

Order

Complaint No. Com/21-CWA(1)/2009.

IN THE MATTER OF:

Complaint No. Shri Vijender Sharma (M/18513) [Complainant] Vs. Shri Sanjay Gupta (M/18672) [Respondent]

Shri Vijender Sharma (M/18513) filed a complaint dated 6th June, 2009 against Shri Sanjay Gupta (M/18672) in Form I along with requisite fee of Rs.2500/- which was registered vide Complaint No. Com/21-CWA(1)/2009. The complaint was made *inter alia* regarding drawal of conveyance expenses and payment of membership fee from NIRC based on a resolution dated 18th November 2007 passed by the Council of NIRC.

Prior to the amendment of Cost and Works Accountants Regulations, 1959 in 2012, Regulation 132 which deals with Expenditure from Fund is reproduced below:

“The funds of a Regional Council shall be employed for such purposes as may from time to time be sanctioned by the Regional Council:

Provided that no funds thereof shall be applied, either directly or indirectly, for payment to the members of the Regional Council except for reimbursing them for any expenses incurred by them in connection with the business of the Regional Council in the region concerned.”

In the instant case, NIRC in one of its Council Meetings fixed the reimbursement amount of Miscellaneous Expenses. As per the Minutes of the said meeting held on November 18, 2007, NIRC approved fixed amounts of Rs 5000/- per month to the Chairman and Rs 4000/- per month to each member of NIRC including Office Bearers for various miscellaneous expenses, which shall be paid on a monthly basis and without submission of bills.

There is no doubt that under Regulation 132 of the Cost and Works Accountants Regulations, 1959, the Regional Council has the power to sanction expenditure from funds. However, such power is to be exercised keeping the proviso to the said Regulation in mind. As per the said Proviso, no fund shall be applied, directly or indirectly, for payment to any member of the Regional Council except for reimbursing them for any expenses incurred by them in connection with the business of the Regional Council in the region concerned. The proviso prohibits use of the fund except for in the manner prescribed therein, meaning only for reimbursing them for any expenses

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incurred by them. Neither the Regulation nor its proviso permits the sanctioning of fixed monthly amounts, irrespective of the actual expenses incurred, and the sanctioning of such fixed monthly amount operates like a monthly allowance which is to be paid irrespective of the fact that the said expenditure has been made or not. The proviso is a clear bar to such practice which permits reimbursement only of 'expenses incurred'. Thus, the resolution dated 18th November 2007 of NIRC is *void ab initio* and has no legal basis.

In view of the above, the following order is passed:-

- i. The Resolution dated 18th November 2007 passed by Northern India Regional Council (NIRC) is *void ab initio* since the resolution is in violation of Regulation 132 of Cost and Works Accountants Regulations, 1959 which approved payment of fixed amounts of Rs 5000/- to the Chairman and Rs 4000/- per month to each member of NIRC on a monthly basis without submission of bills.
- ii. Letter of caution should be issued to Shri Sanjay Gupta for drawal of money from NIRC on the strength of the resolution dated 18th November 2007.
- iii. Shri Sanjay Gupta and any other elected member of NIRC who had drawn money on the basis of the resolution dated 18th November 2007 are required to deposit the exact amount that they had drawn on the strength of the resolution dated 18.11.07, with NIRC within a period of 30 days from the date of receipt of the order.
- iv. The Order stated in (iii) above shall apply *mutatis mutandis* in respect of all members of Council of NIRC who had drawn money on the basis of the resolution in question.
- v. All elected representatives of Council of NIRC be informed to desist themselves from passing any such resolution which is in violation of the Cost and Works Accountants Act, 1959 and the rules regulations framed thereunder.
- vi. The aforesaid decision is to be communicated to all who were members of Council of NIRC during the period 2007-2011.

Dated:- 6th February 2015


(Dr. A.S. Durga Prasad)
Presiding Officer
Disciplinary Committee