



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

[PR/311/15/DD/56/2016/BOD/465/2018]

ORDER UNDER SECTION 21A(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007

In the matter of:

**Shri N.R. Some Gowda**  
No.2, Eden Garden, Thally Road  
Hosur-635109.

..... Complainant

-vs-

**CA. V. Padmavathy (M. No. 202783)**  
No.76, Kasturi Complex  
2<sup>nd</sup> Floor, Mission Road  
Bengaluru- 560027.

..... Respondent

[PR/311/15/DD/56/2016/BOD/465/2018]

MEMBERS PRESENT (in person):

**CA. Rajendra Kumar P, Presiding Officer**  
**Ms. Dolly Chakrabarty (IAAS, retd.), Government Nominee**

**Date of Hearing and passing Order: 15<sup>th</sup> June 2023**

1. The Board of Discipline vide its Findings dated 10<sup>th</sup> February 2023 was of the view that CA. V. Padmavathy (M. No. 202783) is guilty of "Other Misconduct" falling within the meaning of Item (2) of Part-IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. V. Padmavathy and communication dated 25<sup>th</sup> May 2023 was addressed to her thereby granting her an opportunity of being heard on 15<sup>th</sup> June 2023 which was exercised by her by being present in person. She confirmed receipt of the Findings of the Board and made his representation before the Board.
3. On consideration of the representation of the Respondent, the Board was of the view that since the Board has already arrived at its Findings and there is no provision for review of the same, no new submissions can be adduced at this stage.
4. Thus, upon consideration of the facts of the case and the consequent misconduct of CA. V. Padmavathy (M. No. 202783) and keeping in view her representation before it, the Board decided to remove the name of CA. V. Padmavathy (M.No.202783) from the Register of Members for a period of 01 (One) month and also imposed a Fine of Rs.25,000/- (Rs. Twenty Five Thousand Only) upon her.

Sd/-

**CA. Rajendra Kumar P**  
(Presiding Officer)

Sd/-

**Ms. Dolly Chakrabarty (IAAS, retd.)**  
(Government Nominee)

यह प्रतिलिपि खोले के लिए प्रमाणित है  
Certified to be true copy

मेसु गुप्ता / Mesu Gupta  
अनुशासनात्मक अधिकारी / Sr. Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आदर्शपिछवाई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

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/311/15/DD/56/2016/BOD/465/2018]**

**CORAM: (Present in Person)**

**CA. Prasanna Kumar, Presiding Officer**

**Smt. Dolly Chakrabarty, Government Nominee**

**In the matter of:**

Mr. N.R. Some Gowda,  
Hosur

..... Complainant

**Versus**

CA. V. Padmavathy (M. No. 202783),  
Bangalore.

..... Respondent

**DATE OF FINAL HEARING** :18<sup>th</sup> July, 2022

**PLACE OF FINAL HEARING** :New Delhi/through video conferencing

**FOLLOWING WERE PRESENT: (Through Video Conferencing)**

**COMPLAINANT** : Shri N.R. Some Gowda along with his wife Ms. Malarvishi P. K. (for assistance as he was not well conversant with Hindi/English language)

**COUNSEL FOR THE RESPONDENT** :CA. Sunil Appaji

**DIRECTOR(DISCIPLINE)** : CA. Sanjay Kumar Goyal

**FINDINGS:**

**BACKGROUND OF THE CASE:**

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- 1.1. The Complainant believed that the Respondent and Sri Vijaya Raghava Rao held an esteemed position as an Auditor in Dr. B.R. Ambedkar Medical College, located at Kadugondanahalli, Bangalore. He believed that as Chartered Accountants these professionals have a Management Quota of seats which can be given to the outsiders for pursuing medical course as stated by the Respondent and Sri Vijaya Raghava Rao. Based on this belief the Complainant paid her Rs.40,00,000/- (on August, 2013 paid Rs.30,00,000 and at various stages paid Rs.10,00,000 which is shown in the MOU) to secure a medical seat for his son in Dr. B.R. Ambedkar Medical College, Kadugondanahalli, Bangalore.
- 1.2. In return, the Complainant was given a Rs.10,00,000/- fees paid receipt dated 31st August, 2013 with challan No. B4852. After the fee paid receipt was given, both entered into a Memorandum of Understanding for the balance amount to be paid (which is shown in the MOU with the Respondent Firm's Seal). The Complainant received the fee paid receipt but he did not get the admission confirmation letter which was essential for entering into the college to attend the first day of the class held on 25th September, 2013. The Complainant's son was not allowed inside the class because of confirmation letter and the same was informed to the Respondent and Sri Vijaya Raghava Rao. The Complainant was told that the confirmation letter is not required and can directly attend the classes on 30th September, 2013 onwards. When the Complainant along with his son went to the college, the son was not allowed to attend the class for the reason he failed to submit the admission confirmation letter. The Complainant stated that he informed the same to the Respondent.
- 1.3. As per the guidance of the Respondent, the Complainant moved to the High Court to resolve the RTI problem and thereby the High Court passed an Interim Order favouring his son. So, the Complainant positively approached the college to allow his son for attending the classes, but the college refused to allow his son to attend classes, claiming that his fees are partially paid [Rs.10,00,000/-] and till the pending amount of Rs.30,00,000 dues is fully paid, he will not be allowed to attend the class. The Complainant replied to the college Management that full amount of Rs.40,00,000/- is paid through the college Auditor i.e. the Respondent and Sri Vijaya Raghava Rao. But to his surprise, the Complainant was told that the college Management does not know about the Respondent and Sri Vijaya Raghava Rao.
- 1.4. The Complainant replied that he was told that it was a Management Quota seat, and the Complainant should not approach the College Administration and Management. If it is done then the admission will get cancelled. The Complainant filed NCR on 1st February, 2014 and therefore on 16th April, 2014, the Respondent and Sri Vijaya Raghava Rao gave him cheque for Rs.10,00,000/- of Axis Bank, Shanthi Nagar Branch, Bangalore. When the Complainant produced the cheque to the Bank it was dishonoured and returned with endorsement that there was "Funds Insufficient" as dated 04th July 2014.

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**CHARGE ALLEGED:**

2. It has been alleged by the Complainant that he had paid Rs. 40,00,000/- to the Respondent for securing a medical seat for his son in Dr. B.R. Ambedkar Medical College on the belief that she was having Management Quota. However, no seat was given to his son and the Respondent did not return the money paid.

**BRIEF OF PROCEEDINGS HELD:**

3. At its meeting held on 18<sup>th</sup> July 2022, the Complainant and the Counsel for the Respondent were present before the Board through video conferencing and they confirmed that they have read and understood the contents of the modalities and protocols of e-hearing and follow them. Thereafter, the Complainant was put on oath. Subsequently, the Counsel for the Respondent made certain technical objections with respect to the admissibility of the case. On being asked by the Board, the Director(Discipline) (Discipline) countered the technical objections raised by the Counsel for the Respondent and requested the Board to proceed on the merits of the case. While taking note of the Respondent's technical objections, the Board specifically provided the opportunity to the Counsel for the Respondent to make any further submission on the merits of the case, however, he chose not to make any further submission on the merits of the case apart from the written submissions already made. The Complainant was questioned on further substantiation of the charges alleged against the Respondent and he humbly requested the Board to solve his problem.  
Upon consideration of the submissions and documents available on record, the Board concluded the hearing in the case.

**BRIEF SUBMISSIONS OF THE RESPONDENT:**

The Respondent in his defence, inter-alia, submitted as under:

- 4.1. The Act and Rules require the Director (Discipline) to examine the alleged allegations, complaint filed in the prescribed Form, reply of the Respondent (if any) and thereafter rejoinder of the Complainant(if any) where after if finds any of said alleged misconduct fall under either Schedule I or Schedule II or both.
- 4.2. The law does not require the Director (Discipline) to identify or state under which clause of the schedules the Respondent is guilty.
- 4.3. In the present case, the Complainant has filed Form I dated 18/02/2016 providing certain information required under the law and not providing certain information required under the law and also providing some information not required under the law.
- 4.4. Column No 5 of the Form I requires particulars of allegation(s) together with corresponding clause/part of the relevant schedule(s) and in this case, the Complainant has not filled in such information.

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- 4.5. When such information is not filled in, the Director(Discipline) or Officer who scrutinised the complaint must have sought such from Complainant but the same was not done.
- 4.6. It submitted, though the Complainant has not specified under which clause/part of which schedule the alleged misconduct falls, the Director(Discipline) and Office has proceeded further to carry out the investigation further.
- 4.7. After conducting the investigations required under the law, the Director(Discipline) has not found any specific clause under which the Respondent is found to be guilty. Therefore, the Director(Discipline) invoked one clause that is Clause (2) of Part IV of First Schedule exceeding the powers laid down by the law under the Act and Rules.
- 4.8. Nowhere in the CA Act or Rules, the Director(Discipline) is empowered to invoke any of the clauses of any schedule but can only frame if in his/her opinion any of the said alleged misconduct falls under the Schedules or do not fall under the Schedules, he/she shall state the fact and place the opinion before the Board of Discipline or Disciplinary Committee as the case may be.
- 4.9. If the alleged misconduct do not fit under any of the Schedules, the Director(Discipline) shall state the fact and may proceed further under the law towards closure because Nulla poena sine lege- which is a legal principle which states that one cannot be punished for doing something that is not prohibited by law. This principle is accepted and codified in modern democratic states as a basic requirement of the Rule of law.
- 4.10 Part IV deals with 'Other Misconduct' which makes it clear that the misconduct need not be professional.
- 4.11 Chapter V of the Act deals with the provisions of 'Misconduct'. Provisions of Section 21, 21A, 21B, 21C, 21D, 22, 22A, 22B, 22C, 22D, 22E, 22F, 22G are listed in this chapter. Thus, it is clear from the Section that any act or omission provided in the schedules only shall be punishable and not other allegation.
- 4.12 In the present matter, the allegation of misconduct by the Complainant is not mentioned in Form I under column 5; however, in the attached letter addressed to some office bearer of the Branch of the Institute, the allegation is stated to be of 'cheating'. As the member is a practicing member, either Part I or Part III or Part IV of First Schedule or Part I or Part II or Part III of Second Schedule shall be looked into to arrive at an opinion of Guilt by the Director (Discipline) and in the absentia as to such analysis by the Director (Discipline), the Respondent submitted that Clause (2) of Part IV of First Schedule is not applicable to him.
- 4.13 The Board of Discipline may not be accept Respondent's submission as it may be of the opinion that there is a precedent awarded by the Appellate Authority in Appeal No. 08/ICAI/2014 in the matter of Gyan Prakash Agarwal v/s ICAI; Appeal No. 05/ICAI/2014 in the matter of Rajiv Maheshwari v/s ICAI and Appeal No. 07/ICAI/2014 in the matter of Sameer Kumar Singh v/s ICAI. Therefore, it is duty cast upon the respondent to submit that the judgment of the Appellate Authority is not binding upon the Board of Discipline if the Respondent can demonstrate that the analysis of the interpretation by the Appellate Authority was on wrongful grounds and if the facts in this matter are distinguishable to

the facts with the previous case. Further, ignorance of Statute- A precedent is not binding if it was rendered in ignorance of a statute or a rule having the force of statute undermines the authority of precedence.

- 4.14 The law simply wanted the Director (Discipline) to frame opinion based on Compliant/Information of allegation, reply and rejoinder if any to verify whether the said alleged misconduct falls under any of the schedules and if so place his Prima facie Opinion before the Board of Discipline or Disciplinary Committee for further investigation and adjudication. The adjudicating authority is the Board of Discipline and Disciplinary Committee. Adjudicating authority has to decide under which Clause or Clauses the guilt comes under. The duty of the Director is to plainly see whether it falls under Schedule I or Schedule II or both the Schedules.

Hon'ble Supreme Court of India in *Marin Burn Ltd. v/s R.N. Banerjee* 1958-I LLJ 247 held that '*A Prima Facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a Prima facie case had been made out, the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and as to whether that was the only conclusion which could be arrived at on that evidence.*'

In *Gujarat Electricity Board, Gandhinagar v/s Maheshkumar and Co., Ahmedabad* (1995 (5) SCC 545) it was held that "Prima Facie case" means that the Court should be satisfied that there is a serious question to be tried at the hearing, and there is a probability of Plaintiff obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court.

- 4.15 In the present matter, the Director has travelled much beyond Prima Facie in determining the opinion and even adjudicated the clause under which the Respondent may be punished by invoking powers which he does not possess. If there is no punishment written anywhere in the law even though it is an offence, the punishment cannot be awarded. The charging Section should be there. Here there is no charging Clause for any kind of offence then the persons cannot be punished.
- 4.16 There was no professional relation between her and the Complainant. The transaction alleged by the Complainant is purely personal in nature and in no way connected with her profession.

**OBSERVATIONS OF THE BOARD:**

On consideration of the documents and submissions on record, the Board noted that the Respondent raised certain legal objections with respect to the instant case and the Board decided to deal with them before arriving at its Findings on the conduct of the Respondent. The Board also took into view the following submissions of the Director (Discipline) made in this respect during the course of hearing:

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- (a) First issue: the Director (Discipline) cannot decide the Clauses of professional misconduct or the other misconduct: The Director (Discipline) submitted that when a Complainant files a complaint before the Institute or any other Forum he being a layman may not be aware of the Clauses under which the professional misconduct may fall and therefore there is no infirmity if the Clauses are decided by the Director (Discipline). Further, attention may be drawn to Rule 9 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 where it is specifically stated that where Director is of the prima facie opinion that the member or firm is guilty of any misconduct under the First Schedule he shall place his opinion along with the relied upon documents before the Board of Discipline. If the member or the firm is guilty of misconduct in the Second Schedule or both in the First and the Second Schedule he shall place his opinion along with the relied upon documents before the Committee. Hence, if the Director (Discipline) while framing his opinion will not identify the Clauses under which the professional misconduct is falling of the member, how it is possible to decide as to where the PFO is required to be placed whether it will be placed before the BOD or before the DC. Therefore, the objections raised by the Respondent are devoid of any merit.
- (b) Second issue: Director(Discipline)'s opinion cannot be treated as equivalent to the opinion of the Council :the Respondent is going on the wording of the Clause 2, Part IV which is the relevant Clause in this case and in this regard the Respondent has himself quoted the decision of the Appellate Authority therefore he is very well aware of the decision of the Appellate Authority. The issue has been well settled by the Appellate Authority wherein it has been clearly given that there is no infirmity if the Director (Discipline) decides and gives the Opinion, and this decision of the Appellate Authority has not yet been quashed by any Court of Law and therefore this is still in force.
- (c) third issue: The allegations are not mentioned in Form I: Any attachments to Form 'I' are an integral part of Form 'I' and therefore any issue that has been highlighted in the attachment of the Form I has to be read along with the Form 'I'.

5.1. While taking into view the submissions of the Director (Discipline) with respect to the objections raised by the Respondent, the Board opined as under:

- (a) First issue: In this regard, the Board took into view the provisions of Section 21(3) of the Chartered Accountants Act 1949 which provides as under:

*"Where the Director (Discipline) is of the opinion that a member is guilty of **any (emphasis provided) professional or other misconduct mentioned in the First Schedule\***, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule\*\* or in both the Schedules, he shall place the matter before the Disciplinary Committee."*

Similarly, in Rule 9 of the CA Rules 2007, the word 'any' Misconduct has been used. The complainant has to file complaint in the prescribed Form 'I' where he is expected to specify the 'Clause' of the First/Second Schedule under which the alleged misconduct will fall. However, the CA Rules 2007 are silent in case the same is not specified in Form 'I'. Although, Rule 5(5) of the CA Rules 2007 talks of rectification of a 'defective' complaint, however, what constitutes a 'defect' has neither been expressly provided under the CA Act 1949 nor under the CA Rules 2007. Thus, the Board was of the view that where Act/Rules are silent with respect to the course of action to be followed in case any technical lapse is there, the principle of natural justice has to be taken into view. Thus, the complaint cannot be turned down merely because the Complainant has not specified the exact 'Clause' of the Schedule in which the alleged misconduct of the member falls. In this regard, the Board also took into view the observations of the Hon'ble Supreme Court of India in Appeal (civil) 6701 of 2005 in the matter of Uday Shankar Triyar vs Ram Kalewar Prasad Singh & Anr on 10 November, 2005 as stated hereunder:

*"17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use (emphasis provided). The well recognized exceptions to this principle are :-*

*i) where the Statute prescribing the procedure, also prescribes specifically the consequence of non-compliance.*

*ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;*

*iii) where the non-compliance or violation is proved to be deliberate or mischievous;*

*iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the Court.*

*v) in case of Memorandum of Appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant."*

Further, the onus to formulate a prima facie opinion as to the misconduct rests with the Director (Discipline) and therefore, premised on the pleadings filed which contains the allegations and documents placed on record, it the Director (Discipline) which has to first formulate a prima facie opinion on the alleged misconduct. Therefore, notwithstanding the assertions as to the particular clause of misconduct by a complainant, the Director(Discipline) shall, after perusing the material available, conclude as to existence or otherwise of the misconduct alleged. This is also apparent from the provisions of various sub clauses of Rule 9(2){a) of the Misconduct Rules, 2007, which requires the Director(Discipline) to place the matter before the Board of Discipline, if the misconduct alleged falls within the First Schedule and before the Disciplinary Committee, if the

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alleged misconduct falls within the Second Schedule or both under the First and Second Schedule. This also supports the view that the sifting of the allegations to identify the clauses of misconduct is to be performed by the Disciplinary Directorate. Also, the complainant can be a statutory authority, a member of the Institute who is well versed with the provisions of the Act or even a member of public who may not be familiar with the provisions of the Act. In such a scenario, to give a pedantic interpretation to the provisions of the Act and the Rules making it incumbent on a complainant to specify specific clauses of misconduct would be denying the remedy otherwise available under the statute. If the allegations stated in the complainant do not fall within any specified clauses of professional misconduct, the same may however be a case of "other misconduct" and the ICAI would be within jurisdiction to proceed further on the allegations. Thus, the non-mentioning of clauses pertaining to "misconduct" does not in any manner vitiate the proceedings.

The Board also noted that the Respondent referred to the provisions of IPC stating that if no punishment is written anywhere in the law even though it is an offence, the punishment cannot be awarded. In this regard, the Board viewed that Criminal proceedings are distinct from Disciplinary proceedings. The proceedings before the Board of Discipline are quasi-judicial in nature where the misconduct can be proved by preponderance of probabilities having regard to the conduct of the Respondent which is distinct from Criminal proceedings where the commission of offence is required to be proved beyond reasonable doubt. While coming to the said view, the Board took into consideration the decision of the Hon'ble Supreme Court in the matter of "Ajit Kumar Nag -vs- General Manager (PJ) Indian Oil Corporation Limited-AIR 2005 SC 4217 wherein the Hon'ble Apex Court held as under :-

*"The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rules relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt' he cannot be convicted by a Court of law. In a departmental enquiry penalty can be imposed on the delinquent Officer on a finding recorded on the basis of 'preponderance of probability'."*

Similarly in the matter of Capt. M Paul Anthony -vs- Bharat Gold Mines Limited - AIR....1999 SC 1416 the Hon'ble Supreme Court held as under:-

*"In Departmental proceedings, factors prevailing in the mind of the Disciplinary authority may be many, such as enforcement of discipline or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in Departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the Charge has to be proved by the prosecution beyond reasonable doubt."*

- (b) Second issue: The Board noted that the issue had already been decided by the Hon'ble Appellate Authority, and therefore, there is no merit in the argument of the Respondent in this regard.

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(c) Third issue : On perusal of the Form 'I' filed by the Complainant in the instant case, the Board observed that in column 5 of Form 'I', the Complainant had referred to the documents like MOU, FIR, mail copy, etc. Since attachments to Form 'I' are an integral part of Form 'I', they are treated as a part and parcel of the complaint and therefore, there is no merit in the argument of the Respondent in this regard.

5.3 The Board also noted that during enquiry despite giving an opportunity to the Respondent to make his submissions on the merits of the case i.e. the charge alleged against him, he chose to confine himself to the submissions(oral and written) already made in the case.

5.4 Thus, as regard the charge alleged against the Respondent, the Board noted that a MoU dated 7<sup>th</sup> September, 2013 had been entered between the Complainant and the Respondent duly witnessed by 2 witnesses which, inter-alia, states as under:

"1. The First Party has a son by name Mr. S. Akash, who has passed his 2<sup>nd</sup> PUC and eligible for a medical seat and has approached the second party to facilitate the same.

2 (b). That the Second party shall agree to pay the applicable capitation, the tuition fees, hostel fees etc. to complete the admission formalities.....

(d) That the payment schedule for the above fee structure shall be as under:

(i) Fees paid by the second party as on 7<sup>th</sup> September 2013: Rs. 30,00,000

(ii) Fees pending by the second party as on 7<sup>th</sup> September 2013: Rs. 13,84,000

e. That the First party has agreed to pay the pending fees as under:

i. Rs.84,000 by cash on 7th September 2013.

ii. Rs. 13,00,000 before 30th August 2014

Note: The Second party shall pay the pending fees on or before 24th September 2013 in order to facilitate the student to attend classes.

f. The first party has handed over two cheques bearing nos 294712 and 294713 drawn on State Bank of India, Elakkampatti, Salem, as security to the above said pending amount.

3. The second party shall pay Rs.13,00,000(Rupees Thirteen Lakhs only) and the same shall be paid by the first Party on or before 30 August 2014 by cash

4. That the First party shall help the second party in full faith and the second party shall take all the care to pay back the above said due amount on the said date

5. If the above said pending amount is not settled on or before the said date, the second party has all the rights to present the cheques for realization of payments legally."

It was observed by the Board that as per para 2(d) of MOU, the second party i.e Respondent had paid Rs. 30,00,000/- as fees as on 7th September, 2013 and the fee of Rs 13,84,000/- was pending.

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The Board noted that the Respondent in her defence during the PFO stage stated that as per MOU, the Complainant had issued security cheques No.294712, 294713 drawn on State Bank of India, Elakkampatti Branch, Salem for the purpose of having received a loan from her and agreed to settle the amount before 30th August, 2014. The Respondent further contended that no learned person will sign an MOU and issue security cheques, if loan amount is not received by him from the Respondent. However, it is not clear on what count and why the Respondent had agreed to pay Rs. 30,00,000/- from her end for the admission of the Complainant's son and also the pending fee of Rs. 13,84,000/-.

5.5 The Board also noted that the Complainant brought on record a Challan dated 31<sup>st</sup> August 2013 issued in the name of the Complainant's son showing that Rs. 10 lakh had been received in cash as tuition fees for the class of MBBS -I.

5.6 Furthermore, vide letter dated 23<sup>rd</sup> February, 2014 the Respondent herself admitted of receiving the following amounts from the Complainant: -  
*"Rs. 30 Lakhs and Rs. 5 Lakhs as per agreement at various stages  
Rs. 4.50 Lakhs as per Court Order."*

5.7 The Board also noted that the Respondent signed an Affidavit dated Nil wherein she stated that she will refund the amount of Rs. 25 Lakhs on 04.09.2014 taken for admission of Master Akash and paid to Ambedkar Medical College.

5.8 The Board further noted that the Complainant brought on record copy of a cheque of Rs. 10,00,000/- dated 16/04/2014 issued by the Respondent in favour of the Complainant's wife which got dishonoured due to insufficiency of funds. The issuance of said cheque by the Respondent appears to be towards repayment of amount taken by her from the Complainant on the pretext of getting medical seat for his son. Moreover, dishonour of the said cheque further indicates malafide intention of the Respondent. The Board also observed that the telephonic conversation of the Respondent with the Complainant concurs with the documents available on record and the disputed amount of Rs. 30,00,000/-. The conversation read as follows:

*"9341103160 2014.03.06 11:25 - I will call in lunch break with all details. I will get my payment today. You pls come after I receive cash and tell you the venue tomm.  
Today 6 to 7 pm without fail. We will meet tomm near mandal and finalise after getting cash today and take appt from mandal and finalise SATURDAY MORNING, I WILL PAY YOU SIR BY 11 AM ALL 25 LAKH TOMM IF RECD IN BANKING HRS I WILL DO RTGS FROM SBI. TOMM BEFORE EVENING I WILL RECEIVE WITHOUT FAIL.*

*9341103160 2014.03.29 00:17 - Sir Due To Financial Year End And Ugadi On Monday, the Payment is Scheduled On Thursday. By Next Saturday 5th April I Will Settle the Amount. I Will Not Delay The Payment Sir. I Thankyou For All The Support You Extended*

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*And Sincerely Apologise For All The Hardship Caused By My Inexperience. I Am Also Worried And Will Return Amt At The Earliest, Pls Consider The Final Request And Come On 5th April And Collect The Payment Sir. Pls Help As 30lak Is A High Fiqure And At Least One Week Is Required Due To Financial Year End And Ugadi,,pls Dont Come Tomm All The Way Tomm As Payment Is Scheduled On Thursday, hope You Will Consider This Final Request As A Brother.I Completely Understand The Difficulty You Are Facing To Support Me And Will Do The Needful At The Earliest,pls Do Nt Come Tomm Sir, hope You Will oblige And Help"*

5.9 Thus, the Board observed that there is evidence signifying the involvement of the Respondent in the matter under allegation wherein she herself admitted of having received the amount of approx. 39.50 Lakhs from the Complainant as observed above.

5.10 The Complainant also approached the Hon'ble High Court of Karnataka at Bangalore in Writ Petition No. 131 of 2014 against the college amongst others wherein the Hon'ble Court vide Order dated 19<sup>th</sup> March, 2014 stated as under:

*"Mr. Keshava Reddy, learned counsel for the petitioner submits that the respondent-2(the concerned college) has refunded the tuition fee paid by the petitioner in a sum of Rs. 10 Lakhs and the cheque is handed over by the 2<sup>nd</sup> respondent's counsel to the petitioner's counsel in the open court.*

2. *In view of the payment of Rs. 10 lakhs made by the 2<sup>nd</sup> respondent to the petitioner, the learned counsel for the petitioner requests this court to permit him to withdraw the Writ Petition.*

3. *Accordingly, the petition is dismissed as withdrawn subject to encashment of the cheque."*

In view of the above, it is evident that the Complainant's admission in Dr. B.R. Ambedkar Medical College was not uploaded hence, the tuition fee was refunded to the Complainant's son.

5.11 On a combined reading of the aforesaid observations, the Board was of the view that the role of the Respondent acting as a facilitator for a medical seat in Dr. B.R. Ambedkar Medical College, Bangalore for the Complainant's son that has emerged in the case is clearly unbecoming of a Chartered Accountant. The Board was of the view that a Chartered Accountant is not expected to use his professional acumen for undesirable purposes and maintain the dignity of the profession at all times. He is expected not to engage in such tasks that bring disrepute to the profession. The Board was also not convinced with the contention of the Respondent that the alleged transaction is purely personal in nature. The Board was of the view that Item (2) of Part IV of the Chartered Accountants Act 1949 is applicable to all types of Misconduct whether arising out of professional work or otherwise. In this regard, the judgement dated 10th September,

1957 of the Honorable Supreme Court in "Council of the Institute of Chartered Accountants of India and another vs. B. Mukherjee" (AIR 1958 SC 72) is also relevant where after examining the nature, scope and extent of the disciplinary jurisdiction, which can be exercised under the provisions of the Act, the Supreme Court observed as under:-

*"We, therefore, take the view that, if a member of the Institute is found, prima facie, guilty of conduct, which, in the opinion of the Council renders him unfit to be a member of the Institute, even though such conduct may not attract any of the provisions of the Schedule, it would still be open to the Council to hold an enquiry against the member in respect of such conduct and a finding against him, in such an enquiry, would justify appropriate action being taken by the High Court."*

Also, the observations of Hon'ble Supreme Court of India in Civil Appeal No. 11034 OF 2018 arising out of SLP (C) No. 19564/2017 in the matter of Council of the Institute of Chartered Accountants of India v/s Shri Gurbinder Singh are relevant to the case:

*"a Chartered Accountant can be proceeded against for their acts under Schedule I Part-IV sub- clause (2) if, in the opinion of the Council, such act brings disrepute to the profession whether or not related to his professional work."*

Accordingly, the Board held the Respondent guilty in respect of the charge alleged.

**CONCLUSION:**

12. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of 'Other Misconduct' falling within the meaning of Item(2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

Sd/-

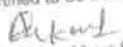
CA. Prasanna Kumar D.  
(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS, retd.)  
(Government Nominee)

DATE:10-02-2023

सही प्रतिलिपि होने के लिए प्रमाणित/  
Certified to be true copy

  
अंश कुमार / Ansh Kumar  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनिक विभाग / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया  
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