



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(51)/2017

Dr. Ashish Thatte (M/27543).....Complainant
v/s
Shri Ashok B. Nawal (M/5720).....Respondent

ORDER

Dated 19/09/2020

1. A complaint dated 18th June 2017 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 Dr. Ashish Thatte (hereinafter referred to as the 'Complainant'), against Shri Ashok B Nawal (M/5720), (hereinafter referred to as the 'Respondent').
2. The complainant *interalia* alleged that:-

The respondent, while contesting elections in 2015, violated a number of Sections of the Cost and Works Accountants (Election to the Council) Rules, 2006 and the Election Code of Conduct which was issued on 16th February 2015. The complainant filed a complaint against the respondent in the Election Tribunal established under section 10A of the CWA Act 1959. Certain documents which were submitted while pleading before the election Tribunal were submitted before the Director (Discipline). This application was forwarded to the Secretary of Institute wherein all documents related to the same were produced. However it has been alleged that the Secretary of Institute who was also the Returning Officer failed to take any action under disciplinary proceedings or action taken but not informed to complainant. As the Secretary failed to take action on the same despite receiving information he was now compelled to file a disciplinary case against the respondent.
3. The violations alleged to have taken place were based on flouting the norms of Election Code of Conduct (Ref EL-2015/10) issued on 16th February 2015. A number of violations have been alleged to have been committed by the respondent, some of which are given below:



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- i. Circular dated 2nd March 2015 (Ref EL-2015/Ins-3):- Clause 5 prohibits not only own photograph to passport size but also any other photograph.
- ii. Clause 9 of the Guidelines for issue of manifesto dated 16th February 2015 (Ref EL 2015/GMC) which states that manifesto by a contesting candidate can be sent in the name of the candidate only but the respondent has sent the manifesto in the name of his company which is a violation of the Guidelines on Election Code of Conduct.
- iii. Clause 2 of the said Guidelines that only one manifesto can be issued but the respondent has issued two manifestoes.
- iv. Clause 3 of the said Guidelines provided that a manifesto shall contain only one passport size photograph but in his manifestos the size of the photograph was much bigger than that prescribed by the Guidelines.
- v. Clause 4 of the Guidelines provided that the manifesto shall not contain any other photograph but the manifesto of the respondent had many other photographs.
- vi. Clause 11 of the Guidelines (Ref EL-2015/Ins1) prohibited sending any adverse comments about other contesting candidates. The respondent had made many comments in his manifesto which were adverse in nature for other contesting candidates including the complainant who was a candidate for the Central Council in 2015.

The above acts of violations were the major ones committed by the respondent. The complainant had alleged 13 (thirteen) acts of violation by the respondent. All these acts in relation to violation of Election Code of conduct for election to the Council and Regional Council-2015 are glaring and can be verified from the available documents. There were also other acts of violation which were alleged to have been committed by the respondent; a few of them are given here below:

- a) Giving interview to one Shri Prakash Sevekari purporting to malign the image of other candidates including that of the complainant. The said interview was circulated to the voters at large.
- b) Articles in WIRC Bulletin were published and circulated by Bizol India Services (P) Ltd. (The respondent was at that time the MD of the company)
- c) Publication of Chairman's communiqué in the WIRC Bulletin on 10th March 2015, i.e., at a date when the Election Code of conduct i.e., Notification dated 16th February 2015 was in force. The communication has identified the respondent as Chairman of WIRC.
- d) Making use of Institute's platform for publicity at a time when the Election Code of Conduct was in force.



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4. The respondent was intimated vide letter Ref No. G/DD/(M-5720)/02/01/2018 dated 17th January, 2018 to send response to the complaint through a written statement in his defense within 21 days from the date of service of the letter. Earlier the respondent was intimated vide letter Ref No G/DD/(M-5720)/01/07/2017 dated 21st July 2017 requesting the respondent to send his response within 21 days from the date of service of the said letter.
5. The respondent vide his letter dated 6th February 2018 denied the allegations made against him and stated *inter alia* as below:

The respondent has filed the Disciplinary Complaint against him with vengeance since he had objected to his misdeeds and raised the debit notes in accordance with the decision of the regional Council based on implementation Committee Report and hence any complaint filed by him should not be taken as a prima facie.

The complainant had filed the Form I and in column no 5, he has mentioned schedule wise list of violation which is given below:

1. The First Schedule Part IV Clause (2): Refer Section 41(3) of the CWA (Election to Council) Rules, 2016
2. The Second Schedule Part II Clause (1): Refer Section 16(4) of the CWA (Election to Council) Rules, 2016

At the outset, the respondent stated that the complainant has already filed the case in Election Tribunal and matter was pending with the Election Tribunal. Further, the said act is not covered under any of the Schedules of "PROFESSIONAL MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE GENERALLY" and "OTHER MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE GENERALLY" and therefore cannot be entertained under the said forum.

Further, it was submitted that the same nature of complaint on the same cause has been registered under complaint number DD/(M-5720)/CA(48)/02/01/2018 dated. 17th January 2018 and therefore reply submitted under the same and also to be considered as reply against this complaint.

In view of the submissions made above, the complaint needs not to be considered and to be quashed being filed as vengeance and mainly filed to harass undersigned.

6. The written statement of the respondent was sent to the complainant vide letter dated 30th July 2018 for sending rejoinder on the same but no rejoinder has been received.



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7. The Director (Discipline) in his prima facie opinion dated 27th July 2020 made the following observations:

- i. The respondent had not provided point wise rebuttal to the allegations leveled by the complainant.
- ii. Instead of denying the allegations with cogent evidence, the respondent has chosen to cast aspersion on the complainant stating that the latter had filed the Disciplinary Complaint against him with vengeance since he had objected to his misdeeds and raised the debit notes in accordance with the decision of the regional Council based on implementation Committee Report.
- iii. The fact that the complainant has already filed the case in Election Tribunal and matter was pending with the Election Tribunal is of no consequence since the Disciplinary Directorate is a separate forum altogether with the Disciplinary authority being vested with the same powers as are vested in a civil court under the Code of Civil procedure, 1908 (5 of 1908).
- iv. In the absence of specific denial of the allegations by the respondent, it is presumed that the respondent had admitted to contravening the Election code of conduct on which the instant case hinges.

It is important to examine the provisions of clause (2) of Part IV of the First Schedule of the Cost and Works Accountants Act, 1959 which states that a member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if in the opinion of the Council he brings disrepute to the profession or the Institute **as a result of his action whether or not related to his professional work**. It is therefore of no consequences whether the act of violation of Election code of conduct by the respondent is the result of his action whether or not related to his professional work.

It is pertinent to quote Rule 42(1) of the Cost and Works Accountants (Election to the Council) Rules, 2006:

Disciplinary action against member in connection with conduct of election.

(1) A member shall be deemed to have brought disrepute to the Council under item (2) of Part IV of the First Schedule of the Act if, in connection with an election to the Council of the Institute, he is found to have contravened the provisions of sub-rule (2) or all or any of the clauses of sub-rule (3) or sub-rule (4) of this rule.



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The Director (Discipline) further opined that it was clear that the respondent has contravened the provisions of Rule 42(2), 42(3)(a), 42(3)(f), 42(4)(iii) and 42(4)(viii) of the Cost and Works Accountants (Election to the Council) Rules, 2006.

8. The Director (Discipline) framed prima facie opinion and the same was placed in the meeting of the Board of Discipline on 27th July 2020 and also agreed to by the Board.
9. The prima facie opinion of the Director (Discipline) stated that the respondent appears to be guilty of clause (2) of Part IV of the First Schedule of the Cost and Works Accountants Act, 1959. 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.
10. In the meeting of the Board of Discipline held on 27th July 2020, the Board members perused the complaint filed by the complainant, the written statement of the respondent, and the prima facie opinion formed by the Director (Discipline) holding the respondent to be guilty of contravening clause (2) of Part IV of the First Schedule of the Cost and Works Accountants Act, 1959. It was brought to the notice of the Board that no rejoinder has been received from the complainant till the date of placing of the prima facie opinion before the Board. The Board directed the Secretary to send the prima facie opinion to the respondent and the complainant in terms of Rule 14(2) of the Cost and Works Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 asking him to file a written statement within 02 (two) weeks.
11. Accordingly, the prima facie opinion was emailed to the complainant as well as to the respondent on 14th August 2020 requesting the latter to send his response through written statement within 02 (two) weeks. In the 26th meeting of the Board held on 29th August 2020, the Secretary of the Board informed the members that no written statement has been received from the respondent in response to the prima facie opinion sent to him. The Board members directed the Secretary to call both the complainant and the respondent in the next meeting of the Board for making oral submissions in terms of sub-rule (6) of Rule 14 of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 which was to be held on 6th September 2020. Accordingly, notice of hearing in terms of Rule 14(6) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 was issued to both to the complainant and



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the respondent to appear before the Board of Discipline for making oral submissions in terms of sub-rule (6) of Rule 14 of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

12. The Disciplinary directorate was in receipt of an email dated 2nd September 2020 on or about 11.22 AM from the respondent who submitted as follows:

"Dear Sir,

I am in receipt of your letter granting me the hearing in the aforesaid case. However, I will not be able to attend the same, since I am not feeling well and advised to have the complete bed rest for 1 month. Further, I do not have internet connectivity at my residence and I will not be able to go to the office or any place considering I am heavy diabetic and I am running 66 years old.

Kindly adjourn the same till the month of Nov 2020. By that time, vaccine for COVID will come in the market.

Kindly do the needful & obliged

With Warm Regards.

CMA Ashok Nawal "

13. The Disciplinary Directorate was also in receipt of an email from Shri Ashis Thatte, complainant on 4th September 2020 sent at or about 12.38 PM which is as follows :

" Dear Sir

I am in receipt of an email sent by you.

I would like to put my response on record before I appear on Sunday, 6th September 2020 at desired time.

1. I would like to state that the tenure of President and Vice President Term is over on 21st July 2020 and unless the new President and Vice President is elected and Council Forms new Board of Discipline this **Board should avoid taking any hearings**. According to me This Board of Discipline has no rights to Try and Decide this case. In this connection I would like to attach a copy of the Email sent by the Secretary, Ministry of Corporate Affairs. **Notice of Hearing is given to me only after this email is sent by the Ministry of Corporate Affairs.**



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[The complainant has attached a copy of a letter No 12/20/2016-PI dated 28th August 2020 of the Under Secretary to the Government of India, Ministry of Corporate Affairs addressed to the secretary of the Institute stating inter alia that "Further the President and the Vice President of the Institute may be asked to refrain from taking any major policy decisions"]

2. I would like to state that As per Rule 14(3) of The Cost and Works Accountants(Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, will be referred as Rules hereinafter, respondent has rights to represent himself by way of Written Representation and if needed he should be given additional time as well. I am not being informed about any Written Representation given by Respondent in the case. If the Respondent has not given any representation then the same should have been informed to me officially. Also after the written submission is received from the respondent, the complainant has the right to file his rejoinder. **In this case I hereby state that I want to file Rejoinder irrespective of whether the Respondent has filed his Written Statement.** The Prima Facie Opinion formed by Director Discipline has a lot of errors and those need to be recorded before proceeding with the matter. In the interest of Natural Justice I must be given the opportunity to file my Rejoinder before the Board prior to my appearance as Complainant in the case. Also as per the same Rule Director Discipline has the right to file his rejoinder and if the same is filed I should be provided with the copy of the same before hearing is scheduled.

3. I have gone through Papers sent by Director Discipline along with Prima Facie Opinion. These papers are incomplete and **do not include 6 Annexures filed along with Complaint.** Unless these documents are provided, Prima Facie Opinion can not be circulated as per **Rule 14(2)(b).** No Director Discipline can form Opinion without relying on all Documents in Complaint as they are integral and non separable part of Complaint.

4. I received notice of Hearing on 1st September, 2020 for the hearing on 6th September, 2020. This notice is for 4 clear days and no Complainant can be prepared with a Huge Set of Documents (More than 250 Pages) ready for hearing. **The Board of Discipline must give sufficient number of days notice (minimum 21 days) before hearing.**

5. In Documents provided along with Prima Facie Opinion shows Respondent was asked for oral submissions on Monday 6th July 2020. In this case **I would like to state that every complainant and respondent has the right to attend all hearings as per Rule 20(1) of the Rules.** However I would like to mention here that the Board of Discipline has not given me Opportunity to be present when the Respondent was asked to be present before the Board. Kindly inform the undersigned how many number of such hearings were conducted by the Board and any Future



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Hearings to be conducted by the Respondent. As per Rule 20(1) I have full rights within four walls of law to attend the hearing of Respondent.

6. I would like to mention here that I am a Complainant and without my knowledge at least one hearing was Scheduled on 6th July, 2020 of Respondent. I would also like to state that Chapter IV procedure comes into force only when Prima Facie Opinion is formed by Director Discipline. The Director has Signed his Prima Facie Opinion dated 27th July 2020 and prior to that Board has no rights whatsoever to interfere into investigations to be conducted by Director Discipline. Even Director Discipline has no Rights to call for Hearing of Accused to defend himself by way of Hearings before Prima Facie Opinion is formed. Investigations must be conducted on the basis of Documents only. **Hence I strongly object to the procedure followed by the Board of Discipline to interfere into Investigations by Director Discipline and raises questions on Investigation to soften charges finalized by Director Discipline.**

7. Director Discipline has failed to give sufficient reasons why this case can not be considered as Offence under Second Schedule and also First Schedule and hence his Prima Facie Opinion lacks merits.

I once again urge you to please follow Procedure laid down in the CWA Act, Rule, Schedules and give me a full set of documents before proceeding with hearing on 6th September 2020 through Video Conferencing.

Also I would like to state here that my Email must be taken on Records and should form part of Proceedings of the case."

14. The complainant appeared to make oral submissions at the appointed time. Before the commencement of oral submissions he drew the attention of the Board members to a letter No 12/20/2016-PI dated 28th August 2020 of the Under Secretary to the Government of India, Ministry of Corporate Affairs addressed to the secretary of the Institute and read out the content thereof which *inter alia* stated that "Further the President and the Vice President of the Institute may be asked to refrain from taking any major policy decisions". The Presiding Officer of the Board stated that the Board of Discipline is an independent body as appointed by the Council and it can try and decide cases. The complainant then proceeded to make his submissions "without prejudice".

15. The complainant submitted that as per Rule 14(3) of The Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the complainant has rights to represent himself by way of Written Representation and if needed he should be given additional time as well. He said



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that he is not informed about any written representation given by the respondent in the case. If the respondent has not given any representation then the same should have been informed to him officially. Also after the written submission is received from the respondent, the complainant has the right to file his rejoinder. He further stated that the Prima Facie Opinion formed by Director Discipline has a lot of errors and those need to be 'recorded' before proceeding with the matter. In the interest of natural Justice he prayed for 20 days time to file his rejoinder. He further submitted that the papers sent by the Director (Discipline) along with Prima Facie Opinion were incomplete and do not include 6 Annexure filed along with Complaint. The complainant went on to state that in the documents provided along with Prima Facie Opinion the respondent was asked for oral submissions on Monday 6th July 2020 and every complainant and respondent has the right to attend all hearings as per Rule 20(1) of the Rules. However the Board of Discipline has not given him the opportunity to be present when the respondent was asked to be present before the Board. The complainant also stated this the instant complaint falls under second Schedule offence and should have been taken to the Disciplinary committee instead of bringing it to the Board of Discipline as the respondent is a habitual offender. He also prayed for levying strictest actions as envisaged in sub-section (3) of Section 21B of the Cost and Works Accountants Act, 1959.

The Board of Discipline after hearing his submissions directed the Secretary of the Board to give the complainant time till 11th September 2020 to file his rejoinder.

16. The respondent did not appear for making oral submissions. The secretary informed the Board members that the respondent, by an email dated 2nd September 2020, informed the Disciplinary Directorate that he has been advised complete bed rest for 1 month and he does not have internet connectivity at his residence and he would not be able to go to the office or any place considering he was diabetic and 66 years old. He prayed for adjournment till November 2020 and he would not be able to go to the office or any place considering he was diabetic and 66 years old. He prayed for adjournment till November 2020. By that time, vaccine for COVID will come in the market.
17. The Board directed the Secretary to send a communication to the complainant to submit his rejoinder on or before 11th September 2020 and decided to give another opportunity to the respondent to make oral submissions under Rule 14(6) of the Rules. The secretary of the Board by his email dated 7th September 2020 communicated the decision of the Board to the complainant. The complainant by his email dated 8th September 2020 sent on or about 9.33 AM submitted as follows:

" Dear Sir



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I would like to state here that time given to me is unjustified and all Facts of the Case cannot be brought in front of the Principal Bench of Fact Finding. I request you to reconsider the time frame given to me and reconsider my application of granting 30 days time from Today to submit my rejoinder. Let me remind you of certain judicial principles which must reflect in Final Judgement, in case, if I am not allowed time to bring some facts before the Board of Discipline by my Rejoinder.

1. **Justice Hurried is Justice Buried.** In instant case where Prima Facie Opinion was formed on 27th July 2020 and delivered to me on 14th August and no time granted to file rejoinder and even hearing is conducted as per Rule 14(6) before due process is followed in Rule 14(3), 14(4) and 14(5) is clear case of Justice Hurried. I urge you not Hurry in the Interest of Justice as sufficient time must be given by Principle Authorities to find the facts of the case.

2. As in the hearing I understand that the Board of Discipline is Independent as appointed by Council however In Legal Parlance '**Judiciary must remain independent, but the independence demands that decisions be rendered on facts and merits**'. I must be allowed to bring Facts before the Board of Discipline and should be allowed time sought by me. In Pandemic conditions, 4 days is very less as we all face difficulties. Even in Normal Conditions I have not heard that a File Rejoinder which is a 3 years old case is given only 4 days. I was led by the Board of Discipline to ask for 20 days from originally demanded 30 days by me. Hence I once again urge you to give me 30 days time to file my Rejoinder.

Please take my Email on Record for any Further Proceedings of the Case."

18. The respondent was informed by an email dated 7th September 2020 sent to him on or about 3.56 PM that the Disciplinary Directorate is yet to receive your reply to the prima facie opinion that was sent to him on 14th August 2020. It was also mentioned that the Disciplinary Directorate was in receipt of his email dated 2nd September 2020 requesting for adjournment of the hearing till November 2020. This mail was placed before the Board of Discipline. However, the Board of Discipline has not acceded to his request for such adjournment and the Secretary was directed by the Board to inform him to make it convenient to be present before the Board of Discipline constituted under Section 21A of the Cost and Works Accountants Act, 1959 on Friday, the 11th September 2020 at 11.20 A.M. to make oral submissions, if any, in terms of sub-rule (6) of Rule 14 of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The respondent, however, by his email dated 9th September 2020 sent on or about 3.15 PM reiterated the same submission which he had made in his earlier email of 2nd September 2020.



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19. The Board noted that the respondent was reluctant to appear for hearing for making oral submissions and therefore, he has nothing more to submit. It was decided that the respondent be called under sub-rule 15(1) of the Cost and Works Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 in the next meeting of the Board to give him an opportunity to be heard before passing any order under sub-section (3) of Section 21A of the Cost and Works Accountants Act, 1959.
20. On the next date, the respondent did not make an appearance.
21. The Board also perused and considered an order dated 10th September 2018 which was passed by the Hon'ble Tribunal constituted under section 10B of the Cost and Works Accountants Act, 1959 pertaining to the election for 19th Council of the ICAI held on 2nd June 2015 for the term 2015-19 in the matter of Shri Ashish P Thatte versus Shri Ashok B Nawal (Respondent) by which the respondent has been found to have contravened the provisions of the Cost and Works Accountants (Election to the Council) Rules, 2006.
22. It is a matter of record that the instant complaint dated 18th June 2017 filed by the complainant hinges entirely on violation of Election Code of conduct for Elections to the Council and Regional Councils-2015 and it is also on record that the same complainant had approached the Hon'ble Tribunal on the same cause of action i.e., violation of Election code of conduct which matter was decided in favour of the complainant by the Hon'ble Tribunal by order dated 10th September 2018. Since the cause of action was the same, the Institute *suomotu* had initiated disciplinary proceedings against the respondent and the Disciplinary Directorate had registered the same as an information.
23. The Respondent was intimated by the Director (Discipline) vide letter Ref No. G/DD/(M-5720)/Inf-CA(58)/1/01/2018 dated 31st January 2019 about the provisions of Rule 42(1) of the Cost and Works Accountants (Election to the Council) Rules, 2006 asking him to explain within 10 (ten) days from the date of service of the letter as to why necessary action shall not be taken against him for the misconduct. The said letter further stated that in case no reply is received within the stipulated time it shall be presumed that he has nothing to say and necessary action will be taken as provided in the CWA Act/Rules/Regulations. A copy of the Tribunal was enclosed with the said letter.
24. A reminder letter Ref No. G/DD/(M-5720)/Inf-CA(58)/2/04/2018 dated 9th April 2019 was sent by the Director (Discipline) stating that no reply had been received on the earlier letter dated 31st January 2019 and requesting the respondent to send the reply within 7 (seven) days from the date of service of the letter. The said letter further stated that in case no reply is received within the stipulated time it shall be presumed that he has



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nothing to say and necessary action will be taken as provided in the CWA Act/Rules/Regulations.

25. The respondent vide his letter dated 22nd April 2019 denied the allegations made against him and stated *inter alia* as below:-

- (a) The respondent at the outset stated and submitted that there cannot be any other case of harassment for mis-utilizing the mechanism of Disciplinary Committee on one ground or another ground.
- (b) The complainant had filed his petition before the election Tribunal under Section 10B of CWA Act, 1959 pertaining to the election for 19th council of the Institute of Cost Accountants of India for the term 2015-19 on the grounds that he had violated the election Code of Conduct including printing manifesto having full page photograph and one more photograph of more than passport size for the re-circulation of revised manifesto and other charges.
- (c) After hearing, the Hon'ble Tribunal had held the case against him holding that there were certain instances where Election Code of Conduct was violated and election was declared void.
- (d) The decision was given on 10th September 2018 which have not been appealed against on account of his health condition, even though he was not in agreement with such order and he had decided not to contest the election in such dirty environment.
- (e) Further the Election Code of Conduct has been made for conducting election in specified manner like printing only one passport size photograph etc. and there was a violation. He stated that he did not know how this brought disrepute to the profession.
- (f) He further stated and submitted that considering the relevant facts of the records that for small misconduct, election was held void, it doesn't tantamount to any violation of bringing any disrepute to the institute and the order was not appealed against only on the grounds of health and my physical disabilities.



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27. The Board noted with grave concern that the respondent is a habitual offender having been pronounced guilty by the Hon'ble Election Tribunal in a complaint filed by the same complainant against him and this has brought disrepute to the profession and tarnished its image.
28. The Board has gone through the documents placed on record and the respective submissions of the parties. A perusal of the documents shows that the Respondent has during the course of Election has violated various provisions as contained in the Election to the Council Rules as well as Code of Conduct. Further, the Respondent has not submitted any response to the compliant on merits. In absence of any denial from the Respondent and/ or disputing the evidence placed on record, we are of the view that Respondent is guilty as charged
29. As far as Complainant contention is concerned about the powers of President/ Vice President is concerned we are of the view that the BoD is discharging its statutory functions in dealing with the disciplinary cases. The President/ Vice President has no say in the proceedings before BoD are concerned and moreover the proceedings before BoD does not comes in the ambit of "policy decision". Therefore, the contentions of the complainant on this count are misplaced.
30. On arriving at a finding under sub-rule (9) of Rule 14, that the respondent is guilty of other misconduct, the Board has given the respondent an opportunity to be heard on 18th September 2020 before passing any order under sub-section (3) of Section 21A of the Cost and Works Accountants Act, 1959.
31. In view of the foregoing, the Board of Discipline is of the opinion that the act of Shri A B Nawal, respondent is unbecoming of a member and accordingly, the respondent is guilty of other misconduct specified in clause (2) of Part IV of the First Schedule to the Cost and Works Accountants Act, 1959 read with Rule 42(1), 42(2), 42(3)(a), 42(3)(f), 42(4)(iii) and 42(4)(viii) of the Cost and Works Accountants (Election to the Council) Rules, 2006.
32. As per sub-section (3) of Section 21A the Cost and Works Accountants Act, 1959, the Board therefore, passes the following order:
- (a) Reprimand the member
 - (b) Impose a fine of Rs 1,000/- to be paid within 30 days from the date of receipt of the order failing which his name will be struck off from the Register of members for a period of one month.

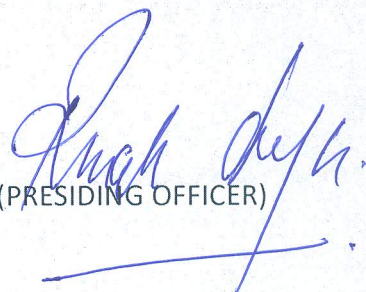


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33. As per Section 22E (1) of the Cost and Works Accountants Act, 1959, "any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary committee imposing on him any of the penalties referred to in sub-section (3) of Section 21A and sub-section (3) of Section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority."


(PRESIDING OFFICER)