

CONFIDENTIAL

BOARD OF DISCIPLINE

Constituted under Section 21A of the Chartered Accountants Act 1949

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : [PR-53/18/DD/85/2018-BOD/512/2019]

CORAM (present in person):

**CA. Prasanna Kumar D., Presiding Officer
Ms. Dolly Chakrabarty (IAAS, Retd.), Government Nominee
CA. (Dr.) Raj Chawla, Member**

In the matter of:

**C.A. Makarand Narayan Joshi (M.No.107605)
344-A, Yadogopal Peth,
Guruprasad Apartments,
Satara – 415002.**

.....Complainant

Versus

**CA. Anand Harinarayan Kasat (M.No.159444)
117/118, Shukrawar Peth,
30/31, Lokhande Colony
Satara – 415002.**

.....Respondent

**DATE OF FINAL HEARING : 25th May, 2022
PLACE OF FINAL HEARING : New Delhi / through video conferencing**

PARTIES PRESENT (through VC):

**Complainant : CA. Makrand Narayan Joshi along with his wife
CA. Manjari Joshi
Respondent : CA. Anand Harinarayan Kasat along with Counsel
CA. Shashi Kant Barve**

FINDINGS:

BRIEF BACKGROUND OF THE CASE:

1. The Respondent is in full time practice as per the records of the ICAI as confirmed in an application under Right to Information Act, 2015. The Respondent is also running

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coaching classes in Satara under the name "AK's Commerce Academy". The "Respondent" advertises the achievements of the students of his coaching class in various examinations; by associating his name with the said class. These advertisements are mainly published in the local press and periodicals. The Respondent also uses social media like Facebook & WhatsApp for the advertisement. The Respondent also does advertisement by way of installing banners, sponsored radio programmes, open public seminar organized by newspaper. Vide announcement dated 18th May, 2017 issued by the Secretary, ICAI members are advised to abstain from advertising their association with coaching /teaching activities through hoardings, posters, banners and by any other means.

CHARGE ALLEGED

2. The Respondent brought disrepute to the profession/the Institute as a result of his advertising his association with coaching /teaching activities through hoardings, posters, banners and by other means. The Respondent contravened provisions of this Act or the Regulations made there under or Guidelines issued by the Council.

The Board noted that the Director (Discipline) in his Prima Facie Opinion held the Respondent prima facie Guilty of Professional Misconduct falling within the meaning of Item (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 and the said view had been accepted by the Board at Rule (9) stage while considering the said Prima Facie Opinion. Accordingly, the conduct of the Respondent was examined in respect of Professional Misconduct falling within the meaning of Item (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 only.

BRIEF OF PROCEEDINGS HELD:

3.1 In the meeting dated 20th April, 2022 in the aforesaid case, the Board noted that the Complainant and the Respondent along with his Counsel were present before it through video-conferencing. Since there was a change in the composition of the Board since the last hearing, the Board gave an option to the parties to the case as to whether they would like to have a De - Novo enquiry or continue from the last proceedings to which they stated that they would like to continue from the last proceedings. Thereafter, the Respondent made his detailed submissions before the Board. The Complainant also made his detailed oral submissions on the

charges alleged against the Respondent. On consideration of the documents and submissions on record, the Board decided to adjourn the proceedings in the case with the direction to the parties to the case to provide the following within 7 days with a copy to the other party to the case to submit their comments thereon, if any:

The Respondent:

1. Copy of his personal ITR along with its acknowledgement, computation of Income, Income & Expenditure account, Balance Sheet for the financial years 2017-18 and 2018-19.

The Complainant:

1. Details/proof regarding the working hours devoted by the Respondent in teaching in M/s AK's Commerce Academy during the F.Y. 2017-18 and 2018-19.

3.2 In the meeting dated 25th May, 2022 in the aforesaid case, the Board noted that the Complainant and the Respondent along with his Counsel were present before it through video conferencing. Subsequent to the last hearing held in the case on 20th April 2022, the Counsel for the Respondent made his detailed oral submissions before the Board. The Complainant also made his submissions in support of the allegation alleged against the Respondent. The Respondent was examined by the Board. On consideration of the documents and submissions on record, the Board concluded the proceedings in the case. However, the decision on the conduct of the Respondent was kept reserved by the Board.

3.3 In its meeting held on 2nd November 2022, on consideration of the submissions and documents on record, the Board decided on the conduct of the Respondent.

BRIEF SUBMISSIONS OF THE PARTIES:

A. COMPLAINANT:

The Complainant in his written submissions, inter-alia, stated as under:

4.1 The Board's view that the Respondent needs to be examined with respect to item (11) of Part I of the First schedule of the Chartered Accountants Act, 1949 is very much apt. The case was very well in progress and was never closed. So, there arises no question of reopening of the case. The Respondent should not ignore the fact that proofs regarding violation of the item 11

of Part I of First schedule of the Chartered Accountants Act, 1949 had been submitted in the complaint itself. ICAI is a regulatory body and Board of Discipline is part of its disciplinary mechanism. Therefore, Respondent had no right whatsoever to challenge the proceeding of the case. Hence, the said objection of the Respondent is untenable.

4.2 The Disciplinary Directorate has properly followed the procedure as specified in the Chartered Accountants (Procedure of investigations of Professional and other misconduct and conduct of cases) Rules, 2007. The Board of Discipline has rightly considered the written representations, rejoinders and supporting documents and also the oral submissions made by the Respondent and Complainant. Members of the Board in the hearing held on 16.08.2021 have also asked specific questions w.r.t. substantial interest of the Respondent as owner in the said academy which were also accepted by the Respondent. The complainant has already mentioned in the same hearing that the Respondent is owner of AK's Commerce Academy and proofs of the same are also on record.

4.3 The Respondent has been already held prima facie Guilty under clause 6 of Part I of First schedule of the Chartered Accountants Act, 1949. Throughout the proceedings, the Respondent has always challenged the applicability of the pronouncement dated 18.05.2017. The Complainant would just like to highlight one important point that the said announcement is very much binding on all CA's, holding COP. If any exception had been there to the announcement, ICAI would have specifically incorporated it. Therefore, it is fully applicable to the Respondent. Further, Clause 6 of Part I of the First Schedule clearly prohibits members holding COP from advertising their association with teaching activities through any means and also states that failing which member will be liable for disciplinary action. There is no question whatsoever of restricting the enquiry of the Board of Discipline to clause 6 of Part I of First schedule of the Chartered Accountants Act, 1949. This is the reason that proofs regarding violation of the item 11 of Part I of First schedule of the Chartered Accountants Act, 1949 were submitted in the complaint itself.

4.4 Section 2(2) of the Chartered Accountants Act, 1949 defines Member of ICAI to be in practice. The activity of running of coaching classes & especially as an owner is direct violation

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of the same. In common parlance, meaning of private tutorship is teaching students on personal level at home or office and not under any coaching/institutional banner. No doubt, the Council has passed a Resolution under Regulation 190A granting general permission for 'private tutorship'. But, the contention of Respondent that he is giving private tutorship is itself a BIG LIE, since:

- I. He is running the classes under the separate banner 'AK's Commerce Academy.
- II. He himself is hiring other CA teachers and paying them honorarium.
- III. He is doing regular advertising of his classes in all media's which are already in detail discussed in our complaint and rejoinder.
- IV. He runs batches for 11th Commerce, 12th Commerce, CA Foundation, CA CS Foundation, CS Executive and B.Com Part I, Part II and Part III. He himself teaches in all these batches. This can't be treated as Private tutorship from any point of view.

4.5 As per Regulation 190A Part B, where permission is granted specifically, clause 7 states 'for part time or full time tutorship under any educational institution other than the Coaching Organization of the Institute'. The Respondent has violated the same by not obtaining specific permission of the Institute. Board can view the proceeding of hearing dated 16.08.2021, in which Respondent has stated while answering to the question of Presiding Officer that AK's Commerce Academy is his 'proprietary concern'.

4.6 The Respondent says that he has surrendered COP on 01.01.2020. This action of the Respondent has no relevance at this juncture of the case. The Respondent has surrendered the COP after the Prima Facie Opinion was given. Surrendering of the same on the contrary is a direct proof that he has done misconduct. In the hearing dated 20.04.2022, honorable Board has asked the Respondent to submit his Income tax Returns and Statement of Accounts. However, the Respondent has immediately refused the instruction of the Board giving the reason of ITR being confidential information. Avoidance of giving such information as required by the Board confirms all the things. The Respondent is very much aware that from the scrutiny of returns already filed by him, it will be clearer that the Respondent is running business under the name of AK's Commerce Academy. In terms of Section 21C of the CA Act, the Board of Discipline has the same powers as are vested in a Civil Court under Code of Civil Procedure,

1908. Hence, the refusal to submit papers required by Board of Discipline is nothing but Contempt of Court.

4.7 The Complainant also humbly requested the Board to call for his Bank Statements, Computation of Income, Books of Accounts along with his ITR. From those records, it will be clear that he has done the business under proprietorship of 'AK's Commerce Academy' and has earned fees from students of his classes, and also has earned professional receipts being full time COP holding Chartered Accountant. Thus, the Respondent has undoubtedly and clearly violated the Clause 11 of Part I of First schedule of the Chartered Accountants Act, 1949 by engaging himself in any business or occupation other than the profession of Chartered Accountants unless permitted by the Council so to engage.

B. BRIEF SUBMISSIONS OF THE RESPONDENT:

The Respondent in his written submissions, inter-alia, stated as under:

5.1 The Prima Facie Opinion has held the Respondent Guilty only on the basis of an Announcement dated 18/05/2017 issued by the Secretary, ICAI which is neither a Guideline of the Council nor is the same issued by following the prescribed process under the CA Act/ Regulations, apart from the same being only "advisory" in nature and is not binding on the Members as it uses May and not shall, which makes it an advisory, for mandatorily following the same. The said Prima Facie Opinion has been formed by not properly interpreting the provisions of Clause 6 of the First Schedule and not appreciating that the case is not covered at all under the said Clause (6) and hence is against the provisions of the Chartered Accountant Act 1949. The Council has not formed any opinion about any disrepute brought by the Respondent to anybody.

5.2 The Prima Facie Opinion has ignored the factual circumstances explained by the Respondent about the alleged communications/advertisements (about the teaching activities) in the social media, that they do not even contain the name of the Firm under which the Respondent has been practicing as a CA and that there is no solicitation of clients or professional work involved at all in any of the alleged communications/advertisements. The

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Respondent has given appropriate explanation for each of the alleged communications/advertisements in his Written Statement.

5.3 The Prima Facie Opinion also does not take into account all the aspects indicated by the Respondent in his earlier Written Statement and draws wrong inferences based on the documents and facts before the Disciplinary Directorate. It also ignores the basic concept that the students cannot be equated to "Clients" and they also do not have professional work to offer and also that the teaching activity is treated under the CA Regulations itself as an engagement in "Other Occupations" and thus such an activity cannot be regulated under: the CA Act, by issuing such said Announcement containing personal opinions of certain authorities on certain matters that can affect the profession. The same is also against the Principles of Natural Justice as the ICAI have not given the basic important information requested by the Respondent for preparation of proper Written Statement.

5.4 The Announcement also does not clearly indicate whether it is applicable to Members devoting less than 25 hours to teaching/coaching activity or those devoting more than that. It is discriminatory between the members as it ignores that members devoting more than 25 hours to teaching/coaching activity are not barred from rendering management consultancy services as specified by the Council, ICAI. Teaching the students does not involve "client and professional CA relationship" as it does not involve services contemplated in Section 2 (2) of the C.A. Act and there is no solicitation of the Clients or of the professional work as contemplated under Clause (6) of the Part I of The First Schedule.

5.5 The Respondent is an Associate Member in practice under the firm name "Anand Kasat and Co", vide firm registration no. 138838W from 2014. The Respondent has not used the name "Anand Kasat and Co." in any of the alleged advertisements claimed to have been issued. As the name of the firm has not been used, to show any association with the coaching/teaching activity, there is no question at all of claiming any solicitation of the clients or the professional work either directly or indirectly. Further, as per Section 7 of the CA Act, 1949, 'every Member of the Institute in practice shall, and any other Member may, use the designation of a Chartered Accountant'. The Respondent has used the letters CA before his name and this is fully

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permitted under the CA Act. The use of the words 'CA' before his name therefore cannot be interpreted as solicitation of clients or work.

OBSERVATIONS OF THE BOARD:

6.1 At the outset, the Board noted that the Complainant contended that the Respondent should also be examined under Item (11) of Part I of the First Schedule to the Chartered Accountants Act 1949. In this regard, the Board noted that the Complainant in column 5 of Form 'I' referred to three allegations against the Respondent. The Director (Discipline) held the Respondent Prima Facie Guilty in respect of one allegation falling within the meaning of Item (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 and not guilty in respect of the other two allegations falling within the meaning of Professional/Other Misconduct falling within the meaning of Clause (2) of Part IV of First Schedule and Clause (1) of Part II of Second Schedule. The said view of the Director(Discipline) had been accepted by the Board. Since the Chartered Accountants Act 1949 and the Rules framed thereunder do not contain any provision for the review of the Orders passed by the BOD/DC, the contention of the Complainant was dismissed. Also, since the Respondent is afforded an opportunity to defend on the charges specified in Form 'I', there cannot be expansion of the charges at later stage of the disciplinary proceedings.

6.2 As regard the Charge alleged, the Board perused the Announcement dated 18th May, 2017 issued by Secretary, ICAI regarding advertisement by members in practice engaged in coaching/teaching activities. The relevant portion of the said announcement is reproduced below:-

"Keeping in view the broad purview of Clause (6) of Part 1 of the First Schedule to the Chartered Accountants Act, 1949, an advertisement of Coaching /teaching activities by a member in practice may amount to indirect solicitation, as well as solicitation by any other means, and may therefore be violative of the provisions of Clause (6) of Part 1 of the First Schedule to the Chartered Accountants Act, 1949.

In view of the above, such members are advised to abstain from advertising their association with Coaching /teaching activities through hoardings, posters, banners and by any other means, failing which they may be liable for disciplinary action, as per the provisions of Chartered Accountants Act, 1949 and Rules/Regulations framed there under.

Subject to the above prohibition, such members may put, outside their Coaching /teaching premises, sign board mentioning the name of Coaching/teaching Institute, contact details and subjects taught therein only. As regards the size and type of sign board, the Council Guidelines as applicable to Firms of Chartered Accountants would apply."

6.3 The Board noted that all advertisements /communications are on the personal Face Book page or personal Whatsapp number of the Respondent which is the communications between friends and acquaintances group. There's only one advertisement of AK's Commerce Academy on banner/hoarding mentioning the Respondent's name as one of the faculties. Even this advertisement does not show any association of the Respondent with AK's Commerce Academy and there is no reference to the Respondent's Chartered Accountant firm there. There are few names of the faculties mentioned in the advertisement and one of the names is that of the Respondent. The above said banner does not show that he is soliciting professional work for his Chartered Accountants firm by any means and his name is just mentioned in the list of faculty for information which does not amount to solicitation. It is observed that in the instant case only the prefix CA was used with the name of the Respondent without any reference to the Chartered Accountants firm with which he was associated and thus, cannot be treated as amounting to solicitation.

6.4 The Board also noted that following communications were done on facebook and whatsapp:-

- (a) First Communication on facebook page, mentioned about starting a new batch of GST.
- (b) Second Communication on facebook page, mentioned about securing 94.16% by Master Vedant Purohit in HSC examination.
- (c) Third Communication on facebook page, mentioned about the Radio program of AKs Commerce Academy 'Introduction of Market'.
- (d) Fourth Communication on whatsapp group, mentioned about securing 94.16% by Master Vedant Purohit in HSC examination.
- (e) Fifth Communication on whatsapp group, mentioned about congratulating and giving best wishes to students who scored good marks.
- (f) Sixth Communication on whatsapp group, also mentioned about the best wishes to students scoring good marks.

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6.5 The Board further noted that above communications on facebook and whatsapp do not show any firm name of the Respondent anywhere, although the words CA. Anand Kasat and Association with AK's Commerce Academy appears but it does not amount to solicitation rather it is just for information within a restricted group of friends and students. The Board noted that each and every communication is focused to either achievements of the students under Respondent's guidance or information regarding starting of batches etc., but no communication advertises for any professional services being offered by him and thus, the same did not amount to solicitation. Further, WhatsApp group is only of "Satara Branch of WIRC" consisting of members and thus, cannot be termed as solicitation of clients/work.

6.6 The Board also noted that there was a program organized by the Radio as a part of educational content with Radio Jockey RJ. There is no evidence to indicate that it was a Sponsored Radio Program by the Respondent –"Listen to special episode of Commerce AK's Academy tomorrow in the program 'Introduction of Market". It also mentions that "Must Listen before joining commerce classes." Timing Issue-Date is 01st June 2017. It is further observed that there is neither mention of CA word nor Respondent's Firm name is used. It is further noted that Respondent's Association as CA with Teaching/Coaching is not displayed. Only Academy Name is mentioned but Respondent's Association with Academy is not displayed.

6.7 The Board noted that none of the communication issued under the name of AKS Commerce Academy showcased that either Respondent or his firm is having any interest in the Coaching Academy.

6.8 Thus, on consideration of the facts and circumstances of the present case, the Board was of the view that Respondent's mere circulation of post for the purpose of communication on private/personal accounts of Facebook and Whatsapp and advertisement of the Coaching academy cannot be treated as solicitation for professional work as there was no mention of the Respondent's Chartered Accountant firm name therein or professional services rendered by him. Accordingly, the Board held the Respondent not guilty in respect of the charge alleged.

CONCLUSION:

7. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949. Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

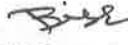
Sd/-
CA. Prasanna Kumar D.
(Presiding Officer)

Sd/-
Ms. Dolly Chakrabarty (IAAS, retd.)
(Government Nominee)

Sd/-
CA. (Dr.) Raj Chawla
(Member)

DATE: 10th February 2023

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy


बिषा नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
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