

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2023-2024)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

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

FILE NO- PR-36/2019-DD/87/2019/DC/1474/2021

IN THE MATTER OF

Sh. Tomy John

VP & Chief Vigilance Officer

Vigilance Department

Federal Bank Limited, Federal Towers

Corporate Office, Bank Junction, Aluva,

Kerala-683101

.....Complainant

Versus

CA. Santosh Mishra (M. No.415907)

660/15, Bajrang Vihar,

Kurshi Road,

Near Jeevan Dhara School

Lucknow-226026

.....Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (In Person)

Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (In Person)

Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (In Person)

CA. Sanjay Kumar Agarwal, Member (In Person)

CA. Sridhar Muppala, Member (Present through Video Conferencing Mode)

DATE OF FINAL HEARING: 04-10-2023 (through physical / video conferencing mode)

PARTIES PRESENT:

Complainant: Not Present

Respondent: CA. Santosh Mishra (Present in person)

Counsel for Respondent: CA. Vaibhav Goyal (Present in person)

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BACKGROUND OF THE CASE

1. The brief background of the case is as under:
 - a. That the Complainant Bank vide complaint in Form I dated 19th January, 2019 has stated that during May 2015, one of the customer of their bank, Shri Piyush Gupta (hereinafter referred to as the '**borrower**'), approached their Vikas Nagar Branch in Lucknow to avail a car loan.
 - b. The Borrower also submitted a "No statutory Due" certificate dated 11th June 2015 issued by the Respondent for availing the loan.
 - c. In the said certificate, the Respondent certified that Shri Piyush Gupta, the borrower, doesn't have any Statutory Liabilities i.e., no income tax / Sales Tax or service Tax was due on his PAN card.
 - d. The vehicle loan proposal was processed based on the above 'No statutory due certificate' issued by Respondent and a loan of Rs.10.60 Lakhs was sanctioned and disbursed.
 - e. As the borrower failed to service the loan, the account turned NPA and an investigation was conducted in the matter.
 - f. During the investigation, it was found that the 'No statutory due certificate' issued by the Respondent was contrary to the facts and was untrue because tax arrears were payable to the Income Tax Department.
 - g. The matter was reported by the Bank to the RBI as fraud, and it was found that the name of the borrower is appearing in Central Fraud Registry (CFR) and Credit Information Bureau (India) Limited (CIBIL) Detect.
 - h. The Respondent denied issuing the certificate.

CHARGES IN BRIEF

2. The allegation against the Respondent is that he had issued a 'No statutory due certificate' dated 11th June 2015 in favour of Mr. Piyush Gupta, the borrower, based on which the Complainant Bank provided a car loan to him which, after an investigation, was found to be false and untrue as the Income Tax Returns of Shri Piyush Gupta showed that income tax amount of Rs.82,690/- and Rs.2,81,760/- were due for the assessment years 2013-14 and 2014-15 respectively.

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3. The Respondent in his reply at the stage of PFO had inter-alia mentioned as under:
- a. That he has not signed the certificate.
 - b. He also received an e-mail from the bank regarding confirmation of said certificate, but he denied the same and further asked the bank to take his fingerprint test or signature test.
 - c. That the Complainant Bank sent its officials on 29th September 2018, and they took his 18 signatures for signature test on their specific format but despite requesting, the result of the same was not shared with him.
 - d. That the Complainant Bank has not shared the result of the signature test with ICAI, which tantamount to hiding facts, as he can be implicated only if his signatures match with the signatures appended on the certificate.
 - e. That facts available on record were ignored by the Bank itself while sanctioning the loan as it was evident from the IT returns that the concerned party was liable to pay income tax of Rs. 82,690/- for the Assessment year 2013-14 and Rs. 2,81,760/- for the assessment year 2014-15.
 - f. That it is routine business practice of any bank to verify ITR, but it failed to check the status of such a defective return, as all the returns without payment of tax are considered as defective.
4. The Director (Discipline) had in his Prima facie Opinion dated 4th March 2021 observed as under:
- a. That the Respondent is denying that he signed the alleged 'no dues certificate' dated 11th June 2015. However, he has not brought on record any convincing document to alienate himself from the alleged certificate.
 - b. Although, the Respondent, in response to the e-mail dated 11th December 2017 from the Complainant Bank, had expressed his willingness for a forensic test of his signature but the same could not be completed for want of the specimen signatures pertaining to the period of June 2015 which was required by IFS (International Forensic Sciences) for desired results, and which were not provided to the Bank by the Respondent.

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- c. The Respondent at the time for calling of additional documents by the Disciplinary Directorate submitted a copy of the letter dated 13th January 2015 sent by him to the Bank of Baroda while applying for the concurrent audit.
- d. It is incomprehensible that if such a document was available with the Respondent, then why he denied having possession of a such document to the complainant bank at the relevant time.
- e. The Complainant has brought on record copy of tax audit reports of M/s Balaji Enterprises, a proprietorship concern of Shri Piyush Gupta, for AY 2012-13, 2013-14 and 2014-15 purported to be issued by the Respondent due to which it is difficult to rule out the professional relationship/connection of the Respondent with Sh. Piyush Gupta.
- f. It is further noted that the extant matter came to the knowledge of the Respondent for the first time on 11th December 2017, but even after a lapse of almost three years till date and despite the fact that his professional integrity/credibility was put at stake, he thought it fit to remain silent and chose not to report this matter to Police or any appropriate authority. The aforesaid behaviour of the Respondent definitely raises an eye of suspicion on his conduct.
5. Accordingly, the 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, held that the Respondent is **Guilty** of Professional and Other Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

The said items in the Schedule to the Act states as under:

Item (7) of Part I of Second Schedule:

"A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he—

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

Item (2) of part IV of the First Schedule:

“A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he-

(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.”

SUBMISSIONS OF THE RESPONDENT ON THE PRIMA-FACIE OPINION

6. The Respondent had inter-alia made the following submissions dated 18th July 2021 in response to Prima Facie Opinion:
- a. The Respondent has denied the allegations against him.
 - b. The Respondent has submitted that the bank has failed to provide any evidence that the alleged certificate was issued/ signed by him.
 - c. That if the Directorate has any doubt about the authenticity of the letter dated 13th January 2015 sent to the Bank of Baroda they should ask from Bank of Baroda whether the evidence given was submitted before the bank or not. The Institute should also ascertain whether there is a provision to give the acknowledgement by the bank for a concurrent audit application applied by email.
 - d. The Institute can ascertain the signature of the Respondent from their own record.
 - e. That the alleged signature on the alleged certificate has not been verified with the so-called tax audit report as well as financial statements as referred by the Institute whereas the Respondent has already claimed that such an alleged tax audit report had also not been signed by him.
 - f. There is no provision that if the matter was not referred to the police, then the same has been assumed as a self-evident set of fact.
 - g. That the report of forensic results for signature was not provided to him.

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- h. That the complaint was filed based on a suspicion by the Complainant. The Director (Discipline) framed the prima facie opinion based on suspicions.
- i. That there was no attempt to find out whether copy of the Income Tax return as referred in the bank record was in fact the copy of the actual return filed before the Income Tax Authority Department.

BRIEF FACTS OF THE PROCEEDINGS

7. The Committee noted that the instant case was fixed for hearing on following dates:

S. No	Dates	Status of Hearing
1.	12.05.2023	Part Heard and Adjourned
2.	04.10.2023	Heard and concluded.

8. On the First day of hearing, held on 12th May 2023, the Committee noted that the Respondent along with his Counsel CA. Ankur Tayal were physically present at ICAI office located at ITO Delhi. The Committee noted that Mr Rajesh George Jacob, Deputy Vice President (Vigilance), Federal Bank, vide his email dated 12th May 2023 submitted that Mr Rahul Nair, who investigated the case, is preoccupied with some other engagements and hence is unable to attend the hearing. Accordingly, he requested an adjournment in the matter.

- 8.1 In the absence of the Complainant, the Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. The Committee, looking into the adjournment request of the Complainant and the fact that this was the first hearing, decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard and adjourned.

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9. On the second and final day of hearing, held on 4th October 2023, the Committee noted that the Respondent along with his Counsel CA. Vaibhav Goel were physically present at ICAI office located at ITO Delhi. The Committee further noted that the Complainant was not present. Thereafter, the Respondent was asked to make his submissions.

9.1 The Respondent in his submissions had inter-alia submitted as under:

- a. That he has submitted Form 18 which was submitted in the month of August 2015 to the ICAI as additional evidence to verify his signature of 2015.
- b. That he also came to know that the borrower, Piyush Gupta, used to take loan from different banks and then default in making payment. Some cases were filed against him and currently he is in jail.
- c. That he has not signed any "No Statutory Due Certificate" and further if it was signed by him then why would he have given his 18 signatures to the Bank for verification.
- d. That to file a police complaint in the instant matter he should have names, address and whereabouts of the accused. Further, the accused can not only be the borrower, but persons connected to bank who were involved in arranging finances. So, until and unless he had the identity of those persons, he cannot file a complaint with the Magistrate.
- e. That he got to know from the reply to RTI filed by him that the Income Tax Returns for AY 2012-13 to 2014-15 of Piyush Gupta were not filed.
- f. That membership number is publicly available, hence, it is easy for Piyush Gupta to get his membership number.
- g. That the address, number and email id mentioned in the certificate does not belong to the Respondent.

9.2 The Committee posed certain questions to the parties to understand the issue involved and the role of the Respondent in the case. Thereafter, the Committee, looking into the Respondent's submissions against the charges levelled, recorded his plea and accordingly concluded the hearing.

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FINDINGS OF THE COMMITTEE:

10. The Committee noted that the charge against the Respondent is for issuance of "No statutory due certificate" dated 11th June, 2015 in favour of Mr. Piyush Gupta, the borrower, which later on was found to be contrary to the facts. The Respondent, however, submitted that he has not signed any such alleged certificate and the Complaint is filed only on the basis of suspicion.
11. The Committee noted that as per the certificate, it was certified that on the PAN of the borrower, there is no liability of Income Tax/ sales Tax or service tax was due. The Committee further noted that as the Complainant Bank, the Income Tax Returns of the borrower Shri Piyush Gupta showed that income tax amount of Rs.82,690/- and Rs.2,81,760/- were due for the assessment years 2013-14 and 2014-15 respectively.
12. The Committee accordingly noted the Respondent with his submissions had brought on record a copy of the reply received under the RTI Act whereby it informed that *"as per data available on systems/ITBA/ITD/Legacy, the assessee i.e. Shri Piyush Gupta PAN: BONPG8693H did not file the Income Tax Return for the A.Y.2012-13 to 2014-15."*
13. The Committee further noted that in the instant matter, the Complainant bank had sent an email dated 11th December 2017 to the Respondent for his confirmation regarding issuance of alleged certificate. The same was denied by the Respondent, and he also offered the Bank to have his signature test.
- 13.1 On the same, the Committee noted that the Bank sent its officials on 29th September 2018, and they took 18 signatures of the Respondent for the signature Test.
- 13.2 The Committee further noted that the verification could not fetch any conclusion as the specimen signatures pertaining to the period of June 2015



which was required by IFS (International Forensic Sciences) for desired results were not provided to the Bank by the Respondent.

- 13.3 The Committee noted that the Respondent at prima-facie stage had provided the desired details by submitting a copy of the letter dated 13th January 2015 sent by him to the Bank of Baroda while applying for the concurrent audit. The Committee noted that a copy of the prima-facie opinion was also shared with the Complainant also. However, despite the same, there is no evidence on record that the enquiry had been completed by the Bank.
- 13.4 The Committee further noted that the Respondent had also submitted Form 18 submitted with the ICAI on 3rd August 2015 to establish his defence. On perusal of the alleged certificate vis-à-vis Form 18 submitted by the Respondent in 2015 to the ICAI, it is noted that the signatures of the Respondent on the certificate does not match with Form 18.
- 13.5 The Committee noted that the Respondent's willingness and co-operation with the Bank in the requisite forensic test proves his bonafide. Accordingly, looking into the same vis-à-vis difference in the signatures, the Committee accepted the submissions of the Respondent that he has not signed the alleged certificate.
14. The Committee further on perusal of the reply received under the RTI Act (mentioned in para 12 above) noted that the issue, on which this case was filed by the Complainant, does not stand.
15. The Committee also noted that the Complainant Bank reported the matter of Piyush Gupta to RBI as fraud and RBI in its investigation found that the name of the borrower is appearing in Central Fraud Registry (CFR) and the Credit Information Bureau (India) Limited (CIBIL) Detect which proves the contention of the Respondent that the said Piyush Gupta is in the habit of doing fraud by forging the documents.

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CONCLUSION

16. In view of the above findings stated in above para's vis a vis material on record, the Committee, in its considered opinion, holds the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

ORDER:

17. 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 passes Order for closure of this case against the Respondent.

SD/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

SD/-

(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE

SD/-

(SHRI ARUN KUMAR, I.A.S, RETD.)
GOVERNMENT NOMINEE

SD/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

SD/-

(CA. SRIDHAR MUPPALA)
MEMBER

DATE: 07TH FEBRUARY, 2024

PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

Bishwa Nath Tiwari
बिषवा नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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