in his counter reply has raised the preliminary issue alleging that the application was filed on 20.07.2015 and the due date for filing the application was 18.07.2015. Thus respondent submitted that there was a delay of two days. The applicant in his rejoinder dated 25.02.2016 to the counter filed by the respondent submitted that, the applicant verified the complaint on 16.07.2015 and the same was dispatched on 16.07.2015 itself and pleaded that there was no delay in making the application.

4.1.1 Section 10A of the CWA Act, reads as under:

“10A. Settlement of disputes regarding election.

In case of any dispute regarding any election under clause (a) of sub-section (2) of section 9, the aggrieved person may make an application within thirty days from the date of declaration of the result of election to the Secretary of the Institute, who shall forward the same to the Central Government.”

4.1.2 It may be noted that the result pertaining to the election of the Nineteenth Council of the ICAI for the term 2015-2019 was declared on 19.06.2015, vide gazette notification dated 19.06.2015. As per Section 10A of the CWA Act, the time for making application is thirty days from the date of declaration of the result. On computation, thirty days period expires on 18.07.2015. Since 18.07.2015 falls on saturday and the ICAI works on five days a week (saturdays and sundays being non-working days), the last date for the purpose of making application under section 10A of the CWA Act would be 20.07.2015 and not the 18.07.2015.

4.1.3 Perusal reveals that the application by the applicant was dispatched on 16.07.2015 and the same was received on 20.07.2015 and the same was within the limitation period as prescribed in Section 10A of the CWA Act. The objection raised by the respondent with respect to limitation is decided accordingly.

4.2 The next issue is, whether the respondent by printing the full size photographs instead of passport size and by publishing more than one photograph in the same manifesto, has



violated the guidelines of ECC? The applicant has submitted that the size of the photograph of the respondent in his election manifesto was bigger than the prescribed size i.e. the passport size, the election manifesto of the respondent bear more than one photograph and by this act the respondent had violated the guidelines of ECC. The respondent while defending himself *inter alia* argued that the printer to whom he had given the manifesto for printing had inadvertently printed full size photograph on the first page and another as profile photo and the first 100 copies were directly dispatched to the addressee. The respondent further submitted that after noticing the error in the manifesto, the instructions were immediately given and the balanced copies were printed in compliance with the ECC.

4.2.1 The guidelines contained under Para 3 of the ECC No. EL-2015/GMC dated 16.2.2015 read as under:

“3. The manifesto or circular may contain one passport size single colour or black and white photograph of the contesting candidate.”

4.2.2 The Tribunal after hearing both the parties, examination of relevant records and the pleadings felt that the election manifesto circulated by the respondent contained photographs bigger than the prescribed size i.e. passport size and also it is apparent that the same manifesto had more than one photograph of the respondent, which is in contravention of guidelines dated 16.02.2015. Further, it is also the admitted case of the respondent that the photographs were duly printed but the same were pleaded to be inadvertently circulated without any intention of violating the ECC. However, it is felt that the respondent is liable for the omission or commission of the agent i.e. the printer.

4.2.3 The aforementioned discussion reveals that the respondent violated the guidelines of ECC as the manifesto contained the photograph bigger in size than the prescribed in the guidelines and also by printing more than one photograph in his election manifesto.

4.3 The next issue is, whether the respondent in his election manifesto has printed the photograph other than of his own and thus contravened the ECC?



4.3.1 The applicant submitted that the election manifesto of the respondent contained some photographs which were other than that of the respondent. The guidelines contained under para 4 of the Notification No. EL-2015/GMC dated 16.2.2015 reads as under:

“4. The manifesto or circular should not contain any other photograph of the contesting candidate or of any other persons either individually or in a group.”

4.3.2 Perusal of the manifesto of the respondent reveals that there are no photographs of any other individual(s) than the respondent in the said manifesto and hence the violation of para 4 of the guidelines in Notification No. EL-2015/GMC dated 16.2.2015 could not be established.

4.3.3 There is no violation pertaining to printing photograph other than that of the candidate.

4.4 The next issue is, whether the respondent had circulated more than one manifesto during the election process and thus violated the ECC?

4.4.1 The applicant had argued that the respondent after changing the size of the photograph on page 2 of the first manifesto and also removing his photograph on page 7 of the said manifesto had circulated another manifesto which is in violation of the guidelines contained under Para 2 of the Notification No. EL-2015/GMC dated 16.2.2015. The respondent had rebutted by submitting in his counter reply stating that after the noticing the error in his election manifesto, he immediately gave instructions to printer and after that the balanced copies were printed in compliance with the ECC.

4.4.2 The guidelines contained under Para 2 of the Notification (No. EL-2015/GMC) dated 16.2.2015 reads as under:

“2. Only one manifesto or circular can be issued by the contesting candidates in relation to the election in the period commencing from the date of issue of final list of nominations to the candidates, which shall be restricted to the members of the constituency concerned. Such manifesto or circular may include a letter, e-mail, SMS or fax addressed to a specific person and circulated to many persons and personal letters mentioning about a candidature and seeking support as per sub-rule (2) of Rule 42 of the Rules.”



4.4.3 It is the admitted case of the respondent that when he noticed the error in the manifesto, thereafter the balanced copies of the manifesto were circulated in accordance with the ECC. Restricting our examination to this particular issue. It may be noted that para 2 of the guidelines begins with the wording “only one manifesto or circular ...”, meaning thereby that the candidate contesting the election to the council is supposed to publish and circulate only the one manifesto during the entire election process. However, as admitted by the respondent only the balance copies were issued and which cannot be considered as second manifesto for the purpose of above guideline, as the same is considered to be in continuation of the previous manifesto.

4.4.4 Therefore, in view of the above the respondent cannot said to have published more than one manifesto.

4.5 The next issue is, whether the respondent by making announcement of approximate dates of election to the council in Chairman’s communiqué for the month of February 2015, and by quoting slogans like “Clean India and Clean Institute” violated the ECC?

4.5.1 The applicant argued that the respondent who was Chairman of WIRC of ICAI, in the February 2015 ‘From the Desk of the Chairman’ had pronounced the probable date of election and also quoted slogans such as “Clean India and Clean Institute” and had violated the guidelines contained under Para 7 of Election Notification No. EL-2015/GMC dated 16.02.2016 and Para 3 and Para 4 of instructions on ECC No. EI-2015/10 dated 02.03.2015. Further it was submitted by the applicant since the February bulletin was expected to be delivered to respective members of ICAI after 15th February, therefore it might have influence the voters. However, the respondent has rebutted, by pleading that the declaration of election dates is not privy of Chairman but its guess.

4.5.2 The guidelines contained under Para 7 of Election Notification No. EL-2015/GMC dated 16.02.2016 and Para 3 and Para 4 of instruction on ECC No. EI-2015/10 dated 02.03.2015 read as under:

“7. No candidate shall directly or indirectly use the institute resources for the purpose of electioneering.” (Notification of ECC dated 16.02.2015)



"3. Use of name of any individual/group/quotes/phrases (e.g. "CMA Group", "Mera Bharat Mahan") or the like, whereby such communication is made from their email-id/mobile or any other mode of communication." (Circular dated 02.03.2015)

"4. Communication of Election Notification/ Guidelines/ Instruction/ Circulars etc. which are issued by the Returning Officer or contents thereof in full or part and/ or explanations/ guidelines thereof for communicating to members." (Circular dated 02.03.2015)

4.5.3 With respect to violation of Para 7 of above Notification of ECC dated 16.02.2015, it may be noted that declaring probable dates of election is only guess work of the respondent and moreover by announcing such dates the respondent did not get any benefits in his election. Further with regard to violation of Para 3 and Para 4 of above instructions on ECC dated 02.03.2015, it is pertinent to mention that the said guidelines were issued much after the publication of the 'From the Desk of the Chairman' for the month of February, 2015. Meaning thereby, when the alleged violations took place at that time, circular dated 02.03.2015 was not in force.

4.5.4 In view of the above discussion, the Tribunal feels that the complaint with respect to violation of guidelines contained under Para 3 and Para 4 of ECC guidelines dated 02.03.2015 is not sustainable and hence rejected.

4.6. The next issue is, whether by publishing the 'From the Desk of the Chairman' for the month of March, 2015 the Respondent had violated the ECC?

4.6.1 With respect to allegation against 'From the Desk of the Chairman' for the month of March, 2015, the guidelines contained under Para 19 and Para 27 of ECC dated 16.02.2015 may be reproduced as under:

" 19. No article, write-up, report, column and the like by any contesting candidates will be allowed for publication/ inclusion in the journal, newsletter or its equivalents, website or otherwise.

" 27. The journal/newsletters published in any form including electronic mode shall not use the column " Council Member/Chairman



Page/Writes"; and in replacement thereof, the nomenclature " Committee Writes", " Council/Regional Council Writes" / " Managing Committee Writes" as the case may be, shall be used. Alternatively, it may be a column in the name of the "Editor". The name (s) of the editor/ publisher of the newsletters etc. can, however, be printed, wherever the same is legally required to be mentioned.

4.6.2 Perusal reveals that 'From the Desk of the Chairman' for the month of March, 2015 begins with the wording "*From the Desk of Chairman*". Further, the last paragraph is as under:

" CEP Programs

WIRC has continued to have CEP programs on each Saturday and all the programs are well appreciated.

NATIONAL PREACTITIONERS CONVENTION

National Practitioners Convention has been scheduled on 16th March 2015 at Mumbai Cricket Association, Recreation Centre, Bandra Kurla Complex, Bandra (e), Mumbai-400051 and following will be deliberated:

- 1. Cost Audit-Peer Review*
- 2. Making Cost audit Framework exciting to BOD*
- 3. Internal audit*
- 4. Get Ready for GST*
- 5. CMA- Opportunities in Banks, SME Sector*
- 6. Forensic Audit*

WIRC appeals all the practitioners to participate."

4.6.3 Thus from perusal of the above, it is clear that the respondent has used the ICAI resources for the purposes of electioneering which is in contravention of guidelines contained under para 7 of ECC No. EL-2015/GMC dated 16.02.2015. Therefore, the respondent has violated Rule 7, 19 and 27 of ECC No. EL-2015/10 dated 16.02.2015.



4.7 The next issue is whether the respondent by circulating the agenda pertaining to Kolhapur Chapter vide email dated 08.04.2015 for taking up the same in the 279th council meeting of WIRC scheduled on dated 19.04.2015 had violated the ECC?

4.7.1 The applicant has submitted that the respondent on 19.04.2015 in the WIRC meeting proposed for giving recommendation to Kolhapur Chapter for their new premises and thus violated the guidelines contained under Para 11 of ECC No. EL-2015/10 dated 16.02.2015. The respondent has rebutted the averments by arguing that the Chairman is duty bound to place all the correspondences including any proposal before the members of regional council and therefore the proposal received from Kolhapur Chapter was taken on agenda. The respondent further submitted that he had not violated the ECC.

4.7.2 Para 11 of ECC Ref No. EL-2015/10 dated 16.02.2015 reads as under:

“ 11. After the notification for the election is issued by the Council, the contesting members shall not announce any financial grant in any form or make promises therefore or announce any projects or schemes of any kind ,which may be aimed at influencing the voters. ”

4.7.3 Perusal of the record reveals that the respondent had merely put forth the proposal of Kolhapur Chapter in the council and the same was left to the wisdom of the council members and did not have any sole right in deciding the matter and thus it cannot be termed as announcement or any promise for the purposes of above guidelines.

4.7.4 Thus, the Tribunal concludes that by forwarding the agenda for Kolhapur Chapter to the council, the respondent has not violated the ECC.

4.8 The next issue is, whether the compendium published by “Bizsol India Services Private Limited” was violative of ECC?

4.8.1 The applicant argued that he was in receipt of Compendium issued by Bizsol India Service Private Limited for compilation of articles of the respondent through another candidate of central council and the applicant alleged the compendium to be the another manifesto by the respondent and argued that the same amounts to violation of the guidelines contained under Para 19, 20 and 21 of ECC No. EL-2015/10 issued on 16.02.2015. However,



the respondent has rebutted the allegation by submitting that the Bizsol India is the independent legal entity and publishing its monthly magazine "Bizsol updates" every month for their clients and prospects and circulation of the same is not limited to the CMA Members or voters. It is further submitted by the respondent that the magazine in question was published in February 2015 and therefore there was no violation of ECC.

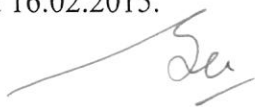
4.8.2 The relevant guidelines contained under Para 19, 20 and 21 of ECC Ref No. EL-2015/10 issued on 16.02.2015, read as under:

" 19. No article, write-up, report, column and the like by any contesting candidate will be allowed for publication/ inclusion in the journal, newsletter or its equivalents, website or otherwise.

20. No brochure/ any other material covering contesting candidates including written communication(s) of programme(s) organized by the Institute/ Regional councils and chapters shall contain the name or reference of any contesting candidate in any manner whatsoever. This prohibited is not, however, applicable for the brochure/ other material as aforesaid already printed for sending to the intended readership or audience, or name required to be given under any specific legal requirement.

21. No brochure/ publicity material including written communication printed in respect of any programme held before or after issue of notification shall contain the photograph/ reference to any of the contesting candidates in any manner whatsoever."

4.8.3 Perusal of the record does not reveal any contravention as mentioned in above stated Para 19 and 20 of ECC dated 16.02.2015, which provides for publication of articles etc. by contesting candidate, however no such articles were there in the record. Further, with respect to Para 21 which deals with the publication of any material relating to programme containing reference of any contesting candidate. However, no such references were there in the record which contravened Para 21 of ECC dated 16.02.2015.



4.8.4 Perusal reveals that the forwarding page of the said compendium contains paragraph which does speak about the respondent and his achievement as CMA professional, which amounts to the violation of Para 20 on the ground that there is a reference to the contesting candidate.

4.8.5 The tribunal concludes that there is a violation of para 20 of ECC Ref No. EL-2015/10 issued on 16.02.2015.

4.9 The next issue is, whether the interview given by the respondent on 14th April, 2015 to one Shri Prakash Sevekari amounts to violation of para 23 of ECC dated 16.02.2015?

4.9.1 The applicant submits that the Respondent gave replies as interview to many voters to questions asked by one Shri Prakash Sevekari and also the said email was circulated to members at large and further the reply of the respondent was part of the conspiracy against certain contesting candidates. The respondent rebutted by arguing that he replied in his capacity as WIRC Chairman and further the respondent pleaded that he had no role in circulation of the email in question.

4.9.2 Para 23 of ECC (Ref No. EL-2015/10) issued on 16.02.2015 reads as under:

“ 23. No interview to newspaper(s), electronic media and the like by contesting candidate(s) in any manner whatsoever is permissible. Any communication to newspaper(s), electronic media and the like by contesting candidate(s) or through any other person in any manner whatsoever is also prohibited.”

4.9.3 It is the admitted case of the respondent that he had replied to the questions raised by Shri Prakash Sevekari in his capacity of the Chairman of WIRC. However, para 23 of ECC dated 16.02.2015 prohibits the interview by contesting candidate in any manner whatsoever. Since, the reply by the respondent is made during enforcement of ECC and thus it very well contravened para 23. With respect to circulation of said interview to other members, no cogent evidence have been produced and further the emails placed on record does not appear to be the authentic copy owing to absence of any valid URL of the service provider and the proper paging thereon on the copies of email placed on record.



4.9.4 Therefore the Tribunal finds that the respondent has contravened para 23 of the ECC dated 16.02.2015 by giving replies to the question asked by Shri Prakash Sevekari during the enforcement of ECC.

4.10 The next issue is, whether the respondent by sending his manifesto in the envelope on which the address of the respondent is written as C/o Bizsol India Private Limited has violated the ECC?

4.10.1 The applicant submitted that the respondent circulated his manifesto in an envelope wherein the Respondent stated address as C/o Bizsol India Private Limited and the Respondent used the name of his company to attract the voters. The Respondent rebutted by pleading that there is nothing mentioned in the Code of Conduct that any communication to be sent only from one address and not any other address.

4.10.2 The circular dated 28th May 2015 (Ref. EL 2015/INS 6) and para 9 of guidelines for issue of Manifesto dated 16th February 2015 (Ref. El 2015/GMC) reads as under:-

“Circular dated 28th May 2015 (Ref. EL 2015/INS 6)

No. El-2015/Ins-6: Further to the Election Code of Conduct, Notifications, Directives, Instructions and Circulars issued by the Returning Officer for free and fair elections, it is hereby brought to the notice for information of all concerned that the candidates can send their manifesto and make appeal to the voters within the Region concerned by post, e-mail, SMS and fax in conformity with the Election Code of Conduct, Notification, Directives, Instruction and Circulars issued by the Returning Officer from time to time. It is also clarified that the above mode of communication may also be made by availing the services of service provider, which should be availed in the name of the candidate only. However, such communication should be made only for the purpose of sending the manifesto and making appeal to the voters within the Region concerned and should not contain any communication made by the Returning Officer.



Contesting candidates, their authorized representatives and members are liable for disciplinary action for non-compliance with the election Code of Conduct, Notification, Directives, Instructions and circulars issued by the Returning Officer in this regard in exercise of authority vested in the returning Officer under Clause (viii) of sub-Rule (4) of the Rule 42 of The Cost and Works Accountants (Election to the Council), rules 2006 as amended read with Regulation 118 of the Cost and Works Regulations, 1959 as amended."

"Guidelines for issue of Manifesto dated 16th February 2015 (Ref. El 2015/GMC)

9. The manifesto of only one candidate can be sent in a single envelope indicating the name of the contesting candidate as sender when sent by post. Similarly, an SMS message, e-mail and fax can be sent only from the phone number, e-mail address and fax number respectively of the contesting candidate."

4.10.3 The para 9 of the Guidelines for issue of Manifesto dated 16th February 2015 (Ref. El 2015/GMC) provides that the manifesto can be sent only in single envelope and indicating the name of the contesting candidate as sender when sent by post. However, about the mentioning of the address the said para is silent. Even if we presume that the respondent has mentioned his office address then the applicant has failed to prove in what manner it might have influenced the voters who are all professionals. Further, the Circular dated 28th May 2015 (Ref. EL 2015/INS 6) also does not provide for the mentioning of office address. And thus in the absence of clear cut provisions in this regards, the act of mentioning the address of Bizsol India Private Limited by the respondent may not be construed in contravention of ECC.

4.10.4 Thus, issue is decided against the applicant and in favour of the respondent.

4.11 The next issue is, whether the respondent had violated the ECC by participating or acting as speaker in the various programs organized during the enforcement of ECC at Vapi and Nasik?



4.11.1 It is argued by the applicant that the respondent had accepted the invitation to act as speaker on programs announced by Nashik Chapter and Vapi Chapter and both these chapter made publicity of the programs and they were on Institute website for quite some time. The respondent have rebutted this by arguing that the programs in question were announced much earlier to the date of declaration of election and the respondent further submitted that it is the practice of WIRC to put all the programme details on Website whenever sent by chapter and WIRC do not make any changes therein. The respondent further states that after notification of ECC he sent his email wherein he had denied to be the speaker in the programmes in question.

4.11.2 Perusal of the record reveals that the applicant has not proved that the respondent has accepted to be the Speaker of those programmes after the coming into force of ECC dated 16.02.2015. It is the admitted fact that the respondent did not act as Speaker in the said programmes. With regard to alleged gratification committed by the respondent, it may be noted that the applicant has not furnished any cogent proof which brings home the allegation of gratification to be true.

4.11.3 Thus, this issue is decided in favour of the respondent.

4.12 With respect to the allegation about wrongly mentioning of date of advancement to Fellowship. It may be noted that the Competent Authority i.e. the Returning Officer had accepted the nomination. Therefore it may not be appropriate for the Tribunal to substitute the wisdom of the Returning Officer who has been specifically conferred with power to perform certain acts.

5. Thus, in view of the above, it may be concluded that the respondent has violated the ECC on the following grounds:

- (i) The Election manifesto of the respondent has photograph bigger than the prescribed size and also it has more than one photograph of the respondent.
- (ii) By publishing March, 2015, 'From the Desk of Chairman'.
- (iii) The forwarding page of the compendium of the magazine under the name and banner of "Bizsol Updates" contains the professional achievements of the respondent.



(iv) The respondent gave replies to the questions asked by Shri Prakash Sevekari during the enforcement of ECC.

6. This Tribunal declares the election of Shri Ashok B Nawal, the respondent to be void. The case file is consigned to ICAI, Kolkata for maintaining necessary records.

7. This order is made today i.e. on 10.09.2018 at New Delhi.

-sd-

Smt Geeta Singh Rathore
(Member)

-sd-

Shri Devendra Kumar
(Member)

-sd-

Shri Suresh Chandra
(Presiding Officer)
New Delhi/10.09.2018

To:

1. CMA Shri Ashish P Thatte, 504, Juniper Everest World, Kolshet Road, Near Dhohali Naha, Thane (West) 400607.
2. CMA Shri Ashok B Nawal, 701, Supriya Classic, Survey No.112/1/3, Baner Road, Baner, Pune-411045.

Copy to:

1. ✓ Secretary, the Institute of Cost Accountant of India, CMA Bhawan, 12, Sudder Street, Kolkata-700016. Ministry of Corporate Affairs, 5th Floor, Shastri Bhawan, New Delhi.
2. Secretary, Ministry of Corporate Affairs, 5th Floor, Shastri Bhawan, New Delhi



Smt Geeta Singh Rathore
(Member)



Shri Devendra Kumar
(Member)



Shri Suresh Chandra
(Presiding Officer)
New Delhi/10.09.2018