



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(65)/2018

Shri R.P. Gore (M/) -----Complainant

V/s.

Dr.Dhananjay V Joshi (M/4923)-----Respondent

ORDER

Dated 13/08/2020

1. - Shri R P Gore (hereinafter referred to as the "complainant") filed a complaint dated 31st March, 2018 against Dr. Dhananjay V Joshi (hereinafter referred to as the "respondent") in Form I along with requisite fee of Rs. 2500/- which was registered vide Complaint No. Com/21 CA (65)/2018.

2. The complaint was made on the following ground:

CMA Dr. Dhananjay Joshi had sent an e-mail dated 12th January 2018 and other mails by communicating the contents of mail stating that Dr. Dhananjay V Joshi, respondent had contravened the provisions of the Cost & Work Accountants act 1959 and various clauses of code of conduct & ethics as per details given below.

- 1) The mail is an attempt to secure any professional work by any means which are not open to Cost Accountants
- 2) The mail is also 'communication' to solicit clients or professional work
- 3) In the given mail he seems to usurp the powers of the council/disciplinary committee and Disciplinary directorate & without authority delivers the judgment
- 4) He strongly used the word 'settled'
- 5) The mail contravenes ICWAI guide lines code of Ethics as given below

- a) The member should conduct himself or herself towards other members with courtesy and good faith





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- b) Not act maliciously or any other way which may adversely reflect on public or professional reputation or business or other member
- 6) Using Designation as 'Former President ICAI'. A Member in Practice is prohibited from using designation other than Cost Accountant
- 7) Using the designation 'Former President ICAI' in the mail along with his name his Professional address & using the mail for not for official use of the institute
- 8) Using the designation 'Former President ICAI-2006-07' in the Visiting card along with use of his name & his Professional address.

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

Printout / Photostat copy e-mail dated 12th January 2018
Printout / Photostat copy of each mail as given in the Annexure RPG 2 (viz E-mail dated 15th June 16, 10th June 16, 16th June 16, 2nd June 15 & 9th June 2015)
Photostat copy of Visiting card

4. The respondent was intimated vide letter dated 06th April, 2018 to send response to the complaint through a written statement in his defence within 21 days from the date of service of the letter.

5. The respondent vide his letter dated 11th August, 2018 denied the allegations made against him and stated *inter alia* as below:-

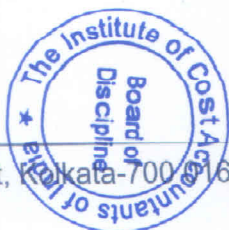
At the outset he denied all the allegations made by CMA R P Gore in the disciplinary complaint filed by him against him.

He mentioned that the complaint is malicious and only to harass the respondent.

The complaint is without any substance and lacks any legal backing.

The major part of the complaint is based on his mail dated 12th January, 2018 sent to CMA M R Pandit. There appears to be some kind of ill feeling and vengeance prompting CMA R P Gore to file this disciplinary complaint.

The mail forming the main plank for the disciplinary complaint pertains to a Cost Audit assignment secured by the firm M.R. Pandit & Company, Cost Accountants of which the complainant CMA R P Gore is a partner. The respondent had filed a disciplinary complaint against M/s M.R. Pandit & Company, Cost Accountants on 23rd February 2018. The complaint is relating to accepting the professional work in the nature of accounting the Book keeping services, Internal Audit services and Management Services along with Statutory Cost Audit by the firm of the complainant in which he is a partner. Whatever may be the reason for





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complainant to file the disciplinary case, he is submitting here under the response to the various allegations made by the complainant.

Allegation 1) The mail is attempt to secure any professional work by any means which are not open to Cost Accountants

Refer clause (5) under First Schedule – Sections 21(4) & 22 of the Cost & Works Accountants Act 1959.

The mail is written by the respondent to the senior partner of a firm of Cost Accountants. The respondent had not made any attempt to secure any professional work by any means which are not open to Cost Accountant. The complainant had not mentioned any Para or Lines from the said mail is an attempt to secure any professional work or from whom such professional work is to be secured by the respondent. It is only the wild imagination of the complainant and totally baseless allegation without any supporting or evidence on record.

Allegation 2) The mail is also 'Communication' to solicit clients or professional work (Ref Annexure RPG 1 & 1A)

Refer clause (6) under First Schedule – section 21(4) & 22 of the Cost & Work Accountants Act 1959

Response: The mail is addressed to M/s M. R. Pandit & Company, Cost Accountants who cannot be the clients of the respondents. The complainant had not mentioned any Para & Lines from the said email concerning the allegation made by the complainants. There is no professional work, solicited from the addressee/addressees of the mail and as such allegation is totally baseless without any substance in the same.

Allegation 3) In the given mail he seems to usurp the powers of the council / disciplinary committee and Disciplinary directorate & without authority delivers the judgment

It may be 'Other Professional Misconduct'

The complainant had not mentioned any para or lines from the said email concerning the allegations made by the complainant. The complainant had not made it clear how the respondent "seems to usurp the powers of the council/disciplinary committee and Disciplinary directorate & without authority delivers the judgment". The complainant is not sure about the misconduct of the respondent and he himself admits "it may be other professional misconduct". The respondent humbly submits that he has neither such intentions as alleged by the complainant nor has any intention to deliver the judgment. The respondent had used the words "we are the opinion that..." Clearly shows that it is in the





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opinion of the respondent and neither he is sitting on judgement or usurping the powers of the statutory bodies and authorities.

Allegation 4) He strongly objected to the use of the word 'settled'

It may be 'Other Professional Misconduct'

Response: The sentence in the mail read as under

"We are of the concerned opinion that this matter need to be settled and clear principals needs to get laid down that whether practicing Cost Accountants can accept scope of Cost Audit work along with management consultancy areas."

Thus the word "Settled" is with reference to the matter and principals which need to get established. The complainant had to read the words in the context of the full sentence and not interpret a single word in the manner in which he deems it fit and may be which is in his inner mind.

Allegation 5) The mail contravenes ICWAI guide lines code of Ethics as given below:-

- a) The Member should conduct himself or herself towards other members with courtesy and good faith.
- b) Not act maliciously or any other way which may adversely reflect on public or professional reputation or business of other member

Clause viii & Clause xi of ICWAI Guidelines on Ethics

The salutation used in the mail is "Dear CMA Pandit Sahab" which shows utmost respect to the senior professional. The last Para of the mail reads as under:

"He requested to consider this email sent to us in the interest of profession and in good faith" Thus the complainant has made totally mischievous and malicious allegations against the respondent. It is reiterated that the respondent has acted in most courteous way and in good faith and there is not a single sentence or word which can be termed malicious etc. The allegations are baseless and totally denied by the respondent.

Allegation 6) Using Designation as 'Former President ICAI' A Members in Practice is prohibited from using designation other than Cost Accountants (ref Annexure RPG 1&2)

Refer Sections 7 of the Cost & Works Accountants Act 1959





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The respondent had used the words "CMA Dr. Dhananjay V Joshi" which is in line with the provisions of Sec 1 of the CWA Act, 1959. The acronym "CMA" itself stands for Cost Accountants which is very much recognized by the Ministry of Corporate Affairs itself. The respondent was holding the position of President of the Institute which is a fact on record and there is no prohibition for writing Former President ICAI. The respondent has not proved how and under which Section of the CWA Act, 1959 or regulations made there under there is such prohibition.

Just for the sake of illustration he enclosed here with an invitation letter for 58th National Cost Convention-2018 from CMA Sanjay Gupta, Former President of The ICAI which clearly addresses CMA Dr. Dhananjay V Joshi as "Past President." It is an accepted convention. The Section 7 of CWA Act, 1959 is misunderstood / misinterpreted by the learned complainant. The respondent had not used the words "Former President ICAI" as designation since he has already sufficiently disclosed his identity through the designation of a Cost Accountant i.e. CMA and also his name.

Thus it is reiterated that the respondent had used the designation of a cost accountant (CMA) only. Being a Former President of the Institute the position held by the respondent appears below his name and designation which is a common practice and not prohibited under the CWA Act, 1959 or the Regulation made thereunder.

The complainant had to bring the act / action of the respondent under any of the acts mentioned under the first schedule or the second schedule of the CWA Act, 1959 read in terms of section 22 of the CMA Act, 1959. The complainant had not referred to any of the provisions contained in the first Schedule or the Second Schedule which are contravened by the respondent and as such the complaint deserves to be dismissed on this count alone.

It may not be out of place to mention that the Complainant CMA R P Gore lost the election to the Regional Council in the year 2015. CMA R P Gore also lost the election to the Managing Committee of chapter in the year 2017. So possibly such diffidence might have prompted him make such wild allegations against the respondent who occupied the highest position in the Apex body.

Allegation 7) Using the designation 'Former President ICAI' in the mail along with his name, his professional address & using the mail for not for office use of the Institute

It is repetition of allegation 6 above and hence the response to allegation 6 may kindly be referred.





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Allegation 8) Using The designation 'Former President ICAI -2006-07' in the Visiting card along with use of his name & his Professional address

It is repetition of allegation 6 above and hence the response to allegation 6 may kindly be referred

6. The written statement of the respondent was sent to the complainant vide letter dated on 21st August, 2018 for sending rejoinder on the same.
7. In rejoinder dated 03rd September, 2018 Shri R P Gore, had submitted on the written statement of CMA Dr. Dhananjay V Joshi (Respondent) as follows:
 - a) In the Written statement it is stated Quote 'The respondent has filled a disciplinary complaint against M/s M R Pandit, Cost Accountants on 23rd February 2018. The complaint is relating to accepting the professional work in the nature of Accounting and book keeping services, Internal Audit services and Management Services along with Statutory Cost Audit by the firm of the complainant in which he is a partner 'Unquote. It is surprising that learned Dr D V Joshi, who himself is the complainant in that case, does not know that the complaint is lodged by him (as alleged / stated in the complaint) for carrying out/ providing Management Services. He quoted from the complaint Form I Quote "to carry out certain services which are in the form of 'Management Services' "Unquote (Ref Para 5 of point 5 of the Form I)
 - b) It is surprising that in the written statement, Dr D V Joshi, the learned respondent (in this case) had signed as 'Complainant'

It is more surprising that the mistake is repeated in the verification. There is further mistake in the verification. The statement date is 11th August 2018, whereas, the verification date 1st day of June 2018. (Earlier than statement date!!) and the most surprising is the fact that the office of the Director, Discipline forwarded the statement to him without bothering / noticing the mistakes, have not got the mistakes corrected.

In the response the respondent had said that the complainant had not mentioned any para or line from the said email concerning the allegation made by the complainant. He had pointed out that the total mail is an attempt to secure the professional work.

- a) In the first para it is stated that they had participated in tendering process (were thus interested in the assignment).





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- b) In the second para it is stated that our firm had been given the assignment.
- c) In the third para there is unsolicited opinion given (Judgement / decision) is given that it is fit case of Professional misconduct.
- d) In the fourth and fifth para, there is veiled threat of action (Disciplinary case)/ harassment against our firm. Thus, it is clear indication of our harassment in case if our firm try to get the assignment in which, their firm is interested.

It should be noted that there were many firms/ Cost Accountants who participated in the process & thus, if for time being the respondent's opinion is valid, each of the firm had committed misconduct the minute they applied for the tender. However, the case was filed against us (the firm, which had been given the assignment). It is an indication / warning to us not to participate in any tender in which their firm is interested. Thus, the mail is an attempt to secure the professional work – present & future.

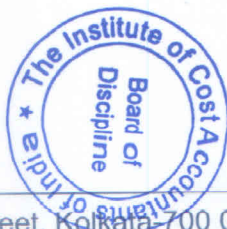
The mail is also 'Communication to get professional work – present & future. In the response the respondent had said that the complainant had not mentioned any para or line from the said email concerning the allegation made by the complainant.

It is stated in response that the word 'settled' should not be read in isolation but should be with reference to the matter that the clear principles need to get established. There are two sentences:

- a) We are of the concerned opinion that this matter needs to be settled
- b) Clear principles need to get laid down that whether practicing Cost Accountant can accept

Scope of Cost Audit along with management consultancy areas

He stated that the clear principle is already established & the Council vide resolution (Appendix no 6 of The Cost & Works Accounts Regulations 1959- as amended) has already given the definition / meaning of the term 'Management Consultancy Services' & the term should include which services / should not include which services. Neither the respondent nor the complainant has any authority to decide in the matter. Thus, the second sentence is not useful, is meaningless and is void ab initio. It leaves only the first sentence / one sentence valid and hence which has to be read in isolation.





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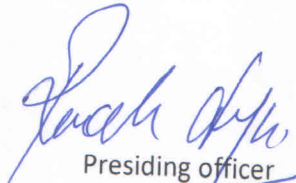
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A It is stated in response that utmost respect is given to our senior member in salutation he had to say that only using good words & salutation does not mean that the provisions are complied with. Threatening to take further action, giving copy to other CMA (CMA Neeraj Joshi) giving one sided interpretation thus trying to defame our firm (Liberal & slander) & other actions are surely the acts of malicious nature & might had adversely affected the public or professional relations of our firm. These act & actions by the respondent, contravenes guidelines on ethics.

On a careful perusal of the complaint, written statement and the rejoinder, 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. I am therefore of the opinion that the complaint be disposed of in pursuance of Rule 9(3) of the Cost and Works Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007.

Accordingly, the complaint stands disposed off.


Presiding officer

