



# 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(82)/2019

Shri Amar Pal.....Complainant

V/S

Shri Sarbajit Ray (M/27784).....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 Sarbajit Ray (M/27784), (hereinafter referred to as 'the Respondent').
2. The complainant *inter alia* stated/alleged that:-
  - i. "Shri Sarbajit Ray is a bonafide Member of the Institute.
  - ii. On 4<sup>th</sup> December, 2018 he made an application to Food Corporation of India (NZ) on behalf of the Firm, where he was and is a Partner, flouting the following-
    - a) Letter-Head of the Firm used for forwarding the report displaying address, which is not the Registered Address of the Firm.
    - b) He had enclosed a "Power of Attorney" along-with application, where signatures of some of the Partners have not been put by the Partners themselves. Further he had arranged to affix the signatures of some Partners, who had resigned/retired from the firm, long before such application was submitted.
    - c) In the said application he had furnished the details of the Firm from the website of the Institute, where Address, Date of Last Deed, Phone Number and e-mail ID of the Firm stands actual, but once again it is unfortunate to mention that in Letter-Head he had changed all these and also attached copy of the Partnership Deed with a different date, which was not registered with the Institute.







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- iii. On 7<sup>th</sup> March 2019 he had submitted another application with SJVN Ltd, where also he used a letter head of the Firm containing false address, e-mail ID, Phone No. which were not available with the Institute.
  - iv. On 30<sup>th</sup> March 2019, he had furnished an acceptance letter to West Bengal State Electricity Transmission Company Ltd. where also he had used a letter head of the Firm mentioning false address, e-Mail ID, Phone No. which were not the ones available with the Institute.
  - v. He might have made similar misrepresentations to another organization also.
  - vi. Based on information from the website of the Institute, he along with others had submitted a Partnership Deed for Re-constitution, M-5 for Branches (where they could not produce any document for Branch in one or more names are not in new Deed. Here, I have to mention that one of the partners Mr. Shyama Prasad Ganguli is sick and did not put his signature on his resignation letter. Moreover another Partner, Mr. Mukesh Kumar did not furnish any Resignation letter to the best of my knowledge. It proves that Mr. Ray managed to get business in his favour through some illegal path, which attracts Disciplinary action against him.
3. The respondent was intimated vide letter dated 13<sup>th</sup> 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.
  4. The respondent vide his letter received on 04<sup>th</sup> January, 2020 denied the allegations made against him and stated *inter alia* as below:
    - i) "With regard to the statement made in serial no. 1, I would like to state that Amar Pal is a fictitious person and does not reside at all at the address as set out in Serial 3 of the alleged complaint. There is no existence of any person by the said name and as such no identity proof of the complainant has been annexed to the alleged complaint.
    - ii) That the statement made in Serial No. 2 and 4 are admitted. I am a Cost Accountant having Membership No. M/27784 since the last ten years and I have discharged his duties sincerely, diligently and honestly without any complaint whatsoever.
    - iii) That the allegations made in paragraph 2 in serial no. 5 is specifically denied and disputed. With regard to the allegations made in paragraph 2 a) and 2c) in serial no. 5, I state that the application made on 4<sup>th</sup> December, 2018 to Food Corporation of India is a matter of record and the said application was made by the me with the consensus of the majority of the partners of Bandyopadhyaya Bhaumik & Co. Cost Accountants. By a resolution made amongst the majority of the partners of the aforesaid firm it was unanimously decided that the address of the firm would be used as 27 A & C Amherst Street, Kolkata – 700 009 and it was also unanimously







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decided that the mobile numbers and email id as contained in the letter head would be used by the firm for correspondence. I specifically deny and dispute that I had also attached a copy of the partnership deed with different date which was not registered with the Institute. I crave leave to produce the resolution; if at all the same is necessary.

- iv) With regard to the allegations made in paragraph 2b) in serial no. 5, I specifically deny and dispute that in the Power of Attorney enclosed with the application the signatures of some of the partners have not been put by the partners themselves or that I had arranged to affix the signatures of some of the partners who had resigned or retired from the firm long before such application was submitted. I state that all the allegations are bogus and motivated and have no legs to stand on. The unfounded allegations of fraud leveled against me cannot be proved by the complainant by simply making allegations. It is a trite principle of law that one who alleges fraud must prove it to the hilt.
- v) With regard to the allegations made in paragraph 3 and 4 in serial no. 5 I State that the letter dated 7<sup>th</sup> March, 2019 and the letter dated 30<sup>th</sup> March, 2019 are matters of record. In this context I repeat and reiterate that by a resolution made amongst the majority of the partners of the aforesaid firm it was unanimously decided that the address of the firm would be used as 27 A & C Amherst Street, Kolkata – 700 009 and it was also unanimously decided that the Mobile Numbers and email id as contained in the letter head would be used by the firm for correspondence.
- vii. With regard to the allegations made in paragraph 5 in serial no. 5, it is specifically denied and disputed that the undersigned have made any misrepresentations to any organization and the complainant is put to strict proof thereof.
- viii. With regard to the allegations made in paragraph 6 in serial no. 5 it is specifically denied and disputed that one of the partners Mr. Shyama Prasad Ganguli is sick or did not put his signature on his resignation letter or another partner Mr. Mukesh Kumar did not furnish any resignation letter.
- ix. With regard to the allegations made in paragraph 7 in serial no. 5 it is specifically denied and disputed that I managed to get business in my favour through some illegal path or the same attracts any disciplinary action against me. I say that I have not done anything detrimental to the professional ethics which is expected of a member of the Institute of Cost Accountants of India.
- x. The undersigned therefore prays that complaint filed by the said Amar Pal is liable to be rejected in limine.”
5. The written statement of the respondent was sent to the complainant vide letter dated 07/01/2020 for sending rejoinder on the same.
6. In rejoinder dated 24/01/2020 Shri Amar Pal had submitted inter alia that:-







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"I have nowhere claimed that I have a Cost Accountant or a member of your esteemed Institute. In this regard, point no. - 1 In Form - 1 may please be referred to. I declare that, my signatures, wherever appearing on the papers available with you, have been put by me only and any difference which may be apparent is due to some uncontrolled movement of the pen.

Now I furnish my rejoinder, in the same order, one after another:

a) Mr. Ray, while refuting the charges, has claimed that I have fabricated the charges based on some confidential documents of their firm M/s Bandyopadhyaya Bhaumik & Co. This is in effect, a clear admission of the charges contained in my complaints. I further declare that the papers were not obtained through any illegal means.

b) I fail to understand, how putting up at the appropriate forum of the unethical and illegal means adopted by them in procuring business can be called Interfering into the day to day affairs of their firm.

c) I admit; I am not supposed to be aware of the nitty gritty of Cost Auditing as I am not a Cost Accountant. However, it is a well-accepted legal maxim that "Ignorance of law of the land is no excuse". I trust, the corollary to this maxim also holds good.

Moreover, Mr. Ray has used the word "revenge" with regard to some unnamed CMA. Since the word "revenge" denotes a reaction to some action, Mr. Ray has implicitly admitted that he, individually or jointly, has caused severe professional harm to one or more professionals of his ilk. I pray, such little digression may please be pardoned.

However, I would like to categorically declare that the sole purpose of my complaints is to stop some members of the honourable profession like CMA from obtaining assignments through illegal and unethical means.

d) Considering the submissions above, it can well be said that my complaints are anything but bogus and stand on irrefutable basis, which have also been explicitly and implicitly admitted by the respondent.

I hope, the Disciplinary Committee of the Institute of Cost Accountants of India will be sufficiently satisfied with my rejoinder and deal with my complaints as per the standing provisions of the relevant statutes.

I reserve my right to add / alter the complaints already-lodged and place additional documents for consideration in this context in future.

7. As a part of investigation, following information were also sought from Director (Membership)







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- All forms M5 submitted by M/s Bandyopadhyaya Bhumik & Co (FRN00041)
- Partnership deed submitted by M/s Bandyopadhyaya Bhumik & Co (FRN00041)
- Enclosures of Form M5 , if any

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 Bhumik & Co was validly made or not.

Accordingly, an e-mail dated 7<sup>th</sup> August 2020 was sent to the Sr. Director (Membership) requesting him to:

- Furnish the professional address, cell number and the e-mail ID of Shri Sarbajit Ray bearing membership number 27784 as recorded in the Membership Directorate.
- State whether or not Shri Sarbajit Ray at any time during the preceding 2 years had submitted an application for reconstitution of firm, M/s Bandyopadhyaya Bhaumik & Co.
- If so, state 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 12<sup>th</sup> August 2020 has replied the following

" Professional Address : 27 A & C Amar Street, Kolkata - 700009, West Bengal

Cell Number : 9830959739 E mail ID : [sarbajitray27@gmail.com](mailto:sarbajitray27@gmail.com)

Preceding 2 years, we received the reconstitution application from the partnership firm 'M/s Bandyopadhyaya Bhaumik & Co. on 27/03/2019 and 06/01/2020 .

Reconstitution applications were given effect from 27/03/2019 and 06/01/2020 accordingly"

Thus, it appears that the membership Directorate has given effect to such request for reconstitution of the above mentioned firm.

9. This matter was put up in the 25<sup>th</sup> meeting of the Board of Discipline held on 13<sup>th</sup> August 2020. 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







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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 20<sup>th</sup> 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 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)

