

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2020-21)]
[Constituted under Section 21B of the Chartered Accountants 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-42/2018-DD/67/2018-DC/1131/2019]

In the matter of:

Shri O G R Kumar and Shri I S Srinivas
D No. 3-22, Main Road,
Dwarka Tirumala,
West Godavari District
Andhra Pradesh – 534426

...Complainants

Versus

CA. Radha Krishna Josyula (M.No.019712)
22B-8-25,
Ambika Street, Powerpet,
West Godavari District,
Eluru, Andhra Pradesh – 534002

...Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekhar Vasant Chitale, Member
CA. Manu Agrawal, Member

Date of Final Hearing: 20th August, 2020 through Video Conferencing

PARTIES PRESENT:

The following Parties were present :

- (i) **Shri OGR Kumar – the Complainant No. 1 (appeared from Andhra Pradesh)**
- (ii) **Shri I S Srinivas – the Complainant No. 2 (appeared from Andhra Pradesh)**
- (iii) **CA. J Kaleswara Rao – Counsel for the Complainants (appeared from his office at Andhra Pradesh)**
- (iv) **CA Radha Krishna Josyula – the Respondent (appeared from his office at Eluru)**

(M)

Allegations of the Complainant:

1. **Shri O G R Kumar and Shri I S Srinivas** (hereinafter collectively referred to as the “**Complainants**”), Andhra Pradesh have filed complaint in Form ‘I’ dated 11th February, 2018 (**C-1 to C-48**) against **CA. Radha Krishna Josyula (M.No. 019712)**, Andhra Pradesh (hereinafter referred to as the “**Respondent**”). The back ground in brief of the extant complaint is as under:

1.1 The Adhoc Committee of the “Dwarakatirumala Kshetra Sri Vasavi Kanyaka Parameswarai Arya Vysya Kalyanamandapam Trust” (hereinafter referred to as the ‘**Trust**’) appointed the Respondent to conduct investigation Audit, to find out and Report on the misappropriation of the Funds of the Trust, for the period commencing from the F.Y 1999 to 2012, as on 15-10-2012. The Respondent and his staff verified the Accounts of the Trust by visiting the Trust on various dates and finalized their conclusions and submitted his Audit Fee Bill of Rs.1,20,000/- as on 21-05-2013 (**C-6**), which was duly paid and acknowledged vide his Receipt No. 31, dated 8-9-2013 (**C-14**).

1.2 Against the aforesaid background, it was alleged that even after receipt of his Audit Expenses of Rs.21,200/- (**C-8**) and Audit Fee of Rs.1,20,000/-, the Respondent had not submitted his Audit Report to his Appointing Authority i.e. the Adhoc Committee / Trustees/ Trust till date of complaint, in spite of several oral and written requests made to him (**C-10,C-13,C-16**). It has also been alleged that the Respondent wrote a letter to the Complainants as on 04-07-2016 (**C-17 to C-21**) and admitted the fact that “no Audit Report was given to anybody” (**C-20**).

Proceedings:

2. At the time of hearing on 20th August 2020, the Committee noted that the Complainant(s) alongwith their Counsel as well as the Respondent were present during the hearing. Thereafter, they gave a declaration that there was nobody except them in their respective room from where they were appearing before the Committee and that they would neither record nor store the proceedings of the Committee in any form. Being the first hearing, the Complainants as well as the Respondent were put on oath.

(14)

Thereafter, the Committee asked the Respondent whether he wished the charges to be read out or it could be taken as read. The Respondent stated before the Committee that he was aware of the allegations raised against him and the same might be taken as read. On being asked, as to whether the Respondent pleaded guilty, he did not plead guilty and opted to defend his case.

Thereafter, the Counsel for the Complainant explained the charges alleged against the Respondent. Thereafter the Respondent made his submissions on the allegations made against him. Both the Complainant and the Respondent were examined by the Committee on the submissions made by them.

Based on the documents available on record and after considering the oral and written submissions made by both the parties before it, the Committee concluded hearing in the matter.

Findings of the Committee:

3. The Committee noted that the Director (Discipline) in his prima facie opinion dated 16th July 2019 had held the Respondent not guilty of alleged misconduct but the Board of Discipline, at its 124th Meeting held on 4th October, 2019, on consideration of the PFO was of the view that the Respondent vide letter dated 31st December 2012 only gave his preliminary observations and the same was also confirmed by the letter dated 27th August 2018 issued by the mediator and did not issue any audit report, thus, the Board did not agree with the prima facie opinion of the Director that the Respondent is NOT GUILTY of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and decided to refer the case to Disciplinary Committee to proceed under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Accordingly, the Committee conducted further inquiry in the extant matter against the Respondent.

4. The Committee noted the oral as well as the written submissions made by the Respondent in the matter wherein he inter-alia submitted that he was contacted by Shri

Ambika Krishna, (hereinafter referred to as 'The Mediator') who requested him to verify the accounts of Trust pursuant to the disputes between the two groups of its members with regard to the Trust affairs, covering the period of F.Y 1999 to 2012 and submit his observations / remarks on the accounts of the Trust, enabling him to understand the issues and settle the dispute amicably. For this purpose, the Mediator formed an Ad-hoc Committee with 6 members, comprising 3 from each of the rival groups, to work in association with the Respondent. Thereafter, an appointment letter dated 15.10.2012 was issued by the Ad-hoc Committee to the Respondent. As per the appointment letter, he completed verification of the records of the Trust on different dates (**W-28 to W-38**) in the presence of the representatives from the Ad-hoc Committee and the two complainants in the extant case were also present almost every day during the period of his verification and extended their co-operation in early and smooth completion of the job.

4.1 He further stated that during his verification, as apprehended by the mediator, he observed so many missing links in the records produced for his verification by the ad-hoc committee, accordingly, vide his covering letter dated 31-12-2012, he submitted one "un-signed" report containing 20 pages to the Ad-hoc Committee and his duly "signed" report to the mediator. However, thereafter, nobody chose to approach the Respondent for seeking any explanations from him over his report except these two individual complainants, Shri O G R Kumar and Shri I S Srinivas who started harassing him for copy of his signed report to be used as an exhibit in their Writ Petition No. 26449/2013 before the High Court, as evident from their letter dated 12-09-2013 (**C-15 and C-16**) for which he expressed his regrets in view of his surrendering all his papers before the mediator on 21-05-2013 itself.

5. The Committee on perusal of documents available on record beside considering the oral and written submissions made by both the Respondent and the Complainant(s), noted that the Respondent was appointed by the Adhoc Committee to verify the accounts of Trust pursuant to the dispute between the two groups of its members with regard to the Trust affairs, covering the period of F.Y. 1999 to 2012 vide appointment letter dated 15.10.2012 issued by the Ad-hoc Committee to the Respondent. Thus, in

such circumstances, the Committee was of the view that it was his responsibility to give any pre-mediation conclusive Report directly to the Ad-hoc committee only which was his appointing authority based on which it could initiate any action and his denial in sharing copy of the report with the Complainants who as such had no *locus standi* to seek his report, was fully justified in the circumstances.

6. The Committee further noted the Contents of letter dated 27th August 2018 (**D-14 & D-15**) based on which the Board of Discipline did not concur with the *Prima Facie* Opinion of Director (Discipline) wherein the mediator had accepted the fact that the Respondent had given his preliminary observations on completion of the verification process vide his covering letter dated 31st December 2012. The Committee further noted that in the said letter, the mediator had also clarified that the assignment given to the Respondent was not in nature of any audit as such and further the role of the Respondent was limited to the extent of providing provisional comments to him as mediator to enable him to take final decision and no further obligation was there on the Respondent. Accordingly, the Committee was of the view that it was amply clear in the extant matter that the Respondent had executed/ completed the limited professional assignment given to him to the satisfaction of the appointing authority by submitting his report on the observations made by him to the Adhoc Committee.

Conclusion:

7. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held **NOT GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule of Chartered Accountant Act 1949.

8. The Committee, accordingly, ordered the closure of this case against the Respondent.

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Sd/-

[CA. Atul Kumar Gupta]
Presiding Officer

Sd/-

[Smt. Anita Kapur]
Member, (Govt. Nominee)
(approved & confirmed through e-mail)

Sd/-
[Shri Ajay Mittal]
Member, (Govt. Nominee)
(approved & confirmed through e-mail)

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member
(approved & confirmed through e-mail)

Sd/-
[CA. Manu Agrawal]
Member
(approved & confirmed through e-mail)

DATE: 16th December, 2020 (through video conferencing)

Certified to be true copy
Mohita Khanna
CA. Mohita Khanna
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
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