

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2022-23)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings 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

Ref. No. PR/411/2019/DD/97/2020/DC/1574/2022

In the matter of:

**Shri K Shanmugaiah,
DGM (HR), ONGC,
Cauvery Asset, Neravy Complex, Neravy,
Karaikal (Pondicherry) – 609604**

.....Complainant

Versus

**CA. Govindarajan K
M/s Govindarajan and Co.,
Chartered Accountants,
No. 30, KAP Building,
3rd Floor, Binny Compound,
Kumaran Road,
Tirupur (Tamil Nadu) – 641601**

.....Respondent

MEMBERS PRESENT:

**CA. Aniket Sunil Talati, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
CA. Sushil Kumar Goyal, Member
CA. Vishal Doshi, Member**

Date of Final Hearing: 8th December, 2022 through Video Conferencing

PARTIES PRESENT:

**(i) Shri K. Shammugaiah, DGM (HR), ONGC – the Complainant's representative
(ii) CA. Govindarajan K – the Respondent**

Charges in Brief:

1. The Committee noted that in the *Prima Facie* Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was held *prima facie* guilty of Professional Misconduct falling within within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Item (7) of Part I to the Second Schedule states as under: -

Part I of Second Schedule:

*PART I: Professional misconduct in relation to chartered accountants in practice
A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he—*

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

Brief background and the allegations against the Respondent

2. The extant case pertains to audit of ONGC Public School, Karaikal (**hereinafter referred to as “the School”**) in relation to which ONGC, the Complainant Company had entered into an agreement dated 19.07.2000 with AJC Society, Kumbakonam for running the School. The said agreement was valid for 5 years and thereafter renewable by mutual consent of the parties. Further, the renewed /revised Agreement dated 18.05.2010 provided that the audited statement of accounts of the School would be submitted by AJC Society to the Complainant Company at the conclusion of each financial year or whenever demanded by them. Based on annual budget submitted by the School, the Complainant Company used to release grants-in-aid to the School whenever deficit was shown therein. The Complainant further stated that Internal audit team/department, ONGC while carrying out audit of accounts of the School for the year 2009-10 to 2012-13 observed certain discrepancies / irregularities which the

Respondent failed to report and thus failed to exercise due diligence in performance of his professional duties.

In extant case, DGM (HR), ONGC Karaikal (Pondicherry), the Complainant has alleged that the Respondent had issued unqualified audit reports for the said financial periods without pointing out any discrepancies / irregularities during the audit of financial statements even without adopting a basic audit methodology of vouching and verification of supporting documents therein. Thus, it is alleged that the Respondent did not exercise due diligence and was grossly negligent in the conduct of professional duties. It is noted that the Complainant has also provided the copy of 'special audit report' on ONGC public School wherein various discrepancies mainly in respect of accounting of salary expenditure and PF expenditure have been observed by the special/internal auditors of the Complainant Company.

Proceedings:

3. During the hearing held on 8th December 2022, the Committee noted that the Complainant's representative and the Respondent appeared before it from their respective location. Thereafter, both of them gave declaration that there was nobody present except them in their respective rooms from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. Being the first hearing, the Respondent was put on oath. 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 that he was aware of the allegations raised against him and that the same might be taken as read. On being asked, as to whether the Respondent pleaded guilty, he pleaded not guilty and opted to defend the case against him.

The Committee, thereafter, asked the Respondent to make submissions on the matter. The Respondent made his submissions in the matter. The Committee, thereafter, examined him on the facts of the case. The Committee sought the Complainant's

rebuttal on the submissions made by the Respondent on which the Complainant submitted that facts of the matter were based on special audit conducted by separate team. Accordingly, the Committee directed the Complainant's representative to provide its rejoinder on reconciliation statement and other submissions made by the Respondent in respect of the allegations made against him. The Committee noted that the Complainant's representative was asked to submit the said rejoinder within 15 days of the date of hearing else the matter would be decided based on documents/information as available on record. Accordingly, the matter was heard and judgment was reserved. Thereafter, the Complainant's representative was provided with the relevant submissions of the Respondent in respect of the allegation made against him so that it could provide its rejoinder thereon.

3.1 On 13th January, 2023, the Committee considered the matter and noted that the Complainant had not submitted any rebuttal on the submissions made by the Respondent. Accordingly, the Committee considered the documents on record; oral and written submissions made by both parties, and upon consideration of the facts and circumstances of the case, decided the matter.

Findings of the Committee:

4. At the outset, it was noted that the Complainant had reported seven discrepancies/irregularities pertaining to financial year 2009-10 to 2012-13 based on which the allegations were raised against the Respondent, out of which charges against four discrepancies were dropped by the Director (Discipline) while forming his prima facie opinion. Accordingly, the Committee held the inquiry only in respect of the following three discrepancies despite which the Respondent had given unqualified opinion on the financial statements of the School for the period concerned:

- that Provident Fund (PF) (Employer and Employee contribution) stated to be paid in Receipts and Payments account did not match with its Challans for FY2010-11

- that there was discrepancy of Rs. 23,01,028/-between the figures of Salary as shown in Receipts and Payments account vis a vis that shown in Bank Statement for FY2010-11
- During FY 12-13, the Salary Expenditure was over booked to the extent of Rs. 18,34,626.

5. With regard to the charge that the Respondent had failed to report in his audit report on the financial statements of the School for FY 2010-11 with respect to non-matching/non-tally of the Provident Fund (PF) (Employer and Employee contribution) as stated in Receipts and Payment Account from that of its Challans. It is noted that as per Special Audit Report, the Provident Fund paid as per Challan was Rs. 45,98,182 (D-13) whereas in Receipts and Payment account of the School, the same was shown to have been paid as Rs. 24,03,238 only.

5.1 The Respondent during the hearing stated that all the charges alleged against him were false. The Respondent also disputed the Special Audit Report being issued by internal audit team/ department of the Company rather than by an independent professional. The Respondent further submitted the reconciliation of Provident Fund figures as stated to have been paid in Receipts and Payments account vis a vis as reflected from remittance challans as under:-

Particulars	2010-11
Employer Contribution to PF	2403238
Employee Contribution to PF	2194944
Total Contribution as per challan	4598182

It is noted that the said figures were supported by the copy of ledgers of both the Employer Contribution to PF and Employee Contribution to PF account exhibiting the monthwise details for each aggregate figure as brought on record by the Respondent. He submitted the reconciliation between the figures stating that the PF remittance challan include both Employer and Employee Contribution to PF as remitted by the School in the PF accounts of its employees.

5.2 The Committee noted that adequate opportunity was provided to the Complainant to counter the reconciliation statement submitted by the Respondent during enquiry before it. However, the Complainant has failed to refute the said reconciliation statement.

4.2 The Committee viewed that Contribution to PF account had two legs – one pertaining to School's contribution being employer which was also appearing as such in Receipts and Payments account and the other leg was pertaining to employees' contribution to PF which was appearing as component of Salary in Receipts and Payments account. Thus, effectively the total contribution remitted in PF account as per challans was appearing in the Receipts and Payments account of the School. Thus, there was no mismatch in the figures of Receipts and Payments account from that of challans. Accordingly, the Committee viewed that the Respondent is **Not Guilty** for the said charge of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

5. With regard to the charge that the Respondent had failed to report in his audit report on the financial statements of the School for FY 2010-11 with respect to discrepancy of Rs. 23,01,028/-between figures of Salary as shown in Receipts and Payments account vis a vis that shown in Bank Statement, the Committee noted the details as stated hereunder:-

Salary paid as per Bank Statements for the year 2010-11

Date of Payment	Particular	Amount
03.05.2010	April 2010 salary	11,02,723
04.06.2010	May 2010 salary	11,28,896
02.07.2010	June 2010 salary	11,28,896
31.07.2010	July 2010 salary	13,59,057
01.09.2010	Aug 2010 salary	13,59,083

A

A

29.09.2010	Sep 2010 salary	13,59,083
29.10.2010	Oct 2010 salary	13,59,083
1.12.2010	Nov 2010 salary	18,57,807
31.12.2010	Dec 2010 salary	14,26,532
01.02.2011	Jan 2011 salary	14,21,302
01.03.2011	Feb 2011 salary	14,16,882
31.03.2011	Mar 2011 salary	14,14,592
Total Salary paid for 2010-11 (as per Bank Statement)		1,63,33,936
Salary paid as per Receipts and Payment Account in 2010-11 (as per Audited Accounts)		1,86,34,964
Difference		23,01,028

5.1 The Respondent, with respect to the said charge, submitted reconciliation of the said figures as under:-

Particulars		Amount
Total salary paid as per Special Audit Report		16333936
Add: Salary paid to staffs other than teachers not considered by ONGC Officers (Out of this Rs. 71429, Rs. 329 paid by cash)		71429
Total Salary paid as per bank statement and by cash		16405365
Add: Employee Contribution to PF	2194946	
Add: Employee Contribution to ESI	34653	2229599
Total Salary paid as per Receipts & Payments A/c in audited A/cs		18634964

5.2 The Committee noted that adequate opportunity was provided to the Complainant to counter the reconciliation statement submitted by the Respondent during enquiry before it. However, the Complainant has failed to refute the said reconciliation statement.

5.3 The Committee noted that as per the Respondent in the Special Audit Report salary paid to school workers other than teachers amounting Rs. 71429/- was not considered as part of the Salary. It is noted that the Respondent corroborated the said figures with the copy of ledger showing salary paid to school workers other than teachers including that paid in cash aggregating to Rs.71429/-. Further, the Employee contribution to PF &

ESI which was a part of Salary paid in Receipts and Payments account was not a part of Salary paid through bank in employees' account. It is viewed that Employees Contribution to Provident Fund and ESI, if transferred to the Salary Account, was a correct presentation of the Salary as it was a part of the salary expense for the School. Considering the submissions of the parties and documents brought on record, the Committee viewed that the transactions recorded in Receipts and Payments Account showed correct picture of Cash and Bank transactions in respect of Salary paid for FY 2010-11. Accordingly, the Committee is of the view that the Respondent is **Not Guilty** for the said charge of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

6. With regard to the charge that the Respondent had failed to report in his audit report on the financial statements of the School for FY 2012-13 on account of Salary Expenditure being over booked to the extent of Rs.18,34,626, it was noted that the Respondent submitted that the total Salary & Bonus of Rs.2,20,16,816 shown in Income and Expenditure account include the Salary for March, 2012 as well as Salary for March, 2013. As per him Salary for March, 2012, had been paid in April, 2012 and March, 2013 Salary was paid before the end of March, 31, 2013 itself. Hence, in that year, the salary was accounted for 13 months. Further, he submitted that the School was consistently maintaining its books of accounts on Cash Basis and this fact was duly disclosed in the Notes to accounts.

6.1 The Committee noted that adequate opportunity was provided to the Complainant to counter the submission made by the Respondent during enquiry before it. However, the Complainant has failed to refute the said submissions.

6.2 The Committee, considering the submissions of the parties, reconciliation statements and working notes submitted by the Respondent and other documents brought on record, was of the view that there seems to be no over-booking of the Salary expenses as alleged by the Complainant. Accordingly, the Committee is of the view that

the Respondent is **Not Guilty** for the said charge for Professional Misconduct under Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion :

7. Keeping in view, the facts and circumstances as discussed hereinabove, the Committee is of the considered view that the Respondent is **NOT GUILTY** under Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

8. Accordingly, in terms of Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passed order for closure of this case.

Sd/-
[CA. Aniket Sunil Talati]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member (Govt. Nominee)

Sd/-
[CA. Vishal Doshi]
Member

Sd/-
[CA. Sushil Kumar Goyal]
Member

Date: 7th February, 2023
Place: New Delhi


प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए. ज्योतिका ग्रोवर / CA. Jyotika Grover
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032