

BEFORE THE APPELLATE AUTHORITY

(Constituted Under the Cost Accountants Act, 1959)

APPEAL NO. 12/ICWAI/2018

IN THE MATTER OF:

Ashok B. Nawal

Versus

...Appellant

**Institute of Cost Accountants of India
Ashish P. Thatte**

**...Respondent No. 1
...Respondent No. 2**

CORAM

Hon'ble Mr. Justice M.C. Garg
Hon'ble Mr. B.M. Sharma
Hon'ble Mr. Praveen Garg
Hon'ble Dr. Navrang Saini

Chairperson
Member
Member
Member

PRESENT

For the Appellant:

Mr. Mahfooz Nazki and Mr. Arpan Behl, Advocates

For the Respondents:

Mr. Peeyoosh Kalra, Mr. Vishal Aggarwal, Ms. Sona Babbar, Advocates along-with Mr. R.K. Jain, Deputy Director (Discipline), ICWAI

ORDER

Date: 17.09.2018

1. A complaint in Form-I was received against the Appellant filed by Shri Ashish Prakash Thatte (hereinafter referred to as complainant), alleging contravention of the provisions of CWA Act/CWA Regulations and Rules framed thereunder on account of:
 - (i) Accepting position as Managing Director (MD) in a company despite clearly prohibited by Cost and Works Accountants Act and Cost and Works Accountants Regulations
 - (ii) Accepting remuneration / fixed salary other than share in Partnership firm
 - (iii) Solicits clients indirectly by advertisement on Institute letterhead and material
 - (iv) Grossly negligent in conduct of his Professional duties.
2. On receipt of notice, the said complaint was defended by the Appellant by filing the Written Statement dated 18th December, 2014, wherein the Appellant submitted that the complaint was filed with malicious intention. However, on facts, the Appellant (Respondent before the DC) stated that the Respondent has

been providing professional services of consultancy and advisory to a company on retainer-ship basis and charges to the company professional fees and company has not paid him any salary or remuneration other than professional fees. Further, the company, Bizsolindia Services (P) Ltd has been engaged in providing services of consultancy, audit and implementation of taxation and economic laws. Therefore, the Respondent has accepted the position as a Managing Director of the company so as to provide advisory services in a better manner.

While denying the allegations levelled against him including against the alleged violation of Clause (10) of Part-I of the First Schedule, he stated that it is only when a Cost Accountant engages himself in any business or occupation than only, he will be said to violate the aforesaid clause. However, in his reply, he admitted that he was working as a Managing Director of Bizsolindia Services (P) Ltd, which also provides the services allowed to a Cost Accountant only. Further, relying upon Section 2 (54) and 2 (94) of the Companies Act, 2013, he denied that he falls within the definition of the Managing Director as he was not a whole-time Director including that of in the company namely Bizsolindia Services (P) Ltd.

3. The Disciplinary Committee, however, did not agree with the defense put forward by the Respondent, the Appellant herein. The Committee regarding the evidence, which came on record, observed as under:-

- i. It is evident from the letter dated 1st April, 2014 from the Chairman of Bizsolindia Services Private Limited that the Respondent was getting a fixed amount per annum under the guise of Professional fees. In case of any professional fees the scope of assignment is always defined. Whereas the letter issued by the Chairman of Bizsolindia Services Pvt Ltd to the Respondent is an open ended letter as regards "Scope of Work" to be performed by the Respondent.*
- ii. The whole structure of the letter is in the form of an employment agreement whereby the Respondent has accepted a fixed amount per annum and other restrictive conditions like not accepting any other employment, part time as otherwise etc. as per Clause (7) of other terms and conditions prescribed in the letter referred above.*

- iii. *From the evidences already submitted, it was clear that despite knowing the fact that Managing Director (MD) was not allowed under the CWA Act, the Respondent had accepted the position of MD and also protecting the same. This clause had been inserted since 2006 and Respondent was holding this position since 14th May, 2004 which the Respondent, by a letter dated 20th April, 2014 informed the Disciplinary Directorate. This clearly shows gross negligence on his part. Knowing the fact that Practicing Cost Accountant cannot take remuneration, Respondent entered into company as Managing Director and accepted remuneration in the form of employee-employer relation and accepted executive position and was also responsible to sign executing documents which are signed by Managers or Employees of Company like executing agreements.*
4. Additionally, regarding the permission sought for by the Appellant from the Institute for working as a Managing Director of the company, it came on record that the Appellant sought permission only vide his letter dated 8th Aug, 2015 for using the designation of Managing Director. In other words, before 8th August, 2015, no permission was sought for by the Appellant.
5. In these circumstances, the Director (Discipline) formed his 'Prima-Facie Opinion' holding the Appellant Prima Facie Guilty of Clause (10) of Part-I of the First Schedule and Clause (1) of Part-II of the Second Schedule of the Act.
6. The Order dated 27th June, 2017 passed by the Disciplinary Committee of the Institute of Cost and Works Accountants of India under Para (13) also contains as hereunder: -
- "13.The Director (Discipline) framed his prima facie opinion which was placed and accepted by the Disciplinary Committee at its 25th meeting held on 20th May, 2016 holding the respondent prima facie guilty on two counts:*
- (i) Clause (10) of Part I of First Schedule to the CWA, Act, 1959*
(ii) Clause (1) of Part II of Second Schedule to the CWA, Act, 1959."
7. Since it was a case of pleading 'not guilty' by the Appellant to the allegations made against him, the Disciplinary Committee after Prima Facie Opinion formed by the Director (Discipline) thought it appropriate to call upon both sides to appear before it and to produce evidence, if any in support of their contention. While the Appellant did not use the opportunity, the complainant invited the attention of the Committee to his letter dated 13th October, 2015 and 24th September, 2015 wherein he has added

additional charge on Shri Ashok Nawal by insertion of Clause (7) of Part I of First Schedule to the Act which included the advertisement published on Bizsol India website in addition to advertisement published by Shri Ashok Nawal every month in the magazine of Bizsol India Limited.

8. The Disciplinary Committee under Para (26) of the Order dated 27th June, 2017 also recorded this fact and further stated that it clearly proves the charges under this section. Shri Ashok Nawal was openly using his designation as Managing Director in all places like reading material provided by Regional Council in February 2017, which was already submitted to Disciplinary Committee in previous hearing at the time of making oral submissions by the complainant. The complainant added that a seminar was to be held on 8th April, 2017 at Navi Mumbai, where the Respondent has consented to act as speaker and from the brochure that was available on the Institute website also reveals that the Respondent is Managing Director of Bizsol India Pvt. Ltd. Shri Ashok Nawal who is also speaker in these seminars to be held at Vapi dated 13th April, 2017, has again termed himself as Managing Director of Bizsol India Services Pvt. Ltd and the same is also available on the website of the Institute.

9. The Disciplinary Committee, while dealing with the matter also observed as follows:-

(i) In the various documents attached by Shri Nawal, he gives his email ID as nawal@bizsolindia.com. This is a clear indication about using name of another company as a practicing professional.

(ii) Shri Nawal has, in his written statement, failed to appreciate the stand taken by the Director (Discipline) about holding of substantial powers of company. However, Shri Nawal focused on proving his monthly retainership which he claims is not his remuneration but income from profession. The complainant stated that he would like to reply upon opinion formed by Director Discipline on Page 9 of the prima facie opinion. He also drew the attention of the learned Committee members between Bizsol India Services Private Limited and Shri Nawal which clearly compels Shri Nawal to devote full time with the company and execute decisions taken by company's Board of Directors.

(iii) Any turnover statement, copies of TDS deducted, details of bifurcation between earnings from company or from own partnership firm etc., submitted by the Respondent are irrelevant matters in the present case.

(iv) The Respondent has completely disregarded that he was Managing Director for quite a long period of time and deriving benefit from the same. However, Respondent has provided most of the documents after this complaint has been filed and not before the date of complaint. Hence, all such documents, which are filed after the date of complaint till date by the Respondent, are to be set aside and are irrelevant for the case.

(v) The Respondent's statement of 'when advisory services are provided by the senior it is considered as authenticated and responsible' is completely a vague statement and accepting such position does not help anyone in providing services. Being Managing Director of the company is the only reason for continuing him to render services to the company.

(vi) In case of practicing professional it is very clear that he can become director of the company but in other words he has to be Director Simplificator and not Managing Director or Whole time Director. By drawing huge sums every month from his company by virtue of his agreement which is in nature of employee and employer relationship clearly shows that Respondent is violating basic principle of law i.e. Director Simplificator.

10. Before finally deciding the matter, the Disciplinary Committee also took

note of the submissions made by the Appellant, which are as hereunder:-

- i. That the Respondent is not a salaried employee of Bizsolindia Services Pvt. Ltd and therefore, not in whole time employment.
- ii. That the Respondent is merely providing consultancy services. He is not filing Income Tax Return as a salaried employee.
- iii. The annual return of Bizsolindia Services Pvt. Ltd shows that income of the respondent from the said company is 40% while the rest comprising 60% income is from other clients/corporate.
- iv. Regarding the expression 'Director Simplificator' used by the complainant in Para (10) of his submissions dated 7th April, 2017, the Respondent stated that the expression 'Director Simplificator' does not appear in the CWA Act/Regulations or Code Ethics and cannot be considered.
- v. Regarding Para (11) of the submissions made by the complainant that the Respondent has made a false statement about his relationship with Dr. Dhananjay Joshi, the Respondent stated that the complainant, as on date, is a partner in Joshi Apte & Associates where Ms. Priyamwada D. Joshi, wife of Dr. Dhananjay Joshi is a partner. Hence, the statement of the Respondent was not false.

11. Further, the Disciplinary Committee finally in Para (36 to 37) of the Order

dated 27th June, 2017 also observed :-

"36. In the case Council of the Institute of Chartered Accountants of India Vs. Subodh Gupta decided by the Hon'ble Delhi High Court, the Hon'ble Court remarked "In the instant case the admitted position is that the respondent is registered with the Council to practice as a Chartered Accountant. He cannot be a director of a company without the permission of the Council. The appellant is the promoter of various companies of which he is a director as

per the evidence on record. Being a Chartered Accountant the respondent cannot actively carry on business through companies, trusts and firms. There is evidence that the respondent is doing so. Affirming the verdict of guilt and keeping the gravity of the misconduct we answer the reference by imposing the penalty of removal of respondent's name from the Register of members of the Institute of Chartered Accountants for a period of two years".

37. *The Disciplinary Committee concluded that the respondent is guilty of professional misconduct and takes the following action under Section 21B (3) of Cost and Works Accountants Act, 1959:*

- (a) Reprimand*
- (b) Removal of name from the Register of members for a period of two years.*
- (c) Fine of Rs.25000/- (Rupees twenty five thousand)*

The fine is to be paid within 30 days from the date of receipt of the order."

12. It is a matter of record that the aforementioned Order was assailed by the Appellant vide Appeal No. 04/ICWAI/2017. In the said appeal, the Appellate Authority vide its Order dated 19th July, 2017 stayed the Operation of the Impugned Order and permitted the Appellant to cross-examine the complainant and to adduce all the evidences and arguments in his favor, if any. In the said Order, the Authority also directed the Appellant to resign from all the Posts held by him as a Managing Director of various corporate bodies within a period of three days considering that the Appellant has admitted that he was working as a Managing Director for an annual remuneration as recorded in the said Order and also stated in his letter of renewal of appointment dated 1st April, 2014, that is why, this Appeal was remanded back to the Institute for the purpose as recorded herein.

13. Consequently, the Disciplinary Committee in compliance with our order dated 9th July, 2017 allowed the Appellant to cross-examine the complainant as well as to adduce evidence and address arguments in his defense and again passed a detailed order reiterating its earlier decision.

14. While passing the Impugned Order dated 6th July, 2018 assailed in this Appeal, the Disciplinary Committee under Para (XVIII, XIX and XX) observed:-

"XVIII. Based on the Evidence submitted by the Complainant, before the Director (Discipline) and the arguments, witness and documents advanced by the

Respondent, it is proven beyond doubt that Shri A.B. Nawal (M/5720) was holding the Position of Managing Director. Further, during the Cross-Examination on 17th Feb, 2018 Shri A.B.Nawal could not prove that he was not holding the position of Managing Director as alleged by the Complainant and he did not violate the provisions of CWA Act, 1959 by accepting the position of Managing Director. Further, the Respondent admitted that he was working as a Managing Director and also received annual remuneration and these facts were recorded by the Hon'ble Appellate Authority in its Order dated 19th July, 2017.

XIX. *In the considered view of the Disciplinary Committee, the moot question to be raised and decided was whether the Respondent Shri Ashok B Nawal (M/5720) was holding the Post of Managing Director in contravention of CWA Act/Rules/Regulations as alleged by the Complainant Shri Ashish P Thatte and whether Shri A.B. Nawal (M/5720) has contravened the clause (10) of Part-I of First Schedule to the CWA, Act, 1959 and Clause (1) of Part-II of Second Schedule to the CWA Act, 1959 and these questions were provided against the Respondent beyond doubt.*

XX. *Therefore, the Committee concluded that the Respondent has nothing more to offer to prove that he was not guilty and did not violate the provisions of CWA Act/Regulations and confirms the order issued by the Disciplinary Committee on 27th June, 2017 and concluded that the Respondent is guilty of Professional Misconduct and take the following under section 21B (3) of Cost and Works Accountants Act, 1959:*

- (a) Reprimand
- (b) Removal of name from the Register of Members for a period of two years
- (c) Fine of Rs.25000/- (Rupees Twenty Five Thousand Only)

The Fine is to be paid within 30 days from the date of receipt of the Order."

15. To appreciate the controversy and background of the matter leading to passing of the Impugned Order by the Disciplinary Committee, it will be appropriate to take note of the letter dated 1st April, 2014, which reads as under:-

"To,

Mr. Ashok B. Nawal
701, Supriya Classic
Near Sadanand Resort, Baner-Mahalunge Road,
Baner, Pune – 411045

Dear Mr. Nawal,

The Management is happy to place on records its appreciation for the Management Consultancy services rendered by you to the company. We desire to renew our previous contract with you w.r.t. professional services on Retainership basis for Professional advice and implement thereof on the defined scope of work for the year 2014-15. The contract will continue thereafter subject to the conditions mentioned elsewhere below.

The scope of work and the terms and conditions for the same would be as specified hereunder.

Scope of Work

1. ***You shall be responsible for training the Business Development Team w.r.t. several aspects of defining policies for capturing the business markets for various segments, expansion of client base and country coverage, strategic for its execution, etc.***

2. *You will co-ordinate with officials of the company to review budgets vis-à-vis actuals and offer you guidance for better implementation of business plan of the company and also provide the officials the necessary guidance required for execution of various projects and contracts materialized.*
3. *You will provide professional expertise services for conducting Project assignments and conducting audits wherever applicable.*
4. *You would also be primarily responsible for inclusion of New Service Areas like IFRS, Direct Tax Cod, Goods and Service Tax and any other such opportunities.*
5. *You will provide opinions in the area of Direct Tax, Indirect Tax, Foreign Trade Policy, EOU, SEZ matters.*
6. *You will advise on Cost Control and Cost Reduction to improve margins of the company.*
7. ***You will take issues at the right platform of clients of Bizsolindia and use your good office being on various Committees of the Associations or the Government.***
8. ***You will also do the necessary co-ordination and representation before the respective government Authorities for obtaining the necessary approvals wherever required.***

PROFESSIONAL FEES

The professional fees for the above scope of work will be Rs. 54,36,000/- per annum. The above fees are all inclusive, which would include all out of pocket expenses as well.

Expenses, if any incurred for conveyance/travel to any client/for business purpose would be reimbursed to you at actuals as per company norms only on receipt of bills from you to this effect. No additional expenses will be reimbursed, except with prior approval from the Board of Directors.

OTHER TERMS AND CONDITIONS

1. *The services to be availed by the company are expected to be of independent Professional nature and therefore objectively and due professional care should be exercised in execution of your responsibilities.*
2. *You shall maintain an office with sufficient staff recruited for providing support services and assisting our Team whenever required and any expenses incurred in maintaining and running such office shall be borne by you.*
3. *You will raise a monthly bill for the above professional fees and necessary service tax would be paid, only on compliance with the Service Tax provisions.*
4. *The above professional fees shall be subject to Tax deduction at source as per the applicable provisions of income tax.*
5. *The period of agreement will be valid till it is terminated by either party. However, consideration for each year will be decided by the company on year to year basis considering various factors. Termination of the said agreement can be done by either party only after giving 3 months' notice in writing. The notice in writing. The notice period from the company and terms thereof will not be applicable in case the termination of the agreement is on grounds of indiscipline, integrity or any similar grounds which are detrimental to the interest of the company and the company reserves the right to terminate the agreement with immediate effect in such cases.*
6. *You will devote your full time and attention to the job profile assigned to you. You will at all times abide by the lawful direction and Policies framed by the Board of Directors, and*

you will work diligently, faithfully and with utmost dedication towards achieving the Goals and Objectives of the company.

7. ***You will not accept any other employment, part time or otherwise or engage in any commercial ventures or business or pursuit, on your own account, or through any agent, individuals, company or agency which is directly related to our company's business interest or activities or which would be detrimental to the company's business activities, except with prior approval of the management.***
8. *You will not divulge to any persons, company or to any bodies company matters, confidential data or knowledge that you possess or would possess, unless prior management approval is obtained.*
9. *You will be responsible for the safekeeping and return in good condition and order, all of the company's property, material and data which may be in your use, custody or charge.*
10. *You will keep the company informed of any change in your profession address.*
11. ***You will be governed by the Company's model standing orders presently in force.***
12. *If the above terms and conditions are acceptable to you, kindly sign the duplicate copy of this letter as a token of acceptance.*

We wish you the Best in your future endeavors and look forward to your continuous contribution for benefit of the company.

Thanking you,

*Yours faithfully,
For Bizsolindia Services Pvt. Ltd.*

*Sd/-
Venkat R. Venkitachalam*

Chairman

*I Accept
Sd/-
Ashok B. Nawal"*

(Emphasis Supplied)

13. The aforesaid letter which is basically the letter of renewal which mentions that the Appellant had been working as Managing Director even earlier. Further, it will also be appropriate to take note of the Resolution passed by the Board of Directors being Resolution No (35) dated 23rd December, 2013 which also clarifies as to what kind of duties were to be exercised by the Appellant. The said Resolution reads as under:-

"CERTIFIED TRUE COPY OF THE EXTRACTS OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF BIZSOLINDIA SERVICES PVT. LTD. HELD ON THE MONDAY THE 23RD DAY OF DECEMBER, 2013 AT 11:00 AM, AT THE REGISTERED OFFICE OF THE COMPANY AT 14-17, SUYASH COMMERCIAL MALL, S. NO. 74 & 75, NEAR PAN CARD CLUB, BANER PUNE – 411045. RESOLUTION NO. 35

CREATION OF CHARGE

"RESOLVED THAT, the draft of Agreement for creation of charge from HDFC Bank Ltd., Swargate Branch, Pune, presented before the Board for initialization by the Chairman for the purpose of identification be and is hereby approved by the Board.

RESOLVED FURTHER THAT, the Company does hereby create charge for Rs.27,80,000/- (Rupees Twenty Seven Lakhs Eighty Thousand Only) in favour of '**HDFC Bank Ltd. Swargate Branch, Pune,** for availing loan against Vehicle Audit A4 by way of hypothecation by exclusive charge over the vehicle/asset i.e. Audit A4 on the terms and conditions as may be decided between the Company and the Bank/Lender."

RESOLVED FURTHER THAT, Mr. Ashok Nawal, Managing Director of the Company be and is hereby authorized to make applications, submit documents and papers, give guarantees and sign other agreements, documents and papers as the Bank may require for the purpose of creation of charge and availing the said loan facilities and to accept, on behalf of the Company, such terms and conditions as the Bank may impose for that purpose.

RESOLVED FURTHER THAT, the Common Seal of the Company be affixed on documents such as deed of hypothecation, Loan agreement or such other documents as the Bank may require, under the signature of Mr. Ashok Nawal, Managing Director of the Company who shall sign in token thereof pursuant to the provisions of the Articles of Association of the Company".

RESOLVED FURTHER THAT, Mr. Ashok Nawal, Managing Director or any of the Directors of the Company be and is hereby authorized to sign, and execute such applications, documents and forms as may be required and to file e-forms no.8 or such other forms as may be required with the Registrar of Companies, Pune to give effect to this resolution.

For Bizsolindia Services Pvt. Ltd.

Manoj Behede
Joint Managing Director"

14. The bare perusal of the above referred letter dated 1st April, 2014 and Resolution dated 23rd December, 2013, particularly when there being no rebuttal to both these documents on behalf of the Appellant, Prima Facie leads to understand that there is no infirmity in the Impugned Order. However, taking into consideration various submissions made on behalf of the Appellant through his Counsel, we are of the considered view that the core issues which requires consideration and final decision thereon by this Authority are as hereunder:-

- i. **Whether the Appellant is guilty of Professional Misconduct under Clause (10) of Part-I of the First Schedule of the Act, as held by the Disciplinary Committee while accepting the Position of Managing Director of M/s Bizsolindia Services Pvt Ltd as well as simultaneously holding the Certificate of Practice (CoP) issued to him by the Institute of Cost Accountants of India?**

- ii. **Whether the Appellant is also guilty of Professional Misconduct under Clause (1) of Part – II of Second Schedule to the Act, as held by the Disciplinary Committee?**
- iii. **Whether the allegations leveled against the Appellant were required to be looked into by the Board of Discipline or the DC which passed the Impugned Order is justified to exercise its jurisdiction over the present matter?**
- iv. **Whether the Constitution of the DC, under sub-section (1) of Section 21B of the Cost and Works Accountants Act, 1959 is legal and consequently has jurisdiction to pass the Impugned Order? And;**
- v. **Whether the punishment awarded to the Appellant by the DC is justified under the facts and circumstances involved in the matter?"**

15. As regards issue No.1 as to whether the Appellant is guilty of Professional Misconduct under Clause (10) of Part-I of the First Schedule of the Act, the Learned Counsel appearing on behalf of the Appellant submitted that the Director (Discipline) vide its Order dated 15th June, 2016 had only found the Appellant Prima Facie Guilty of being a Managing Director in a Company. The said misconduct false under Schedule-I, Part- I, Clause-10 of the Cost and Works Accountants Act, 1959. There is no other misconduct that the Director (Discipline) found the Appellant to be guilty of. It is further submitted that the Appellant is not an employee and had no major responsibility as a Managing Director.

We have examined this issue on the basis of the materials on record including the complaint filed by the Complainant, written statement as submitted by the Appellant at the relevant time including other relevant papers namely his letter of renewal of appointment dated 1st April, 2014, Prima-Facie Opinion formed by the Director (Discipline) besides the Impugned Order passed by the Disciplinary Committee and observed that the Appellant was undoubtedly holding the position of a Managing Director of M/s Bizsolindia Services Private Limited as well as simultaneously holding the Certificate of Practice (CoP) issued to him by the Institute of Cost Accountants of India without seeking prior permission of the

Council of the Institute, which is certainly violative of Clause (10) of Part-I of the First Schedule of the Act. Thus, we hereby reject the arguments made on behalf of the Appellant that he was not an employee of the Company. Further, we have observed from his renewal of appointment that he was possessing all necessary powers to be exercised as a Managing Director of the said Company.

16. As regards issue No.2 as to whether the Appellant is also guilty of Professional Misconduct under Clause (1) of Part-II of the Second Schedule to the Act, the Learned Counsel appearing on behalf of the Appellant submitted that the only finding against the Appellant is that he was guilty of Misconduct under Clause (10) of Part-I of the First Schedule and Clause (1) of Part-II of the Second Schedule of the Act, whereas, according to him there was no allegation of any misconduct mentioned in the Second Schedule. He further submitted that neither in the complaint nor in the Prima Facie Opinion or in the Impugned Order, there was any discussion on the relevance of Second Schedule. Furthermore, he submitted that in the present case, the specific allegation against the Appellant was that of Part-I Misconduct. However, the Director (Discipline) as well as the Disciplinary Committee grossly erred in referring to Part-II of the Second Schedule which is an omnibus provision and is necessarily deemed to have been excluded in the present case where the specific provision has been provided under Part-I of the First Schedule of the Act, as it is a settled principle of Law that specific excludes the general. In view thereof, the whole proceedings are grossly misconceived since it ought to have been placed before the Board of Discipline and not before the Disciplinary Committee.

On the other hand, the Learned Counsel appearing on behalf of the Institute submitted that the Complainant himself has mentioned the violation of the Provisions of the Second Schedule besides that the Director (Discipline) in his Prima Facie Opinion held the Appellant guilty under the provision in question. The Impugned Order also contains that the Appellant is guilty of the said clause

obviously on the ground that the same is violative of the Council guidelines which requires the prior permission for undertaking any other business or occupation while holding the Certificate of Practice by any member of the Institute, whereas, the Appellant herein is not having any such required permission of the Council.

Hence, In view of the violation of the guidelines issued by the Council, we are of the view that the Appellant is certainly also guilty under clause (1) of Part-IV of the Second Schedule of the Act.

17. As regards issue No. 3 as to whether the allegations leveled against the Appellant were required to be looked into by the Board of Discipline or the Disciplinary Committee which passed the Impugned Order is justified to exercise its jurisdiction over the present matter, all arguments advanced by the Learned Counsel appearing on behalf of the Appellant are hereby rejected in view of our considered view as to issue No. 2 above. Thus, we are of the considered view that the Disciplinary Committee is fully justified to undertake and enquire in the present complaint.

18. As regards issue No. 4 as to whether the constitution of the Disciplinary Committee under sub-Section (1) of Section 21B of the Act, is legal and consequently have jurisdiction to pass the Impugned Order, the Learned Counsel appearing on behalf of the Appellant submitted that the Disciplinary Committee was not formulated in accordance with Section 21B of the Act but was constituted/re-constituted by the President and Presiding Officer of the Disciplinary Committee, which was objected to by various Council Members from time to time. He further submitted that the members of Disciplinary Committee were not elected and therefore the same is against the express provisions of the Act.

On the other hand, the Learned Counsel appearing on behalf of the Institute submitted that the contention of the Appellant that the said provision uses the

word 'elected' and no such election has taken place, is misconceived as the members constituting the Disciplinary Committee are unanimously elected from amongst the members of the Council and this fact is revealed from the minutes of 308th Meeting of the Council, which is already the part of the record. However, the Appellant did not attend the meeting of the said meeting of the Council in which the Disciplinary Committee was constituted. He further submitted that after the Appellant became Council Member, the Disciplinary Committee was also constituted in its 295th Meeting held on 22nd July, 2015 and he never raised his objection to the formation of the Committee and during the course of this Committee only the Prima Facie Opinion was formed.

We would like to make it very clear that the word 'elected' as used in sub-section (1) of Section 21B of the Act, does not mean and require election of the Members of the Disciplinary Committee every time on case to case basis. Thus, the Disciplinary Committee constituted by the Members of the Council unanimously is having the jurisdiction to decide all the complaints filed before it.

Based on the above arguments and after perusing the relevant records, we are of the considered view that there is no illegality in the constitution of the Disciplinary Committee and thus the same was having a lawful jurisdiction to decide the present complaint.

19. As regards issue No. 5 as to whether the punishment awarded to the Appellant by the Disciplinary Committee is justified under the facts and circumstances involved in the matter, the Learned Counsel appearing on behalf of the Appellant submitted that assuming, on demurer, that an alleged misconduct has been committed, the Impugned Order removing the name of the Appellant from the Register of Members for a period of two years is disproportional. In this regard, he has also brought on record a case namely **Bhagat Ram Vs. State of Himachal Pradesh and others, AIR 1983 SC 454** decided by the Hon'ble Supreme Court, wherein the Hon'ble Court held that *"it is equally true that the*

penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.”

After considering the nature of the misconduct committed by the Appellant, hearing arguments of the parties and considering the age of about 65 years of the Appellant, we are of the considered view that the ends of justice will be met out if we modify the punishment of removal of his name from the Register of Members for a period of one year instead of two years. Thus, we hereby modify the Impugned Order to this effect only.

20. All other arguments incidental to the main grounds of defence, raised on behalf of the Appellant, being distinguishable from the core issues involved, are hereby rejected.

21. Stay Order/Interim relief, if any, granted to the Appellant is vacated. With this the present appeal is disposed of. No cost to either party.

Justice M. C. Garg
Chairperson

B.M. Sharma
Member

Praveen Garg
Member

Dr. Navrang Saini
Member