



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**

(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)

CMA BHAWAN

12, SUDDER STREET, KOLKATA-700 016

Telephones : + 91-33-2252-1031 / 1034 / 1035
: + 91-33-2252-1619 / 1492 / 1602
: + 91-33-2252-7373 / 7143 / 2204
: + 91-33-2252-0141 / 0191
Fax : + 91-33-2252-7993
: + 91-33-2252-1026
: + 91-33-2252-0147
: + 91-33-2252-2871
Website : www.icmai.in

ORDER

IN THE MATTER OF:

**Complaint No. Com/21-CA(24)/2015 - Shri Rakesh Singh (M/10111) [Complainant] Vs.
Shri Sanjib Ratan Saha (M/8081) [Respondent]**

Shri Rakesh Singh (M/10111) filed a complaint dated 13th April 2015 in Form I along with requisite fee of Rs.2500/- against Shri Sanjib Ratan Saha (M/8081), alleging that Shri Sanjib Ratan Saha, a member of this Institute, who also happened to be an employee of the Institute, working in the capacity of Director (Finance), has siphoned off public money in collusion with another member (name removed from the Register of members w.e.f. 8th June 2015) who was a Council Member of the Institute during the term 2007-2011 and from 2011 till 7th June 2015. The complainant has alleged that the respondent, namely Shri S.R. Saha has colluded with the Council Member concerned i.e., Dr. Sanjiban Bandyopadhyaya to siphon off the funds of the Institute thereby contravening the provisions of Clause (1) of Part-II of the Second Schedule to the Cost and Works Accountants Act, 1959. The complainant has also attached copies of several e-mails dated 14th January 2015, 21st January 2015, 23rd January 2015, 27th January 2015 (some of them are referred here) addressed to the respondent, among others, expressing his concern about the withdrawal of money by Dr. Sanjiban Bandyopadhyaya in the name of Professional Development (PD) expenses and requesting the respondent (in the capacity of Director – Finance) to look into the matter.

The Disciplinary Directorate, on receipt of the complaint and being satisfied that it was a fit case to be dealt 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, proceeded to register the said complaint vide Complaint No. Com/21-CA(24)/2015 and a copy of the said complaint was sent by the Disciplinary Directorate to the respondent pursuant to Rule 8(1) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, for the respondent's response in his defence by way of a written statement.

The respondent, in his written statement dated 23rd April 2015, denied and disputed all the allegations levelled against him. The gist of his submissions is as hereunder:



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)

:: 2 ::

- He has never acted in a manner which is detrimental to the interest of the organization.
- He has never colluded with Dr. Sanjiban Bandyopadhyaya or with any other Council Member or with anyone else.
- He accepted the fact that although the complainant had been sending various e-mails (referred to above) to him on the subject, the latter did not respond to these e-mails as he was of the view that since the contents thereof involved a Council Member, he chose not to reply to them.
- So far as payments made to Dr. Sanjiban Bandyopadhyaya are concerned, even before the receipt of e-mails from the complainant, the Finance Department under his instructions has made a complete analysis of the records relating to claims being made by Dr. Sanjiban Bandyopadhyaya on various occasions. He stated that records revealed that Dr. Bandyopadhyaya had made such claims for years together.
- On perusal of the records from April 2007 onwards, it was also revealed that no other Council Member has made any claim other than normal T.A./D.A. which is usually claimed in prescribed format for attending Board meetings.
- The records also reveal that all the claims and supporting vouchers of Dr. Bandyopadhyaya were in his own hand writing. The claims were usually made on plain paper stating that expenses were to be reimbursed for PD work though none of the bills/claims mention the nature of PD work or persons with whom the claimant was meeting.
- During quarterly review of accounts carried out by the auditors of the Institute, they specifically questioned the purpose for which such payments were made and due to the verbal query of the auditors, the Respondent stopped making any further payment on this account. The last claim was submitted by Dr. Sanjiban Bandyopadhyaya on 6.01.15 and on his verbal enquiry; the respondent informed that the claimed amount of bill cannot be reimbursed. Dr. Bandyopadhyaya, however, did not submit any further claims after that date nor did he ask payment of the bill that he submitted.
- The respondent took over as Director (Finance) of the Institute on 24.10.11 succeeding Sr. Director (F & A) and the former had followed the practice established by his predecessor of reimbursing claims made by Dr. Sanjiban



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)

:: 3 ::

Bandyopadhyaya. As an employee of the Institute, he had no reason to believe or suspect that there is a 'possibility of such claims not being genuine'.

- It should also be appreciated that the Institute did not have any established norms for payments to Council Members and all the payments were released in good faith. Being an ordinary employee, neither did he have the authority nor the jurisdiction to enquire into the veracity/authenticity of the bills submitted. Further, he stopped making such payments the moment Director (Discipline) queried about the reimbursements to Dr. Bandyopadhyaya and the respondent made a full analysis of payments made over the years.
- It must also be stated in all fairness that the onus of proving the genuineness of the bill lies with the person who makes the claim. As Director (Finance), he was not in a position to question the authenticity or the genuineness of the bills submitted by a Council Member.
- The Council and the President are authorized to approve reimbursement of any bonafide expenses and as Director (Finance), the respondent has no occasion to know whether such expenses were authorized or not. Also, the erstwhile Director (Finance) who introduced and established the system of such reimbursement to the then Council Member should be questioned and the truth and genesis of such practice should be brought to light.

In his rejoinder dated 28th July 2015, the complainant submitted that he has learnt from a very reliable source that the then Council Member concerned has siphoned off colossal amount of public money in contravention of the Council guidelines. The complainant further stated that no other Council Member has ever preferred such exorbitant bills other than normal T.A./D.A. which are usually claimed for attending meetings of the Institute. Institute records also reveals that all the aforesaid claims submitted by Dr. Sanjiban Bandyopadhyaya, the then Council Member, were in his own hand-writing and the exorbitant claims have been said to be made on plain paper stating that the expenses were to be reimbursed for Professional Development work. The complainant also stated that Dr. Sanjiban Bandyopadhyaya had been able to dupe the Institute and when he started making uproar on this issue, the auditors specifically questioned the purpose for which such payments were made. The complainant further stated that the respondent was in a responsible position and had full knowledge of the facts and therefore, he does not concur with the views of the respondent that the latter had acted in good faith.



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)

:: 4 ::

The prima facie opinion formed by the Director (Discipline) holding the respondent prima facie guilty of misconduct was placed before the Disciplinary Committee in the 23rd meeting of the Disciplinary Committee held at Kolkata on 20th November 2015. However, the said prima facie opinion was not accepted by the Committee members. The Committee members perused the facts of the case and noted that the respondent has only followed an established practice in force in regard to making payments. The Committee also noted that the respondent has not acted beyond authority or colluded with Dr. Sanjiban Bandyopadhyaya, the then Council Member, in siphoning off funds of the Institute.

On a letter dated 20th November 2015 issued by the Disciplinary Directorate seeking clarification from the complainant as to whether the complaint filed by him was against a member of the Institute or against an employee of the Institute who was holding the position of Director (Finance), the complainant, by his letter dated 1st December 2015 clarified that:

- Complaint lodged against Shri Sanjib Ratan Saha is in the capacity of the respondent being a member of the Institute.
- Clause (1) of Part II of Second Schedule, Section 22 of the CWA Act, 1959 read with Section 408 of the Indian Penal Code 1860 has been contravened.

Clause (1) of Part II of Second Schedule states that –

“A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of this Act or the regulations made there-under or any guidelines issued by the Council.”

In the 24th meeting of the Disciplinary Committee, held at Kolkata on 19th March 2016, the Committee members noted the content of the letter dated 1st December 2015 of the complainant who stated that the complaint lodged against Shri Sanjib Ratan Saha is, as a member of the Institute. The Committee after considerable discussion and deliberation came to the conclusion that though the respondent is a member of this Institute but at the same time he is an employee of the Institute and is governed by the Service Rules of the Institute. It therefore needs to be seen whether there has been any complaint on this ground and whether the respondent has been charged with this offence under the present Service Rules of the Institute. i.e., The ICWAI Officers' Service Rules, 1983. The Committee members directed the Secretary of the Committee to ascertain the information from the HR Department of the Institute for putting up the same in the next meeting of the Committee.



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)

:: 5 ::

On a query being made by the Disciplinary Directorate to the Director (Administration & HR) on this, the latter by his letter Admn.Kol.2016/01 dated 18th May 2016 stated the following:

"As per the record of the Institute, no complaint/inquiry has been made/instituted against Shri Sanjib Ratan Saha, Director (Finance) by the Institute relating to siphoning of funds in collusion with an Ex-Council member under the Service Rules of the Institute".

In the 25th meeting of the Disciplinary Committee, the Committee members unanimously opined that the complaint against the Respondent, as far as siphoning of funds in collusion with an Ex-Council member is concerned, be dropped and the case be closed in terms of Rule 9(2)(c) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The committee members also expressed that there is an urgent need to formalize Standard Operating Practice in cases of disbursements made by an employee to the members of the Council.

(Manas Kumar Thakur)
Presiding Officer

Dated:- 28th June 2016