



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT 1949 READ WITH
RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF
PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

File No. PR-171/14-DD/199/2014-DC/789/2018

In the matter of:

Shri Jose Mathew

Joint Secretary, Gulf Returnees Educational Society
AA-70, I Floor, 2nd Street, 3rd Main Road, Anna Nagar,
Chennai – 600 040

.....Complainant

Versus

CA. Abraham Zachariah... (M. No. 024413)

M/S. J Martin & Associates.... (FRN007078S)

Chartered Accountants, Plot No. 1552,

MIG T.N.H.B. Main Road, Velacherry,

Chennai-600042

.....Respondent

Members present :

Smt. Anita Kapur, Govt. Nominee & Presiding Officer

Shri Ajay Mittal, Member (Govt. Nominee)

CA. Manu Agrawal, Member

Date of Final Hearing: 13th August 2020 through Video Conferencing

Place of Hearing: New Delhi

1. Vide report dated 16th December, 2019 (copy enclosed), the Disciplinary Committee was of the opinion that **CA. Abraham Zachariah (M. No. 024413)** was **GUILTY** of 'Professional Misconduct' falling within the meaning of Clauses (2) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect of certification of provisional financials of M/s. Gulf Returnees Educational Society (hereinafter referred as the "**Society**") primarily in relation to an expenditure of Rs. 1.08 crore in respect to charge on collateral security. It is noted that the Respondent is guilty under Clauses (2) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 as per which the Respondent:

"(2) certifies or submits in his name, or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice; and

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties."

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 1st August read with communication dated 6th August were addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 13th August 2020 through video conferencing.



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3. The Respondent appeared before the Committee on 13th August 2020 through video conferencing from Regional Office of ICAI at Chennai and made oral submissions wherein he inter-alia stated that he had affixed seal and signature and certified that the provisional as a true copy.

4. The Committee considered the oral submissions made by the Respondent and viewed that the Respondent had attested the provisional financials without examining the resolution of the Management Committee authorizing for the charge on collateral security and as such he failed to act diligently since he affixed his seal and signature on the provisional financial statement of the Society only on the advice of Dr. George. The Committee in this regard is of the considered opinion that as a matter of prudence, before affixing a seal and signature on any document, a Chartered Accountant who place reliance on facts figure of documentary evidence, should satisfy himself by applying his knowledge and skill but the Respondent in the extant case had certified the documents which were not examined by either the Respondent himself or his partner/assistant.

5. The Committee noted that the Respondent has been held guilty within the meaning of clauses (2) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered the removal of name of Respondent **CA. Abraham Zachariah (M. No. 024413)** from the Register of Members for a period of 1(one) year.

Sd/-

[Smt. Anita Kapur]

Member, (Govt. Nominee)

Sd/-

[Shri Ajay Mittal]

Member, (Govt. Nominee)

(approved & confirmed through e-mail)

Sd/-

[CA. Manu Agrawal]

Member

(approved & confirmed through e-mail)

Certified True Copy


Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate

The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

Date: 13th August 2020 through Video Conferencing

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

[Constituted under Section 21B of the Chartered Accountants (Amendment) Act, 1949]

Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No. : [PR-171/2014/DD/199/14/DC/789/18]

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Shri Jose Mathew
Joint Secretary, Gulf Returnees Educational Society
AA-70, I Floor, 2nd Street, 3rd Main Road, Anna Nagar,
Chennai – 600 040

.....Complainant

Versus

CA. Abraham Zachariah... (M. No. 024413)
M/S. J Martin & Associates.... (FRN007078S)
Chartered Accountants, Plot No. 1552,
MIG T.N.H.B. Main Road, Velacherry,
Chennai-600042

.....Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
CA. Amarjit Chopra, Government Nominee
CA. Rajendra Kumar P, Member
CA. Chandrashekhar V. Chitale, Member

DATE OF HEARING : 05.06.2019

PLACE OF HEARING : ICAI Bhawan, Chennai

PARTIES PRESENT:

Shri Jose Mathew - Complainant
CA. S. Nagrajan - Counsel for the Complainant
CA. Abraham Zachariah – Respondent
CA. R. G. Rajan – Counsel for Respondent
Shri G. George – Witness to the Committee

Sh. Jose Mathew, Chennai –vs.- CA. Abraham Zachariah, Chennai (M. No. 024413)

Charges in Brief:-

1. The Committee noted that there are two charges against the Respondent, in which he has been held Prima Facie Guilty of professional misconduct. These are as under:-

1.1 The Respondent has Certified in his name, a report of an examination of financial statement without carrying out examination of those financial statements by him or any partner or employee of his firm or other Chartered Accountant in practice.

1.2 The Respondent failed to obtain sufficient information before expressing his opinion on the financial statements.

Brief facts of the Proceedings:

2. The Committee noted that the Complainant and the Respondent along with his Counsel was present and appeared before it. The Committee further noted that the witness Shri G. George, former Secretary of the Society was also present.

2.1 The Committee called Shri G. George and put him on oath. After examination of the witness, the Committee discharged him.

2.2 Both the parties made their submissions. After recording the final submissions of the parties to the case, the Committee concluded the hearing in the captioned matter.

Findings of the Committee:

3. The findings of the Committee in subject case are as under:-

3.1 The Complainant is a Joint Secretary of M/s. Gulf Returnees Educational Society (hereinafter referred as the "Society")

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3.2 Dr. G. George was the Secretary of the said society till December 2010 i.e. for a period of more than 10 years. It is the charge of the Complainant that the Respondent had affixed seal and signature on the Financial Statement of the Society in the capacity of an auditor, to facilitate Dr. George.

3.3 The attention of the Committee is drawn to the Balance Sheet and Income & Expenditure Account of the Society for the year ended 31st March 2010 which is signed by CA. John Mathew of M/s. M. Johanan & Co. These financial statement contains the date of certification 14/05/2010.

Further, attention of the Committee is also drawn to Balance Sheet and Income & Expenditure account for year ended on 31st March 2010 (provisional) which is dated 10.08.2010.

3.4 The Committee is surprised that how a provisional financial statement can be signed after the date of audited financial statement. The Respondent affixed a seal and signature and attested these Financial Statements both provisional and final as true copy. In the provisional Income & expenditure account for the year ended 31st March 2010, the Committee find that an amount of Rs. 1.08 Crore is debited as an expenditure on account of "charge on collateral security". It is this expenditure which is the main contention between Complainant and Dr. George.

3.5 Dr. George was the Secretary of the Society for the period of 10 years. It is his contention that for raising loans towards carrying the objective of the Society, he had given immovable property owned by him as collateral security to the bank. Dr. George has admitted that he has charged 3% as commission for the immovable property that he has given collateral security to the bank for raising loans for the Society.

3.6 The Committee enquired as to why this amount was not charged in each year separately and how he chose to charge this amount in year 2010. Dr. George submitted that the same was resolved by the Society in a meeting of the members in a particular year.



3.7 The Committee noted that the Respondent has affixed seal and signature and certified that the provisional as a true copy. The Respondent is a Chartered Accountant in practice, the Committee wanted to know, on what basis he has affixed a seal and signature and whether he has applied proper due diligence and verified the Resolution of the Management Committee authorizing the charge of Rs. 1.04 Crores.

3.8 The Respondent replied that he had not carried out the audit but he had affixed a seal and signature on the financial statement on the advice of Dr. George.

3.9 In view of above statement of the Respondent, the Committee was of the view that it is a matter of prudence that before affixing a seal and signature on any document, a Chartered Accountant who place reliance on facts figure of documentary evidence, should have satisfied himself by applying his knowledge and skill.

3.10 The Committee finds that the Respondent has certified the documents/financials, which were not examined by him nor by his partner/assistant. Further, he was also not in possession of any resolution of the Management Committee which authorizes the commission payable to Dr. George.

3.11 After the hearing was concluded, the Respondent vide his letter dated 1st July 2019 received on 9th July 2019 submitted the minutes of the 10th Annual General body meeting of the Society which was held on 26th September 2019. Through this letter the Respondent submits that it is in this meeting a decision to compensate Dr. George was taken.

On perusal of said letter, the Committee notes the followings;

"GS has expressed that his personal property pledge with PNB for the term loan taken for GRES to be released accessible value of his property to be paid to him as compensation. Members have agreed to release personal property of GS and have agreed to pay the compensation to GS".

Further, the Committee finds that only the General Secretary has signed these minutes which are dated 16/10/2009. The Chairman of the meeting has not affixed his


signature. It is important to note here that Dr. George is the General Secretary and he is beneficiary of the said amount which is the cause of the dispute.

3.12 The Committee is led to the fact that the matters are in dispute relating to the Society and are before the Court of Law. The Committee is of the view that the Respondent should have clearly specified the charges and the assumptions based on which he affixed the seal and signature on a document which was not verified or audited by him. The Respondent was also grossly negligence in performing his duty as a professional, he merely placed reliance on social compulsions rather than professional judgment.

In conclusion, the Committee is of the view that the Respondent is guilty and has not applied proper judgment that is required to be displayed by a Chartered Accountant in practice.

Conclusion:

4. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held **GUILTY** of 'Professional Misconduct' falling within the meaning of Clauses (2) and (7) of Part I of the Second Schedule to the Chartered Accountant Act, 1949.


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

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE


Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASHEKHAR V. CHITALE)
MEMBER

DATE : 16th December, 2019

PLACE : New Delhi

Certified True Copy


Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate

The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi