



भारतीय सनदी लेखाकार संस्थान
(संसदीय अधिनियम द्वारा स्थापित)
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

PR-89/2018-DD/103/2018/DC/1323/2020

[DISCIPLINARY COMMITTEE [BENCH-II (2024-2025)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

ORDER UNDER SECTION 21B (3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007

[PR-89/2018-DD/103/2018/DC/1323/2020]

In the matter of:

Mr. Sunil Laxman Porje,
Krushnakunj Niwas,
Near Veer Savarkar Square,
Wadner - Vihitgaon Road,
Wadner - Dumala
Nashik-422401.

.... Complainant

Versus

CA. Sachin Vikramrao Ghayal (M. No. 131695)
Office no. 5A, C/o Aarzo Energy,
First Floor,
Kumar Prestige Point Building,
B/H BSNL Office, Shukrawar Peth,
Pune-411002.

.....Respondent

Members Present:-

CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)
Mrs. Rani S. Nair, IRS (Retd.), Government Nominee (through VC)
Shri Arun Kumar, IAS (Retd.), Government Nominee (through VC)
CA. Sanjay Kumar Agarwal, Member (in person)
CA. Cotha S Srinivas, Member (in person)

Date of Hearing : 28th March, 2024

Date of Order : 17th May, 2024

1. That vide Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Sachin Vikramrao Ghayal (M. No. 131695)** (hereinafter referred to as the **Respondent**) is **GUILTY** of Professional Misconduct



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falling within the meaning of Item (11) of Part I of the First schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said Findings, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication was addressed to him thereby granting opportunity of being heard in person / through video conferencing and to make representation before the Committee on 28th March 2024.

3. The Committee noted that neither the Respondent was present before it nor was there any intimation as regard his non-appearance. The Committee also noted that the case was earlier fixed on 19th March 2024 wherein the copy of the Findings sent at the address available in the member records of ICAI had been received back undelivered with the comments '*no such person*'. The Committee also noted that the soft copy of the Findings of the Disciplinary Committee and the Notice for the hearing had also been sent to the email address available in the member records of ICAI. As per email delivery intimation for the communication of the date of hearing, the delivery of the said email had been complete.

3.1 The Committee also noted from the member records of ICAI as under:

(a) 'KYM' Form of the Respondent had been submitted and the same was pending with the comment '*not filled*'.

(b) The membership status of the Respondent is '*inactive*' and the membership Fees has been paid till 2017.

3.2 The Committee also noted that as per the case records, the Respondent was a director in a private Company. Thus, the Ministry of Corporate Affairs records in respect of the directorship held by the Respondent were perused and notice for hearing at the Aurangabad address where the companies in which he held directorship were registered, was sent through speed post which was duly delivered to him as per the delivery report on record.

3.3 Thus, the Committee was of the view that all possible efforts have been made to ensure the delivery of the communication for hearing upon the Respondent but he chose not to represent before the Committee. Keeping in view the provisions of Rule 19(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee presumed that he has nothing more to represent before it and thus, decided to consider his case for award of punishment on the basis of material available on record.

4. The Committee considered the reasoning as contained in the Findings holding the Respondent Guilty of Professional Misconduct.

5. Keeping in view the facts as well as circumstances of the case and material on record, the Committee noted that the Respondent failed to give his submissions on the adherence of



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Regulation 190A of Chartered Accountant Regulations, 1988 despite the same being specifically called for. Looking into apparent violation of Chartered Accountants Regulations, 1988 the Committee held that the Respondent is Guilty of Professional Misconduct falling within the meaning of Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

5.1 Further, the Respondent despite being in full time practice was also director in M/s Sachin Ghayal Sugar Pvt. Ltd. The Respondent, after receipt of the complaint, vide e-Form DIR 12 submitted on 6th November 2018 appointed his wife as director of the Company w.e.f. 25th March 2018. He resigned from the Company as director w.e.f. 31st March, 2018. However the e-Form in this regard was filed on MCA portal on 21st November 2018. The e-Form DIR-12 filed on 24th July, 2014 clearly mentioned the appointment of the Respondent as director of the Company whereas the Respondent claimed that he is Director 'Simplicitor' in a private limited Company and does not hold any position as working or whole-time director in the said Company.

5.2 As per list of shareholders as on 31st March 2022, uploaded on MCA portal, the Respondent was holding more than 99% shares of the Company. The Committee hence noted that the defence of the Respondent cannot be accepted.

5.3 Hence, professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 7th February 2024 which is to be read in consonance with the instant Order being passed in the case.

6. Accordingly, the Committee was of the view that ends of justice will be met if punishment is given to him in commensurate with his professional misconduct.

7. Thus, the Committee ordered that CA. Sachin Vikramrao Ghayal (M. No.131695), Pune be Reprimanded under Section 21B (3) (a) of the Chartered Accountants Act 1949.

sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

sd/-

(MRS. RANI S. NAIR, IRS RETD.)
GOVERNMENT NOMINEE

sd/-

(SHRI ARUN KUMAR, IAS RETD.)
GOVERNMENT NOMINEE

sd/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

प्रमाणित सत्य प्रतिलिपि / Certified True Copy

Proven

अंजू गोवर / ANJU GOVER

सहायक सचिव / Assistant Secretary

अध्यक्ष निदेशालय / Disciplinary Directorate

भारतीय सनदी लेखाकार संस्थान

The Institute of Chartered Accountants of India

आर्य समाज भवन, विश्वास नगर, शाहूजी रोड, दिल्ली-110032

ICAI Bhawan, Vignees Nagar, Shahuji Road, Delhi-110032

sd/-

(CA. COTHA S SRINIVAS)
MEMBER

CONFIDENTIAL

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

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

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

File No.: [PR-89/2018-DD/103/2018/DC/1323/2020]

In the matter of:

Mr. Sunil Laxman Porje,
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Near Veer Savarkar Square,
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Nashik-422401

.... Complainant

Versus

CA. Sachin Vikramrao Ghayal(M. No. 131695)
Office no. 5A, C/o Aarzo Energy,
First Floor,
Kumar Prestige Point Building,
B/H BSNL Office, Shukrawar Peth,
Pune-411002

.....Respondent

MEMBERS PRESENT: (In person)

CA. Ranjeet Kumar Agarwal, Presiding Officer (Present through Video Conferencing Mode)

Smt. Rani Nair, I.R.S. (Retd.), Government Nominee (In person)

Shri. Arun Kumar, I.R.S. (Retd.), Government Nominee (Present through Video Conferencing Mode)

CA. Sanjay Kumar Agarwal, Member (In person)

DATE OF FINAL HEARING: 23.06.2023 (through physical/video conferencing mode)

PARTIES PRESENT :

COMPLAINANT: Not Present

RESPONDENT: Not Present

BACKGROUND OF THE CASE: -

1. The brief background of the case is that
 - a. the Complainant has filed Form-I dated 20th March 2018 against the Respondent who, despite being in full time practice, was also engaged in other business.
 - b. After receipt of the complaint the Respondent, vide e-form DIR 12 submitted on 6th November 2018 had appointed his wife as director of the Company w.e.f. 25th March 2018. The Committee further noted that the Respondent resigned from the Company as director w.e.f. 31st March 2018, however the e-form in this regard was filed on MCA on 21st November 2018.

CHARGES IN BRIEF: -

2. The Committee noted that charges levelled against the Respondent are as under: -
 - a) The Respondent despite being in practice is running CA classes in the name of Sachin Ghayal Professional Academy.
 - b) The Respondent, despite being in full time practice is also director in M/s Sachin Ghayal Sugar Pvt Ltd.
3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:
 - a. The Respondent in his defence stated that he had not done any attest function as Chartered Accountant. He was taking coaching classes for the CA students since 2010. He further stated that communication from the President, ICAI dated 28th January, 2010 had advised the members that coaching classes should not be conducted between 09.30am to 05.30pm. The said advisory by the President specifically issued for members and the word "members" was not preceded by the word practicing or non-practicing. Therefore, he had presumed that coaching classes can be conducted by practicing members also. For the coaching classes, no advertisements etc. were issued by him in any newspaper.

- b. He further submitted that he is Director simplicitor in a private limited company and he does not hold any position as working or whole-time director in the said company. He further stated that holding of directorship simplicitor is permissible to practicing Chartered Accountant.
4. The Director (Discipline) in his Prima Facie Opinion dated 20th April, 2020, with respect to the **first Allegation** noticed that per Appendix (9) of Chartered Accountants Regulations, 1988, a member in full time practice is required to seek specific permission for "part-time or full-time lectureship for courses other than those relating to the Institute's examination conducted under the auspices of the Institute or the Regional Councils or their branches". Further such engagement as lecturer in an University, affiliated college, education institution, coaching organization, private tutorship, the direct teaching hours devoted to such activities taken together should not exceed 25 hours a week. It is noted that the Respondent failed to provide a copy of specific permission obtained from the Institute in this regard. It is noted that the Respondent was holding full time COP and was also engaged in full time coaching activities without specific approval of ICAI as required. Therefore, he is held prima facie guilty of Professional Misconduct falling within the meaning of Item (1) of Part II of the Second schedule to the Chartered Accountants Act, 1949.
5. With regard to the **second allegation**, the Director (Discipline) opined that the Respondent was specifically asked to produce a copy of financial statement of M/s Sachin Ghayal Sugar Pvt Ltd along with the Director's Report to prove that he is director simplicitor in the Company under terms of Rule 8(5). However, the letter was returned undelivered with postal remarks "Not Claimed". Hence in absence of any evidence from the Respondent to establish that he was merely a director simplicitor, he is held prima facie guilty of Professional Misconduct falling within the meaning of Item (11) of part I of First schedule to Chartered Accountants Act, 1949.
6. Accordingly, the Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional Misconduct and Other Misconduct of Cases) Rules, 2007, in his prima-facie opinion dated 20th

April 2020 held the Respondent Prima Facie Guilty of Professional Misconduct falling within the meaning of Item (11) of Part I of the First Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

7. The said items in the Schedule to the Act, states as under:

Item (1) of Part II of Second Schedule:

"A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he-

(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;."

Item (11) of Part I of First Schedule:

"A member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he-

(11) engages in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage: Provided that nothing contained herein shall disentitle a chartered accountant from being a director of a Company, (not being a managing director or a whole time director), unless he or any of his partners is interested in such company as an auditor;

BRIEF FACTS OF THE PROCEEDINGS:

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

S. No.	Date	Status of Hearing
1.	12.11.2021	Adjourned as both parties were not present
2.	06.04.2023	Adjourned as both parties were not present
3.	30.05.2023	Adjourned as both parties were not present
4.	31.05.2023	Consideration of directions given in meeting dated 30.05.2023 (details in para 11 below)
5.	23.06.2023	Concluded the case Ex- Parte.

9. On the day of the first hearing held on 12th November 2021, the Committee noted that the parties were neither present nor had replied for their presence in hearing. The Committee looking into absence of both the parties decided to adjourn the matter. The Office was directed to inform the party accordingly.
10. On the day of the second hearing held on 6th April 2023, the Committee noted that none of the parties were present and that no intimation or adjournment request was received from either of the parties. Thereafter, the Committee, looking into the absence of the Complainant as well as the Respondent, decided to adjourn the hearing to a future date.
11. On the day of third hearing held on 30th May 2023, the Committee noted that none of the parties were present despite due service of notice and that no intimation or adjournment request was received from either of the parties. Thereafter, the Committee gave directions to the office to collect the following documents/ information and present the same in the next hearing i.e. on 31st May, 2023:
- a) Whether any Unique Document Identification Number (UDIN) was generated by the Respondent.
 - b) Copy of Audit Report along with financial statements of M/s Sachin Ghayal Sugar Pvt. Ltd. for the financial years 2014-15 to 2019-2020.

Thereafter, the Committee decided to adjourn the hearing.

- 11.1 In the meeting held 31st May 2023, the office apprised the above-mentioned documents and, after considering the same, the Committee, on account of natural justice, decided to provide the last opportunity to both parties, failing which the case would be decided ex-parte.
- 11.2 The Committee also directed to call for the following information from the Respondent:
- a) To provide any documentary evidence(s) to substantiate that he was merely a director simplicitor in M/s. Sachin Ghayal Sugar Pvt. Ltd.

- b) To provide any documentary evidence to substantiate that he did not exceed the prescribed limit of 25 hours of teaching as prescribed by the Chartered Accountants Regulations, 1988.

The Committee also directed the office to serve the notice on the Respondent through the Pune Branch of ICAI also. Accordingly, the matter was adjourned to a future date.

12. On the day of Final hearing held on 23rd June 2023, the Committee noted that none of the parties were present despite due service of notice. The Committee noted that in compliance of the directions given in the last hearing held on 31st May 2023, the office served the notice on the Respondent through the Pune Branch. The Committee noted that despite offering various opportunities to appear before the Committee and even attempting to serve the notice through the branch office, neither the Respondent communicated about his presence nor provided the desired documents.

12.1 The Office further informed that the Pune Branch mentioned that the Respondent is now shifted to Aurangabad and they do not have his new address.

12.2 The office further informed the Committee that the Respondent confirmed over the phone that he is in receipt of various email communications from the office.

12.3 The Office further apprised the Committee that as per the reply received from the UDIN Directorate the Respondent is not registered on UDIN Portal and therefore had not generated any UDIN.

12.4 The Committee, in absence of any defence from the Respondent noted that the Respondent is shying away from appearing on the Committee as if he has nothing to add in his defence. The Committee, while considering the documents on record, decided to conclude the case ex- parte.


FINDINGS OF THE COMMITTEE

13. The Committee observed that the **first issue** involved was that the Respondent, despite being in practice, was running CA classes in the name of Sachin Ghayal professional academy at office no. 5A, First Floor, Kumar Prestige Point, Near Chinchedi Talim, Behind BSNL Office, Shukrawar Peth, Pune-2. The Committee in this regard noted that Regulation 190A of Chartered Accountant Regulation, 1988 reads as follows:

190A. Chartered Accountant in practice not to engage in any other business or occupation:

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.

Further Appendix (9) of Chartered Accountants Regulations, 1988 (Point no.6 of Part B), a member in full time lectureship for courses other than those relating to the Institute's examination conducted under the auspices of the Institute or the Regional Councils or their branches". Further such engagement as lecturer in an University, affiliated college, education institution, coaching organisation, private tutorship, the direct teaching hours devoted to such activities taken together should not exceed 25 hours a week.

14. The Committee noted that the Respondent failed to give his submissions on the adherence of the above requirement despite the same being specifically called for. The Committee noted that it was the responsibility of the Respondent to provide necessary documents to defend the charge which he failed to provide. Further, the Respondent did not attend any hearing at any point of time to defend himself. Thus, the charge framed in the prima-facie opinion, that the Respondent was holding COP and was also engaged in full time coaching activities without specific approval of ICAI as required, is upheld. 

15. Looking into apparent violation of Chartered Accountants Regulation, 1988 the Committee held that the Respondent is held **Guilty** of Professional Misconduct falling within the meaning of Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

16. The Committee with respect to the **next charge** that the Respondent being in full time practice was also director in M/s Sachin Ghayal Sugar Pvt Ltd. The Committee noted that Item (11) of Part I of Chartered Accountants Act, 1949 states:

"engages in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a chartered accountant from being a director of a Company, (not being a managing director or a whole-time director), unless he or any of his partners is interested in such company as an auditor."

17. The Committee further noted that the Respondent, after receipt of the complaint, vide e-form DIR 12 submitted on 6th November 2018 had appointed his wife as director of the Company w.e.f. 25th March 2018. The Committee further noted that the Respondent resigned from the Company as director w.e.f. 31st March 2018, however the e-form in this regard was filed on MCA on 21st November 2018.

18. The Committee noted that the fact remains undisputed that the Respondent served as director of the Company despite being in full time practice. The Committee also noted that the e-form DIR-12 filed on 24th July 2014 clearly mentioned the appointment of the Respondent as director of the Company whereas the Respondent claimed that he is Director simplicitor in a private limited company and does not hold any position as working or whole-time director in the said company. The Committee also noted that as per list of shareholders as on 31st March 2022, uploaded on MCA portal, the Respondent was holding more than 99% shares of the Company. The

Committee hence noted that the defence of the Respondent cannot be accepted that he is Director simplicitor in a private limited company and does not hold any position as working or whole-time director in the said company.

19. The Committee on the basis of documents available on record and in the absence of defence of the Respondent held **Guilty** of Professional Misconduct falling within the meaning of Item (11) of part I of the First schedule to the Chartered Accountants Act, 1949.

CONCLUSION

20. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (11) of Part I of the First schedule and Item (1) Part – II of the Second Schedule to the Chartered Accountants Act, 1949.

SDI/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

SDI/-

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

SDI/-

(SHRI. ARUN KUMAR, IAS, RETD.)
GOVERNMENT NOMINEE

SDI/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

DATE : 07TH FEBRUARY, 2024

PLACE: NEW DELHI

सही प्रतिशिपि होने के लिए प्रमाणित
Certified to be true copy

श्री श्रुति गर्ग / CA. Shrutl Garg
सहायक निदेशक / Assistant Director
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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