

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

In the matter between:

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

..... Applicant

Versus

1. CMA Shri Amit A Apte,
11/7, Lakshminarayan Nagar,
Survey no. 11 and 12,
Erandawana, Pune-411004.

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

3. CMA Shri Neeraj D Joshi,
'CMA Pride', 1st Floor, Plot No.6,
S.No. 16.6, Erandawana Hsg. Soc.,
Erandawana, Pune-411004.

..... Respondents

Quorum:

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

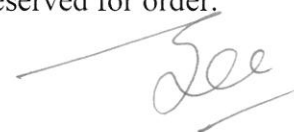


Order

Date: 16.10.2018

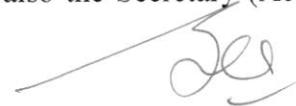
The Central Government constituted a Tribunal under sub-section (1) of Section 10B of the Cost and Works Accountants Act, 1959 (CWA) vide Ministry of Corporate Affairs (MCA) Notification No. GSR 787 (E) dated 15 October, 2015 consisting of the three members viz; 1. Shri Suresh Chandra from Ministry of 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, 4.3.2016, 1.4.2016, 19.6.2017, 27.5.2018 and 11.8.2018. 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 the surgery of the Applicant 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 which was adjourned on the request of the parties 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 11.8.2018, with the direction that parties may provide the list of their respective witnesses. On 11.8.2018, the hearing was conducted and the Applicant was not present however on behalf of Respondents Shri Neeraj D Jhoshi was present. Through email dated 30.07.2018, the Applicant informed that he would not participate in further hearings. On 11.08.2018, the hearing was concluded in the absence of the Applicant as he had informed that he would not participate in further hearings and the matter was reserved for order.



2. Shri Ashok B. Nawal, the Applicant in the matter preferred this application under section 10B of the CWA Act for raising the disputes pertaining to election held on 2nd June, 2015 for Council to ICAI *inter alia* on the grounds that the respondents namely, Shri Ashish P Thatte and Shri Neeraj D. Joshi were not eligible to contest the Election of the Council as both were found *prima facie* guilty of professional misconduct by the Director (Discipline) of the ICAI; that the respondent namely, Shri Amit A. Apte secured 140 votes which were actually casted in favour of Shri Ashish P Thatte as a second preference and thus on the disqualification of Shri Ashish P Thatte, Amit Apte also consequently eliminates; that all the respondents canvassed together for the election; that the respondents also circulated SMS/emails to voters providing information about polling both, address and voter list number along with request to cast preference votes; that father of Shri Neeraj D. Joshi (Respondent) namely, CMA D.V. Joshi made announcement of donation of Rs. 25,000/- to Aurangabad Chapter on 25th of February, 2015 in front of members in a function for Bhoomi Pujan held in Aurangabad; that the nominations of all the three Respondents should have not been accepted as certain amounts were outstanding on the date of nominations as per Debit Notes raised by WIRC and thus the applicant prayed for declaring the election of all the respondents to be void.

3. The Respondents in their counter reply while traversing all the averments made by the applicant, submitted that though they have individually signed the counter however, their reply may be considered as a joint and several responses from all the three Respondents. The Respondents further refuted the claims of the Applicant *inter alia* on the grounds that the Applicant has done a mischief and has given a false and illegal application; that the application has been purposefully preferred with the criminal intention of causing wrongful loss to the Respondents and to tarnish their image; that the application itself needs to be rejected and disposed of against all the Respondents and in particular against CMA Amit A. Apte and CMA Ashish P. Thatte on the very ground that applicant has wrongfully, falsely and illegally with *mala fide* intention has stated on record that all candidates were for Regional Council of WIRC; that CMA Amit A. Apte and CMA Ashish P. Thatte were not the candidates for Regional Council for WIRC; that the Respondents denied the contents of paragraph 1 and 2 of the complaint; that mere finding *prima facie* guilty of professional misconduct does not itself amounts to disqualification from nomination unless the other conditions provided in the extant Act/Rules are fulfilled; that the Returning Officer of ICAI was also the Secretary (Acting) and



must have been well versed with all the disciplinary proceedings and findings thereof against the candidates contesting for election to the Council; that the acceptance of the nominations of the Respondents by the Returning Officer on the face of it negates the allegations raised by the Applicant; that assumption taken for considering vote preference is baseless and wrong; that the Applicant did not produce any cogent and substantial documents in support of his allegations and with respect to the documents furnished for alleged canvassing of votes together by no stretch of imagination linked with the allegation; that the averments made by the Applicant contained in paragraph 7 to 12 are all false, wrong for want of supporting documents and hence are denied; that contents of paragraph 13 to 17 are again of misleading nature and untrue and are made with *mala fide* intention to tarnish the image of the Past President; that the allegation with respect to Debit Note (vide para 16 of the complaint) were hollow and had no basis and that with the application Mr. Nawal is trying to mislead the Hon'ble Tribunal by making such illegal and baseless application. Accordingly, the respondents prayed that the application may be rejected.

4. This Tribunal has heard the parties and also perused the documents on record.

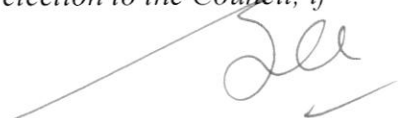
4.1. The first issue which needs to be taken up is, whether the respondents namely Shri Ashish P. Thatte and Mr. Neeraj D Joshi were guilty of professional misconduct and were ineligible to contest the election?

4.1.1. The applicant argued that Shri Ashish P. Thatte and Mr. Neeraj D Joshi were *prima facie* found to be guilty of professional misconduct by the Director (Discipline) of the ICAI vide his letter F.No. G/DD/M-5720/INFO-CA(7)/03.11.2014 dated 18.11.2014 and letter F.No. G/DD/M-5702/INFO-CA(8)/03.11.2014 dated 18.11.2014. During the hearing the Respondents argued that the Applicant had made a false statement intentionally by wrongly quoting the letter No. F. No. G/DD/M-5720/INFO-CA(8)/03.11.2014 dated 18.11.2014. The Respondents vehemently argued that this letter never exist in the record of the ICAI.

4.1.2. Rule 7 of the Cost and works Accountant (Election to the Council) Rules, 2006, read as under:

“ 7. Members eligible to stand for election.-....

Provided that no person shall be eligible to stand for election to the Council, if



(a) He has been found guilty of any professional or other misconduct and his name is removed from the register or he has been awarded penalty of fine as provided in proviso to clause (a) of sub-section (2) of section 9 of the Act,

4.1.3. For invoking Rule 7, the twin conditions are to be simultaneously satisfied i.e. guilty of professional or other misconduct and also consequently removal of name from the register or awarding the penalty provided in proviso to clause (a) of sub-section (2) of section 9 of the CWA.

4.1.4. This Tribunal in order to decide the above issue directed the Secretary ICAI to verify both letters relied upon by the Applicant. The Secretary ICAI through letter dated 11.08.2018 submitted the reply and it is worth quoting the last paragraphs of the said letter dated 11.08.2018, which are read as under:

“(a) F.No.G/DD/M-5720/INFO-CA (7)/ 03.11.2014 dated 18-11.2014-Opinion of director (Discipline) of the Institutes of Cost Accountants of India-submitted.

(b) F No.G/DD/M-720/INFO-CA(8)/3.11.2014 dated 18.11.2014- Opinion of Director (Discipline) of the Institute of cost accountant of India- In this matter, Opinion of Director (Discipline) of the Institute of Cost Accountant of India, was forwarded vide Ref. No. G/DD/M-5720/INFO-CA (8)/05/06/2015 dated June,13,2016 and copy of the same is submitted. Hence, it is submitted that letter No. F.No. G/DD/M-5720/INFO-CA(8)/03.11.2014 dated 18.11.2014 does not exist in our records.”

4.1.5. Perusal of the letter no. F.No. G/DD/M-5720/INFO-CA (7)/ 03.11.2014 dated 18-11.2014 and letter Ref. No. G/DD/M-5720/INFO-CA (8)/05/06/2015 dated June,13,2016 reveals that both letters speak about the prime facie opinion of guilty of Shri Neeraj D Joshi and Shri Ashish P Thatte respectively. Since for applicability of Rule 7, the candidate must be guilty and his name must have been removed from the register.

4.1.6. In view of the above, the applicant has failed to prove the charge of guilty of professional misconduct with respect to Respondents namely, Shri Ashish P Thatte and Shri Neeraj D Joshi.

4.2. The next issue to be examined is whether all the respondents have canvassed together and violated the ECC?

4.2.1. The Applicant alleged that all the respondents have canvassed together for votes which itself attracts the violation of ECC. It is argued by the applicant that all the respondents visited voters of Pune, Nashik, Aurangabad and other places during elections period and delivered slip to the voters. The applicant at page number 3 of his complaint dated 15.07.2015 has highlighted some pattern of slips and further during the course of hearing on 26.05.2018 furnished some bunch of envelopes to the tribunal in support of his contentions. The respondents have refuted all allegations and argued that they never visited such places as stated by the applicant during election process. Further the respondents submitted that slips mentioned are just computer generated and anyone can create it and the applicant has not furnished the affidavit of any such witness to prove the distribution of slips.

4.2.2 The guidelines contained under Para 42 sub para 3 of the ECC No. EL-2015/10 dated 16.2.2015 read as under:

“3. A manifesto or circular issued shall conform to the following requirements in the interest of maintaining dignity in the election, namely:

- (a) A manifesto or circular shall contain information regarding the candidate himself and shall not make reference, directly or indirectly, to any other candidate;*
- (b) The information which a candidate may furnish in a manifesto or circular regarding himself, shall not differ in any respect from the information furnished by the Institute to the voters under rule 9. A candidate may, however include in such manifesto or circular any additional information not contained in the information furnished under rule 9;.....”*

4.2.3 The guidelines contained under explanation II appended to para 42 of the ECC No. EL-2015/10 dated 16.2.2015 read as under:

“ Explanation-For the purpose of this clause, canvassing for votes, distribution of visiting cards, pamphlets, manifesto, letters, hand-outs,

circulars, gifts and the like, erection of any stall and display of any banner shall be treated as disorderly behavior/misbehavior.....

(ix) Contesting the election representing a political party or on political lines;.....”

4.2.4. The Tribunal vide order dated 26.05.2018 gave opportunity to both the parties to provide list of witnesses which they wished to examine in their support and also to furnish their affidavit. The applicant through his letter dated 27.06.2018 submitted the list of six witnesses, however no affidavit was furnished alongwith the letter. Further, this tribunal vide order dated 27.07.2018 gave last and final opportunity to the applicant to furnish the affidavit of the witnesses whom he wished to examine as a witness. The applicant vides email dated 30.07.2018 addressed to the presiding officer of this tribunal and which is worth reproducing as under:

“ Dear Sir,

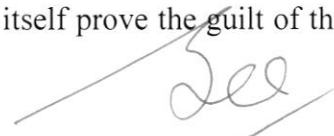
At the outset, let me express my sincere gratitude for hearing granted so far and also for forthcoming hearing.

Sir, I am physically handicapped person and now not keeping my good health at my age 64 and therefore I have decided not to spent any more on such cases, which is not constructive for the growth of profession and hence request you to decide the case on merit considering the submissions made so far in the appeal as well as numbers of hearings and also on the audio and video recording of Aurangabad Chapter proceedings of Bhumi Poojan and relying on the letters given by the witnesses.

Now, I will not be attending any more hearings. Kindly give the justice after going through all the documents and evidences produced so far.

CMA Ashok Nawal”

4.2.5. The applicant has neither furnished the affidavits of the witnesses nor produced them in person for examination before the tribunal. Therefore, the statements of the witnesses who said that the respondents have canvassed together for votes cannot be read as evidence. Moreover, the bunch of envelopes and the slip mentioned in the complaint does not itself prove the guilt of the



respondents. The applicant has not furnished any cogent evidence to discharge his burden of proof that the respondents have canvassed together and distributed the slips.

4.2.6 This tribunal holds that the applicant has failed to prove the allegation of canvassing together for votes by all the respondents.

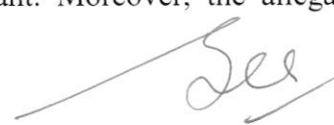
4.3. The next issue to be determined is whether the announcement of donation of Rs. 25,000/- by Shri Dhananjay Joshi (father of Respondent Shri Neeraj D Joshi) on 25.02.2015 at the Bhoomi Pujan at Aurangabad Chapter was made to influenced the voters.

4.3.1 The applicant alleged that father of Shri Neeraj D. Joshi one of the Respondent namely, Shri Dhananjay Joshi on 25.2.2015 at the Bhoomi Pujan at Aurangabad Chapter announced the donation to the tune of Rs. 25,000/- when the ECC was enforced. The applicant argued that CMA D V Joshi tried to influence the voters for and on behalf of candidates related to him and the applicant further submitted that during the announcement the large numbers of voters were present. The respondent Neeraj D Joshi denied the allegation and argued that he has no role in the decision of his father. The respondent submitted that his father has his own source of income.

4.3.2 The guidelines contained under Para 11 of the ECC No. EL-2015/10 dated 16.2.2015 read 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.

4.3.3 The tribunal for determination of this issue and to give fair hearing summoned the video audio recording of the said function of Bhoomi Pujan at Aurangabad Chapter. On 11.8.2018 the Secretary of ICAI produces the photograph of the said function and regarding the video audio recording he furnished letter dated 1.8.2018 addressed to Secretary (Acting) ICAI wherein the Chairman Aurangabad Chapter CMA M.R. Pandit, stated that no audio and video recording of the said function was done and it was also stated CD containing some photographs of the said function have been sent along with the said letter. The Tribunal seen the photographs and found no substantial things which proved the allegation of Applicant. Moreover, the allegation is



pertaining to the donation that too by the father of one of the Respondent and this allegation holds no water on the ground that in what manner merely giving the donation that too of meager amount of Rs. 25,000/- would influenced the highly qualified professionals. Further even the rule 11 speaks about the candidate only. Thus no merit is found in the allegation of Applicant.

4.3.4 The Tribunal rejects the allegations of the applicant.

4.5 The next issue to be determined is, whether certain amounts were outstanding against all the respondents and their nominations ought to have not been accepted?


4.5.1 The applicant submitted that WIRC of ICAI have raised debit notes on respondents namely CMA Ashish P Thatte and CMA Neeraj D Joshi based on 275th Regional Council meeting held on 2nd June 2014 at WIRC, Mumbai and debit notes were raised which were pertaining to year 2013-14, amounting to Rs. 10,67,607/- and Rs 10,70,803/- respectively and raised in 2014-15. The applicant further argued that similar debit notes were raised on respondent CMA Amit Apte for claiming reimbursement of expenses of unauthorized meetings, amounting to Rs. 26,749/- and these amounts were outstanding prior to their nominations. The respondents have denied the allegation and argued that the illegal and false Debit notes were raised under the signature of the applicant himself and the same were issued to tarnish the image of the respondents.


4.5.2. With regard to allegation of dues outstanding against all the three respondents at time of filing of nominations in the form of Debit Notes issued by WIRC, such Debit Notes were disputed at that point of time. The authenticities of these Debit Notes were not clear at that point of time. Besides, these could have been taken up before the returning officer and there appears to be no such issue culminating into adverse order against the Respondents. Hence, the allegation of the Applicant could not be proved.


5. In view of the above, the application is dismissed. The case file is consigned to ICAI, Kolkata for maintaining necessary records.



6. This order is made today i.e. on 16.10.2018 at New Delhi.


Smt Geeta Singh Rathore
(Member)


Shri Devendra Kumar
(Member)


Shri Suresh Chandra
(Presiding Officer)
New Delhi/16.10.2018

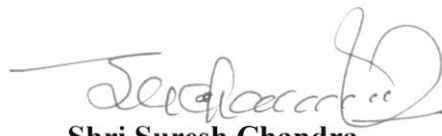
To:

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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 Suresh Chandra
(Presiding Officer)
New Delhi/16.10.2018


Shri Devendra Kumar
(Member)