



# 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(73)/2019

Shri Vijender Sharma (M/18513) .....Complainant

V/S

Shri Sunil kumar Singh (M/23553).....Respondent

Order

06/09/2020

1. A complaint dated 6<sup>th</sup> June 2019 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 Vijender Sharma (hereinafter referred to as 'the Complainant'), against Shri Sunil Kumar Singh (M/23553), (hereinafter referred to as 'the Respondent').

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

The main allegations against Shri Sunil Singh are that he had circulated a copy of the draft "Inspection Report" of CAG to members of the Council and to the members of NIRC (most of them were voters for the ensuing Elections to the Council-2019) highlighting certain matters selectively with a view to defaming his image and to have a negative influence in the minds of the members of NIRC. Shri Sunil Singh has very cleverly picked up certain portions of the Inspection Report selectively and highlighted with a mala-fide intention, with the sole objective of tarnishing his image during election.

It is also worth mentioning that the portion of Inspection Report which states that "there are no major irregularities....." have not been highlighted with ulterior motive.





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The complainant further alleged that this malpractice had been deliberately adopted by the respondent who was the then Chairman of NIRC who was himself a candidate for Central Council Election since, it is evident from the Inspection Report that in the name of 'test check', certain selective items have been shown to the audit team while several transactions/events which warrant serious audit have been brushed inside the carpet with ulterior motive. It is also apparent from the report that vital documents including minutes have been suppressed from the audit team. In fact, this has been a common practice in the Institute in all such type of audit/investigations conducted by outsiders where selected items are checked, selected documents are produced, vital documents are suppressed and pre-meditated reports are submitted. It is also surprising that the Inspection Report was not referred to the Headquarters for comments/submission of documents/minutes either by the audit team or NIRC. It is apparent that the entire process has taken place in a pre-planned manner in collusion with the interested persons. It is also not out of place to mention that there were clear evidences against one of the members of the audit team of NIRC having accepted gratification during his earlier assignment with the Institute and such corruption was being investigated by CVC.

The Inspection Report is intended to be a confidential Report and any unauthorized circulation to members at large would tantamount to misconduct on the part of the Chairman, NIRC, besides the action being defamatory and done with a purported motive to serve the ulterior objective of Shi Sunil Singh.

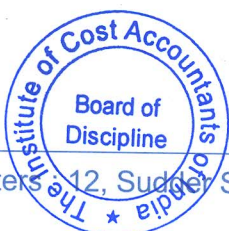
The complainant had requested to initiate immediate disciplinary proceedings against Shri Sunil Singh, the then Chairman of NIRC for such misconduct in terms of the provisions of Sections 21 & 22 of the CWA Act, 1959 read with the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Complainant alleged violation of the the following clauses of the CWA Act, 1959 by his unauthorized act of circulation the confidential CAG Report:

(i) Clause (2) of Part IV of the First Schedule

(ii) Clause (1) of Part II of the Second Schedule

3. The respondent was intimated vide letter dated 10<sup>th</sup> June, 2019 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 received on 6<sup>th</sup> August, 2019 denied the allegations made against him and stated *inter alia* as below:







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## Allegation:

In his complaint the complainant's allegation was that the respondent had circulated a copy of the Inspection Report of CAG to members of the council and to the members of NIRC (most of them are voters for the ensuing Elections to the council-2019), through an e-mail dated 24<sup>th</sup> May 2019, at or about 10:45 A.M. highlighting certain matters in said report.

## Reply:

The mail dated 24<sup>th</sup> May 2019, as attached by the complainant in his above mentioned complaint at Annexure-2 (Page-7), was very clear that the said mail had been circulated from NIRC to Regional Council and Central Council members only. It has not been circulated to any member of NIRC or anywhere else as alleged by the complainant.

So his complaint has no grounds that it is circulated to members of NIRC or to members at large.

Further, the respondent stated that the complainant should know that being the Chairman of NIRC, the former had all rights to conduct the business of NIRC and in the capacity of the Chairman it was his duty to inform the President of ICAI-CMA, Secretary and all council members (Regional as well as Centre) the major issues raised by CAG team in their reports dated 9<sup>th</sup> May 2019 as the said report contained some serious issues which were related with functioning of Central Council, the then secretary (Acting) and Regional Council. The respondent also stated in his written statement that the said audit had been initiated by Head Quarters/Central Council and not by NIRC under the supervision of one of the employees of HQ-Delhi Office. Further, highlighting main points in any report was normal practice in any organization and what the respondent felt was important, have been highlighted without any bad intension.

The respondent further stated that they had provided all records, documents including Minutes books, vouchers ledgers etc. whatever was available with them at NIRC during said audit in consultation with HQ employee coordinating the said audit.

After receiving CAG report dated 9<sup>th</sup> May 2019, they had sent their replies dated 8<sup>th</sup> June 2019 as desired by CAG with a copy to HQ.

Shri Sharma, complainant has also mentioned that "the entire process has taken place in pre-planned manner in collusion with the interested persons....."

The respondent in his written statement has requested the complainant to disclose the name of interested persons and requested the Director (Discipline) to investigate the matter. He stated that the complainant must be asked about these interested persons.







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The respondent further submitted that they had sent mail along with the draft CAG report to the Council members including President and Secretary (Acting) and Regional Council members only and not to any member in NIRC. He adds that if any general member of NIRC happened to receive the copy of CAG report, than it was a matter of investigation and he would be part of that investigation to resolve the issue in the best interest of the profession.

The respondent finally requested that till the matter of circulation of mail to general members of NIRC is not resolved, the complainant be asked to withdraw his false and baseless allegations and action under professional misconduct must be initiated against the latter for wasting the time of the Institute for reasons best known to him.

5. The written statement of the respondent was sent to the complainant vide letter dated 8<sup>th</sup> August 2019 for sending rejoinder on the same but no rejoinder has been received till date.

6. From the above facts of the matter it is observed that:-

- i. The draft CAG report was dated 9<sup>th</sup> May 2019
- ii. The said CAG report was circulated by the respondent vide mail dated 24<sup>th</sup> May 2019.
- iii. The replies to the said CAG report were furnished on 8<sup>th</sup> June 2019.
- iv. The mail containing selected portion of the CAG report, by the respondent's own admission, was sent to the members of the Central and Regional Council as well as to the Secretary (Acting).

It is a fact that Shri Sunil Singh, respondent had circulated the draft CAG Inspection Report which was intended to be a confidential Report even before replies were given to the said report by NIRC. It is therefore quite clear that the respondent has chosen to pick items selectively and highlighted the same presumably with some malafide intention.

7. The Director (Discipline) framed prima facie opinion and the same was placed in the meeting of the Board of Discipline on 27<sup>th</sup> July 2020 and also accepted by the Board.

8. This act of the respondent was unbecoming of the member and thereby tarnished the image of the profession thereby bringing disrepute to the profession as a result of his action notwithstanding that it was not related to his professional work. Being the Chairman of the NIRC, he ought to have restrained from circulating the confidential Inspection report of the CAG.







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9. Shri Sunil Kumar Singh, was prima facie found to be guilty of clause (2) of Part IV of the First Schedule of the CWA Act, 1959. There is, however, no violation of clause (1) of Part II of the Second Schedule of the CWA Act, 1959 as alleged by the complainant.

10. 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.

11. In the 24<sup>th</sup> meeting of the Board of discipline held on 27<sup>th</sup> July 2020 the Board accepted the prima facie opinion formed by the Director (Discipline) and directed the Secretary of the Board to send the prima facie opinion to the respondent and the complainant in terms of Rule 14(2)/14(3) 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. Accordingly, the prima facie opinion in physical form was sent both to the complainant and the respondent on 10<sup>th</sup> August 2020 requesting the respondent to file his written statement within two weeks from the date of service of the PFO. No reply, however, has been received till date from the respondent. This was followed by email communication dated 12<sup>th</sup> August 2020.

12. In the 25<sup>th</sup> meeting of the Board, the Board members directed the Secretary to call both the complainant and the respondent in the next meeting of the Committee 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. Accordingly email dated 24<sup>th</sup> August 2020 was sent to both the complainant and the respondent requiring them to make themselves convenient for making oral submissions in the next meeting of the Board to be held on 29<sup>th</sup> August 2020.

13. Both the complainant and the respondent appeared before the Board at the appointed date and time through video conferencing and made their respective submissions. 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.

14. The complainant reiterated the allegations that he had made in the complaint stating that the draft Inspection report was circulated by way of email by the respondent to Council members, Regional Council members of NIRC and other members of NIRC with a malafide intention since the latter was also a candidate for elections to the Council – 2019 which was scheduled to be held on 28<sup>th</sup> June 2019. The complainant also stated that the purported mail had damaged his reputation to a great extent. He alleged that by circulating the draft







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Inspection Report among the general members of NIRC the respondent had violated Regulation 123 of the Cost and Works Accountants regulations, 1959.

15. The respondent, on the other hand, stated that since he was elected by the members of NIRC, it was his duty to bring the draft Inspection report to the knowledge of the members of NIRC at large. He also stated that he wanted advice/suggestions on the draft report from the Council members and Regional council members and according to him, since no advice or suggestion was forthcoming from them, the respondent had circulated the said report among the general members of NIRC.

16. It is therefore abundantly clear that the respondent accepted the fact of circulation of the said Inspection report, though he did not plead guilty during the oral submission that was held on 29<sup>th</sup> August 2020.

17. The Board members after hearing both the parties and after considering the representations including written statement, supporting documents and oral submissions directed the Secretary of the Board of Discipline to call the respondent in the next meeting of the Board in terms of Rule 15(1) to enable him an opportunity of being heard before passing any order under sub-section (3) of Section 21A of the Cost and Works Accountants Act, 1959.

18. I am of the view that though the complainant has alleged that the act of the respondent was purported and malafide and was done to spoil his chances of winning the election which was to be held on 28<sup>th</sup> June 2019, this view does not hold much ground. The act of the respondent has to be examined in the light of normal framework of governance and ethics. The question that came up before the Board of Discipline was whether or not the act of circulating the draft Inspection report to the members at large of NIRC was justified. As a Chairman, he ought not to have circulated the said report highlighting certain items selectively to the members of NIRC as the report was not only a draft report but the same was done even before replies to the observations were furnished to the CAG. As a Chairman, the respondent ought to have exercised reasonable care and caution to ensure that the said report was not available to each and every member of the Northern India Regional Council.

19. In view of the foregoing, the Board of Discipline is of the opinion that the act of Shri Sunil Singh, 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.





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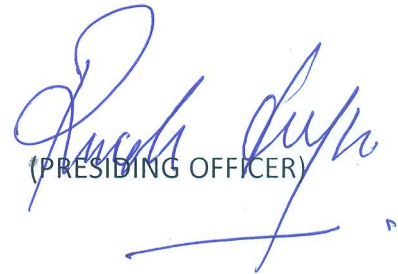
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20. As per sub-section (3) of Section 21A the Cost and Works Accountants Act, 1959, the Board of Discipline passes the following order:

(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.

21. 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)

