



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

[PR/28/2020/DD/65/2020/BOD/621/2022]

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:

CA. Kumar Hari Ji (M.No. 057882)
214B, Ashok Place,
Exhibition Road,
Patna 800001.

.... Complainant

-Vs-

CA. Kaustubh Pratik (M.No. 421621)
Devjyoti Niwas
Road No 4 IAS Colony
Near Golki More Sadbhawana Nagar
East Laxminagar Khemnichak
Patna – 800 027.

.... Respondent

[PR/28/2020/DD/65/2020/BOD/621/2022]

MEMBERS PRESENT (in person):

CA. Rajendra Kumar P, Presiding Officer
Ms. Dolly Chakrabarty (IAAS, reted.), Government Nominee
CA. Priti Savla, Member

Date of Hearing and passing Order: 11th January 2024

1. The Board of Discipline vide its Findings dated 6th December 2023 was of the view that CA. Kaustubh Pratik (M.No. 421621) is **GUILTY** of Professional Misconduct falling within the meaning of Item (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Kaustubh Pratik and communication dated 4th January 2024 was addressed to him thereby granting him an opportunity of being heard on 11th January 2024 which was exercised by him by being present before the Board through video conferencing. He confirmed receipt of the Findings of the Board. He vide email dated 11th January 2024 also made a written representation on the Findings of the Board. He in his oral representation requested the Board to take a lenient view in the case as the alleged misconduct was unintentional.
3. Thus, upon consideration of the facts of the case, the consequent misconduct of CA. Kaustubh Pratik (M.No. 421621) and keeping in view his representation before it, the Board decided to remove the name of CA. Kaustubh Pratik (M.No. 421621) from the Register of Members for a period of One (1) Month.

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)


Sd/-

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

Sd/-

CA. Priti Savla
(Member)

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


नीलम पुंडीर / Neelam Pundir
अधिष्ठाता / Sr. Executive Officer
अनुशासन/अपराध विभाग / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आर.बी.आर. 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- 28/2020-DD/65/2020/BOD/621/2022]

CORAM (present in person):

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

In the matter of:

**CA. Kumar Hari Ji,
214B, Ashoka Place,
Exhibition Road,
Patna-800001.**

.....Complainant

Versus

**CA. Kaustubh Pratik (M. No. 421621)
C/o Abdesh Singh,
Opp. Reserve Bank of India,
Near Mohini Automobile Services,
Patna- 800001.**

.....Respondent

**DATE OF FINAL HEARING : 21st July 2023
PLACE OF FINAL HEARING : Lucknow**

PARTIES PRESENT (In person):

**Respondent : CA. Kaustubh Pratik
Counsel for the Respondent : Shri Sumit Kansal, Advocate**

FINDINGS:

CHARGE ALLEGED:

1. The Respondent was in full time job with "Jeevika" (a Govt. organisation of Bihar, as a Procurement Officer) and was simultaneously holding full time Certificate of Practice of Institute/ICAI and accordingly violated Regulation 190A of Chartered Accountants Regulations,1988.

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BRIEF OF PROCEEDINGS HELD:

2.

S.No.	Date of Hearing	Status
1.	21 st July, 2023	Heard and concluded.

BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:

(a) Respondent:

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

- a) The original complaint i.e. document C-1 filed in Form-I does not enlist any allegation (in Column 5) against the Respondent and consequently, the Complainant has failed to pinpoint or enumerate even a single clause of relevant Schedule i.e. Schedule I and Schedule II of the Chartered Accountants Act, 1949 showcasing any kind of Misconduct (Professional or Other) against him.
- b) The complainant has not approached the Hon'ble ICAI with clean hands and is guilty of concealing the true and proper facts of the matter. The Complainant has no locus standi of any sort to initiate the present complaint as there is no proper authorization annexed with the instant complaint. The Complainant happens to be one of the partners of the CA partnership firm namely - M/s K. Hari Ji & Co based in Patna. The instant complaint clearly contravenes Rule 3(4) of the Misconduct Rules, as the complaint can only be filed on behalf of the partnership firm, and not in personal capacity of the complainant and consequently, must have been accompanied with a resolution giving the authorization to the instant complainant to institute the complaint, if any. Hon'ble BOD must take strict note of this observation and it is humbly requested that the instant complaint be dismissed on this ground alone.
- c) In the scenario that the Complaint is non- maintainable at the very threshold, the action of the Director(Discipline) on taking cognizance of a defective and inchoate complaint against a member of the ICAI is bad in contemplation of law and violates the very regulations of the CA Act 1949 r/w Misconduct Rules 2007. As such, the instant Prima Facie Opinion dated 24.05.2021 prepared by the Director Discipline is perverse and arbitrary & should be dismissed at the very threshold.
- d) Further, on merits the Prima Facie Opinion framed by the Director(Discipline) is devoid of substance, it does not, in any way, establish the fact that the Respondent is prima facie "guilty" of Professional Misconduct falling within the meaning of clause (11) of Part I of First Schedule to the Chartered Accountants Act 1949.
- e) None of the allegations in the instant complaint showcase that the Respondent has engaged in any kind of business or occupation other than the profession of Chartered Accountancy.

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- f) It is submitted with deference that the present complaint is gross abuse of the process of law and of the jurisdiction vested in this Hon'ble Institute. The complaint has been filed with malicious intent, wrongful motive, and not for any bonafide purposes, but to exert coercion on the Respondent.
- g) The Complainant in its own complaint has annexed documents namely C-4, C-5 and C-6 which clearly showcase that the complaint is a measure of the counter-blast as the Complainant's plea filed through its Partnership Firm was not acceded to by the Jeevika Society wherein the Complainant Firm had requested for the cancellation of the EOI for Statutory Audit of BRLPS (Jeevika Society), for FY 2015-16. The Complainant through his letter dated 20th June 2016 has clearly mentioned that his Firm's application/technical bid for EOI/Tender was rejected, against which the Complainant filed a complaint against M/s Jeevika Society on 06th May, 2016.
- h) It is thus crystal clear, that the complainant by way of instant complaint possesses no locus standi, (as without prejudice to the fact, that the act of the Respondent does not tantamount to 'Professional Misconduct and he had already resigned from the Jeevika Society in April 2021) since the Respondent was not the answering/accountable member of the Procurement Committee for the shortlisting evaluation and consequently no case is sustainable against the Respondent for Professional Misconduct or otherwise relating to the Procurement Committee/Selection Procedure of the Jeevika Society by the complainant. The Complainant though elaborately happens to annex documents showcasing cancellation of Tender/EOI for statutory audit of BRLPS/Jeevika due to major irregularities in evaluation of EOI (though the complainant has failed to showcase any irregularity per se) but utterly fails to establish any nexus of the Respondent with such procedural irregularities, if any. Consequently, on this ground of merits alone, the instant frivolous complaint and the said PFO should be dismissed by the Hon'ble BOD.
- i) The Complainant in his rejoinder has wrongly and malafide stated that the Respondent has given a certain written declaration/undertaking in Civil Writ no. 13116 before Hon'ble Patna High Court. However, as already stated earlier that the PFO dated 24.05.2021 and the instant Complaint suffer from material irregularities which fact is abundantly showcased here also, wherein at one hand the Complainant relies upon a certain purported writ whilst the Director(Discipline) (Para 8.3 of PFO) observes it a civil suit, leading to complete contradiction and ambiguity, for which acts, the Respondent is bearing the brunt of his profession. Further, the Director(Discipline) has wrongly construed the R-2 Document as certain declaration given by the Respondent to the Bihar Vidhan Sabha (stated In Para 8.3 itself). The Director(Discipline) failed to even acquire the copy of such declaration (if any) and relied on and considered the Complainant's Rejoinder as the Respondent's declaration. Moreover, the cardinal legal principles (Principles of Natural Justice) suggest that an opportunity of being heard must have been given to the Respondent before the preparation of the impugned PFO dated 24.05.2021, wherein the Respondent has not even been served with the copy of the said Writ petition.

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- j) The Respondent has regularly been performing his professional duties and obligations well within the spheres of Chartered Accountants Act 1949, while the facts were misinterpreted before the Director(Discipline) by the Complainant, wherein the instant Complaint happens to be an empty formality, being merely a counter blast, as the Complainant Firm lacked the professional competence/parameters and could not secure the Statutory Audit of Jeevika Society, as its technical bid got rejected by the said society.
- k) Therefore, it is averred before the Hon'ble Board, that levelling and adding any such charge by the Director(Discipline), without carefully examining the complaint on technical aspects and its merits, is void ab initio, prejudicial to the interests and repute of the Respondent and should be dropped at the very outset.

(b) Complainant:

4. The Complainant in his submissions, inter-alia, stated as under:
- (a) The Respondent himself accepted in his reply that he is doing full time job in JEEVIKA (BRLP) a govt. organisation of Bihar on contractual basis and holding full time COP of ICAI. In his recent intimation he has informed that he has resigned from JEEVIKA w.e.f.13.04.2021.

OBSERVATIONS OF THE BOARD:

5.1 At the outset, the Board noted that the Respondent objected that the original complaint in Form-I does not enlist any allegation (in Column 5) against him and consequently, the Complainant has failed to pinpoint or enumerate even a single clause of relevant Schedule i.e. Schedule I and Schedule II of the Chartered Accountants Act, 1949 showcasing any kind of Misconduct (Professional or Other) against him. In this regard, the Board noted that in Column 5 of Form 'I', the Complainant specified 'attached' and in the documents annexed to the Form 'I' specifically at C8, the allegation alleged against the Respondent together with the relevant Clause of the Schedule had been specified. Since documents annexed to the complaint are treated as part and parcel of the complaint in Form 'I', the Board was of the view that the objection of the Respondent is not tenable.

5.2 As regard the second objection of the Respondent that the Complainant had no locus standi to file the complaint, the Board took into view the decision of the Hon'ble Delhi High Court in the matter of Rajiv Bhatnagar -vs- the Disciplinary Directorate of the Institute of Chartered Accountants of India (ICAI) & Ors, in WP(C) 9317/2014 wherein it has been stated as under:

B. S. S.

*"34. At this stage, it is relevant to note that the proceeding against a member of ICAI are in the nature of disciplinary proceedings. The object is to ensure that professional standards are maintained and Chartered Accountants maintain the professional standards, and conduct themselves in a manner, so as not to bring disrepute to the profession. Such proceedings cannot be viewed with the prism of a private lis between the Complainant and the Chartered Accountant. **The complainant, essentially, acts as a realtor that provides information to the ICAI regarding misconduct.**"*

The Board further noted that the Complainant became aware of the alleged misconduct of the Respondent during the course of applying for tender for Statutory audit of BRLPS (Bihar Rural Livelihoods Promotion Society) and the Director(Discipline) was well within his powers to examine the conduct of the Respondent on a reference received from the Complainant. Thus, the Board viewed that the plea raised by the Respondent is not sustainable. Accordingly, the case was dealt with on its merits by the Board of Discipline, keeping in view, the submissions and documents on record.

5.3 As regard the charge alleged that the Respondent was in full time job with "Jeevika" (a Govt. organisation of Bihar(hereinafter referred to as 'entity'), as a Procurement Officer) and was simultaneously holding full time Certificate of Practice of Institute/ICAI, the Board took into view Regulation 190A of Chartered Accountants Regulations, 1988, which deals with the provision for Chartered Accountants in practice not to engage in any other business or occupation, and the same reads as below:

"A Chartered Accountant in practice shall not engage in any business or occupation other than the profession of accountancy, except with the permission granted in accordance with a resolution of the Council".

The permissible categories of engagements approved by the Council under Regulation 190A, are available in Appendix No. 9 to the Chartered Accountants Regulations, 1988 which provides as under:

(B) "Members of the Institute in practice may engage in the following categories of business or occupations, after obtaining the specific and prior approval of the Council in each case:-

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1. Full time or part-time employment in business concerns provided that the member and/or his relatives do not hold substantial interest in such concerns.”

5.4 The Board observed that the Complainant brought on record the List of Staff of ‘Jeevika’ wherein the name of the Respondent had been shown as the ‘Procurement Officer’.

5.5 Further, during the course of hearing on being specifically asked by the Board as to under what specifications the payments received from the entity were reflected in Form 26AS, the Respondent stated as ‘Salary’. He also informed that his engagement with the entity was for about 8 years i.e. from 2013 to 2021, his appointment had been renewed 7 times and he later on resigned from the entity. He also informed that he carried out Tax Audit during the said period.

5.6 Since the Respondent had been in continuous employment with the entity for a period of around 8 years drawing salary from there while holding full time Certificate of Practice and also carried out attest function during the said period, the Board held the Respondent guilty in respect of the charge alleged.

CONCLUSION:

6 Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

Sd/-

Ms. Dolly Chakrabarty (IAAS, retd.)

(Government Nominee)

Sd/-

CA. Rajendra Kumar P

(Presiding Officer)

DATE: 06-12-2023

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Certified to be true copy

श्री. भाषा तिवारी / Bhasha Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनालय निदेशालय / Disciplinary Directorate
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