

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2023-2024)]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

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

FILE NO- PR/348A/17-DD/40/18-DC/1394/2020

In the matter of:

**Shri Rocky Joseph Gonsalves & Others,
Malungi,
Mulagaon, Distt. Palghar,
Vasai – 401 201**

.....Complainant

Versus

**CA. (Ms.) Gauri Suresh Bedekar (M.No.108207)
Partner, M/s. Gokhale & Sathe,
Chartered Accountants,
16 Bedekar Sadan - 4,
Tatya Gharpure Path,
Girgaum,
Mumbai - 400 016**

.....Respondent

MEMBERS PRESENT

- 1. CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)**
- 2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)**
- 3. Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)**
- 4. CA. Sanjay Kumar Agarwal, Member (Present in person)**
- 5. CA. Sridhar Muppala, Member (Present in person)**

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

PARTIES PRESENT:

Complainant: Shri Rocky Joseph Gonsalves, (Through Video Conferencing Mode)

Respondent: Present from BKC Office, Mumbai

Respondent Counsel: CA Jayant Gokhale (Present from BKC Office, Mumbai)

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BACKGROUND OF THE CASE

1. The brief background of the case is that
 - a. The Respondent was the auditor of Bassein Catholic Co-Operative Bank Ltd (hereinafter referred to as the "Bank / BCCB") for the financial year 2016-17.
 - b. The Complainant(s) stated that certain accounting standards had been flouted and the reports were misleading.
 - c. The Complainants have accused the Respondent of endorsing inaccurate and deceptive financial statements and the Cash Flow Statement of Bank / BCCB for the financial year 2016-17.
 - d. The Complainants also stated that they raised some queries with the Management of the Bank, but they did not get a satisfactory and justifiable explanation from them.

CHARGES IN BRIEF

2. The Committee noted that the Complainants had levelled eight allegations against the Respondent out of which the Director (Discipline) held her Guilty on only one charge. The allegations levelled by the Complainants are as under:

S.No.	Allegations	View of Director (Discipline)
1.	Non- reporting of Violation of provision of AS-3, Cash Flow Statement	Held Not Guilty
2.	The Bank was holding extra cash margin in respect of outstanding bank guarantees and LC and non-reporting of the said cash margin in the financial statement. The same was not reported by the Respondent.	Held Not Guilty

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3.	Bank has inflated the profit in profit and loss account by accounting abnormal interest returns with interest receivable portion. The same was not reported by the Respondent.	Held Not Guilty
4.	The dividend paid to the shareholders amounting to Rs.13.62 Cr was missing in Cash Flow Statement of financial year 2016-17. The same was not reported by the Respondent.	Held Guilty
5.	The Respondent failed to report that the reserves are not increased as per amounts of profit appropriated	Held Not Guilty
6.	Appropriation of profit towards ex-gratia is incorrect since profit belongs to shareholders, ex-gratia paid to employees is administrative expenses and should be debited to the Profit & Loss Account was not reported.	Held Not Guilty
7.	The profit figure transferred to Balance Sheet from Profit & Loss is not matching and is short by Rs.8.70 Cr which is strange and flouting all the accounting standards	Held Not Guilty
8.	During Monetization period, bank has violated Rule 35 of Maharashtra Co-operative laws & rules 1960, 1961 and has accepted excess deposits of Rs.766 Cr. against the eligibility. The same was not reported by the Respondent.	Held Not Guilty

3. The Committee noted that the Respondent in her reply at the stage of PFO, with respect to the allegation wherein she was held Guilty had submitted as under:

- a. That the Complainant made allegation in regard to Rs. 13.62 Cr which is the dividend that is proposed to be paid.

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- b. The sum is not actually paid until the same is approved by the General Body.
 - c. The said sum was however, properly disclosed under appropriation of profit on page no.25 of the Annual Report of the bank for the financial year 2016-17.
 - d. Since it would be paid after approval of the General Body to be held in financial year 2017-18, it has not been shown in the Cash Flow Statement as payment for F.Y. 2016-17.
4. In respect of Guilty charge, the Director (Discipline) in his Prima Facie opinion dated 12th October, 2020, observed as under:
- a. The Board of Directors in their Director's report recommended/proposed the dividend for the financial year 31st March 2017. Since the proposed dividend is an item subject to approval of the Annual General Meeting, the same is not a liability of the Company until approved by the AGM. Hence, the question of showing the same in the Cash Flow Statement does not arise at all until it is approved by AGM and paid to shareholders.
 - b. On perusal of the annual report for the previous year i.e. financial year 2015-16, it is observed that in Board of Directors' report, the Board of Directors recommended the dividend @ 14% and accordingly, the proposed dividend of Rs. 12.86 crore was shown as recommended as appropriation from the profit.
 - c. Further, the Company was paying dividend regularly on an annual basis was established from the details of progress given in the Annual Report with the heading "Progress At A Glance (Year 1920-2017) wherein it was shown that the dividend was regularly being proposed and being paid as per the practice of the bank.

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- d. However, it is noted that neither the payment of previous year's dividend (i.e. financial year 2015-16) nor the current year's dividend (i.e. financial year 2016-17) was shown in the Cash Flow Statement for the Financial year 2016-17.
- e. If as per practice adopted by the Bank, the dividend for the current year was to be paid in next year end then as per practice, the dividend for the previous year must have been paid in the current year or shown separately in the Balance Sheet but on perusal of the financial statements including the Cash Flow Statement, it is noted that entry related to dividend / payment of dividend was not appearing.
5. Accordingly, the Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, held the Respondent Prima-facie **Guilty** of Professional Misconduct falling within the meaning of Items (5) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said items in the Schedule to the Act states as under:

Item (5) of Part I of the Second Schedule

"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he: -

(5) Fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity"

Item (7) of Part I of the 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"

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SUBMISSIONS OF THE RESPONDENT ON PRIMA FACIE OPINION:

6. The Committee noted that the Respondent in her written submissions dated 20th May 2021 had, inter-alia, mentioned as under:
- That it was only a proposed dividend, hence the question of showing the same in the cash flow statement does not arise at all, until it is approved by the AGM.
 - The manner of presentation in regard to the proposed dividend has been consistently followed by the bank over numerous years and the same Complainant has never raised an issue in this regard.
 - Even if the manner of presentation regularly adopted is considered incorrect, such a single error should not lead to a conclusion that the auditor has acted with callous disregard to facts or been grossly negligent in performance of her duties.

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.	19-09-2022	Adjourned in absence of both parties.
2.	23-06-2023	Adjourned at request of the Respondent and in absence of the Complainant.
3.	10-08-2023	Part Heard and Adjourned.
4.	23-08-2023	Part Heard and Adjourned.
5.	04-10-2023	Heard and concluded.

8. On the day of the first hearing held on 19th September 2022, the Committee noted that neither the Complainant(s) nor the Respondent appeared before it. The Committee, looking into the fact that the matter is placed for hearing for the first time and the absence of the parties, decided to adjourn the matter to a future date.

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9. On the day of the second hearing held on 23rd June 2023, the Committee noted that the Respondent vide her email dated 13th June 2023 sought adjournment on account of non-availability of her Counsel CA. Jayant Gokhale. The Committee noted that the Complainant(s) were also not present. 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 third hearing held on 10th August 2023, the Committee noted that none of the Complainants were present. The Committee further noted that the Respondent along with her Counsel CA. Jayant Gokhale was present through video conferencing mode. The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether she pleaded guilty to the charges alleged. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against her. The Committee, looking into the fact that this was the first hearing, decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard and adjourned.
11. On the day of the fourth hearing held on 23rd August 2023, the Committee noted that Shri Rocky Joseph Gonsalves (one of the Complainants) was present through Video Conferencing Mode. The Committee further noted that the Respondent along with her Counsel CA. Jayant Gokhale was also present through video conferencing mode. Since the Respondent was already administered on oath in the last hearing hence the Complainant was administered on oath.
- 11.1 Thereafter, the Committee asked the Complainant to explain the charge. On the same, he submitted that he sent two circulars of the RBI Bank dated 6th June, 2022 and 18th December, 2022 whereby the RBI has imposed monetary penalty on the bank for non-compliance of IRAC norms in financial statements for the financial year 2018-19 and 2019-20. The Complainant stated that the

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said irregularities were continued from the financial year 2016-17. The Respondent was auditor of the Company for the financial year 2016-17.

He further submitted that he has nothing further to submit and the Committee may take decision based on documents on record.

- 11.2 When the Respondent was asked to make her submissions, she/her counsel mainly reiterated her earlier submissions made at the stage of PFO. Apart from the same, the Respondent/ Her Counsel, inter-alia, submitted as under:
- a. The Respondent is answerable for financial year 2016-17 only as the allegation pertains to the said financial year.
 - b. The Respondent is not associated with the Bank subsequent to the audit for financial year 2016-17.
 - c. That the Complainant not only raised the issue before the Institute but also before the General Body of the Bank and RBI.
 - d. That the RBI has closed the matter without actually taking any cognizance of those complaints and grievances raised by the Complainant.
 - e. That the Respondent has clearly shown the amount of dividend as per the practice followed by the bank. That practice has got the sanctity of the law as well as the RBI.
 - f. That this is a quasi-criminal proceeding. That after levying a certain charge, the Complainant cannot keep improving the charge and the Director (Discipline) cannot add a further charge on which the Respondent did not get any chance to defend herself.
 - g. That she is not responsible to defend an illusory charge.
 - h. That she has submitted the extracts of various financial statements of different banks prepared under Maharashtra Co-operative Societies Act wherein the same practice was followed.
 - i. In the Maharashtra Co-operative Societies Act there is a clear provision that a reference has to be made to unpaid dividend that means out of 13.62 crores amount remained unpaid is required to be disclosed under the provisions of Maharashtra State Co-operative Societies Act.

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- 11.3 The Committee posed certain questions to both the Complainant and the Respondent to understand the issue involved and the role of the Respondent in the case.
- 11.4 On consideration of the same, the Committee gave directions to the Respondent to submit the following details in next 15 days :
- a. Details in the manner the Bank has dealt in books the Dividend account including unclaimed dividend.
 - b. Ledger account of Dividend- clearly depicting dividend declared, dividend paid.
 - c. Ledger account of unclaimed dividend.
 - d. Copy of Form N of the Maharashtra Co-operative Societies.
 - e. Response of the RBI to letter dated 1st March 2019 sent by her client.
- 11.5 The Committee also gave directions to the Complainant to submit the following details in next 15 days :
- a. Response of the RBI on letter dated 1st March 2019 sent by the Bank.
 - b. Any other information to substantiate his charges.

With the above, the matter was partly heard and adjourned.

- 12 On the day of Final hearing held on 4th October 2023, the Committee noted that the Shri Rocky Joseph Gonsalves (one of the Complainants) was present through Video Conferencing Mode. The Committee further noted that the Respondent along with her Counsel CA. Jayant Gokhale was also present through Video Conferencing Mode from ICAI, BKC Office, Mumbai.
- 12.1 The Committee noted that in the meeting held on 23rd August 2023, both Complainant and Respondent were directed to submit certain documents/submissions. The Respondent had submitted the documents however the Complainant failed to submit the same. In response, the Complainant submitted that he had earlier submitted two RBI circulars wherein the Bank was fined because of the irregularities in F.Y. 2018-19 & 2019-20. The Committee further noted that the Respondent Counsel on the same stated

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that fine by RBI is for later years and not for the period when the Respondent was auditor of the Bank.

12.2 Thereafter, the Respondent was asked to make her submissions, she/her counsel inter-alia, submitted as under:

- a. That she has submitted the summary of unpaid dividend balances for the financial years 2013-14 to 2016-17 and copies of the ledgers related to them are also submitted.
- b. That the difference between the unpaid dividend balances as at 31st March, 2016 and as at 31st March, 2017 is Rs 912420.40 which is exactly the figure that is reflected in the cash flow statement for the financial year 2016-17.
- c. That Form N requires specifically the figure of unpaid dividends to be reported, which has been reported accordingly by the Respondent.
- d. That the RBI has not levied any penalty for the financial year 2016-17 or earlier years for which the financial statements were audited by the Respondent.
- e. That there are no adverse comments or penalty after the inspections done by RBI for the years under question, i.e. for the audit done by the Respondent and the bank had been given "A" rating for the period.
- f. That the RBI has closed the matter. Further it is not the normal practice that the RBI issues a letter saying that the matter is closed. Also, the Bank has informed her that from 2017 till today, no further issue have been raised by RBI with regard to the issue involved in the allegation:
- g. That the cash flow is in accordance with the requirements of Maharashtra State Co-operative Societies Act.

B. S. J.

12.3 Thereafter, keeping in view the facts and circumstances of the case, the material on record and the submissions of the parties, the Committee concluded the hearing of present matter.

FINDINGS OF THE COMMITTEE:

- 13 The Committee noted that the charge against the Respondent was that in the Cash Flow Statement, the item related to the dividend paid to the shareholders of Rs.13.62 Crores was missing.
- 14 The Committee observed that the Respondent had made detailed submissions (including verbal submissions) before it and also submitted various documents in her defense to establish that the practice adopted by the entity relating to disclosure of dividend in cash flow was in line with the requirements of the prevailing Act and Rules. The Committee observed that the documents submitted by the Respondent includes extracts of financial statements of various other banks prepared under Maharashtra Co-operative Societies Act, details in the manner the Bank has dealt in books the Dividend account including unclaimed dividend, Ledger account of Dividend, Ledger account of unclaimed dividend, Copy of Form N of the Maharashtra Co-operative Societies and Response of the RBI to letter dated 1st March 2019.
- 15 The Committee agreed with the submissions of the Respondent that the dividend recommended by the Board of Directors of the bank for the financial year 2016-17 which are subject to approval of shareholders in AGM, are not expected to disclose in the Cash Flow Statement as the same was not paid in the financial year 2016-17.
- 16 As regards the charge related to dividend approved in the previous financial year and paid in the financial year 2016-17 audited by the Respondent, it was observed by the Committee that as per Section 62 of the Maharashtra Co-operative Societies Act, 1960, *the balance sheet and the profit and loss account to be laid before the annual general meeting of a society by the committee shall ordinarily be in Form N.* 

16.1 On perusal of Form 'N', it was observed that Form 'N' provides for format of Balance Sheet and Profit & Loss Account only and does not provide for format of Cash Flow Statement. Hence, it appears that Maharashtra Co-operative Societies Act, 1960 does not require cash flow statement to be prepared in a specific format as desired in general financial statements.

16.2 Further, as per format of Balance Sheet given in Form N, a Co-operative society is required to show unpaid dividends as liability as under:

Instructions in accordance with which liabilities should be made out	Figures for the previous year	Liabilities	
		Figures for the current year	Figures for the current year
1	2	3	4
	Rs.		Rs.
		VII Current liabilities and provisions	...
		(a) Sundry creditors	
		(b) Outstanding creditors	
		(i) for purchases	
		(ii) for expenses including salaries of staff, rent, taxes, etc.	
		(c) Advance, recoveries for the portion for which value has still to be given, viz. unexpired subscriptions, premiums, commission, etc.	
VIII.		VIII. Unpaid Dividends	
IX.		IX. Interest accrued due but not paid	...
X.		X. Other liabilities (to be specified)	...
XI		XI Profit and Loss Account Profit	...
Contingent liabilities which have not been provided for should also be mentioned in the Balance Sheet by way of a footnote.		for last year	
		Less : Appropriations	
		Add : Current profits	

16.3 The Committee on perusal of the Balance Sheet of the Bank as at 31st March, 2017 noted that the same was duly shown in the Balance Sheet as per the format prescribed in Form N.

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17 As regards the disclosure of the unpaid dividend in the Cash Flow Statement, it is observed by the Committee that the effect of the change in the unpaid dividend has been taken in the Cash Flow Statement as "Net Increase (Decrease) in the Unclaimed Dividend". The Committee noted that in the instant case, the same reflects the difference between the unpaid dividend balance as at 31st March, 2016 and 31st March, 2017.

17.1 In this regard, the Respondent provided a reconciliation statement along with a copy of unpaid dividend accounts. The bifurcation of the same is as under:

Dividend related to		Unpaid dividend Balance as at March 2016	Unpaid dividend Balance as at March 2017
		(A)	(B)
March 2013	95 th Dividend	14,67,575.40	0.00
March 2014	96 th Dividend	6,76,970.00	5,95,649.00
March 2015	97 th Dividend	6,82,398.00	5,88,903.00
March 2016	98 th Dividend	0.00	7,29,971.00
	Total	28,26,943.40	19,14,523.00

17.2 The Committee on perusal of the same noted that the net increase/ (decrease) in unpaid dividend was (9,12,420.40). The Committee on perusal of the Cash Flow Statement noted that the same figure was duly reflected in the Cash Flow Statement as a net increase/ (decrease) in unclaimed dividend.

17.3 The Committee was accordingly satisfied that the effect of the dividend paid during the financial year 2016-17 was taken in the Cash Flow Statement of the bank as an increase / decrease in unclaimed dividend.

18 As regards the presentation of dividend in cash flow statement, the Respondent brought on record a copy of extracts of financial statements of

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various other banks to show that the practice adopted by the bank regarding disclosure of payment of dividend in Cash Flow Statement was in line with the practice adopted by the other banks at the prevalent times and as per past practice of the bank.

- 19 Moreover, on perusal of the audit report of the Respondent on the accounts of the bank for the financial year ended 31st March 2017, it is observed by the Committee that the Respondent has clearly mentioned in her audit report as under:-

"Management's Responsibility for the Financial Statements

2. Management is responsible for the preparation of these financial statements in accordance with Maharashtra Co-operative Societies Act, 1960, Banking Regulation Act, 1949 (A.A.C.S.) and RBI Guidelines.....

Auditor's Responsibility

3. Our responsibility is to express opinion on these financial statements based on our audit. We conducted our audit in accordance with the applicable standards issued by the Institute of Chartered Accountants of India and prescribed under the Maharashtra Co-operative Societies Act, 1960 / Banking Regulations Act, 1949 (A.C.C.S.) and RBI Guidelines."

From the above, it appears that the financial statements of the bank were prepared in line with the requirement of Form 'N' and the fact that the accounts have been prepared as per the requirement of the Maharashtra Co-operative Societies Act, 1960 was duly mentioned in the audit report.

- 20 In addition to the above, there was nothing on record to show that the RBI has imposed any penalty on the bank for non-complying with the applicable disclosures' requirement for the financial year 2016-17.

- 21 Hence, the Committee concluded that disclosure of payment of dividend was shown as an Increase / Decrease in unclaimed dividend as per practice

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prevalent in co-operative banks at that time. Thus, the charge against the Respondent that payment of dividend has not been shown in the Cash Flow Statement does not stand on the merits.

CONCLUSION

22 In view of the findings stated in the above paras vis a vis material on record, the Committee in its considered opinion, holds the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Items (5) and (7) of Part 1 of the Second Schedule to the Chartered Accountants Act, 1949.

ORDER

23 Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case against the Respondent.

SD/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

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

SD/-
(SHRI. ARUN KUMAR, IAS, RETD.)
GOVERNMENT NOMINEE

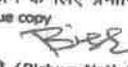
SD/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

SD/-
(CA. SRIDHAR MUPPALA)
MEMBER

DATE: 07TH FEBRUARY, 2024

PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy


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