



# 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(86)/2020**

**Shri Rabindra Nath Das (M/7758)-----[Complainant]**

**Vs**

**Shri Niranjana Mishra (M/13060)----- [Respondent]**

### Order Dated 20/09/2020

1. A complaint dated 2<sup>nd</sup> March 2020 was received in Form I in triplicate by the Director Discipline from Shri Rabindra Nath Das (M/7758)(hereinafter referred to as the "complainant") along with complaint fee of Rs 2500/- plus GST as applicable, against Shri Niranjana Mishra (M/13060)(hereinafter referred to as the "respondent") alleging certain acts of violation for violation of Election Code of Conduct in relation to the Election to the Council and Regional Council – 2019.
2. The complaint was registered by the Disciplinary Directorate after it was found to be in order and the same proceeded with in the manner as prescribed in Chapter III of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. A unique number Com-21/CA(86)/2020 was allotted to the complaint.
3. A copy of the said complaint was sent to the Respondent vide letter Ref No. G/DD/Com-C-86/1/03/2020 dated 12<sup>th</sup> March 2020 requesting him to send his written statement in his defence within 21 days from the date of service of the letter. The respondent vide email dated 2<sup>nd</sup> April 2020 sent at or about 2.03 PM, acknowledged having received documents from the Disciplinary Directorate relating to the complaint filed against him. He further stated that he does not remember the date when he had received the same as he had kept the documents in office, which was about 10 kilometres away from his residence. In the same email, he also mentioned that due to lock down, he was staying at home and very stringent restrictions were imposed on the people not to move out of home. He prayed for extension of time till the lock down was over.







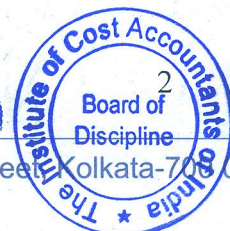
# THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(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

4. Again, on 3<sup>rd</sup> June 2020, the respondent by an email sent at or about 5.12 PM to the Director (Discipline) he stated that his office was still nearer to containment zone and he was unable to visit his office. He requested the Director (Discipline) to wait till 30<sup>th</sup> June, 2030 (subsequently rectified as 2020) as he anticipated that state Govt. will lift the lock down after 30<sup>th</sup> June 2020 and he would be able to have access to the documents.
5. The Director (Discipline) vide email dated 25<sup>th</sup> June 2020 sent on or about 4.37 PM, acknowledged the receipt of the respondent's mail dated 3<sup>rd</sup> June 2020 requesting for extension of time for submitting the written statement up to 30<sup>th</sup> June, 2020. An extension of time was granted to the respondent for submitting his written statement to reach the office of the Director (Discipline) on or before 30<sup>th</sup> June 2020.
6. On 30<sup>th</sup> June 2020, an email was sent by the respondent on or about 5.56 PM stating that after a long period of lockdown/shutdown due to pandemic COVID19 on that day only (i.e., on 30<sup>th</sup> June 2020) his office was opened and some of the staff joined. He stated that he has received the documents on that day from his DAK receiving person. He requested to give 21 days time "from today as per the regulation in the light of natural justice and humanitarian ground" since the delay in replying was beyond his control.
7. The Director (Discipline) vide email dated 1<sup>st</sup> July 2020 communicated to the respondent that the Disciplinary Directorate has accepted his request for submitting his written statement in terms of Rule 8(3) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and was directed to submit his written statement on or before 20<sup>th</sup> July 2020.
8. The respondent submitted his written statement dated 18<sup>th</sup> July 2020 sent at or about 4.19 PM inter alia expressed sorrow for not submitting the written submission in time since the 'non-compliance' was beyond his control. He also thanked for granting extension of time. He stated that since the lock down was extended till 31<sup>st</sup> July 2020 in Bhubaneswar, he was unable to move out of his house for submitting hard copy of the written statement and shall do so once the situation is normalised.
9. The written statement dated 18<sup>th</sup> July 2020 of the respondent is reproduced below:  
  
"I have gone through the complaints made by CMA Rabindra Nath Das ( M/7758) dated 2nd March 2020 to my election to the Council for the term 2019-23 and my written statement/compliance/response for such complaints is enumerated below.

(1) The complaint raised by the complainant pertains to my election to the Council.







# 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

(2) As per the Section 10 A of the Cost and Works Accountants Act, 1959 any matter relating to disputes regarding election is to be referred to the Secretary of the Institute. Thus, the disputes regarding election are beyond the scope of the Board of Discipline or Disciplinary Committee. The Section 10A is given below:

***"10A Settlement of disputes regarding election.***

*In case of any dispute regarding any election under clause (a) of subsection (2) of section 9, the aggrieved person may make an application within thirty days from the date of declaration of the result of election to the Secretary of the Institute, who shall forward the same to the Central Government"*

(3) CMA Rabindra Nath Das is not an aggrieved person. As per Rule 2 sub rule (b) of Cost and Works Accountants (Election Tribunal) Rules, 2006, "aggrieved person" means a person who contested that election to the Council to which the dispute pertains. Hence, CMA Rabindra Nath Das has no right to file a complaint pertaining to election matters.

In view of above the Disciplinary Directorate is requested not to register this complaint as it is void ab initio. Further, I am not guilty of any misconduct as per the provisions of Cost and Works Accountants Act, 1959 or Regulations framed thereunder.

I reserve the right to add any further information to the information submitted with this letter."

10. From the above mentioned facts, it is observed that the written statement of the respondent in terms of sub-rule (3) of Rule (8) was received on 18<sup>th</sup> July 2020 after a period of four months and six days from the date of service of the complaint. In his written statement the respondent submits that the complaint filed pertains to his elections to the Council and as per Section 10A of the Cost and Works Accountants Act, 1959 any matter relating to disputes regarding election is to be referred to the Secretary of the Institute. Thus, the disputes regarding election are beyond the scope of the Board of Discipline or the Disciplinary Committee. Then the respondent referred to Section 10A of the Cost and Works Accountants Act, 1959 and also sub-rule (b) of Rule 2 of the Cost and Works Accountants (Election Tribunal) Rules, 2006 which defines an "aggrieved person".







# 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

11. The said written statement was emailed to the complainant on 21<sup>st</sup> July 2020 on or about 11.44 AM requesting the complainant to send the rejoinder on the written statement, if any, within 21 days from the date of service of the e-mail. The complainant vide his email dated 24<sup>th</sup> July 2020 sent on or about 9.05 P.M. submitted his rejoinder in terms of sub-rule (4) of rule 8 of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The rejoinder of the complainant is reproduced below:

" I have gone through the written statement of Shri Niranjana Mishra (M/13060) in response to my complaint registered with you vide Complaint No. Com-21/CA(86)/2020, sent to me vide your email dated July 21, 2020.

Shri Niranjana Mishra (M/13060) being wilful guilty of misconduct committed by him under Rule 42 of the Cost and Works Accountants (Election to the Council) Rules, 2006 has been intentionally sitting with the complaint for abnormally long time and buying time with some so called excuses as he has no answer to the violations committed by him. He has been unduly benefited by providing extension of time beyond the provisions of the rules and he is exploiting his position as a sitting council member.

He has full knowledge of the provisions of Election Code of Conduct, 2019 having himself approved this being a sitting council member at the relevant point of time.

It may kindly be noted that Shri Niranjana Mishra has not denied any of the complaints made by me, which makes clear that he has accepted all the charges.

Shri Mishra has mentioned about Section 10A of the CWA Act 1959 - Settlement of disputes regarding election, which has no relation with violation of Rule 42 of the Election Rules.

Neither Sec. 21 of the CWA Act, 1959 nor the CWA (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 state that a person has to be aggrieved to file any disciplinary complaint. In fact, disciplinary complaint can be filed by a person who is not aggrieved and even a non-member.

Therefore, the technical ground of Sec. 10A does not lie at all.

Since Shri Mishra has committed major violations of election code of conduct as mentioned by me in the disciplinary complaint, he has no other alternative but to try to take the shelter of so called technical grounds. Therefore, he has not gone into the merit of the complaint and has also not denied any complaint.







# 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

In response to my rejoinder, Shri Mishra will definitely again start seeking time, which should not be entertained.

Therefore, this is clear acceptance of guilt by Shri Niranjana Mishra and penalty should immediately be imposed upon him in accordance with the CWA Act, 1959."

12. The Director (Discipline) sent a reminder to the respondent on 11<sup>th</sup> August 2020 at or about 8.03 PM. But no response was received from the complainant in this behalf.
13. The Director (Discipline) formed a prima facie opinion in terms of Rule 9(2)(a)(i) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 which was agreed to by the Board of Discipline in terms of Rule 9(2)(b) of the said Rules at its meeting held on 13<sup>th</sup> August 2020 and thereafter the Board of Discipline proceeded further under Chapter IV of the Rules.
14. The gist of Prima Facie Opinion formed by the Director (Discipline) is reproduced below:

"It therefore appears that a prima case is made out and item no 2 of Part-IV of First schedule to the Act is applicable since there appears to be a violation of Rule 42 of the Cost and Works Accountants (Election to the Council) Rules, 2006.

It is pertinent to quote Rule 42(1) of the Cost and Works Accountants (Election to the Council) Rules, 2006:

**Disciplinary action against member in connection with conduct of election.**

**A member shall be deemed to have brought disrepute to the Council under item (2) of Part IV of the First Schedule of the Act if, in connection with an election to the Council of the Institute, if he is found to have contravened the provisions of sub-rule (2) or all or any of the clauses of sub-rule (3) or sub-rule (4) of this rule.**

It is important to examine the provisions of clause (2) of Part IV of the First Schedule of the Cost and Works Accountants Act, 1959 which states that a member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if in the opinion of the Council he brings disrepute to the profession or the Institute **as a result of his action whether or not related to his professional work**. It is of no consequence whether the act of violation of Election code of conduct by the respondent is the result of his action whether or not related to his professional work.







# 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 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.

If the Board of Discipline decides to proceed further under Rule 9(2)(a)(i) of the above rules, it may cause to deliver to the respondent and the complainant, the enclosed prima facie opinion in pursuance of Rule 14(2)(a) and particulars and documents relied upon by the Director (Discipline) during the course of formulation of prima facie opinion in pursuance of Rule 14(2)(b) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 along with copies of all relevant papers placed before the Board of Discipline."

15. In the 25<sup>th</sup> meeting of the Board of Discipline held on 13<sup>th</sup> August 2020, the members of the Board of Discipline perused the complaint filed by the complainant, the written statement of the respondent, the rejoinder of the complainant and noted that a prima facie case has been made out by the Director (Discipline) holding the respondent to be guilty of contravening clause (2) of Part IV of the First Schedule of the Cost and Works Accountants Act, 1959. 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) 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.
16. By an email dated 21<sup>st</sup> August 2020, the prima facie opinion was sent to the complainant and the respondent requesting the respondent to send written statement within 02 weeks from the date of service of the said mail.
17. The respondent vide his email dated 3<sup>rd</sup> September 2020 sent on or about 6.06 PM prayed for extension of time of 45 days. The email of the respondent is reproduced below:

"Extension for Written Statement in case No. G/DD/Com-C-86/(13060)/4/08/2020.

Dear Sir,

I am in receipt of your email dated 21st August 2020 giving me time to file a written statement in case No. G/DD/Com-C-86/(13060)/4/08/2020.







# 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

Looking at the Lockdown Situation and restrictions imposed on travelling I request you to give me additional time as per **Rule 14(3) of The Cost and Works Accounts (Procedure of Investigations of Professional and Other Misconduct of Cases) Rules, 2007** of another 45 days to submit my written statement. Unlock 4 in the state of Orissa has just begun and since 1st September I have started attending my office where documents are kept related to this case. If needed guidelines can be provided or the same can be located in the official website of the State of Orissa. Due to increasing in number of positive cases day by day from mid of July 2020, local Municipality Commissionerate is also sometimes, suddenly declaring containment zone where case is more.

Sir, as I am a Central Council member, I am responsible for attending a physical meeting at New Delhi Scheduled on 20th September 2020 and it requires a lot of preparation mental as well as physically, because of agenda items of top priority like, Accounts, Annual report, and other matters. Reply to such cases requires application of mind and presently I am fully focused on attending meetings at New Delhi which requires travel and when I return back I may be required to Quarantine myself as per rules prevailing at that time. Hence I feel 45 days are sufficient enough to cover all restrictions.

I am sure the Board of Discipline will allot me prescribed time as per Regulations. As a Natural Justice this much of time is needed to file my detailed response when a Prima Facie Opinion is already considered by the Board of Discipline.

As mentioned in Prima Facie Opinion Complainant has not provided any documentary evidences as per email dated 30th July 2020 of Director Discipline, the complaint can be disposed off sighting **Rule 14(1) of The Cost and Works Accounts (Procedure of Investigations of Professional and Other Misconduct of Cases) Rules, 2007** as Board of Discipline shall follow Summary Disposal Procedure.

I again request the Board of Discipline to please grant me additional time of 45 days to submit my written statement."

18. The complaint by email dated 4<sup>th</sup> September 2020 sent on or about 7.17 PM submitted the following which is reproduced below:

"Dear Sir,

From the contents of your mail attaching therewith prima facie opinion and other documents, it is evident that the respondent has committed gross violation of the Cost and Works Accountants Act, 1959 and the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.







# 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

I am yet to receive any response from him till date and accordingly, it is taken that he has accepted all the complaints made against him. I have already furnished sufficient proofs in this regard and if required, I will submit further proofs at the time of hearing as and when ordered by the Hon'ble disciplinary authority.

I reiterate what I have stated in my complaint and rejoinder earlier. Incidentally, the respondent is an influential council member who is misusing his chair by getting the disciplinary proceedings delayed. In fact, the extension of time that has been granted to him till now is beyond the provisions of any law in force.

He was also a part of the council involved in framing the Election Code of Conduct and has himself wilfully committed the violations to take undue advantage of his position as a sitting council member and got abnormal number of votes, which he would have otherwise never managed to get.

Justice delayed is justice denied. He has already been unduly benefited by giving extension of time in violation of the rules. Hence, under no circumstances, he should be granted any further time.

Therefore, you are requested to take immediate action against him by imposing penalty in accordance with the Cost and Works Accountants Act, 1959 and the the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007"

19. In the 27<sup>th</sup> meeting of the Board of Discipline (hereinafter referred to as the "Board") held on 6<sup>th</sup> September 2020, the Secretary of the Board informed the members that the respondent vide his email dated 3<sup>rd</sup> September 2020 had prayed for extension of time of 45 days and also read out the content of the email dated 3<sup>rd</sup> September 2020 of the respondent. He brought to the notice of the Board members the provisions of sub-rule (3) of Rule 14 of The Cost and Works Accounts (Procedure of Investigations of Professional and Other Misconduct of Cases) Rules, 2007 which stated that the Board may give the respondent additional time for submitting his written statement on application by the respondent on his adducing sufficient reasons to the satisfaction of the Board of Discipline for seeking additional time. The Board members after detailed deliberation was of the view that the Disciplinary Directorate did not receive any reply to the prima facie opinion that was sent to the respondent on 21<sup>st</sup> August 2020, the due date of which had expired on 4<sup>th</sup> September 2020. On perusal of the contents of the email dated 3<sup>rd</sup> September 2020 of the respondent seeking extension of time of 45 days for submitting the written statement. the Board was of the opinion that since more than adequate time had been given to him for submitting the written statement and no material submission was made by him in this regard, the Board was not in favour of granting any extension of time as the reasons cited in his email dated 3<sup>rd</sup> September 2020 were







# 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

not found to be satisfactory by the Board. Accordingly, the Board directed the Secretary to call both the complainant and the respondent in the next meeting of the Board 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.

20. A notice via email dated 8<sup>th</sup> September 2020 was served both on the complainant and the respondent requiring them to be present at the next meeting of the Board to be held on 11<sup>th</sup> September 2020 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. In the email dated 8<sup>th</sup> September 2020, sent to the respondent at or about 4.35 PM it was mentioned that the Board of Discipline had perused his application seeking additional time of 45 days for submitting the written statement but the Board was of the opinion that since more than adequate time had been given to him for submitting the written statement and no material submission has been made by him in this regard, the Board was not in favour of granting any extension of time to him as the reasons cited in his email dated 3<sup>rd</sup> September 2020 were not found to be satisfactory by the Board. He was asked to be present before the Board of Discipline constituted under Section 21A of the Cost and Works Accountants Act, 1959 on Friday, the 11<sup>th</sup> September 2020 at 12.00 Noon to make oral submissions, if any, 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.
21. On the same day, i.e., on 11<sup>th</sup> September 2020 on or about 10.22 AM, the respondent sent an email to the Director (Discipline) expressing his inability to appear in the hearing on account of his ill health as he was having some medical issues since 1-2 weeks. He attached a copy of the medical certificate dated 7<sup>th</sup> September 2020 of the Physician advising him bed rest for two weeks. He requested for postponement of the hearing scheduled on 11<sup>th</sup> September 2020 for a later date once he is given clearance by the Doctors. He further stated that he would inform the Board of Discipline accordingly and submitted a prescription dated 10<sup>th</sup> September 2020 from Kar Clinic & Hospital Pvt Ltd advising rest for one week.
22. In the meantime, the respondent filed a writ petition before the Hon'ble High Court at Delhi on 9<sup>th</sup> September 2020, [W.P.(C) 6264/2020 & CM APPL. 22365/2020] a copy of which was served on the Institute the same day via e-mail stating *inter alia* that the complaint against the petitioner (here, respondent) was bad in law and liable to be dismissed. He prayed for:
  - a. passing an ex-parte order in his favour and against the respondents (i.e., the Institute, the complainant and the Disciplinary Directorate) for staying







# 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 prima facie opinion dated 13<sup>th</sup> August 2020 which was communicated to him on 21<sup>st</sup> August 2020.

b. passing an ex-parte order in favour of the petitioner restraining the Board from continuing with the proceedings in the complaint including but not limiting to hearing fixed on 11.09.2020 of the Respondent No 3 (here, the complainant) against the petitioner (here, respondent) during the pendency of the present petition.

c. passing any such further order(s) as the Hon'ble Court may deem fit and appropriate in facts of the present case.

23. The Hon'ble high Court at Delhi pronounced the order on 11<sup>th</sup> September 2020 of the Hon'ble High Court, the operative part of which, is reproduced below:

***"The learned senior counsel for the respondent no. 1, 2 and 4 submits that the hearing in terms of Sub-Rule 6 of Rule 14 of the Rules shall be granted to the petitioner on 18.09.2020 at 2.00 p.m.***

***It is ordered accordingly. No further notice in this regard would be given to the petitioner.***

24. That thereafter the petitioner being dissatisfied filed LPA 254/2020 appealing against the order dated 9.9.2020 passed by Ld. Single Judge in WP (C) 6264 of 2020. The said LPA came up for hearing before the Hon'ble High Court on 17.09.2020 which states that the Hon'ble High Court has directed the parties to appear before Board of Discipline on 19.09.2020.

25. The Respondent also filed his written submissions dated 18.09.2020. The Respondent in his submissions has mainly raised issues that complaint has been filed with ulterior motives and being devoid of any merits. As far as the issuance of multiple manifesto is concerned he has stated that he has issued a performance report dated 21.03.2019 which was issued prior to the notification of election code of conduct and the same cannot be treated as pre-election manifesto. As far as posting of that report is concerned he has stated that the same has been done by CMA Manas Mishra and he was not aware of such posting. It has further been stated that as far as circulation of manifesto in May 2019 and July 2019 are concerned in May 2019 for the first time Respondent has published his manifesto and a copy of the same was forwarded to Returning Officer. However, the Respondent admitted that on 28.06.2019 he made a Facebook post mentioning his Serial No of the ballot paper with a request to the voters to cast their vote in his favour. However, the same cannot be treated as manifesto. Lastly he has stated that as far as alleged text message/WhatsApp concerned the same has not been sent from his mobile phone directly. Further, Respondent has stated that the prima facie opinion of Director (Discipline) is bad in law and in contravention of the provisions of the Act and Election Rules. He has also mentioned therein that the allegations







# 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](http://www.icmai.in)

complained of fall under the second schedule whereas he has been held prima facie guilty under the first schedule. The Respondent has also raised an objection and has stated that the constitution of the Board of Discipline is illegal as there is no member appointed under Section 16(1) (c) of the Act. The Respondent has also casted allegations of ulterior motive upon Board of Discipline. He has also submitted that Board of Discipline is under obligation to afford fair and transparent opportunity to the Respondent in terms of the procedure laid down by the Appellate Authority.

26. Thereafter, in terms of the direction of the Hon'ble High Court of Delhi the Board of Discipline conducted the proceedings on 19.09.2020 at 2PM wherein the Complainant and the Respondent were given ample opportunity to make their respective submissions.
27. During the course of hearing the Learned Counsel for the Complainant has placed on record screen shots of the messages sent by the Respondent and copy of the manifesto containing a much bigger and coloured photograph of the Respondent. The Counsel for the Complainant has also stated that there is enough evidence on record which clearly establish that the Respondent has violated the provisions of Election to the Council Rules as well as of Code of Conduct as well as of the Act. The fact that the same on record and especially when the Respondent has not disputed issuance of the same, it is nothing less than an admission on his part. He has further stated that the Respondent has tried to play around the words and phrases in naming his manifesto as '*performance report*'. The way and manner of printing of so called performance report in itself speaks that the same is only a manifesto to allure the voters by stating that in his last tenure he did this much of work. It has also been stated that Prima Facie Opinion so formed by the Director Discipline is very much in line with the procedure laid down and based on the evidence on record and even otherwise there is not a single word of rebuttal contained in his written statement filed before the Director Discipline which in other words is only an admission on his part. He has also contended that the Respondent though every time sought time to file written statement on the pretext that all the records are lying in office, however, in his written statement there is not a single word which is derived from the records and was only an objection taken to these proceedings. In such a conceptus the prima facie opinion can not be held to be invalid. He has further stated that there is no illegality in the constitution of Board of Discipline and the same is valid. As per the complainant more than prescribed time has been allowed to him at every stage. He has also pressed upon the fact that the Respondent while getting his request for extension of time of 45 days rejected, within 24 hours has approached the High Court at Delhi by way of filing the writ petition instead of amending himself to the jurisdiction of the Board and submit the same here, this very fact clearly shows that it is the Respondent who has always tried to run away from the proceedings and







# 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

intended to prolong the same. He has also stated that the Respondent just to escape himself from the proceedings has attempted to take shelter under technical objections and not come out with any evidence to either refute the allegations in the complaint or to show that he did not violate any provisions of the Act and/ or Code of Conduct to prove that the evidence so brought on record are in anyway related to him. The Counsel for the Complainant before concluding his submissions has also drawn attention of the Board that the Respondent vide his email dated 11.09.2020 has submitted two medical certificates dated 07.09.2020 and 10.09.2020 of two different Doctors advising complete bed rest. However suddenly on 08.09.2020 on getting his request rejected he himself found himself fit and travelled all the way to Delhi to sign affidavit in support of writ petition on 09.09.2020. These series of events raises doubt on the medical certificate so produced by the Respondent and on the stand taken by him at every stage of proceedings.

28. The Counsel for the Respondent on the other hand has stressed upon the submission made by him in the written submissions dated 18.09.2020. He has vehemently argued that the prima facie opinion is not a speaking order and is bad in law and in violation of the Rules. He stated that the Prima facie Opinion should be a reasoned order and referred to the Hon'ble Supreme Court Judgement in the case of Umanath Pandey and Ors vs. State of UP & Ors where it was held that the judicial order should be supported by reason. Further the constitution of Board of Discipline is not valid and attributed ulterior motives on the part of Board of Discipline. He mentioned about Section 21(1) and Section 21(4) in particular of the Cost and Works Accountants Act, 1959 and stated that the prima facie opinion formed by the Director (Discipline) was without following the proper procedure as laid down in the Act since no investigation has been done by the Director (Discipline) in the instant complaint. He mentioned about Section 21C of the Cost and Works Accountants Act, 1959 and stated that it was within the powers of Director (Discipline) to require the discovery and production of any document which has not been done in this case. He has also take the Board through its submissions and the same are not repeated herein as the same is mentioned in preceding paras. The Learned Counsel for the respondent stated that natural justice forms an integral part of any judicial proceeding and he relied upon Hon'ble Supreme Court judgement in the case of Ayaub Khan Noorkhan Pathan Vs The State of Maharashtra and Ors. He also mentioned that though Rule 14(1) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 speaks of following summary disposal procedure on dealing with all cases but the right to examine witness or examination of evidence cannot be taken away. In support of his statement, the Learned Counsel mentioned three decided case laws of







# 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

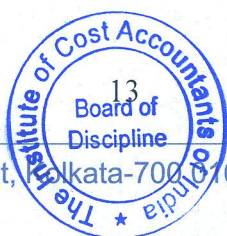
the Hon'ble Appellate authority namely, (i) Rajiv Maheshwari (ii) Gyan Prakash Agarwal case and (iii) RadheShyam Bansal. Finally, he wanted to cross examine the complainant.

29. We have given thoughtful consideration to the rival contention of the parties. We are of the considered view that the challenge of the Respondent that the prima facie opinion is illegal, does not carry any weight. In this regard, we have gone through the written statement filed by the Respondent wherein he has taken a sole plea that the matter has to be dealt with by Election Tribunal. In such circumstances, when the Respondent has not himself not denied the allegations made by the complainant and the piece of evidence attached along with complaint than the opinion of Director Discipline can not be faulted with and is as per legal provisions. Further, the Director Discipline has detailed the reason in his opinion holding the Respondent prima facie guilty. As far as the next contention of the Respondent regarding constitution of Board of Discipline is concerned, we are of the view that the post of CEO in the Institute is vacant who has to be part of BoD however in absence of appointment of CEO the third member is not there in BoD. Even otherwise as per the Rules the quorum for the meeting of the Board is two and therefore the composition does not suffers with any infirmity. Moreover, we wish to mention that even otherwise the Respondent himself was a party to the proceedings of the Council wherein the composition of the Board was decided, and no objection was raised by him during the decision making process of the constitution of the Board. Hence, his submissions seems to be an only attempt in haste to save himself. We also wish to mention that the Respondent has repeatedly attributed allegations of ulterior motives on the members of the Board. However, the same is without any substance. We are of the considered opinion that the Respondent has been given ample opportunity to defend himself at every stage of proceedings. The same is also got vindicated with the orders passed by the Hon'ble High Court in Delhi wherein the Hon'ble Court himself has refused to give any longer time to make his submissions before the Board.

30. Further, we note that the text which have been sent as bulk messages which reads as under;

- (i) Please cast your precious vote today. Regards, CMA Niranjana Mishra
- (ii) Please cast your most precious vote before 8 p.m. If not done by now. Regards... CMA Niranjana Mishra
- (iii) Please cast your most precious vote before 8 p.m. If not done by now. Only 30 minutes left. Regards... CMA Niranjana Mishra"

The attention is also drawn to the fact that such request also tantamount to manifesto in terms of the Election to the Council Rules.







# 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](http://www.icmai.in)

31. The Institute of Cost Accountants of India issued an "Election code of Conduct for observance by the candidates and their authorized representatives during the elections to the Council and Regional councils to be held in June 2019" on 26<sup>th</sup> March 2019 which was issued to maintain a peaceful and healthy atmosphere during the election process and for ensuring a free and fair election.
32. We are therefore of the further view that the Respondent did publish a manifesto containing a very big sized photograph on the first page and also he is seen with other dignitaries on the third page of the said manifesto that was claimed to be issued on 21<sup>st</sup> March 2019. But at the same time, it is equally true that the respondent is an existing Council member who has been elected twice to the Council in successive terms. It is also true that he was one of the approving members in the Council of the Election code of conduct which came into force on 26<sup>th</sup> March 2019. Hence, such an action on his part to issue a manifesto should have been avoided by him. Further, in respect of the manifesto the Respondent has stated that the same was only a performance report. However, we are not in agreement with the contention of the respondent. The Respondent while part of the Council was well aware of the provisions of the Code of Conduct and despite that has issued the same and now is trying to term it as a "Performance Report". However, the contents of the same gives a clear impression that the same was only a manifesto and a mere use of some alternative narration does not completely absolve him from the charge. On the other hand the Respondent being the member of the Council in its previous term as well has to be extra cautious in issuing the same.
33. In regard to the second allegation of the complainant that "Thereafter, during the month of May 2019 and June 2019 up to the date of polling on 28<sup>th</sup> June 2019, he circulated various manifestoes including the manifesto issued by him on 21<sup>st</sup> March 2019. These manifestoes were widely circulated by him through e-mail, WhatsApp and even posted on Facebook'. The Board perused the Annexure 3 submitted by the complainant and observed that this was the manifesto that has been claimed to be issued by the Respondent. On the first page of the manifesto, the size of the photograph is more than the prescribed size. A standard passport size photograph measures 2x2 inch but even on a plain perusal of the photograph it can be clearly inferred that the dimensions of the photograph are more than that of passport size. The Respondent has therefore violated point number 5 of the Clarification (III) stated on page number 10 of the Election code of conduct which provides that "the manifesto or circular may contain one passport size single colour or black and white photograph of the contesting candidate."
34. On page number 3 of the same annexure 3 which is claimed to be the manifesto of the respondent, a facebook or facebook like posting dated 16<sup>th</sup> June with the comment "CMA Manas Mishra is with Niranjana Mishra" where the respondent is seen with other dignitaries, Past Presidents and others. This posting was made on 16<sup>th</sup> June 2019 i.e., after the issuance of the notification on Election code of Conduct







# 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

which came into force on 26<sup>th</sup> March 2019. This is a violation of point number 6 of the Clarification (III) stated on page number 10 of the said notification which provides that "the manifesto or circular should not contain any other photograph of the contesting candidate or of any other person either individually or in a group."

- 35 On perusal of the first page of the annexure 4 submitted by the Complainant, a Facebook or Facebook like posting dated 28<sup>th</sup> June with the comment "Let us move together to make our profession the most best in the country. Cast your valuable precious vote to choose your best leader and make today yours' day" together with a small sized photograph of the respondent indicating his serial number and making an appeal "Cast Your Valuable 1<sup>st</sup> Preference Vote" is observed. This tantamounts to another manifesto whose issuance is prohibited under sub-rule (2) of Rule 42 of the cost and Works Accountants (Election to the Council) Rules, 2006 which provides that "Only one manifesto or circular shall be issued by a candidate in relation to the election in the period commencing from the date of issue of final list of nominations to the candidates". The respondent clearly has issued more than one manifesto and violated the above mentioned provisions of Rule 42 of the cost and Works Accountants (Election to the Council) Rules, 2006
- 36 Point number 17 of the Clarification (III) stated on page number 11 of the Election code of conduct states that "No contesting candidate shall send SMS/WHATSAPPmessages to members requesting to cast vote on election day or similar communication to improve the voting". It is observed from annexure 4 submitted by the complainant that the respondent had through the above message has communicated with the members and has therefore violated point number 17 of the Clarification (III) stated on page number 11 of the Election code of conduct.
- 37 This has been admitted by the respondent himself in his petition filed at the Hon'ble High court on 9<sup>th</sup> September 2020 wherein he affirmed that "So far as the Facebook post dated 28.06.2019 is concerned, the same was issued by the Petitioner in view of the email dated 27.06.2019 issued by one of the Past President of the Respondent No. 1 wherein he had stated that the ballot numbers of the various candidates were not available in the public domain. Accordingly, the Petitioner had made the Facebook dated 28.06.2019 wherein the name of the petitioner and his ballot number was stated and nothing else....."
- 38 This plea of the respondent does not hold any ground inasmuch as he had made an appeal through his Facebook post on 28.06.2019 "Let us move together to make our profession the most best in the country. Cast your valuable precious vote to choose your best leader and make today yours' day' clearly seeking votes in violation of the Election code of Conduct.
- 39 Thus, the respondent has not complied with the directives or circulars or instructions issued by the Returning Officer in the matter relating to Elections to the Council and







# 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

Regional Councils – 2019, thereby contravening Rule 42 (4) (viii) of the Cost and Works Accountants (Election to the Council) Rules, 2006.

40. The Board has noted that the respondent has all along been buying time since 2<sup>nd</sup> April 2020, and went on to seek extension of time beyond 11<sup>th</sup> September 2020 even when the Writ Petition filed by him was going to be heard by the Hon'ble High Court at Delhi. The Board also noted that never did he make an attempt to refute the allegations complained or even to file the written statement on merits during the period from 12<sup>th</sup> March 2020 till 11<sup>th</sup> September 2020. Not even a single line was written by the respondent in support of his defence. On the contrary, he had sent mails after mails seeking extension of time citing Covid-19 as the main reason for non-submission of written statement. Thus, the plea taken by the respondent for continuously seeking extension of time has no legs to stand on and is a ploy to buy time presumably to drag the disciplinary proceedings with an ulterior motive.
41. The Board after detailed deliberation and after considering the written representations, supporting documents and the oral submissions of the complainant and the respondent and arrived at a finding that the respondent is guilty of other misconduct in terms of sub-rule (9) of Rule 14 of the Rules.
42. On arriving at a finding under sub-rule (9) of Rule 14, that the respondent is guilty of other misconduct, the Board has given the respondent an opportunity to be heard on 20<sup>th</sup> September 2020 at 9.00 AM before passing any order under sub-section (3) of Section 21A of the Cost and Works Accountants Act, 1959.
43. The respondent by his email dated 20<sup>th</sup> September 2020 at or about 2.45 AM addressed to the Director (Discipline) expressed his inability to attend the hearing and prayed for a further time of three days and requested for extension of the hearing till 24<sup>th</sup> September 2020 to attend the same which fact was brought before the Board. However, the respondent personally appeared with his authorised representative on the appointed date and time and was given an opportunity to submit. The Board noted that there was no material submissions that could have a bearing in the matter.
44. The Board is of the view that the act of the 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 read with Rule 42(1), Rule 42(2) and Rule 42 (4) (viii) of the Cost and Works Accountants (Election to the Council) Rules, 2006.







Phone : +91-11-24622156-57-58  
Website : [www.icmaj.in](http://www.icmaj.in)

- 

*Jack Vesp.*  
(PRESIDING OFFICER)