

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.: [IPR/G/96/2017/DD/158/2017-DC/1376/2020]

In the matter of:

Shri A.K. Deharia
Executive Engineer,
Water Resources Division,
Dindori Distt.
DINDORI (M.P)-422202

.....Complainant

Versus

CA. (Ms.) Yashasvee Singh (M. No. 505804)
Partner
M/s Ajai Mishra & Associates,
Chartered Accountants,
Next to Heera Homeo Pharmacy,
Rajendra Nagar,
Lane no. 3(Main Road),
SATNA-485001

.....Respondent

MEMBERS PRESENT: (In person)

CA Ranjeet Kumar Agarwal, Presiding Officer (In Person)
Smt. Rani Nair, Govt. Nominee (In Person)
Shri Arun Kumar, Govt. Nominee (In Person)
CA. Sanjay Kumar Agarwal, Member (In Person)
CA. Sridhar Muppala, Member (In Person)

DATE OF FINAL HEARING : 24.07.2023 (Through Physical/ Video conferencing Mode)

PARTIES PRESENT

Complainant : Not Present
Respondent : Through Video Conferencing Mode

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BACKGROUND OF THE CASE:-

1. The brief background of the case is that
 - a. The Complainant is the Executive Engineer of Water Resources Division, Dindori had filed a complaint dated 10th March, 2017 against the Respondent who had issued two Turnover Certificates, one dated 29th October, 2010 and the other dated 9th February, 2012.
 - b. These certificates were issued to M/s Sushil Dutt Pandey (hereinafter referred to as 'firm') which was used by the firm in the bidding process to procure work of the Bilgaon Medium Project which was approved by Government Level Assessment Committee.
 - c. M/s Sushil Dutt Pandey got its Balance Sheet audited from two different Chartered Accountants firms for financial year 2009-10 viz., M/s K.P Dubey & Company, Chartered Accountants and M/s Amit Anand Jain & Company, Chartered Accountants.
 - d. The turnover of the firm for the financial year 2009-10 in the Balance Sheet dated 2nd October 2010 signed by M/s Amit Anand Jain & Company Chartered Accountants was Rs. 6,32,25,987/- while the turnover of the firm in the Balance Sheet dated 25th September 2010 signed by M/s K.P Dubey & Company, Chartered Accountants was Rs. 27,08,42,530/-.
 - e. The Respondent had issued the certificate based on financial statements signed by M/s K.P Dubey & Company.

CHARGES IN BRIEF: -

2. The Committee noted that the charge against the Respondent is that the turnovers in the certificates issued were contrary to the actual which have been attested / certified by the Respondent, ignoring the actual turnover for various financial years (i.e., 2006-07 to 2010-11).
3. The Committee noted that the Respondent in her reply at the stage of PFO had, inter-alia, mentioned as under:
 - a) That the firm had approached her in financial year 2011-12 to provide the turnover certificates for five financial years from 2006-07 to 2010-11.

Thereafter, the firm produced copy of original balance sheet for verification in her office. Based on the same she had issued the turnover certificate dated 9th February 2012.

- b) That in September, 2014 the Respondent came to know from some anonymous source that the proprietor of the firm had prepared two balance sheets for the financial year 2009-10. The one produced in her office was signed by M/s K.P Dubey & Company and the other one was signed by M/s Amit Anand Jain & Company.
 - c) As soon as the said matter had come to her knowledge, she tried to contact the proprietor of the Firm. After many failed attempts to get in touch with him and sensing something wrong, she made a written complaint to local police on 4th September 2014 and provided them with the copy of all the documents she had.
 - d) That on further understanding the gravity of the situation that the said certificate could be misused for some malafide purpose, she also lodged a complaint with MP CM helpline on 30th September, 2014.
 - e) That she followed up the complaint on 25th September, 2016 by personally visiting the local police station.
 - f) That she is the victim of conspiracy of Shri Sushil Dutt Pandey.
 - g) That the certificate was made by her in good faith and after presentation of all documents in physical form in her office.
4. The Director (Discipline) had in his Prima Facie Opinion dated 11th August, 2018 noticed that Respondent had issued two certificates to the Firm with regard to turnover for various financial years. It is also observed that the Complainant himself had brought on record the copies of complaint filed by the Respondent when she came to know about two balance sheets of the Firm for Financial year ¹⁸

2009-10 and an FIR had been registered in the matter on 14th September 2017. This shows that Respondent had taken the necessary steps after she came to know about manipulation done by the proprietor of the Firm. Moreover, it is noted that role of the Respondent was limited of certification and not to conduct audit. Accordingly, the Respondent is held prima facie **Not Guilty** of Professional and/or Other Misconduct falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

5. The Committee noted that the Board of Discipline at its 99th meeting held on 12th December 2018, considered the prima facie opinion of the Director (Discipline) dated 11th August 2018 along with the Complaint, Written Statement, and additional documents on record. The Board on consideration of the same, in terms of provisions of Rule 9(3)(b) of Chartered Accountants (Procedure of investigations of Professional and Other Misconduct and Conduct of cases) Rules 2007, directed the Director (Discipline) to further investigate and ascertain from the firm as to how and why the financial statements for the financial year 2009-10 were got audited from two different auditors and ascertain about the authenticity of the same.

5.1 Pursuant to directions of the Board of Discipline, a letter dated 26th February, 2019 was sent to the firm for seeking the same. However no reply was received. Since no further information has come on record, the Director (Discipline) vide his Prima Facie Opinion dated 22nd July, 2020 hold the Respondent Not Guilty.

5.2 The said matter was again placed for consideration of Prima Facie Opinion before Board of Discipline wherein the Board of Discipline on consideration of the same noted as under:

"The Respondent had issued two general certificate, one dated 29th October, 2010 and the other dated 9th February, 2012 without specifying the purpose for which they have been issued."

In her submissions before the Disciplinary Directorate, the Respondent stated that the first certificate had been issued by her on the basis of the audited financial statements produced before her by the proprietor of the entity. However, on perusal of the said certificate it is noted that the Respondent had certified the gross turnover of the entity categorically stated therein that the certificate had been issued after verification of the book/records/documents produced before her.

Also, in the certificate dated 9th February, 2012, the Respondent stated that the certificate had been issued after verifying relevant documents and record produced before her by the entity whereas, in her submissions before the Disciplinary Directorate, the Respondent stated that the second certificate was issued by her on the basis of the first certificate.

The Board also noted that the alleged audited financial statement for the Financial year 2009-10 on which reliance had been placed by the Respondent was signed on 25th September, 2010 and almost within a period of one month of the same, the gross turnover of the entity had been certified by the Respondent without having known the purpose for which the certificate is being got issued as clearly evident on perusal of the said certificate.

Thus, the Board was of the view that in the circumstances professional skepticism does not seem to have been exercised by the Respondent. Further, in both the certificates, the basis of certification is clearly specified which is contrary to the basis being claimed by the Respondent before the Disciplinary Directorate. Thus, the role of the Respondent in alleged fraudulent certification needs to be examined further.”

Accordingly, the Board of Discipline did not concur with the reasons given against the charge and accordingly **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 Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act. The Board of Discipline holds the Respondent prima facie Guilty falling within the meaning of Item (7) of Part I of the Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act and decided to refer the matter to Disciplinary Committee for further enquiry in the

matter under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The said clause to 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—

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

Item (2) of Part IV of 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 PRIMA FACIE OPINION:

6. The Respondent in her submissions dated 15th August 2021 had inter-alia mentioned as under:
- a. That it has been very rightly pointed that in both the certificates dated 29th October 2010 and 09th February 2012 the purpose for which they are issued, is not mentioned.
 - b. The reason behind the same is that with the bonafide intention of making the same certificate usable for more than one purpose and more than one department (as normally is the course of the practice), the limitation of purpose and specific department had been intentionally not mentioned in the certificate after mutual discussion.
 - c. That the said certificates are issued on the basis of books/documents/records produced before her for verification, yet she had stated before the office of Disciplinary Directorate that the first certificate is prepared on the basis of Audited Financial Statements produced before her and the second certificate is prepared on the basis of First certificate dated 29th October 2010.

- d. That the phrase “books/documents/records” as used in both the certificates – has been used by her with a very bonafide intention for generally referring to any or all the documents verified by her (at the time of issuance of certificate), which she considered necessary in light of her limited knowledge and as her professional responsibility as a Chartered Accountant before the issuance of such certificate on said dates.
- e. As regards the second certificate, since the supporting's to be verified were same for both the certificates, which were duly produced before her at time of issuance of first certificates, she didn't again, asked for the production of same for the second time. Since the supporting's were produce for the first time, and the same applied for second certificate as well, she used the phrase “book/documents/records” in the second certificate as well.
- f. That in almost all the tender processes in Madhya Pradesh Government Works the practice followed in almost all the pre tender qualification requirements is that they ask for turnover certificate, no matter what's the date of audit, no matter even if all the Audit Reports for each financial year are duly uploaded or submitted along with tender form and the turnover certificate is asked even if the audit is being conducted by the same Chartered Accountant issuing the turnover certificate. Since it's a common practice here in Madhya Pradesh in almost all the Work contracts and it continues till date, hence she found no reason to be suspicious.

BRIEF FACTS OF THE PROCEEDINGS:

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

S. No.	Date	Status of Hearing
1.	01.06.2022	Part heard and adjourned
2.	20.06.2023	Fixed and adjourned on request of the Respondent and in the absence of the Complainant
3.	24.07.2023	Concluded and Judgement Reserved
4.	25.08.2023	Final decision taken on the case

8. On the day of the first hearing, held on 01st June, 2022; the Committee noted that the Respondent was present through Video Conferencing Mode. The Committee noted that the Complainant was not present despite the due delivery of notice. The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether she was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against her. Thereafter, looking into the fact that this was the first hearing, the Committee decided to adjourn the hearing to a future date to provide one more opportunity to the Complainant. With this, the hearing in the matter was partly heard and adjourned.
9. On the day of the second hearing, held on 20th June, 2023, the Committee noted that the Complainant was not present, and no intimation was received from him despite the notice duly served upon him. The Committee noted that the Respondent vide email dated 15th June, 2023 sought an adjournment on the grounds that she went abroad on 8th June, 2023 and will return after 4th July, 2023. The Committee looking into the grounds of natural justice acceded to the adjournment request made by the Respondent, and accordingly, the case was adjourned.
- ✓ 10. On the day of the final hearing, held on 24th July 2023 the Committee noted that the Respondent was present, however the Complainant was not present despite notice being duly delivered to him. Thereafter, the Respondent was asked to make her submissions. The Respondent in her submissions had inter-alia mentioned as under:
 - a. That one Mr. Sushil Dutt Pandey who was a contractor and was known through her brother-in-law had approached her in financial year 2011-12 to provide the turnover certificate of his firm for five financial years from 2006-07 to 2010-11, which she did.
 - b. That somewhere in September 2014 it came into her knowledge that fraudulent character of the contractor (i.e. Mr. Sushil Dutt Pandey), and she

- found one envelope in her office received by anonymous post which contains balance sheet for one financial year out of five years certified by her.
- c. That on comparing with the data available with her, she was shocked to see that there was mismatch in the turnover. As she issued the certificate based on financial statements signed by M/s K.P Dubey & Company whereas the other Balance Sheet was signed by M/s Amit Anand Jain and Company.
 - d. As soon as the said matter had come to her knowledge, she tried to contact the proprietor of the Firm. After many failed attempts to get in touch with him and after seeking advice from his seniors sensing something wrong, she filed a complaint in local police station and as per their directions made a complaint in CM helpline on 30th September 2014.
 - e. That the said certificates were issued on the basis of books/documents/records produced before her by the proprietor of the firm for verification.
 - f. That she had no idea about the usage of certificate issued by her.
 - g. That at that time she felt that the audited financial statements is a complete record in itself and had seen their audited reports only for five years before issuing the certificate.
 - h. That using of generalized statement while issuing certificate was her mistake but the same was not done with malafide intentions.
 - i. That the Complainant and the Government Department had closed the case.

10.1 The Committee posed certain questions to Respondent to understand the issue involved and the role of the Respondent in the case. On consideration of the same, the Committee gave directions to the Respondent to submit Copy of the court order wherein the matter filed against her was closed.

With the above, the Committee decided to conclude the hearing by reserving its judgement.

11. Thereafter, this matter was placed in a hearing held on 25th August 2023 for consideration of the facts and arriving at a decision by the Committee. The Committee noted pursuant to its direction given in the meeting held on 24th July, 2023, the Respondent had submitted the required documents.

11.1 The Committee noted that the Respondent had brought on record additional papers consisting of a copy of RTI towards the status of the case in FIR No, 0854 and FIR report filed by the police. Accordingly, keeping in view the facts and circumstances of the case, material on record and submissions of the parties the Committee passed its judgement.

FINDINGS OF THE COMMITTEE:

12. The Committee noted that the Respondent in the present case had issued two Turnover Certificates, one dated 29th October 2010 and the other dated 9th February 2012. The Committee noted that the reason of instant complaint is variation in figure of turnover for the F.Y. 2009-10 certified by the Respondent vis-à-vis figures appeared in the financial statement of that year. The Committee noted that the role of the Respondent was limited to certification and not to conduct audit.
13. The Committee noted that this case was referred to it by the Board of Discipline mainly on account of wording used in the certification vis-à-vis wordings used by her in her written statement at the Prima-facie stage. The Respondent rather choosing the appropriate language used generalised statement in her certificate. The Committee noted that the Board of Discipline while referring the case noted that the BOD in its observation mentioned that there was contradiction in the clarity of statement of Respondent submitted at Directorate level vis a vis language mentioned in the certificate ad also the purpose of the certificate was also not clear.
14. The Committee noted that the complainant in this regard had also file complaint against the two another Chartered firm whose financials audited by two different Chartered accountants i.e. one by M/s Amit Anand Jain & Company bearing File No. PR/G-97/2017/DD/159/17 and other by M/s K.P Dubey & Company bearing File no. PR/G/95/17-DD/157/2017 against whom separate cases have been filed by the Complainant. The Committee noted that the Board of Discipline held both Not Guilty.

15. The Committee noted that the Respondent had issued the certificate based on financial statements signed by M/s K.P Dubey & Company. The Committee noted that in the case of M/s K.P Dubey & Company bearing File no. PR/G/95/17-DD/157/2017 the Board observed that the veracity of signature of the CA. Sunil Kumar Chaubey (M.No. 404544) Partner M/s K.P. Dubey & Company was in question, and he had also filed FIR at Bhadohi against Mr. Sushil Dutt Pandey for forgery of his signature. The relevant extract from PR/G/95/17-DD/157/2017 are reproduced as below:

"10.5 It is also seen that the signatures of the Respondent on financial statements of M/s Sushil Dutt Pandey, Khargone are appearing to be different from the one comparable with the signature of the Respondent on the Written Statement and on specimen copies, copy of merger agreement between M/s K.P Dubey and M/s S Chaubey & Associates and other form submitted by the Respondent firm to the Institute. This variance in signatures lends credence to the defence that he (i.e. the Respondent) was not responsible for the Balance Sheet alleged to have been signed by him. Accordingly, the benefit of doubt goes in favour of the Respondent that he has not done the audit of M/s Sushil Dutt Pandey, Khargone and that the signatures could have been forged on the financial statements.

10.6 It is also noted that on financial statement alleged to be signed by the Respondent it was mentioned as proprietorship as on 25/9/10 whereas the Respondent Firm had already been partnership firm w.e.f 29/12/2009. Moreover the Respondent no. 2 had never been incharge of Varanasi branch rather his other partner CA. Sunil Kumar Chaubey i.e. Respondent no. 1 was incharge. The name of Respondent no.2 was appearing on financial statement. These apparent discrepancies does indicate that the balance sheet of M/s Sushil Dutt Pandey Proprietor firm purportedly regard by Respondent No. 2 is a forged one.

10.7 It is also noted that Respondent firm has filed a FIR at Bhadohi against Mr Sushil Dutt Pandey for forgery of Respondent signature. This shows that Respondent Firm has taken necessary judicial steps after coming to know about forgery.

10.8 Moreover, it is also seen that despite letter dated 19th July, 2017 followed by reminder letter dated 10th October, 2017, the Complainant has failed to submit his Rejoinder. In the

absence of Rejoinder, the defence taken by the Respondent needs to be appreciated and this also tilts the balance of guilt in favour of the Respondents.

11. Thus, in the absence of any rebuttal by the Complainant or other specific evidences from the Complainant Department, in terms of the reasonings given above, I am of the prima facie opinion that in respect of the allegation contained in the instant complaint, the Respondent is **NOT GUILTY** of professional misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act."

16. The Committee noted that the Respondent on merits submitted that the issuance of certificate was bona-fide and no mala-fide was involved while issuing the alleged certificate. The same was also evident from the fact that as soon as the said matter came to her knowledge, she filed various complaints with local police station as well as to CM helpline. The said complaints filed with police and CM helpline were also in the knowledge of the Complainant as he himself brought the same before Director (Discipline).

17. The Committee, as regards the present matter is concerned noted that the Complainant at any point of time neither at directorate stage nor before the Committee came forward to substantiate his allegations against the Respondent and this inclines that he is satisfied regarding the bonafide of the Respondent in the present matter.

18. The Committee noted that the Respondent also submitted that her work was limited to certification only and she had issued the turnover certificate only on the basis of audited balance sheet produced before her. However later on as soon as this fact came to her knowledge through anonymous letter delivered at her office wherein, she found that there was difference in turnover certified by her as compared to actual turnover (stated in that letter), she took all corrective actions like tried to contact the proprietor of the firm and took legal aid in the said matter.

19. The Committee noted that in furtherance to the above the Respondent filed various complaints before local police station following with Complaint to Senior Superintendent of Police, Satna as well as with CM helpline. The Committee

noted that the Respondent also brought on record a copy of the FIR which was Suo-moto filed by the police station on her behalf and its current status before the Committee wherein the closure report was filed by the police after due investigation before the Hon'ble JMFC Court Satna however the case is sub-judice before the Hon'ble District and session Court Satna for recording of Evidence in Criminal Matter.

20. The Committee further noted that in the present case FORM I is filed by the Complainant department on 10th March 2017. However, the Respondent way back in year 2014 (dated 04-09-2014, 25-09-2014 and 10-10-2014 followed by Complaint on CM helpline on 30-09-2014) took all corrective measure as a prudent professional to defend herself from the Conspiracy/cheating of the Contractor (Mr. Sushil Dutt Pandey). However, it is pertinent to note that the investigation in the said matter is done by local police and subsequently F.I.R in the said matter was filed after 03 years in 2017 by the Police.
21. The Committee noted that the Respondent had at hearing stage before it accepted her mistake that she to an extent done the certification in good faith and also uses the wrong words/phrases to the extent of certifying the turnover certificate and assures that she will be extra cautious while performing her professional assignments and the same will never happen in future.
22. The Committee noted that it is amply clear from the submissions of the Respondent that her intention was not malafide and not to mislead anybody as the precautionary measures were taken by her in the form of initiating Police complaint against the proprietor of the firm i.e. M/s. Sushil Dutt Pandey which proves her bona-fide and the Respondent was vigilant enough to report such misuse of the certificate issued by her.
23. The Committee further noted that the Respondent admitted about her limited knowledge about her professional responsibility as a Chartered Accountant before the issuance of such certificate.

24. The Committee, looking into the steps taken by the Respondent to safeguard her interest and the fact that there was no malafide intention of the Respondent, decided that the Respondent i.e. CA. Yashasvee Singh, be given benefit of doubt and absolved of the charge levelled against him. Yet she is advised to be more cautious while doing professional work.

CONCLUSION

25. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

ORDER

26. 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 an 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 : 07.02.2024

PLACE: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy
Nitika Gupta
सीए नीतिका गुप्ता / CA. Nitika Gupta
सहायक निदेशक / Assistant Director
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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