



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)
CMA Bhawan, 3 Institutional Area,
Lodhi Road, New Delhi-110003

Phone : +91-11-24622156-57-58
Website : www.icmai.in

The Board of Discipline u/s 21A

The Institute of Cost Accountants of India

In the matter of:- Complaint No Com/21-CA(42)/2016

CMA Rakesh Bhalla (M/9442)----- Complainant

V/s

CMA Balwinder Singh(M/19898)-----Respondent

ORDER

Dated 15/05/2020

1. A complaint dated 07/04/2016, in Form-I was filed under Section 21 of the Cost Accountants Act, 1959, ("the Act") read with Sub- Rule (1) of Rule 3 of the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, ("the Rules), by CMA Rakesh Bhalla (M/9442) (hereinafter referred to as 'the Complainant'), against CMA Balwinder Singh (M/19898), (hereinafter referred to as 'the Respondent').

2. The Complainant *inter-alia* stated/alleged that the Respondent:

- i) *The Respondent used logo of the Institute for his election purpose and also used his partner, through whom he has used chapter resources/funds for his benefits during election time.*

Hence, he has contravened the provisions of Clause 4 and Clause 7 of Notification no -EL 2015/10 dt.16.02.2015 read with Clause 1 of part-II of the second schedule (sec 21(3), 21B (3) & 22).

Notification no-EL 2015/10 dt. 16.02.2015 in Para four at page -1 state that: "The election code is deemed to be guidelines of the Council under clause (1) of part-II of the Second Schedule of the Act and it is obligatory for each candidate to comply with the Election Code of Conduct."

Clause 4 of Notification no-EL 2015/10 dt. 16.02.2015 reproduced below: "All candidates shall avoid scrupulously all activities , which are corrupt practices, such as providing incentive to voters , intimidation of voters, giving



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)
CMA Bhawan, 3 Institutional Area,
Lodhi Road, New Delhi-110003

Phone : +91-11-24622156-57-58
Website : www.icmai.in

presentations to voters host parties and get – together of members with the object of securing votes etc.”

Clause 7 of Notification no-EL 2015/10 dt. 16.02.2015 reproduced below:

“No candidate shall directly or indirectly use the Institute’s resources for the purpose of Electioneering.”

Clause 1 of Part-II of the second schedule (sec 21(3), 21B (3) & 22)

Contravenes any of the provisions of this act or the regulations made there-under or any guidelines issued by the Council.

- ii) *The Respondent used Chapter money and resources for his electioneering. So he is also guilty under Clause 25 (1) of Chapter bye laws. Clause 25 (1) is reproduced as under:*

“There shall be established a fund under the management and control of the Managing Committee into which shall be paid all monies received by the Managing Committee by way of membership fees, grants, donations, subscriptions and other incomes of the Chapter and out of which shall be met all expenses and liabilities properly incurred by the Managing Committee”.

Provided that funds of the chapter shall be applied either directly or indirectly for payment to the members of Managing Committee of the Chapter except for reimbursing them for any expenses incurred by them in connection with the business of the chapter.

Since the Respondent has used chapter resources including funds for distribution of diaries, hence is guilty under the law.

- iii) *Statements of some of the Members who received diaries during the election process are enclosed for your ready reference.*

Prayer:

Since election was contested by the Respondent by using the funds and sources of the institute / Chapter which is serious offense and has contravened various provisions of rules and regulations law I pray:

- That his Central Council membership should be suspended till the decision is pending with the competent authority after this complaint,*
- That his membership of the institute should be terminated till the decision is pending, and*
- That he should be penalized with maximum fine and penalty by removing his name from membership of the institute under clause 21B (3) of the Act.*



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)
CMA Bhawan, 3 Institutional Area,
Lodhi Road, New Delhi-110003

Phone : +91-11-24622156-57-58
Website : www.icmai.in

In support of the complaint, the complainant has annexed the following evidences:

- 1) Original diary received by him
- 2) Photocopy of front page of some diaries
- 3) Statement of some members in receipt of diary
- 4) Copy of NIRC News Magazine July 2013 & June 2014
- 5) Copy of Annual Account of Chandigarh Chapter-2014-15
- 6) Copy of representations against AGM & EGM of Chapter

3. The respondent was intimated vide letter dated 03rd June, 2016 to send response to the complaint through a written statement in his defence within 21 days from the date of service of the letter.

The respondent vide his letter dated 29th September, 2016 denied the allegations made against him and stated inter alia as below:

The brief of the alleged contravention of clauses by Complainant, Nature of allegations and rejoinder by respondent is as under:

Violation Alleged by Complainant	Nature of Allegation by Complainant	Written Statement by Respondent
Contravene the provisions of Clause 1 of Part II of the Second Schedule	Violation of Election Code of Conduct	Complaint sans merit of its acceptance under Section 21 of the ICWA Act, 1959 by the Disciplinary Directorate
Contravene Clause 4 of Election Notification EL-2015/10 dated 16.02.2015 read with Clause 1 of Part II of the Second Schedule	Violation of Election Code of Conduct	Complaint sans merit of its acceptance under section 21 of the ICWA Act, 1959 by the Disciplinary Directorate
Contravene Clause 7 of Election Notification EL-2015/10 dated 16.02.2015 read with Clause 1 of Part II of the Second Schedule	Violation of Election Code of Conduct	Complaint sans merit of its acceptance under Section 21 of the ICWA Act, 1959 by the Disciplinary Directorate
Contravene the provisions of Sub-Clause (1) of Clause 25 of Chapter Bye-Laws	Violation of Election Code of Conduct	Complaint sans merit of its acceptance under Section 21 of the ICWA Act, 1959 by the Disciplinary Directorate

The Complaint needs to be rejected on following technical ground:



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)
CMA Bhawan, 3 Institutional Area,
Lodhi Road, New Delhi-110003

Phone : +91-11-24622156-57-58
Website : www.icmai.in

1. The Complaint, if any, relating to the violation of Election Code of Conduct relating to the Council Elections 2015-19, i.e., period from code of conduct from 16.02.2015 till the declaration of result 19.06.2015 was required to be filed with the Returning Officer during the period when Election Code of Conduct was in force for necessary action by the Returning Officer as per The Cost and Works Accountants (Election to the Council) Rules, 2006.

Thus the complaint sans merit for its acceptance under Section 21 of the ICWA Act, 1959 by the Disciplinary Directorate.

2. The Complaint, if any, post elections is covered under "The Cost and Works Accountants (Election Tribunal) Rules, 2006."

Thus, the complaint sans merit for its acceptance under Section 21 of the ICWA Act, 1959 by the Disciplinary Directorate.

3. Attention is drawn to the following:

Election Notification No.2015/Ins-5 and Ins-6 dated 16.04.2015 and 28.05.2015 respectively, the last Para of the said notification states as under:

Contesting candidates, their authorized representatives and members are liable for disciplinary action for non-compliance with the Election Code of Conduct, Notifications, Directives, instructions and Circulars issued by the Returning officer in this Regard in exercise of authority vested in the Returning officer under Clause (vii) of Sub-Rule (4) of Rule 42 of The Cost and Works Accountants (Elections to the Council) Rules, 2006 as amended read with Regulation 118 of the Cost and Works Accountants Regulations, 1959 as amended.

It is apparent from above that Disciplinary Proceedings can be initiated by Returning Officer.

Thus, the complaint filed by a member (other than Returning Officer) sans merit of its acceptance under section 21 of the ICWA Act, 1959 by the Disciplinary Directorate.

4. Attention is drawn to the following:

Election Notification No.2015/10 dated 16.02.2015, the allegation of which is alleged in the complaint by the complainant, the last Para of the said notification states as under:

"Notwithstanding anything contained herein above the Council may cause investigation into the conduct of any candidate or authorized representative or any other member in any other circumstances for violation of Election Code of Conduct."

It is apparent from above that the Council is vested with the additional power to investigate any circumstances of violation of election code of conduct.



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)
CMA Bhawan, 3 Institutional Area,
Lodhi Road, New Delhi-110003

Phone : +91-11-24622156-57-58
Website : www.icmai.in

Thus, the complaint filed by a member (other than the Council) sans merit of its acceptance under section 21 of the ICWA Act, 1959 by the Disciplinary Directorate.

From the above, it is apparent that the complaint is void ab-initio and PRIMA FACIE sans merit of its acceptance under Section 21 of the ICWA Act, 1959 by the Disciplinary Directorate.

It was humbly prayed that the complaint be rejected on technical grounds with the costs to the complainant.

However, the Respondent reserves the right to make further submission on factual grounds.

4. The written statement of the respondent was sent to the complainant vide letter dated 21th July, 2017 for sending rejoinder on the same.

In reply the complainant has submitted rejoinder dated on 8th August, 2017 mentioned that he (Complainant) hereby submitted his rejoinder without prejudice to the complaint dated 07-04-2016 filed earlier. The point wise reply in as given below:

- A. *Fact/ Merits of the Complaint had not been disputed by the respondent means allegation charged against him admitted on account of Contravene provisions of Election Code of Conduct read with Clause 1 of part-II of the Second Schedule (Section 21(3), 21(B) (3)& 22*

Complainant submitted that in the written statement dated 29.09.2016 filed by the respondent before Director Discipline with the plea that complaint needs to be rejected without merits of its acceptance under Section 21 of the ICWA Act, 1959 by the Disciplinary Directorate. From this it is evident that respondent admitted the allegations raised by the complainant in his complaint dated 07-04-2016 as given below

- * Distribution of Diaries to get electoral mileage*
- * Used logo of the institute to get electoral benefit.*
- * Used Chapter resources / funds to get electoral benefit.*

Had respondent not contravened the provisions of the election codes then respondent would have discussed facts/merits of the case in his rejoinder filed with Disciplinary Committee. It is imperative to mention here that respondent is trying to distract attention of the adjudicating authority from the merit of the case smartly by mentioning technical grounds only and seeking rejection of the complaint filed by the complainant. Whereas Respondent is guilty under the provision of election rules.



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)
CMA Bhawan, 3 Institutional Area,
Lodhi Road, New Delhi-110003

Phone : +91-11-24622156-57-58
Website : www.icmai.in

- B. Respondent challenged authority of the Disciplinary Committee with claim that Complaint was required to be filed with the returning officer and it is not within the preview of Disciplinary Committee.

Election to the Council Rules, 2006 not debarring for filing complaint against member contravened the provisions of the election codes before the Disciplinary Committee and moreover Disciplinary Action specifically mentioned in the Election code of conduct in the notification no EL-2015/10 dt 16.02.2015 Relevant abstract is reproduced as

"Attention of the members is also invited to the provisions of Rule 41 and 42 of the Cost and Works Accountants (Election to the Council) Rules, 2006 which provides for disciplinary action against members contravening the election norms set out in the said rules"

From this it is evident that Election notification instructed to follow provisions of the Rule 41&42 for Disciplinary action against members contravening the election norms set out in the said rules.

Further, Notification no EL-2015/10 dt 16.02.2015 in Para 4 at page 1 state that

"The Election Code is deemed to be guidelines of the Council under clause (1) of Part II of the second Schedule of the Acts and it is obligatory for each candidate to comply with the Election code of Conduct."

*Clause 4 of the Notification no. EL-2015/10 dt 16.02.2015 reproduced below
"All candidates shall avoid scrupulously all activities, which are corrupt practices, such as providing incentive to voters, intimidation of voters, giving presentations to voters, host parties and get-together of members with the object of securing votes etc. notification*

*Clause 7 of the Notification no EL-2015/10 dt 16.02.2015 reproduced below
"No candidate shall directly or indirectly use the Institute's resources for the purpose of electioneering"*

*Clause 1 part-II of the Second Schedule (Section 21(3), 21(B) (3) & 22
"Contravenes any provisions of this act or regulations made there under or any guideline issued by the council"*

Respondent used Chapter money and resources for his electioneering. So he is also guilty under clause 25 (1) of Chapter bye laws. Relevant abstract is reproduced as under.



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)
CMA Bhawan, 3 Institutional Area,
Lodhi Road, New Delhi-110003

Phone : +91-11-24622156-57-58
Website : www.icmai.in

"There shall be established a fund under the management and control of the Managing Committee into which shall be paid all monies received by the Managing Committee by way of membership fees, grants, donations, subscriptions and other incomes of the Chapter and out of which shall be met all expenses and liabilities properly incurred by the Managing Committee".

"Provided that no funds of the Chapter shall be applied, either directly or indirectly for payment to the members of the Managing Committee of the Chapter except for reimbursing them for any expenses incurred by them in connection with the business of the Chapter".

It is imperative to mention here that respondent has contravened the provisions of clause 4 and clause 7 while Distribution of Dairies to give the election mileage, Used logo of the institute for his election purpose and Used Chapter resources / funds for his benefit during election time which is serious offense and contravened various provision of the Rules and Regulations as briefed above and un-doughty liable to face charges under the provisions of Section 21(3), 21(B) (3) & 22.

Point wise rejoinder in respect of written statement of the respondent whereby he claimed the complaint needs to be rejected on following technical grounds without going into merit of the case.

1. Respondent's Rejoinder

The Complaint, if any, relating to the violation of Election Code of Conduct relating to the Council Elections 2015-19 i.e. period from code of conduct from 16.02.2015 till the declaration of result 19.02.2015 was required to be filed with Returning officer during the period when Election Code of conduct was in force for necessary action by the Retuning officer as per the Cost & Works Accountants (Election to Council) Rules, 2006 thus the Complaint sans merit for its acceptance under section 21 of the ICWA Act, 1959 the Disciplinary Directorate.

1. Complainant's Response

There is nowhere mentioned in the Cost & Works Accountants (Election to Council) Rules, 2006 that complaint against member who is guilty of contravene provisions of Rules 2006 / Act 1959 should be filed through Returning officer & debarring Disciplinary Committee to accept complaint filed by the member or take action against member is who is guilty of contravene provisions of Rules 2006/ Act 1959. So this technical ground is not valid reason for rejection of complaint of the complainant.



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)
CMA Bhawan, 3 Institutional Area,
Lodhi Road, New Delhi-110003

Phone : +91-11-24622156-57-58
Website : www.icmai.in

Further, it is not mandatory to file complaint against member or to take action on account of guilty of contravene provisions of the Cost and Works Accountants (Election to Council Rules) 2006/ICWA Act 1959 to the Returning officer and also these provision does not stop Disciplinary Committee to accept complaint and take necessary action.

2. Respondent's Rejoinder

The Complaint, if any, post elections is covered under "The Cost and Works Accountants (Election Tribunal) Rules, 2006. Thus, the complaint sans merit for its acceptance under section 21 of the ICWA Act, 1959 the Disciplinary Directorate

2. Complainant's Response

There is nowhere restriction in the Cost & Works Accountants (Election Tribunal) Rules, 2006 that complaint against member who is guilty of contravene provisions of Rules 2006/Act 1959 should not filed with Disciplinary Committee. So, this technical ground is not valid reason for rejection of complaint of the complainant.

Further, it is not mandatory to file complaint against member or to take action on account of guilty of contravene provisions of the Cost and Works Accountants (Election to Council Rules) 2006/ ICWA Act 1959 to the Returning officer and also these provisions does not stop Disciplinary Committee to accept Complaint and take necessary action.

3. Respondent's Rejoinder

Election Notification No. 2015/Ins-5 and Ins-6 dated 16.04.2015 and 28.05.2015 Respectively stated that Contesting Candidates, their authorised representatives and members are liable for disciplinary action for non-compliance with the Election code of conduct, Notifications, Directives, Instructions and circular issued by the returning officer under clause vii (4) of Rule 42 of the Cost and Works Accountants (Election to the Council) Rules, 2006 as amended read with Regulation 118 of the Act 1959 as amended. It is apparent from above that Disciplinary Proceedings can be initiated by Returning Officer. Thus, the complaint filed by the member (other than Returning Officer) sans merit of its acceptance under section 21 of the ICWA Act, 1959 by the Disciplinary Directorate.

3. Complainant's Response

Wrong presumption given by the respondent in his technical ground and it is totally based on his imagination only whereas clause viii (4) of Rule 42 does not stipulate like this. To understand clause viii (4) of Rule 42 of the Cost and



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)
CMA Bhawan, 3 Institutional Area,
Lodhi Road, New Delhi-110003

Phone : +91-11-24622156-57-58
Website : www.icmai.in

Works Accountants (Election to the Council) Rules, 2006 relevant abstract of the Rule is given below:

*Disciplinary action against member in connection with conduct of election
(4) A member shall not adopt one or more of the following practices with regard to the election to the Council, namely:-*

(viii) Non- compliance with any of the directives or circulars or instructions issued by the Returning Officer under These Rules in any matter relating to elections

Complainant claims that clause 42 (4) (vii) further strengthen his point as on plain reading these clause it can be understood that Rule 42 defines Disciplinary action against member in connection with conduct of election and Clause (4) prescribed that A member shall not adopt one or more practices with regard to the election to the Council, and Non-compliance with any of the directives or circulars or instructions issued by the Returning Officer under These Rules in any matter relating to elections

From this it can be noticed that this clause refers that disciplinary action can be taken where Non-compliance with any of the directives or circulars or instructions issued by the Returning Officer under These Rules in ay matter relating to elections and it is not apparent form above that Disciplinary Proceedings can be initiated by Returning officer.

Further, it is not mandatory to file complaint against member or to take action on account of guilty of contravene provisions of the Cost and Works Accountants (Election to Council Rules) 2006/ ICWA Act 1959 to the Returning officer and also these provisions does not stop Disciplinary Committee to accept complaint and take necessary action

So, technical presumption given by the Respondent is incorrect and liable so this is not valid reason for rejection of complaint of the complainant.

4. Respondent's Rejoinder

Election Notification No. 2015/10 dated 16.02.2015, the allegation of which is alleged in the complaint by the complainant, the last Para of the said notification states as under

"Notwithstanding anything contained hereinabove, the council may cause investigation into the conduct of any candidate or authorised representative or other member in any circumstances for violation of Election Code of Conduct.



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)
CMA Bhawan, 3 Institutional Area,
Lodhi Road, New Delhi-110003

Phone : +91-11-24622156-57-58
Website : www.icmai.in

It is apparent from above that the Council is vested with the additional power to investigate any circumstances of violation of election code of conduct.

Thus, the complaint filed by a member (other than council) sans merit of its acceptance under Section 21 of the Act 1959.

4. Complainant's Response

Again presumption of the respondent to interpret this clause is incorrect, as the council may cause investigation into the conduct of any candidate or authorised representative or other member in any circumstances for violation of Election Code of Conduct does not indicate that disciplinary action is to be taken by the Council only and restrict Disciplinary Committee for not to act on the complaint filed by the member against member who is guilty of contravene provisions of Rules 2006/Act 1959.

Further, it is not mandatory to file complaint against member or to take action on account of guilty of contravene provisions of the Cost and Works Accountants (Election to Council Rules) 2006/ICWA Act 1959 to the Returning officer and also these provisions does not stop Disciplinary Committee to accept complaint and take necessary action. So this technical ground is also not valid reason for rejection of complaint of the complaint.

It is also submitted that, worthy Prime Minister Sh. Narinder Modi too aired his criticism over ICAI's disciplinary record – a charge that institute is now trying to cope with. At CA day event on 1st July'2017. Sh. Modi Said just 25 auditors had faced action in over a decade and around 1400 cases are pending and government is reviewing plans to put in place of National Financial Reporting Authority (NFRA) as It seeks to rein in ICAI for its perceived failure in enforcing discipline. Law provides for NFRA to look into the matters of professional & other mis-Conduct and also suspend CAs/Firms from 6 months to 10 years.

It is imperative to mention here that in this instant complaint due to delay in action taken against the respondent, he has already enjoyed half of his term as member of the Central Council. In view of the above mentioned and foregoing submission action against respondent has not been taken despite of his guilty of contravention of provisions of Rules 2006 / Act 1959 is proven and respondent is still enjoying membership of Central Council. It is imperative to mention here that presence of respondent in the council may cause irreparable damages to CMA profession with intend to gain political / financial mileage in the institute circle with such type of professional misconducts.



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)
CMA Bhawan, 3 Institutional Area,
Lodhi Road, New Delhi-110003

Phone : +91-11-24622156-57-58
Website : www.icmai.in

Complainant respectfully prayed that

- I. Central Council membership of the respondent should be suspended till the decision is pending with the competent authority after this complaint,*
- II. Membership of the Institute should be terminated till decision against this complaint is pending and*
- III. He should be penalised with maximum fine and penalty by removing his name form membership of the Institute under the clause 21(3), 21(B) (3) & 22.*

5. The Director (Discipline) vide his prima-facie opinion dated 17/08/2019 stated that on perusal of the Complaint, written statement and rejoinder of the parties, there is nothing on record to substantiate the allegations against the respondent and the complainant has failed to adduce prima-facie evidence in support of his complaint.
6. The Board at its meeting held on 17/08/2019 perused the records of the case in detail and thoroughly examined the complaint, written statement, rejoinder filed by the complainant, prima facie opinion of the Director (Discipline) and the documents on record. The thorough perusal of the complaint and the evidence available on record in the form of original diary and photocopy of some diaries prima facie show that the same were printed by the Chapter itself. The evidence available in the form of statement of some members in receipt of diaries further demolishes the complaint of the complainant as statement of such members further confirms that the same were issued and distributed by the Chapter and the Respondent had no role in the printing and distribution of diaries. There is nothing on record to prove the allegations against the Respondent in respect of use of logo for election purpose and use of Chapter resources/funds for elections and the complaint are found to be lacking merit. The records of the complaint and material on record do not depict contravention of Clause 1 of Part II of the Second Schedule {Sec. 21(3), 21B (3) & 22} of the CWA Act, 1959 or contravention of the provision of Clause 4 & Clause 7 of Notification no. EL 2015/10 dated. 16.02.2015 read with Clause 1 of Part II of the Second Schedule {Sec. 21(3), 21B (3) & 22} of the CWA Act, 1959 or Clause 25 (1) of Chapters Bye laws as alleged by the complainant. There is also no material on record to depict that there is any violation of Rule 42 of the Cost and Works Accountants (Election to the Council) Rules, 2006, which would attract Clause 2 of Part IV of the First Schedule of the CWA Act, 1959.
7. In view of totality of all the facts and circumstances of the case and after detailed deliberations, the Board decided to order for closure of the matter in accordance with Rule 9(3)(a) of the Cost and Works Accountants (Procedure of Investigations of



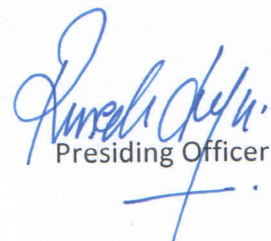
THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)
CMA Bhawan, 3 Institutional Area,
Lodhi Road, New Delhi-110003

Phone : +91-11-24622156-57-58
Website : www.icmai.in

Professional and other Misconduct and Conduct of Cases) Rules, 2007 and inform the Complainant and the Respondent accordingly.

Accordingly, the complaint stands disposed off.


Presiding Officer