



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(57)/2017

CMA Prashant S Vaze (M/28236)----- Complainant

V/s

CMA Sanjay Ramchandra Bhargave (M/8348)-----Respondent

ORDER

Dated 15/05/2020

1. A complaint dated 27/11/2017, 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 Shri Prashant S Vaze (hereinafter referred to as 'the Complainant'), against Shri Sanjay Ramchandra Bhargave (M/8348), (hereinafter referred to as 'the Respondent').

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

CMA Sanjay Bhargave is Past CCM of the Institute, Past Chairman of WIRC and Advisor of Pune Chapter for number of years and member of Pune Chapter. Some members representing Pune Chapter met Hon. Union Finance Minister Shri Arun Jaitley during a function at Pune on 17th October 2015 and requested him to look into some matters of importance to Professional CMAs. A memorandum signed by CMA Neeraj Joshi, CMA Amit Shahane, CMA Sanjay Bhargave, CMA D V Joshi, CMA N K Nimkar, as representatives of ICAI Pune Chapter was handed over to Hon. Minister. Chapter Bye-Law 16(4) of 2013 clearly states that the Managing Committee or any member of Chapter shall at no time make any direct or indirect communication with the Central Government or any of the State Government or any Statutory Authority unless the same is specifically authorized by the Council in writing. Above Act of CMA Sanjay Bhargave of signing the memorandum on behalf of Pune Chapter was a clear violation the Chapter Bye Law 16(4) of the Cost Accountant's Chapter Bye Law, 2013 which were in force on 17th October 2015. This act of Sanjay Bhargave is very serious considering that he is Past CCM of Institute for 8 years. This act of CMA Sanjay Bhargave is perfect case of professional misconduct under CWA Act & Rules, Regulations. This is a clear case of professional and other misconduct under – Second Schedule Part II, Professional misconduct in relation to members of Institute generally, clause (I).



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

Annexure A : Email from CMA Anant Dhavale, the then Chairman Pune Chapter dated 17th October 2015 which clearly mention about the communication with the Central Government Minister and handing over of signed memorandum to the Union Finance minister by the above mentioned representative of Pune Chapter.

Annexure B:- Copy of the memorandum signed by above mentioned members submitted to Union Finance Minister.

3. The respondent was intimated vide letter dated 07th December, 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 05th January, 2018 denied the allegations made against him and stated inter alia as below:-
 - *He, along with some members of the Institute, met Hon. Finance Minister Shri. Arun Jaitey during his visits to Pune on 17th October 2015 and requested him to look into some matters of importance to professional CMA.*
 - *A memorandum signed by CMA Neeraj Joshi, CMA Amit Shahane, CMA Sanjay Bhargave, CMA D.V. Joshi, CMA N.K.Nimkar, as a representatives of ICAI Pune Chapter was handed over to Hon. Minister.*
 - *Chapter Bye Law 16(4) of 2013 clearly states that the managing committee or any member of Chapter shall at no time make any direct or indirect communication with the Central Government or any of the State Government or any Statutory Authority unless the same is specifically authorized by the council in writing.*
 - *His act of signing the memorandum on behalf of Pune Chapter is a clear violation of the Chapter Bye Laws, 2013 which were in force on 17th October 2015. This act of his is very serious considering that he is Past CCM of the Institute.*
 - *This act of signing memorandum submitted to Hon. Minister is perfect case of professional misconduct under CWA Act & Rules, Regulations.*
 - *This is a clear case of professional and other misconduct under Second Schedule Part II, Professional misconduct in relation to members of Institute generally, clause (I).*
 - *CMA Harshad Deshpande, RCM Ex Officio member of Pune Chapter and CMA Ashok Nawal, CCM, Ex Officio Member of Pune Chapter had knowledge of the facts of the case.*

He further understands that he had been directed to send his response through a written statement in his defence. As directed, he gives below his response.



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Pune Unit of Bharatiya Janata Party had organized a programme "Interaction with Hon. Shri. Arun Jaitley, Union Minister of Finance, Corporate Affairs, Information & Broadcasting Government of India".

The interactive meeting was mainly to discuss the economic situation, GST and other related issues. The admission to meeting was open only to invitees. The eminent personalities in Pune, Leading professionals, Academicians, Industry Leaders were the invitees to the meeting. CMA Amit Apte, CCM was also amongst the invitees. As CMA Amit Apte was out of station, he requested to represent the Institute for the said meeting. During the personal interaction, a brief note on the role of Cost Accountants in various tax laws and other areas and scope of CMA profession was handed over to Hon. Minister. A copy of the note was circulated to all members of Pune Chapter of ICAI. Copy of the note is already enclosed by CMA Prashant Vaze along with his complaint. On perusal of the same, it can be seen that it contains the areas where cost accountants can help the exchequers and society at large. The contents of the Memorandum are fully supportive to the CMA profession. The note does not contain any specific area which will result in personal gain to the signatories to the note.

As regards the violation of the Chapter Bye Law 16(4) of Cost Accountants Chapter Bye Laws, Chapter Bye Law No. 16 provides for functions of the managing committees. Bye Law 16(4) states that the managing committee or any other member of the chapter at no time make any direct or indirect communication with the Central Government or any of the State Government or any Statutory Authority unless the same is specifically authorized by the Council in writing.

5. The Respondent further stated that:-

In the instant case, the representation was given to Hon. Minister as per the request of the Central Council Member of the same constituency. Considering the above facts and particularly the fact that he was acting as per the request of Central Council Member there is no contravention of Chapter Bye – Law 16(4) of 2013 as alleged by the Complainant. In this connection it is submitted that Chapter Bye Law No. 16 provides for functions of the managing committee whereas Bye Law 16(4) prohibits the managing committee or any other member of the chapter from making any direct or indirect communication with the Central Government or any of the State Government, or any Statutory Authority, unless the same is specifically authorized by the Council in writing. The prohibition is applicable to members at large and not only to the managing committee. It is pertinent to note that provisions related to professional and other misconduct are enumerated in the Schedules to the Cost and Works Accountants Regulations 1959. No such provision of making any direct or indirect communication with the Central Government or any of the State Government or any Statutory Authority, unless the same is specifically authorized by the Council in writing is treated as professional or other misconduct in the CWA Act, regulations or Schedules to the Regulations. In the instant case, neither CWA Act nor CWA regulations prohibit members or even chapters from making any direct or indirect communication with the Central Government, or any of the State Government, or any Statutory Authority. The scope of professional or other misconduct as per the CWA regulations does not include making any direct or indirect communication with the Central Government or any of the State



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Government, or any Statutory Authority in the interest of the profession. Therefore meeting Hon. Minister and submitting him a representation as suggested by CCM cannot be treated as professional or other misconduct. It is very common that Union Ministers, State Ministers, Government Authorities attend various seminars and functions arranged by Chapters in the capacity of Chief Guests or Guest of Honour. Often representations are submitted to them by Chapters. These representations mainly contain the details of Institute, Strengths of CMA profession and request to enhance statutory recognition to CMA profession. In none of the case the same is authorized by the council in writing. If the act of meeting Hon. Finance Minister and signing the representation submitted to him is professional misconduct then action needs to be taken against every member, RCM and CCM.

It is pertinent to note that the instance quoted by the complainant CMA Prashant Vaze dates back to October 2015 whereas CMA Prashant Vaze has lodged the complaint in November, 2017 i.e. after a gap of more than 2 years. In the meantime GST has been introduced by Government of India and the scope of CMA profession is also recognized in GST law. Certainly the interaction with Hon. Minister by Pune Chapter and many other Chapters and efforts of Central Council Members and members of the Institute in their personal capacity has contributed to the same. In view of the above, in the instant case, there is no professional or other misconduct. He had not contravened any provisions of the CWA Act or Regulation and therefore the complaint filed by CMA Shri Prashant Vaze needs to be dismissed.

Under the circumstances he requested to dismiss the complaint filed by CMA Shri. Prashant Vaze and refrain from initiating any proceedings against him.

He also requested to grant him an opportunity of personal hearing before the case is finally decided.

He reserves his right to add/amend/ alter /amplify/ delete any one or more grounds stated here-in-before.

6. The written statement of the respondent was sent to the complainant vide letter dated on 09th January, 2018 for sending rejoinder on the same.
7. In rejoinder dated 25th February, 2018 Shri Prashant S. Vaze had submitted inter alia that:-
 - i) *In his reply CMA Sanjay Bhargave has mentioned that he has met the Union Finance Minister because CCM CMA Amit Apte has requested him to represent the Institute as CCM CMA Amit Apte was out of town. Thus he himself has agreed to the fact that he has contravened the Chapter Bye-Law 16(4) of 2013 (In force at that point of time) which clearly states that the managing Committee or any member of Chapter shall at no time make any direct or indirect communication with the Central Government or any of the State Government or any Statutory Authority unless the same is specifically authorized by the Council in writing.*
 - ii) *It should be noted that request by CCM CMA Amit Apte has no locus standi as such, because Chapter Bye – Law 16(4) of 2013 clearly states that the Managing Committee or*



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any member of Chapter shall at no time make any direct or indirect communication with the Central Government or any of the State Government or any Statutory Authority unless the same is specifically authorized by the Council in writing. CCM CMA Amit Apte should have produced the Authorization in writing by the Council along with the letter. Hence this becomes a clear cut case of violation of Chapter Bye Laws. This has become more serious because Past Central Council member of our Institute has been involved in this violation.

iii) *In view of the above, he requested the Disciplinary Directorate to take action against CMA Sanjay Bhargave for violating Chapter Bye Law 16 (4) of 2013, as per the existing provisions of the CWA Act and Regulations.*

8. The Director (Discipline) vide his prima- facie opinion dated 17/08/2019 stated that on perusal of the Complaint, written statement and rejoinder of both the parties, Director (Discipline) observed that although the action of the respondent was not as per the Chapter Bye Laws but it is very common that Union Ministers, State Ministers, Government Authorities attend various seminars and functions arranged by Chapters in the capacity of Chief Guest of Honour. Often representations are submitted to them by Chapters. These representations mainly contain the details of Institute, Strengths of CMA profession and request to enhance statutory recognition to CMA profession. In this case also the letter submitted to hon'ble minister Shri Aun Jaitley was indicative of various important issues concerning the profession on which efforts are being made by the Council, Regional Councils, Chapters etc. and which are in the interest of the profession. A brief note on the role of Cost Accountants in various tax laws and other areas and scope of CMA profession was handed over to Hon. Minister. Further, it contains the areas where cost accountants can help the exchequers and society at large. The contents of the Memorandum are fully supportive to the CMA profession. The note does not contain any specific area which will result in personal gain to the signatories to the note. Hence held the Respondent prima facie "Not Guilty" of professional or other misconduct under any of the items of First and/or Second Schedule to the Act.

9. The Board of Discipline perused that though the action of the respondent was in good faith and for the interest of the profession and as per the advice of the Central Council Member, who was also Executive Committee Member of the Institute, it is not desirable that the Managing Committee or any member of the Chapter make any direct or indirect communication with the Central Govt. or any Statutory Authority unless the same is specifically authorized by the Council (Presently President) in writing. 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