



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

[PR-274/2017-DD/352/2017/BOD/654/2022]

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. Anumeha Garg (M.No. 521429)
Jai Balaji Bhawan,
Brahma Road, Chhattisgarh, CGX
Ambikapur- 497001.

... Complainant

-Vs-

CA. Anoop Kumar Gupta (M.No. 414659)
Bhawrmal, Post Chandan Nagar
Distt. Balmpur
Ramanujganj, Chhattisgarh (CGX)
Surguja- 497220.

... Respondent

[PR-274/2017-DD/352/2017/BOD/654/2022]

MEMBERS PRESENT (in person):

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

Date of Hearing and passing Order: 11th January 2024

1. The Board of Discipline vide its Findings dated 28th December 2023 was of the view that CA. Anoop Kumar Gupta (M.No. 414659) is GUILTY of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Anoop Kumar Gupta 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 in person before the Board. He confirmed receipt of the Findings of the Board and made his representation before it.
3. Thus, upon consideration of the facts of the case especially that the audit in question was the audit of the Zila Panchayat and its implementing agencies Janpad, Panchayat Balrampur, Kusmi, Rajpur, Ramchandrapur, Shankargarh and Wadrafnagar wherein the appointment was for a fixed term i.e. for the FY 2016-17 by the appointing Authority and neither the Complainant nor the Respondent had any role to play in the same, the consequent misconduct of CA. Anoop Kumar Gupta (M.No. 414659) and keeping in view his representation before it, the Board decided to impose a Fine of Rs.10,000/- (Rs. Ten Thousand only) upon him.

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

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

Sd/-

CA. Priti Savla
(Member)

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy
Chhatang
सरल सिंह / Charan Singh
कार्यकारी अधिकारी / Executive Officer
अनुशासनशास्त्र विभाग / Disciplinary Directorate
भारतीय सशस्त्र लेखाकार संस्थान
The Institute Chartered Accountants of India
कार्यकारी कार्यालय, विश्वास नगर, रायपुर, छिन्नी-110032
ICAI Bhawan, Vishwas Nagar, Raipur, Chhinni-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/274/2017/DD/352/2017/BOD/654/2022]

CORAM (present in person):

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

In the matter of:

CA Anumeha Garg,
M/s G.K Sureka & Co.,
Chartered Accountants,
Jai Balaji Bhawan, Bramha Road, Ambikapur,
Chhattisgarh 497001.

.....Complainant

Versus

CA. Anoop Kumar Gupta (M.No.414659)
M/s Shashan Moghe & Co.,
35, First Floor, Raipur 492001,
Chhattisgarh.

.....Respondent

DATE OF FINAL HEARING : 27th July 2023

PARTIES PRESENT:

Complainant : CA. Anumeha Garg (through video conferencing)
Counsel for the Complainant : CA. Ashish Garg (through video conferencing)
Respondent : CA. Anoop Kumar Gupta (in person)

FINDINGS:

BRIEF BACKGROUND OF THE CASE:

1. The Complainant was appointed as auditor of Zila Panchayat, Balrampur vide letter ref no.1170/Vi 7/P.Gra.Vi.Vi/2016, Rajpur dated 8.4.2016 and letter ref. no. 1637/S/P.Gra.Vi.Vi/2016, Rajpur dated 13.5.2016 issued by Chhattisgarh Govt., Panchayat



and Gramin, Vikas Vibhag Secretariat, Mahanandi Bhavan, New Rajpur, out of the audit panel constituted at District Level. The audit was allotted for audit of accounts of Zila Panchayat, Janpath Panchayat and Implementing Agencies. She was appointed auditor for the year 2015-16. After completion of the audit and in subsequent year, the Complainant came to know that the Respondent has been appointed as auditor of Zila Panchayat, for the financial year 2016-17.

CHARGES ALLEGED:

The Complainant alleged against the Respondent as under:

- 2.1 The Respondent did not obtain the NOC from the Complainant before acceptance of audit of Zila Panchayat for the financial year 2016-17.
- 2.2 The statutory audit fees of the Complainant for the financial year 2015-16 were not paid by the Zila Panchayat and without clearing her fees, the Zila Panchayat appointed another auditor for the next financial year 2016-17. The Respondent before accepting the audit did not ensure whether the outstanding fee to the previous auditor had been settled or not.

The Board noted that the Director (Discipline) in his Prima Facie Opinion held the Respondent Not Guilty of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949. On consideration of the same, while agreeing with the view of the Director (Discipline) holding the Respondent Not Guilty of Professional Misconduct falling within the meaning of Item (1) of Part-II of the Second Schedule to the Chartered Accountants Act, 1949, the Board observed that the Complainant brought on record a copy of the Order dated 18th May 2017 appointing the Respondent as the auditor of the Zila Panchayat (MGNREGA), all implementing agencies, Janpad, Panchayat Balrampur, Kusmi, Rajpur, Ramchandrapur, Shankargarh and Wadrafnagar for the F.Y. 2016-17. She also brought on record an email dated 1st June 2017 addressed to the Respondent referring to the said appointment advising him to refrain from accepting the said assignment unless a no objection is issued in his favour. The Respondent chose to remain silent as to whether he communicated with the Complainant as regards the said

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appointment by not submitting his written statement despite several opportunities given to him to do so. Thus, the Board was of the view that the onus was on the Respondent to show that either he did not accept the said appointment or communicated with the previous auditor prior to the acceptance of the said appointment. Accordingly, the Board did not agree with the Prima Facie Opinion of the Director (Discipline) that the Respondent is NOT GUILTY of 'Professional Misconduct' falling within the meaning of Item (8) of Part-1 of the First Schedule to the Chartered Accountants Act, 1949 and decided to proceed further under Chapter IV of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

BRIEF OF PROCEEDINGS HELD:

3.

Date of Hearing(s)	Status of Hearing(s)
4 th May, 2023	Part heard and adjourned with the direction to the Complainant to be present in person at the next date of hearing.
27 th July, 2023	Heard and concluded with the direction to the Respondent to provide copy of the following: - a. Copy of the Financial Statement of M/s Zila Panchayat for the Financial Year 2016-17 audited by him. b. Copy of the letter for allotment of Audit of M/s Zila Panchayat for the Financial Year 2016-17 to him along with the acceptance given by him for the conduct of such audit. The Respondent submitted his response.
3 rd November, 2023	Decision on the conduct of the Respondent taken on the basis of documents and submissions on record.

BRIEF SUBMISSIONS OF THE COMPLAINANT:

4. To substantiate the charges alleged against the Respondent, the Complainant, inter-alia, submitted as under:



- 4.1 It is a settled position that communication with the previous auditor is to be followed by every member of the ICAI. The Respondent made an untrue statement that he has sent a mail seeking NOC. It is a matter of fact that Respondent has not sent any mail for NOC. The Respondent has not submitted copy of any mail sent to the Complainant and in the absence of positive evidence, it is reasonable to conclude that Respondent has not communicated with the Complainant before accepting the Statutory Audit of MGNREGA under Zila Panchayat Balarampur for FY 2016-17.
- 4.2 Kind attention is invited to the mail sent by the Complainant to the Respondent on 01.06.2017 informing him about the fact that undisputed fee is pending for the Statutory Audit of MGNREGA Scheme under Zila Panchayat Balrampur FY 2015-16 and asked the Respondent to refrain from accepting/executing the Statutory Audit of the same scheme for the next year. The Respondent has ignored the Complainant's email and proceeded with execution of the audit in gross violation of the ICAI Guidelines.
- 4.3 The Respondent's letter is very vague in nature. In the absence of payment details and specific evidence, their statement about payment of her fees is baseless. Further, as per general practice, Account Officer are working in the Accounts Department only. But the statement made by the Account Officer in their letter that "*they have enquired from the Accounts Department*", poses a question mark on the authenticity of the letter produced by the Respondent.
- 4.4 The Respondent failed to establish communication with the Complainant in such a manner as to retain in his hands positive evidence of such communication with the previous auditor i.e., the Complainant.

OBSERVATIONS OF THE BOARD:

- 5.1 As regard the charge that the Respondent did not communicate in writing with the Complainant before acceptance of audit of Zila Panchayat, Balrampur for the financial year 2016-17, the Board took into view the requirement of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 which provides as under:



"A Chartered Accountant in practice shall be deemed to be guilty of Professional Misconduct, if he-

Accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing."

The Board observed that there are two essential requirements under Item (8) of Part I of the First Schedule to The Chartered Accountant Act, 1949 which are as follows:

- i. The communication should be prior to the acceptance of the appointment as auditor.
- ii. The communication should be in writing.

The Board further noted that the Council of ICAI has laid certain guidelines as mentioned in Para -1 and Para - 7 of page no.166-168 of Code of Ethics – 2009 which read as below:

"1. The requirement for communicating with the previous auditor being a Chartered Accountant in practice would apply to all types of audit viz., statutory audit, tax audit, internal audit, concurrent audit or any other kind of audit.

7. Although the mandatory requirement of communication with previous auditor being Chartered Accountant applies, in uniform manner, to audits of both government and non-government entities, yet in the case of audit of government Companies/banks or their branches, if the appointment is made well in time to enable the obligation cast under this clause to be fulfilled, such obligation must be complied with before accepting the audit. However, in case the time schedule given for the assignment is such that there is no time to wait for the reply from the outgoing auditor, the incoming auditor may give a conditional acceptance of the appointment and commence the work which needs to be attended to immediately after he has sent the communication to the previous auditor in accordance with this clause."

Also, the following Paras of the Code of Ethics- 2009 merit consideration in this regard:

"The Council has taken the view that a mere posting of a letter under certificate of posting is not sufficient to establish communication with the retiring auditor unless there is some evidence to show that the letter has in fact reached the person communicated

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with. A Chartered Accountant who relies solely upon a letter posted under certificate of posting therefore does so at his own risk. "

"Members should therefore communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. In the opinion of the Council, communication by a letter sent "Registered Acknowledgement due" or by hand against a written acknowledgement would in the normal course provide such evidence."

- 5.2 In the instant case, the Board noted that the Complainant was the Auditor of Zila Panchayat, Balrampur for the financial year 2015-16. Further, Respondent was appointed statutory auditor of Zila Panchayat, all implementing agencies, Janpad, Panchayat Balrampur, Kusmi, Rajpur, Ramchandrapur, Shankargarh and Wadrafnagar for the next financial year i.e. 2016-17. The Board took into view the following seriatim of events in the case:

Sl.	Date of communication	Particulars of communication
1.	6.04.2017	Audit panel formed for the purpose of selection and appointment of auditors of Zila Panchayat for the F.Y. 2016-17
2.	18.05.2017	The Respondent appointed Auditor of the Zila Panchayat, all implementing agencies, Janpad, Panchayat Balrampur, Kusmi, Rajpur, Ramchandrapur, Shankargarh and Wadrafnagar
3.	01.06.2017	The Complainant sent an email asking the Respondent to refrain from accepting the assignment as their undisputed fee was pending for the Statutory Audit of MANREGA Scheme under Zila Panchayat, Balrampur for the F.Y. 2015-16.
4.	2.06.2017	Zila Panchayat, Balrampur issued a letter to the Respondent stating that the Accounts Department has informed that no fees are due to the previous auditor i.e. the Complainant.

- 5.3 The Board further noted that the Respondent in his submissions stated that he is not required to obtain NOC in the case of Governmental Audit though he communicated with



the Complainant in the third week of May through email. However, he failed to bring on record the copy of said email.

- 5.4 In view of the documents and submissions on record together with the requirements prescribed under the Code of Ethics, the Board was of the view that the Respondent was required to communicate with the Complainant being the previous auditor prior to the acceptance of audit irrespective of the type of audit and also retain in his hands the positive evidence of communication which he failed to do so.

Thus, in the absence of the positive evidence of communication on the part of the Respondent with the Complainant before accepting the Statutory Audit of Zila Panchayat, Balrampur for the Financial Year 2016-17, 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 held **GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

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

Sd/-

CA. Priti Savla
(Member)

DATE: 28-12-2023

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

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