

**DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]**

**Findings cum Order under Rule 18(17) and 19(2) of the Chartered Accountants
(Procedure of Investigations of Professional and Other Misconduct and
Conduct of Cases) Rules, 2007**

[File No. PR- 222/15-DD/252/2015/DC/908/2018]

In the matter of:

**Shri Premsukh chandmal Changediya,
1551, Sadashiv Peth,
C/o, Sadashiv Peth,
C/o Gopi Scooter House,
Pune - 411030**

And

**Shri Dhinendra Shantilal Kurani,
586/2A, Pitalenagar,
Plot No.25, Gultekdi,
Pune – 411 037**

...Complainants

Versus

**CA. Pramod Babulal Shah (M. No. 036382)
725/26, Budhwar Peth,
2nd Floor, Priyadarshini Apartments,
Near Bank of Maharashtra,
Pune – 411 002**

.....Respondent

MEMBERS PRESENT:

**CA. ATUL KUMAR GUPTA, PRESIDING OFFICER,
SHRI RAJEEV KHER, IAS (RETD.), GOVERNMENT NOMINEE
CA. RAJENDRA KUMAR P, MEMBER
CA. CHANDRASHEKAR VASANT CHITALE, MEMBER**

DATE OF FINAL HEARING/ORDER : 29.05.2019

PLACE OF FINAL HEARING/ORDER : ICAI, MUMBAI

PARTIES PRESENT:

**Complainant : Shri Premsukh Chandmal Changediya
Counsel for the Complainant : Shri Prasant Bhudhawat, Advocate
Respondent : CA. Pramod Babulal Shah
Counsel for the Respondent : CA. Shashikant Barve**

CHARGES IN BRIEF:

1. It is noted that the Complainant alleged that the Respondent was acting as an auditor and was operating bank account of Virayalam Public Trust for the financial year 2005-06 to 2010-11. It is noted that the Complainant leveled many allegations in his complaint but the Respondent was held prima facie guilty only in respect of the following charges:-

i) The Respondent was working in the capacity of the Auditor and bank operator despite of being the trustee of the Trust. He is looking after day to day work and was signing on all the important documents of the Trust.

ii) The Respondent has put his seal as the Chartered Accountant without mentioning his membership number.

BRIEF OF THE PROCEEDINGS :-

2. The Committee noted that on the day of hearing, both the Complainant and the Respondent were present along with their respective Counsel(s). The Complainant and the Respondent were put on oath. The Complainant explained the charges against the Respondent, to which the Respondent pleaded not guilty. The Counsel for the Respondent made submissions on the charges. The Counsel for the Complainant also made his submissions. The Committee also posed questions to the Complainant and the Respondent. After hearing the final submissions, the Committee decided to conclude the hearing in the above matter.

FINDINGS :-

3. In respect of first charge related to working in the capacity of the Auditor despite being trustee of the Trust and being involved in day to day affairs of the Trust, the Respondent stated that he was not appointed as a Trustee of the Virayalam Public Trust. He had been the Auditor of the financial accounts till year ending 31/03/2010. There is thus no case for conflict of interest and the documents referred by the Complainant are for a period beyond 31/03/2010. The Respondent stated that there is confusion due to mentioning of names of two different trusts. One Trust is Virayalam Public Trust and second is Shree Mahavir Research Foundation and both the Trusts are independent from each other and registered with separate registration numbers.

3.1 He was trustee in Shree Mahavir Research Foundation for the period 01.01.2010 to 01.01.2013 and was auditor for the financial year 2005-06 to 2009-10 in Virayalam Public Trust and last audit was completed in January, 2011. The Respondent submitted a letter dated 18.05.2019 from the Trustee of Virayalam Public Trust and Shree Mahavir Research Foundation mentioning therein that the Respondent was appointed as Trustee only of Shree Mahavir Research Foundation for the period from 01.01.2010 to 01.01.2013. He was appointed auditor of Virayalam Public Trust for the financial years 2005-06 to 2009-10. He was not Trustee of Virayalam Public Trust at any of point of time.

3.2 He has ceased to be as auditor of Virayalam Public Trust after the audit of financial year 2009-10. On being enquired from the Respondent as to why his name is appearing as Trustee in an Application no.01/2012, the Respondent stated that the said application was filed on behalf of three separate trusts in the name of Virayalam Public Trust and hence, name of trustee of other trusts was also appearing in the list.

4. In view of above submissions, when the Committee asked the Complainant to produce the documents wherein the Respondent was shown as Trustee of Virayalam Public Trust, specifically for the financial years 2005-06 to 2009-10, the Complainant could not produce any documentary evidence in this regard.

5. Looking into above submissions and facts, it is noted that the Complainant failed to produce any documentary evidence on record to show that the Respondent besides being auditor of Virayalam Public Trust for the financial years 2005-06 to 2009-10, was Trustee of the said Trust. Further, the Trustee of the Virayalam Public Trust and Mahavir Research Foundation vide letter dated 18th May, 2019 confirmed that the Respondent was not Trustee of Virayalam Public Trust at any point of time. The Committee also observed that there was no document on record wherein the Respondent signed in any other official capacity of the Trustee during the period for which he was auditor of the Trust. Thus, since the Respondent was not Trustee of Virayalam Public Trust for the period for which he audited the accounts, question of conflict of interest does not arises at all and the charge levelled against him has no merit. Therefore, the Committee decided to hold the Respondent not guilty with respect to above charge.

6. In respect of second charge related to non-mentioning of membership number, the Respondent stated that the Respondent had been practicing in his own name as a C.A. and not as a Proprietor or Partner of any entity and therefore even according to the SA 700 or in terms of the decision of the Council at 296th Meeting as referred in the prima facie opinion, the Respondent was not required to mention mandatorily his membership number as claimed. After perusal of the documents on record, the Committee decided to extend the benefit to the Respondent in respect of this charge as the Audit Report of the Trust was signed in individual name of the Respondent and not under the name of the firm. Accordingly, the Respondent is not guilty in respect of above charge also.

CONCLUSIONS:

7. Thus in light of above, in the considered opinion of the Committee, the Respondent is held **Not Guilty** of Professional Misconduct falling within the meaning of Clauses (4) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

7.1. Accordingly, the Committee passes an Order for closure of this case under Rule 19(2) of the Chartered Accountants (procedure of Investigations of Professional and Other Misconduct and Conduct of cases Rules, 2007.

Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(SHRI RAJEEV KHER, IAS (RETD.))
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASHEKHAR VASANT CHITALE)
MEMBER

DATE : 16th December, 2019
PLACE : New Delhi