



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(81)/2019

Shri Amar Pal.....Complainant

V/S

Shri Ajay Kumar Bhattacharya (M/4520).....Respondent

ORDER

Dated 06/09/2020

1. A complaint dated 06/11/2019, 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 Amar Pal (hereinafter referred to as 'the Complainant'), against Shri Ajay Kumar Bhattacharya (M/4520), (hereinafter referred to as 'the Respondent').
2. The complainant inter-alia stated/ alleged that:-
 - I. "Shri Ajay Kumar Bhattacharya is a bonafide Member of the Institute.
 - II. Based on information from the website of the Institute, he along-with others, had submitted a Partnership Deep for Re-constitution, M-5 for Branches (where they could not produce any document for Branch in one or more cases) and resignation letters of Partners, whose names are not in new deed. Here, I have to mention that one of the Partners, Mr. Shyama Prasad Ganguli was and is sick and did not put his signature on this resignation letter. Moreover another Partner, Mr. Mukesh Kumar did not issue any Resignation letter.
 - III. It proves that Mr. Bhattacharya had made false statement to the Institute through some illegal path, which attracts Disciplinary action against him.
3. The respondent was intimated vide letter dated 13th December, 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.





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The respondent vide his letter received on 05th January, 2020 denied the allegations made against him and stated inter alia as below:

"In reference to the letter mentioned above, I do hereby, like to submit whether the complainant some Amar Pal is a bonafide member of the Institute or any official as indicated in the rule no 3 of Chapter II of the CWA rules and regulations, as it is mentioned in the complain that "not applicable.

As such it is not understood so, as to how such complain of an unidentified person has been entertained by the institute.

Moreover, it is also not understood as to how the relevant documents, being very very confidential in nature in regard to the sovereignty, security and safety of the firm M/s Bandhyapadhya Bhaumik and company have been obtained by the complainant who is neither a member nor having any *locus standi* in the Institute. Moreover it is not clear to me so as to what is his exact name as once he has signed as Amar Paul and in other as Amal Pal.

In view of the above, the complaint is looked to be confusing and fabricated. The Institute may have checked up thoroughly before entertaining such bogus and malafide complaints.

Now coming to the point of complaints, It is to mention that branches of the firm M/s Bandhyapadhya Bhaumik and company are continuing as it is, since quite a reasonable time and that too with the clear approval of the institute. Hence, the Institute may kindly clarify the same.

So far as the Second point is concerned, it is also to mention that the resignation of CMA S.P.Ganguly is duly signed by him, as confirmed by his son and younger brother, and the same has been properly checked up by the institute.

In case of CMA Mukesh Kumar, no resignation is required at all, as he has automatically ceased to be a partner as per rules and provision of the Rules and regulations of the institute and the same have been properly checked up and scrutinised by the institute before approving the desired Reconstituted Partnership Deed of the firm M/s Bandopadhya Bhaumik and Company.

In view of the facts and statement as expressed above my humble submission to the institute to kindly withdraw such bogus and baseless allegation of the complainant.

In this connection, it is for kind information of the institute that since, the complainant has seriously attempted to tarnish my image and reputation as well as of our firm, I am in thought of exercising the necessary legal action against the so called complainant under intimation to the Institute."





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4. The written statement of the respondent was sent to the complainant vide letter dated 07/01/2020 for sending rejoinder on the same.
5. In rejoinder dated 24/01/2020 Shri Amar Pal had submitted *inter alia* that:-
"Rule 3 (Chapter-II) of The Cost and Works Accountants (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007, as has been referred to by the respondent, actually relates to the persons against whom a complaint may be lodged. Hence, the plea of the respondent does not hold good. I expressly declare that no document in my possession, in relation to this case, has been obtained through any illegal means. The sole purpose behind lodging these complaints is that no member of this esteemed profession should obtain any assignment through any misrepresentation or any illegal or unethical means. I expressly declare that all the signatures of the complainant, as appearing on the papers relating to the complaint are mine and any difference in signature is due to mis-movement of the pen used.

Since the respondent has admitted that the documents on which the complaints are based, are genuine, the question of the complaints being bogus does not arise. The Institute of Cost Accountants of India, may dismiss the complaints once these are found to be really without any substances.

I declare that I bear no grudge to any of the respondents or the firm but I feel, the case of obtaining or trying to obtain assignments by the firm through its members using misrepresentations or illegal/unethical means needs to be brought to the notice of the Institute in the greater interest of this esteemed profession."

6. As a part of investigation, following information were also sought from Director (Membership)
 - a) All forms M5 submitted by M/s Bandyopadhyaya Bhumik & Co (FRN00041)
 - b) Partnership deed submitted by M/s Bandyopadhyaya Bhumik & Co (FRN00041)
 - c) Enclosures of Form M5, if any
7. Director (Membership) vide his mail dated 04/07/2020 had provided the desired documents. However, from the documents it is difficult to conclude whether or not the reconstitution of the firm M/s Bandyopadhyaya Bhaumik & Co was validly made or not. Accordingly, mail dated 7th August 2020 was sent to the Sr. Director (Membership) requesting him to furnish information on -
 - a) Whether or not Shri Ajay Kumar Bhattacharya bearing membership number 4520 at any time during the preceding 2 years had submitted an application for reconstitution of firm, M/s Bandyopadhyaya Bhaumik & Co.





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- b) If so, whether or not the Membership Directorate has given effect to such request for reconstitution of the above mentioned firm.
8. The Membership Directorate vide mail dated 12th August 2020 has replied the following:
- "We accept the reconstitution applications only when it is sent from the partnership firm. Any reconstitution application that has been sent by an individual partner is not accepted."*
9. This matter was put up in the 25th meeting of the Board of Discipline held on 13th August 2020. The Secretary of the Board pointed out that it is not clear whether the membership Directorate has given effect to such request for reconstitution of the above mentioned firm. The Board members examined the complaint of the complainant, the written statement of the respondent and the rejoinder submitted by the complainant and observed that there was prima facie nothing on record to prove the allegations against the respondent. However, the Secretary of the Board pointed out to the Board members that the entire issue hinges on reconstitution of the firm M/s Bandyopadhyaya Bhaumik & Co, bearing Firm Registration No. 000041). During the meeting Ms. Malobika Das, Asst. Director (Membership) was advised to join the meeting and she was asked whether the reconstitution of the firm has been validly made to which she replied that she had checked all the relevant documents for giving effect to the reconstitution of the said firm. She further stated that "we accept the reconstitution applications only when it is sent from the partnership firm. Any reconstitution application that has been sent by an individual partner is not accepted." From her statement it appears that in the present case also the Membership Department must have given effect to the reconstitution of the firm. The Board members advised Ms. Das to send an email to the Director (Discipline) confirming that the reconstitution of the firm M/s Bandyopadhyaya Bhaumik & Co (FRN00041) had been done based on request for reconstitution being received from the partnership firm and not from any individual partner.
10. Ms. Malobika Das, by her email dated 20th August 2020 sent on or about stated that *"with respect to the processing of the application for reconstitution of the partnership firm 'M/s, Bandyopadhyaya Bhaumik & Co. - FRN 000041' this is to confirm that the application was processed as per the guidelines of the Institute as laid down".*
11. 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





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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. The complaint lacks merit and it is therefore, proposed that the complaint may 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)

