



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(47)/2017

Shri Nagesh Laxman Bhagane (M/29569) ----- Complainant

CMA Harshad Shamkant Deshpande (M/25054)----- Respondent

ORDER

Dated 06/07/2020

1. Shri Nagesh Laxman Bhagane (M/29569) filed a complaint dated 2nd February, 2017 against CMA Harshad Shamkant Deshpande (M/25054) in Form I along with requisite fee which was registered vide Complaint No.Com/21-CA (47)/2017.

2. The complaint was made on the following grounds:

Contravention of provisions of the Cost and Works Accountants Act and Rules and Regulations made thereunder.

1. CMA Harshad Shamkant Deshpande, the present Regional Council Member from Western Region and member of Managing Committee of ICAI - Pune Chapter has contravened the Provisions of Chapter Bye-Law 25 and SOP ref: CMA/ADMN/005/2013-Guidelines for Regional Council / Chapter.

2. The Chapter Bye - Law 25 (partially - relevant portion) reads as under

"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 or any expenses incurred by them in connection with the business of the Chapter."

3. The SOP issued by the Institute as referred above (partially - relevant portion) reads as under-

"A member of Managing Committee cannot be a faculty for any coaching including oral conducted by the Chapter and take honorarium / remuneration from the Chapter."

4. CMA Harshad Shamkant Deshpande continues to be the member of the Managing Committee of ICAI - Pune Chapter since 2007-08 till today. He has occupied various positions in Managing Committee of Pune Chapter as follows.

2007-08 - Member



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2008-09- Member

2009-10 - Treasurer

2010-11- Treasurer

2011-12-Treasurer

2012-13-Treasurer

2013-14- Secretary

2014-15- Secretary

2015-16- Member and Ex-officio WIRC

2016-17- Member and Ex-officio WIRC

5. CMA HarshadShamkant Deshpande was working as faculty for oral coaching conducted by the Chapter during the period he was the member of the Managing Committee and even Office Bearer.

CMA HarshadShamkant Deshpande has himself confirmed about his association as faculty with ICAI - Pune Chapter on number of occasions. The records for the same can be obtained from ICAI - Pune Chapter by the Disciplinary Directorate.

3. The respondent was intimated vide letter dated 10/02/2017 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 29/05/2017 denied the allegations made against him and stated inter alia as below:-

- i. That the Complainant has not provided any evidences of payments. It is also not clear which time period the applicant is referring to.
- ii. SOP as mentioned in the complaint is effective from which date? Whether after issue of such SOP there is any contravention?
- iii. Under what section and provisions of the CWA Act & Regulations is the complaint filed ?

In the absence of any evidence supporting the complaint, the complaint is incomplete and cannot be entertained and responded to.

The respondent stated that he has requested the Director (Discipline) to direct the complainant to provide following information in order to enable respondent to reply the same. The information required is as under:

1. Time period for which the complainant is referring for alleged contravention



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2. Details of All payments made (Date, Particulars, Amount, Bank, Branch, IFSC code, transaction reference no. etc)
3. List of Managing Committee Members along with the advisors/co-opted members/invitees etc. for the period of alleged contravention
4. Chairman of Chapter & Chairman of coaching committee of Chapter for the period of alleged contravention
5. Process followed for selection of faculty by Coaching Committee Chairman or any other appointing authority for faculty for the period of alleged contravention
6. Minutes of all Managing Committee Meetings & Minutes of all Coaching Committee Meetings for the period of alleged contravention
7. Approving authority for each such payment made
8. Whether the respective Chairmen / approving authority were aware of bye law 25? if not reasons thereof.
9. If yes then statement justifying such default
10. Whether other managing committee members were also paid remuneration contravening provisions as produced by complainant during the period from 2007-08 till date?
11. If Yes , then Name of such managing committee member, date payment & amount paid

I request Director (Discipline) to direct the complainant, CMA Bhagane to produce the evidences and sent the required information as mentioned above in order to enable respondent to respond.

Failing to provide required evidences & full information by complainant, the complaint should be disposed off penalizing the complainant for filing wrong complaint.

5. Further, the respondent vide his letter dated 07th June, 2017 stated that CMA Bhagane has not produced any evidence to support his complaint. Failing to provide required evidences and full information by complainant, the complaint should be disposed off penalizing the complainant for filing wrong complaint.
6. The written statement of the respondent was sent to the complainant vide letter dated 31/03/2017 for sending rejoinder on the same.
7. In rejoinder dated 30/04/2017 Shri Nagesh Laxman Bhagane, had submitted on the written statement:-

"Para V clearly provides the allegations against CMA HarshadShamkant Deshpande. CMA HarshadShamkant Deshpande was acting as the "faculty" member of Pune Chapter of Cost Accountants when he was occupying e various positions in the capacity of office bearer of



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Pune Chapter of Cost Accountants. CMA Harshad Shamkant Deshpande was acting as the faculty member of Pune Chapter of Cost Accountants & was receiving payments as faculty member from Pune Chapter of Cost Accountants during the period 2011 to 2015. In my form I, I have already mentioned under para VI that the records for the same can be obtained from ICAI-Pune Chapter by the Disciplinary Directorate (of the Institute). I request the Disciplinary Directorate to get the confirmation/ information / evidence from ICAI – Pune Chapter :

1 Whether CMA HarshadShamkant Deshpande is / was acting in various capacities as member, treasurer, secretary of Managing Committee of Pune Chapter of Cost Accountants during the years 2007-08 to 2014 - 15.

2. Whether CMA HarshadShamkant Deshpande was acting as faculty and was receiving payment as faculty member from Pune Chapter of Cost Accountant during the period 2011-2015.

CMA HarshadShamkant Deshpande is himself Regional Council Member and also Managing Committee member of the Chapter and is supposed to be fully conversant with the provisions of CWA Act, Rules and Regulation made there under and the various directives of the Council / Chapter by Laws, SOPs etc. As per The Cost & Works Accountants (Procedure of Investigations of professionals and other misconduct and conduct of cases), Rules 2007 CMA Harshad Shamkant Deshpande has to file his written statement in his defence.

The disciplinary complaint is very simple that CMA Harshad Shamkant Deshpande was the Managing Committee member of ICAI – Pune Chapter and during the corresponding period he was also working as faculty for oral coaching and was drawing payment as faculty payment from Pune Chapter of Cost Accountants. Hence there is contravention of CWA Act, Rules and Regulations made there under , Chapter by Laws, Institute's Standard Operating Procedures as already mentioned in my complaint Form I.

I have filed complaint by paying fees under RTI Act 2015, I have also provided the authentic source of information from which further evidences can be collected. As such it is not obligatory on the part of the complainant to provide "information" to the person against whom the complaint is filed by the complainant.

Chapter III of the Cost & Works Accountants (Procedure of Investigations of professionals and other misconduct and conduct of cases) Rules 2007 deals with Procedure of Investigation. Rule 8 Procedure to be followed by Director on a complaint clearly lays down the procedure. The disciplinary cases mechanism is well governed by the rules mentioned above, which are being strictly followed by the complainant and it is expected that all parties will also strictly followed the said rules."

Further vide letter dated 20/01/2018 the respondent stated inter alia as below:-

CMA HarshadShamkant Deshpande (Membership no. 25054) was a member or office bearer of the Managing Committee of ICAI Pune Chapter during the period 2007-08 to 2014-15. Thereafter he is member and ex-officio WIRC nominee on the Managing Committee for the year 2015-16 and 2016-17.



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The pages showing Constitution of Managing Committee of Pune Chapter of Cost Accountants for the years 2009-10 to 2014-15 enclosed herewith.

(Refer annex. 1 to annex. 6)

2. CMA Harshad Shamkant Deshpande (Membership no. 25054) was engaged as faculty for oral coaching in Pune Chapter of Cost Accountants for the period from 2009 to 2015.
3. Remuneration/Faculty/oral coaching payment or such other payment made by: ICAI Pune Chapter to CMA Harshad Shamkant Deshpande (Membership no. 25054) during the period when he was also the member / office bearer of the Managing Committee of Pune Chapter is as under:

Year 1st April 2009 to 31st March 2010 Rs. 4,875/

Year 1st April 2010 to 31st March 2011 Rs. 2,500/

Year 1st April 2011 to 31st March 2012 Rs. 29,400/

Year 1st April 2012 to 31st March 2013 Rs. 40,870/

Year 1st April 2013 to 31st March 2014 Rs. 44,050/

Year 1st April 2014 to 31st March 2015 Rs. 33,800/

The above information is provided from most reliable and authenticate sources. The records relating to remuneration paid to respondent CMA Harshad Shamkant Deshpande can be obtained from ICAI- Pune Chapter by the Disciplinary Directorate (of the Institute). He requested the Disciplinary Directorate to get the confirmation / information /evidence from ICAI- Pune Chapter.

The written statement furnished by CMA Harshad Deshpande is in the form of a "Disclaimer" The respondent has "not denied" or "refuted" any of the facts mentioned in the complaint filed against him.

This is nothing but tacit acceptance of the facts for which disciplinary complaint has been filed by the complainant:

The purpose of written statement is to negate the charges made in the complaint by the complainant and not only to ask for evidence from the complainant himself.

The respondent has only asked for "evidences" from the complainant to support his complaint.

What is expected to be given in "Written statement" is the defence of the respondent A defence called the written statement in general is a reply to the complaint in which the respondent deny or admit each and every allegation or facts given in the complaint.

It may be pertinent to note that in any legal process "Witten Statement" has to follow certain rules in process of enquiry of a complaint The rules for the Written Statement signify that -The facts which remain unanswered by the defendant, it will be presumed that the said fact was admitted by the defendant.



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Where a defendant denies an allegation of fact in the complaint, he must not do so evasively, but answer the point of substance.

Every allegation of fact in the complaint if not denied in the written statement shall be taken to be admitted by the defendant. What this rule says is that any allegation of fact must either be denied specifically or by a necessary implication or there should be at least a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to be admitted.

The Written Statement published by CMA Harshad Shamkant Deshpande tantamounts to admission of a allegations made against him in the Disciplinary complaint filed by me.

Kindly take my above rejoinder of written statement filed by CMA Harshad Shamkant Deshpande (M./25054)

8. Director (Discipline) vide his letter dated 08th May, 2020 asked the Chairman, Pune Chapter to provide the following information:

- I. Whether Shri Harshad Shamkant Deshpande, bearing membership number 25054 was a member of the Managing Committee of Pune Chapter of Cost Accountants,
- II. If so, then the period during which he was a member of the Managing Committee and the posts held during such period.
- III. Whether Shri Harshad Shamkant Deshpande was a faculty member of Pune Chapter at any time.
- IV. If so, whether Shri Harshad Shamkant Deshpande was remunerated for the assignment taken up by him.
- V. If your answer to the above is in affirmative, then the total remuneration drawn by Shri Harshad Shamkant Deshpande from teaching assignment as a faculty member and also send the certified copies of vouchers through which payment was made to Shri Harshad Shamkant Deshpande. But no reply has been received.

9. 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.

10. The Board of Discipline in its meeting perused that, it is not desirable that the Managing Committee member should gain pecuniary benefit by taking oral classes by whatever name it may be called. Since there is no merit in the complaint filed by CMA Nagesh Laxman Bhagane, the complaint was dropped under Rule 9(3) (a) of the The Cost & Works Accountants



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(Procedure of Investigations of professionals and other misconduct and conduct of cases),
Rules 2007 The matter was discussed at length and after discussion, the Board decided that
the respondent is to be cautioned.

Accordingly, the complaint stands disposed off.

Presiding Officer