



# 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

Complaint No. Com/21-CA(43)/2016

Shri Parveen Kumar Sharma (M/19843) -----Complainant

Shri Mukesh Kumar Gupta (M/12643)-----Respondent

### ORDER

Dated 12/06/2020

1. A complaint dated 18/05/2016, 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 Praveen Sharma (M/19843) (hereinafter referred to as 'the Complainant'), against CMA Mukesh Gupta (M/12643), (hereinafter referred to as 'the Respondent).
2. The Complainant *inter-alia* stated/alleged that the Respondent:
  - Mr Mukesh Gupta contested elections 2015 -2019 term of the Institute for NIRC held during May 2015
  - CMA Mukesh Gupta distributed the Diaries during the election period/ code of conduct to the members of the Institute with mal fide intention to get benefit during election.
  - The said Diaries were carrying message of Mr Mukesh Gupta and his partner who was also candidate for the Central Council, ignoring all other office bearers of the Institute/ Regional Council/ Chapter.
  - It is to be noted that Mr Mukesh Gupta was Chairman of Chandigarh Panchkula Chapter when the said Diaries were distributed.
  - It is further pointed out that the Diaries were distributed to select group to get the favour during election.
  - Diaries were got printed and distributed using Institute/ Chapter resources for election complaining of Mr Mukesh Gupta and his partner Mr Bawinder Singh and is evident from the following facts :



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- Diaries were carrying message of Mr. Balwinder Singh (who was not having any official post/ elected post/ position) ignoring all other office bearers of the Institute/ Chapter including President, Vice-President, Chairman- NIRC and sitting members of NIRC from Chandigarh Panchkula Chapter and Secretary of the Chapter, which is clearly violation of Chapter Bye Laws .
- In said Diaries Mr Mukesh Gupta promoted his partner Mr Balwinder Singh. Mr. Balwinder Singh used Institute logo in his message inside Diaries without having any portfolio in the Institute.
- Diaries were distributed after election notification issued on 16 February 2015 and continued even after filing of nomination paper by Mr Mukesh Gupta and his partner Mr Balwinder Singh.
- I am member of the Institute/ Chapter for more than 17 years and this was never a practice of distribution of Diaries by the Chapter on the eve of New Year. Even for the year 2016 no such Diaries have been distributed.
- During financial year 2014-15 Chapter has suffered a loss to the tune of rupees 4.00 lacs and Chapter Chairman has distributed Diaries first time in the history of the Chapter for nothing but to influence members during election for his personal and at the same time promoting his partner.
- Due to misuse of funds by Chapter Committee, more than 50 number for the Chapter including CMA R L Prabhakar (founder member), CMA S S Mann, CMA L N Agarwal, CMA J C Bhatia and CMA Anil Sharma (present RCM –NIRC) has filed complaints against Chapter committee during 2013-14 and 2014 -15 which are still pending with the competent authority at HQ . During said period Chapter Suffered losses to the tune of Rs. 4.00 Lacs. Hence the sole purpose of distribution of Diaries was basically election campaigning of Mr Mukesh Gupta and his partner Mr. Balwinder Singh nothing else.  
Mr Mukesh Gupta is guilty under the provisions of Iwa:
  1. He has used Chapter resources/funds for his and his partner 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).*
  2. Mr Mukesh Gupta used Chapter money and resources for his electioneering. So he is also guilty under Clause 25 (1) of Chapter bye laws.

## 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 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.*





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*In support of the complaint, the complainant had 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
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3. The respondent was intimated vide letter dated 08<sup>th</sup> 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.
  4. The respondent vide his letter dated 28<sup>th</sup> 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:*

<b>Violation Alleged by Complainant</b>	<b>Nature of Allegation by Complainant</b>	<b>Written Statement by Respondent</b>
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 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:*

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.*



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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.***

***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.***





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

5. The written statement of the respondent was sent to the complainant vide letter dated 24<sup>th</sup> February, 2017 for sending rejoinder on the same but no reply has been received.
6. In this connection, Director (Discipline) vide his letter dated 15/03/2017 asked the Complainant whether any formal complaint in regard to violation of Election Rules was made to Returning Officer at any time during the period February-June, 2015 or at anytime thereafter, if so, requested to produce documentary evidence of such complaint. But till date, no reply has been received.
7. The above-mentioned Complaint has been examined in pursuance of Section 21 of the Cost and Works Accountant Act, 1959 as amended in 2006 read with Rule 9 of the Cost and Works Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007. It is observed that there was nothing on record to prove the allegations against the respondent and the complainant has not been able to adduce any evidence regarding the same.
8. The Board at its meeting held on 12/06/2020 perused the records of the case in detail and thoroughly examined the complaint and written statement, filed by the complainant, views 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.



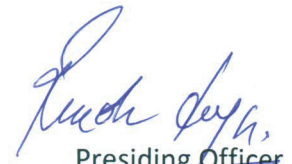
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9. In view of totality of all the facts and circumstances of the case and after detailed deliberations, the Board held that the complaint lacks merit and decided to order for closure of the matter in accordance with Rule 9(3)(a) of the Cost and Works Accountants (Procedure of Investigations of 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