

BOARD OF DISCIPLINE

(Constituted under Section 21A of the Chartered Accountants Act 1949)

**FINDINGS UNDER RULE 14 (9) READ WITH RULE 15 (2) OF
THE CHARTERED ACCOUNTANTS (PROCEDURE OF
INVESTIGATION OF PROFESSIONAL AND OTHER
MISCONDUCT AND CONDUCT OF CASES) RULES, 2007**

CORAM: (THROUGH VC)

CA. Rajendra Kumar P, Presiding Officer
Ms. Dolly Chakrabarty, Government Nominee

IN THE MATTER OF:

Ms. Bhavana Pundlikrao Gawali,
Civil Lines, RISOD
Distt. Washim
Risod.....

Complainant

Versus

CA. Upendra Gunwantrao Muley (M. No. 101398)
M/s Upendra Muley & Co.
Parvati Nilayam, Plot No. 101- B
1st Floor, Mayanagar CIDCO N-2
Jalna Road, Beside Hotel Sangrila
Aurangabad.....

Respondent

Date of Final hearing : **04th February 2025**
Place of Final hearing : **ICAI Bhawan, New Delhi**

PARTIES PRESENT

Respondent : **CA. Upendra Ganwantrao Muley (Through VC)**

FINDINGS:

BACKGROUND OF CASE:

1. The Complainant, who was a Member of Parliament, has stated that she is having Trust (M/s Mahila Utkarsh Pratishtha), which is recently converted into a Section 8 Company and being a Member of Parliament, she is always busy with social and official activities and does not have enough time to devote to the affairs of the Trust. She had appointed Mr. Ashok Narayan Gandole as the Secretary of the Trust by executing Power of Attorney in favour of him and gave all the powers to do the entire act on her behalf. Mr. Ashok Narayan Gandole had appointed the Respondent as auditor for audit of the Trust and Group of Companies namely, M/s Bhavana Agri Product and Services Private Limited, M/s Bhavana Sugar Private Limited and M/s Tirumala Agri Cultivation



Private Limited. The Complainant stated that the Respondent colluded with the Trust's Secretary, namely Mr. Ashok Narayan Gandole and misappropriated more than 18 Crores and had put the Trust and other groups of Companies under debt burden. The Complainant stated that the Respondent has been appointed to look after the matter of accounting, audit assurance and statutory compliances of Companies Act and other necessary statutory law, but the Respondent has not updated any of the Compliances as required by the Government Authorities in proper times/ due dates. Consequently, the Government authorities from the concerned departments issued show cause notices and several reminders but the Respondent did not respond towards the same and as a result, the concerned authorities imposed heavy penalties for the same and some directors are disqualified due to non-filing of ROC return and annual compliances of the Companies and the Complainant has also suffered lakhs of penalties for non-complying with ROC Requirements.

CHARGES ALLEGED:

2. The following are the charges alleged against the Respondent by the Complainant:

Allegation 1: The Complainant has alleged that M/s Mahila Utkarsh Pratisthan had received many notices from the Income Tax department for assessment years 2013-14, 2014-15 and 2016-17 under Section 147 & 148 of Income Tax Act, 1961. The Complainant stated that various reminders were sent by the department to the Respondent's e-mail for reply, submission and personal hearing but he never responded to the assessing officer concerned of Income Tax department. Even after being given lots of opportunity by the Assessing Officer concerned to him to submit the response of so-called notices to Trust, the Respondent neither appeared nor intimated the Complainant about the notices received by him from the Income Tax department. The department finally sent last notice on 09.12.2019 as show cause notice on mail of the Respondent to submit record online and hearing date was given as 13.12.2019. The said notice added a warning if Trust through Respondent shall not make any response to the department, then Assessing Officer will pass ex-parte decision against the Trust and the matter shall be sent to the Commissioner of Income Tax and it will come under the litigation of ITO. Further, the department raised demand of Rs.10 Crore approx. under section 156 of the Income Tax Act, 1961. The Complainant further stated that the concerned assessing officer, and his office personals had called the Respondent so many times with respect to all notices for attending hearing(s) but he never responded to them even though the officers sent messages to him personally on WhatsApp to remind him, but he never furnished any of documents or gave a reply to them.

Allegation 2: The Complainant has alleged that the Respondent was appointed by Mr. Ashok Gandole (Trust's Secretary) as statutory auditor for Bhavana Group of Companies to look after the matter of accounting, assurance and Statutory compliances of Companies Act, 1961 and requirements of other necessary statutory laws but the Respondent has not updated any of the compliances as required by Ministry of Corporate Affairs and Registrar of Companies and not filed annual returns under Section 92 of Companies Act, 1961 and Balance Sheet with ROC within time, due to which the Complainant was disqualified under Section 164 of Companies Act, 2013 for five years and the Companies got heavy penalties due to non-compliances and the Respondent did not inform the matters to the Complainant.

Allegation 3: The Complainant has alleged that Mr. Ashok Narayan Gandole (Trust's Secretary) escaped with money and some other valuable cash of Rs. 7 Crore of Trust (as mentioned in FIR dated 07.07.2019) and deposited into his own account



maintained at the Akola Janta Commercial Co-Op. Bank Ltd. Further, allegedly an amount of Rs.1.30 Crore was transferred to the Respondent on the same day of deposit. Accordingly, it has been alleged that it is evident that the Respondent was part of the fraud.

Allegation 4: The Complainant has alleged that the Respondent appointed himself as an auditor for audit of Trust and the Company for the assessment year 2019-20 by fabricating appointment letter on the letter head of the trust whereas the fact is that the Complainant did not appoint him as an auditor for that year where running matters were undergoing.

Allegation 5: The Complainant has alleged that the Respondent has cheated so many people and embezzled crores of Rupees and there were so many newspapers wherein news about misappropriated amount of Rs. 79 lakhs approx. with an old woman was published.

Allegation 6: The Complainant has alleged that the Respondent who has misappropriated lots of money from Trust, has confessed before her and agreed to settle misappropriated amount and issued a cheque bearing No.000008 dated 31.10.2019 for amount of Rs.3.70 Crore which he has gained by way of fraud.

Allegation 7: The Complainant has alleged that various police complaints were lodged against the Respondent in the city of Aurangabad and Risod, Dist. Washim, for all the fraud he committed with Trust and people of his own city and absconded with the whole family by locking his house.

3. At the outset, the Board noted that as regard allegation numbers 1, 2, 4, 5 and 7 as mentioned above, after a thorough investigation, the Director (Discipline) held Respondent '**Not Guilty**' in his Prima Facie Opinion and the Board concurred with the reasoning and the views of the Director (Discipline). The Board, therefore, limited the extant proceedings to the two allegations only, i.e., allegation number 3 that the Complainant alleged that Mr. Ashok Narayan Gandole (Trust's Secretary) escaped with money and some other valuable cash of Rs. 7 Crore of Trust (as mentioned in FIR dated 07.07.2019) and deposited into his own account maintained at the Akola Janta Commercial Co-Op. Bank Ltd. Further, allegedly an amount of Rs. 1.30 Crore was transferred to the Respondent on the same day as the deposit. Accordingly, it has been alleged that it is evident that the Respondent was part of the fraud and allegation number 6 that the Complainant alleged that the Respondent who has misappropriated lots of money from Trust, has confessed before her and agreed to settle misappropriated amount and issued a cheque bearing No.000008 dated 31.10.2019 for an amount of Rs.3.70 Crore which he has gained by way of fraud.

BRIEF OF PROCEEDINGS HELD:

4. The details of the hearings fixed and held in the matter are given as under:

Date of Hearing(s)	Status of hearing(s)
22 nd May 2023	Oath taken by Respondent and adjourned at the request of the Counsel of the Complainant.
17 th August 2023	Adjourned at the request of the Complainant.
21 st November 2023	Adjourned at the request of the Complainant.
26 th June 2024	Adjourned at the request of the Complainant.
18 th January 2025	Part heard and adjourned.
04 th February 2025	The matter is heard and concluded.

SUBMISSIONS OF THE RESPONDENT:

5. The Respondent inter-alia submitted that Ms. Bhavana Gawali has alleged that the Respondent received illicit money through a transfer from Ashok Gandole, who supposedly stole cash from the Trust. According to the police, Gandole had deposited cash from his locker into his bank account, later transferring the same amount to me. This transfer is suspected to be part of a Rs. 7 crore robbery that took place on 07.07.2019, but there is a key discrepancy in the dates. While the Complainant claims that the transfer to me occurred on the same day of the robbery, the police assert that the transfer happened on 24.07.2019, weeks after the robbery. Additionally, the fact that the Respondent received the money through a bank transfer, not cash, suggests that the funds were not illicit but rather used to cover legitimate expenses which the Respondent incurred.
6. Respondent further submitted that it is also important to note that the Complainant's Trust was converted into a Section 8 Company, requiring the filing of financial statements for the period from 01.04.2019 to 15.12.2019. These statements were prepared by CA. Hakeem Shaikh and signed by the Complainant herself, and there is no mention of the alleged Rs. 7 crore robbery or theft of any cash. This omission raises questions about the validity of the robbery claim. The Respondent have provided copies of these financial statements as evidence, and the Respondent believes that it is crucial to explain that why Ms. Bhavana Gawali has lodged these false complaints, potentially to achieve ulterior motives through harassment.
7. The Respondent further submitted that the Complainant has alleged that a cheque dated 31.10.2019 was issued by me on 31.01.2020 as a partial settlement. She further claims that the Respondent promised to repay the remaining amount soon and attempted to prevent her from depositing the cheque by repeatedly assuring her of payment. However, this narrative raises several inconsistencies. Firstly, the complaint was lodged just two days after the cheque's issuance, leaving no clear time frame for the Respondent to have made such pleas. Additionally, the Complainant, a seasoned politician with significant judgment, would not likely act against her own interests by delaying the cheque's deposit based on his alleged requests.
8. Respondent furthermore submitted that significant discrepancies exist in the versions of events presented by the Complainant. While she alleges that the Respondent admitted about the fraud before a Fraud Detection Committee and issued the cheque, her own aide, CA. Saeed Khan, denied knowledge of such a confession when questioned by the Enforcement Directorate. The versions provided to the police and the Directorate are inconsistent, undermining the credibility of her claims. The reality is that the cheque was coerced from the Respondent, and the narrative of it being issued as a settlement for fraud appears to be an afterthought to support her allegations. The matter remains sub judice, with these discrepancies highlighting the manipulative intentions behind the Complainant's accusations.
9. The Respondent also submitted that the Complainant's Trust, Mahila Utkarsha Pratishthan, was dissolved by the Assistant Charity Commissioner, Washim, at her own request. This raises questions about her allegations of fraud within the Trust, as it was dissolved and converted into a Company before the police complaint was filed.
10. Additionally, the Respondent submitted that the Complainant, Ms. Bhavana Gawali, and her associates have continuously lodged false and frivolous FIRs against the Respondent including Ashok Gandole and others, to intimidate and harass them. These cases, registered under political pressure at the Risod Police Station, were often

followed by filing of chargesheets without proper investigation or summoning the Respondent. Multiple FIRs against the Respondent, such as FIR 419/2019, FIR 101/2020, FIR 126/2020, and FIR 388/2020, have been stayed by the Nagpur Bench of the Bombay High Court, which found these cases lacking merit. The High Court recognized the pattern of false complaints filed at the behest of the Complainant and granted relief in all these cases.

- 11.** Besides above, the Respondent submitted that the Complainant's aides filed two more false FIRs against the Respondent at CIDCO Police Station, Aurangabad. These cases were also dismissed, with FIR 678/2019 being closed by the police with a B-Final Summary Report, noting its malicious intent, and FIR 615/2020 being quashed by the Aurangabad Bench of the High Court, which called it an afterthought. These legal decisions highlight a clear misuse of state power by the Complainant, aimed at pressuring and blackmailing the Respondent. The orders from the Hon'ble High Court demonstrate the baseless nature of the accusations and the Complainant's intent to manipulate the legal system.
- 12.** The Respondent also submitted that the Complainant allegedly dissolved the Mahila Utkarsha Pratishthan Trust through forgery, using falsified signatures of other trustees, including one who had passed away. Trustee Ashok Gandole raised concerns and lodged complaints with the Assistant Charity Commissioner, Washim, but despite the evidence, a dissolution order was issued on 03.01.2023. Gandole later filed a formal complaint with the Charity Commissioner, Maharashtra, for a deeper investigation into this unjust order. Further, complaints by the trustees were retracted using forged affidavits and signatures, indicating a pattern of manipulation by the Complainant. The Ministry of Law and Justice, Government of Maharashtra, has ordered an inquiry into the matter, and the Charity Commissioner has been directed to investigate. This case is also highlighted in the Enforcement Directorate's Prosecution Complaint before the Special PMLA Court in Mumbai. The court noted that there is no substantial evidence and the Complainant's authority to file the complaint is questioned. The court found the allegations vague and lacking material support.
- 13.** The Respondent also submitted that the Enforcement Directorate found that Rs. 7 crores theft was false and implicated the complainant and Saeed Khan in misappropriating the funds to purchase property. The Respondent further argues that the Rs. 3.70 crore cheque was issued under duress, supported by evidence of coercion, showing threatening behaviour by the Complainant, Saeed Khan, and their associates. Despite initial omissions in complaints about the cheque, it was later mentioned in a complaint on 31.10.2019 to the Aurangabad Commissioner of Police, describing the pressure to issue the cheque for an amount not owed by the Respondent.
- 14.** It is also submitted by the Respondent that the arbitrary amount on the cheque, discrepancies in the Complainant's varying versions of its purpose, and the lack of consistent evidence contradict claims that the cheque was an admission of guilt. Instead, the defence asserts that the cheque was issued due to undue influence and manipulation, not as a confession of any fraud or wrongdoing.
- 15.** Respondent also submitted that the Assistant Director of Income Tax (Investigations), Akola, has initiated an investigation into Ms. Bhavana Gawali and her Trust regarding allegations of embezzlement of Rs. 18.18 crores and the theft of Rs. 7 crores in cash. The ADIT has asked Gawali to explain the sources of these funds and their tax treatment, along with details of the Trust's conversion into a Section 8 Company. However, despite being summoned on 29.12.2023 to appear on 05.01.2024, Gawali did not show up for the investigation, continuing a pattern of non-appearance before

various authorities, including the police, the Enforcement Directorate (ED) and others. The ED's investigation revealed that the allegations made by Gawali in the FIR were false, and the Rs. 7 crores were misappropriated by her, along with Saeed Khan and a hawala operator, to purchase property in Mumbai. The FIR was allegedly filed to cover up her own misappropriation.

16. It is further stated that the Respondent has submitted evidence regarding the payments made to him whereas the Complainant has offered nothing but unsubstantiated allegations to harass him. All the payments that he has received to date are either by cheque or bank account transfer. Even the Hon'ble High Court has observed that the Respondent received no money in cash. The Hon'ble High Court also stated that there is nothing on record that would indicate that the Respondent is a conspirator in the present matter.

OBSERVATIONS OF THE BOARD:

17. The Board noted that the Respondent was present before the Board through Video Conference. The Board further noted that Ms. Sneha G Sanap, also appeared before it without submitting any authorization from the Complainant. The Board did not take any submissions from the Counsel appearing on behalf of the Complainant on record, even though the Counsel herself did not make any submissions, as the Counsel only wanted the adjournment. The Board did not accede with the request of the Counsel for adjournment.
18. The Board observed that considering the evidence, arguments and submissions presented by the Respondent, it is evident that the Complainant has failed to discharge her burden of proving the allegations against the Respondent. The charge, specifically relating to Rs. 1.3 crore fraudulently received by the Respondent, remain unsubstantiated due to the lack of concrete evidence and inconsistencies in the Complainant's claim.
19. The Board regarding Charge No. 3 further observed that it is on record that Rs. 1.3 crore was transferred to the Respondent's account by Mr. Ashok Gondole. The Respondent has provided a plausible explanation, supported by documents that the said amount was a legitimate payment for prior dues owed to him, spanning several years of professional engagement. The Complainant has not demonstrated any credible evidence to establish that the amount in question was stolen or that the transaction was fraudulent.
20. The Board regarding Charge No. 6 observed that the allegation regarding a cheque of Rs. 3.7 crore issued by the Respondent to the Complainant has been rendered baseless. Respondent submitted that the cheque number 000008 dated 31.10.2019 for Rs. 3.70 Crores of the DCB Bank was never encashed as the Respondent has submitted Bank statement of DCB Bank Saving Account Number 03210200001304 from 2013 till 9th June 2020 confirming this fact on an affidavit. Thus, without evidence to show that the cheque was used in any fraudulent manner this charge does not hold merit.
21. Additionally, the Respondent has pointed out significant contradictions in the Complainant's narrative and produced findings from prior judicial and investigative authorities that support his defense. These findings, including those of the Enforcement Directorate (ED) and Hon'ble Court clearly state that there was no theft of funds as alleged by the Complainant.

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22. In conclusion, the Board observed that till date, no judicial or quasi-judicial authority came out with the observation that there was a theft or robbery of Rs. 7 Crores as alleged by the Complainant. Therefore, in absence of such an observation or without any concrete evidence, no one can be held responsible for any act or as a part of the alleged fraud, if any. In fact, the observation of some of these authorities who are looking into various aspects of this matter between the Complainant and Respondent are otherwise that the allegation of theft of Rs. 7 Crore is misleading. Thus, when the allegation of this theft itself is observed to be misleading, therefore, the Respondent cannot be held responsible as alleged by the Complainant. Additionally, the Complainant has also failed to establish her allegations of fraud and misconduct against the Respondent. The documentary evidence coupled with the Respondent's detailed explanations supports the conclusion that the charges lack merit. Accordingly, the Respondent is found not guilty of any charge by the Board.

CONCLUSION:

23. Thus, in conclusion in the considered opinion of the Board the Respondent is **Not Guilty** of Other Misconduct falling within the meaning of Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act. Accordingly, the Board passed an Order for closure of the case in terms of the provisions of Rule 15 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Sd/-
CA. Rajendra Kumar P
Presiding Officer

Sd/-
Dolly Chakrabarty, IAAS (Retd.)
Government Nominee

Date: 10-02-2025

प्रमाणित सत्य प्रतिलिपि / Certified true copy

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