THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
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ORDER

Complaint No. Com/21-CWA(12)/2012

In the matter of:

Panineeya Sanskrit College Trust.....Complainant

Vs.

Shri E.V.P.S. Krishna (M/7197).....Respondent

1. Shri D. Ravi, Trustee representing Panineeya Sanskrit College Trust, Hyderabad (Panineeya Sanskrit College Trust was established for promoting education and they have been running various educational institutions at Dilsukh Nagar, Hyderabad) as Advocate/Trustee filed a complaint dated 5th January 2012 in Form-I together with the prescribed complaint fee of Rs 2500/- against Shri EVPS Krishna, respondent, bearing membership number 7197 alleging professional misconduct and lying under oath by the respondent and hence the complaint has been filed under Section 21 of the Cost and Works Accountants Act, 1959.

2. The Disciplinary Directorate having scrutinized the complaint and finding the same in order and on being satisfied that it is a fit case to be dealt with in the manner as prescribed in Chapter III of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, proceeded to register the complaint vide Complaint No. Com/21-CWA(12)/2012.

3. It has been alleged by the complainant that the respondent in connivance with one Shri T.S. Kohli, who happens to be a close friend and associate of the respondent and claiming to be the President of Guru Nanak Educational Society by misleading one of the

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4. trustees had fraudulently obtained the signature for various bank documents and by manipulating and creating a false Memorandum of Understanding (MOU) dated 1st October, 2005 whereby it was shown to sell the property at measuring Ac 8.00 in Survey No.103 of Gaddinnaram Village, Saroornagar Mandal, Ranga Reddy District in favour of Gurunanak Education Society.

5. The said MOU referred to in Para 1 above also contemplated in the event of dispute, the matter will be referred to sole Arbitrator, Shri E.V.P.S. Krishna for Arbitration. It has been alleged by Shri D. Ravi representing Trustee of Panineeya Sanskrit College Trust, that the respondent and Shri T.S. Kohli, an associate of the respondent in collusion and in connivance with each other have obtained and the MOU in a fraudulent manner. Further, Shri E.V.P.S. Krishna was appointed as an Arbitrator, which was disputed to by the complainant i.e. Panineeya Sanskrit College Trust. The appointment of Shri E.V.P.S. Krishna as an Arbitrator, as has been alleged, has come to the notice of Panineeya Sanskrit College Trust much later when it came to know that Shri K.S.Kohli and Shri E.V.P.S. Krishna are very closely known to each other. It needs to be mentioned here that as evident from 9th Annual Report of all Soft Co-operation Limited, Shri E.V.P.S. Krishna was the Director of the Company of which, Shri T.S. Kohli was the Managing Director.

6. In the meantime Shri T.S. Kohli, President of Gurunanak Education Society, who happened to be a close friend of the respondent as alleged by the complainant, filed an arbitration petition before Shri E.V.P.S.Krishna, invoking arbitration clause on 8th September 2010. The petition was challenged by Panineeya Sanskrit College Trust on the ground that when the MOU itself was fabricated/ manipulated/manufactured and hence illegal and invalid, there could not be any adjudication on the basis of such illegal documents. Further, Panineeya Sanskrit College Trust claimed that they had never consented or voluntarily agreed for referring the dispute to Shri E.V.P.S.Krishna as an Arbitrator and contended that since arbitration was a creation of contract, Shri E.V.P.S. Krishna cannot act as an Arbitrator when the contract itself is disputed as forged and fabricated. In this context, the complainant has filed a FIR against Shri E.V.P.S. Krishna and others in Police Station of Saroornagar, in Cyberabad District, offence under IPC Sections 209, 229, 406, 420, 468, 471, 120(b).

7. On receipt of the complaint, the Disciplinary Directorate letter no. G/DD(M-7197/Com-C-12/2)/07/2012 dated 4th July, 2012 while forwarding the complaint together with the annexure totalling to 90 pages to the respondent, requested him to file its written

statement in terms of Rule 8(3) of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

8. The respondent vide its letter dated 4th August, 2012 denied having received the said complaint and requested the Disciplinary Directorate to send copies of the complaint to him to enable him to respond, through written statement. He also prayed, for extension of time for submitting of reply and an additional time of 21 days was duly granted vide letter No. G/DD(M-7197/Com-C-12/3)/08/2012 dated 21st August 2012.

9. The respondent, in his written statement dated 4thSeptember 2012, denied the allegation levelled against him by the complainant. He stated that the respondent was in no way concerned with the disputes between the complainant and Shri T.S. Kohli. The respondent also stated that the allegation that he happened to be a "close friend and business associate of T.S.Kohli is not wholly correct". He also denied the allegation on the ground that the alleged misconduct should be one referable to a professional misconduct in connection with the professional work relating to the work of a practicing Cost Accountant. He stated in the entire complaint filed by the complainant, there is no complaint regarding the discharge of duties / assignments as an Cost Accountant. The complaint is with reference to the adjudication made made by the respondent as an arbitrator which does not relate to the professional work as Cost Accountant and therefore the entire complaint itself is misconceived. The respondent further contended that is not a complaint to be adjudicated by the Institute of Cost Accountants of India (formerly ICWAI) and the complainant has no *locus standi* to approach this Institute with the subject complaint and the very proceedings would be without jurisdiction as it was not an issue to be adjudicated by the Institute of Cost Accountants of India.

10. The respondent further contended that under the CWA Act, there is no bar to the respondent to act as a Director of a company. In fact the proviso to clause (x) of First Schedule to the CWA Act, 1959 makes it clear that a Cost Accountant is not precluded from being a Director of the company. Therefore, misconduct, much less professional misconduct, cannot be attributed to a member of the Institute, by virtue of the member being a Director of a company. Therefore, the respondent contends that the grievance made in the complaint relating to the respondent as holding the position of Director of a company is unsustainable.

11. The respondent also denied that he ever acted as a Tax Consultant / Adviser to Shri T.S. Kohli and he was a person who was the named as an Arbitrator under MOU as per the

Arbitration and Conciliation Act, 1996 and not by virtue of being a member of the Institute. He also stated that both the parties have willingly chosen him as an Arbitrator. He stated that there was nothing in Cost and Works Accountants Act, 1959 precluding a member of the Institute to act as an Arbitrator. The respondent was of the opinion he has not committed any misconduct, he is innocent and the complaint has been filed only to harass him.

12. Shri D. Ravi acting on behalf of Panineeya Sanskrit College Trust, according to the respondent, filed a false complaint which was registered as crime No. 477/11 Police Station Saroornagar R.R. District in which subsequently a charge sheet was filed before the Hon'ble Court of 11th Metropolitan Magistrate, Hyderabad vide CC No. 321/2012 virtually on the same set of allegation as made in the present complaint, which the respondent will contest. The respondent further stated in his written statement that even before the arbitration award was passed, the complainant had filed OS No. 462/2011 on the file of Hon'ble Court of the District Judge, Ranga Reddy District at LB Nagar seeking to stay the arbitration proceedings. No interim orders of stay were passed by the Hon'ble Court.

13. Panineeya Sanskrit College Trust vide its letter dated 21st December 2012 forwarded the rejoinder for the written statement of the respondent wherein Shri D. Ravi on behalf of Trust, stated that the averment made in the written statement by the respondent where all frivolous, false, evasive and nothing but concocted versions. The Trust, in the rejoinder, has submitted FIR and Charge sheet filed by Police Department, Saroornagar Police Station, District Cyberabad. In the charge sheet given under section 173 of Cr. PC it was opined that Shri E.V.P.S. Krishna and other accused hatched a conspiracy and created and forged a MOU wherein the name of Shri E.V.P.S.Krishna was referred as an Arbitrator in the event of dispute. This was in order to cheat the complainant to cause wrongful loss to the complainant. Shri E.V.P.S. Krishna vide his letter dated 8th December 2010 addressed to the complainant stating that "In this connection firstly you have to note that I am an associate member of Institute of Cost and Works Accountants of India and my profession is not tax consultancy and hence I have never acted as a Tax consultant / Advisor or any service to Shri T.S. Kohli and his group of Institutions and clarifies that there are no circumstances likely to give rise to justifiable doubts. Therefore, the parties need not have any apprehensions as to the independency or impartiality of the Arbitrator". But the fact is that Shri E.V.P.S.Krishna who was acting as an Arbitrator in conspiracy went ahead and proceeded to pass an award in favour of Shri

T.S. Kohli which the complainant has questioned before the competent Court of law. There cannot be even a slightest doubt that Shri T.S. Kohli and Shri E.V.P.S. Krishna are having long standing association with each other and they are the Promoters and Directors of "AARBEE Hire Purchase and Finance Limited". Likewise, they are also Promoters in "ALSOFT Corporation Limited" and likewise they are the Promoters/Directors in "SIGMA COMPSOFT Technologies Limited [Garden Cements Private Limited.

14. The charge sheet dated 28.02.2012 issued by Saroornagar, Cyberabad Police station mentioned that E.V.P.S. Krishna did not have any authority to act as an Arbitrator. However, Regulation 111A of the Cost and Works Accountants Act, 1959 permits a Cost Accountant in Practice to act as an arbitrator. But in the instant case, the appointment of the respondent as an arbitrator is nothing but an attempt to sway things in favour of Guru Nanak Education Society, whose President was T.S. Kohli a Business Associate of the respondent. Furthermore, in conspiracy with the other accused, he engineered a complaint and created a false document of MOU by deceptions upon the complainant in making him to sign certain papers without revealing the content of the document and hence is an accomplice in the crime.

15. The respondent was in judicial custody as admitted by him though bail was granted to him thereafter by a competent Court of Law.

16. In the 17th meeting of the Disciplinary Committee held at Kolkata on 18.11.14, the Committee noted the prima facie opinion formed by the Director (Discipline) and directed that the Respondent be informed to file a Written Statement in terms of Rule 18 (3) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 before the Respondent is called to make oral submissions at Hyderabad. In compliance with such directives of the Disciplinary Committee, the prima facie opinion dated 18th November 2014 was duly sent both to the Complainant and the Respondents vide letter Nos. G/DD(M-7197)/Com-C-12/3)11/2014 and G/DD(M-7197)/Com-C-12/3)12/11/2014 dated 18th November 2014 with a direction to the respondent to send a written statement in terms of Rule 18(3)/18(4) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

17. The Disciplinary Directorate is in receipt of a letter dated 15th December 2014 from the respondent requesting for grant of 15 days time for filing the Written statement. The respondent submitted his second written statement dated 28th February 2015 i.e. after a period of more than 90 days denying all the allegations and the prima facie opinion dated 18th November 2014 framed by the Director (Discipline). The respondent, in his second written statement stated that the allegations made by the complainant do not amount to professional/other misconduct. He also refuted the charge made in the prima facie opinion that he did not have the authority to act as an arbitrator stating that the respondent only discharged the functions of an arbitrator in terms of the provisions of the Arbitration and Conciliation Act 1996 and the Agreement *inter-se* between the parties. The function of the Respondent as an Arbitrator and the adjudication thereon as also the Award passed in terms of the provisions of the Act have nothing to do with the factum of the respondent being member of the Institute of Cost Accountants of India.

18. It was decided in the 20th meeting of the Disciplinary Committee that the complainant and the respondent be called for making oral submissions in terms of Rule 18(6) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Accordingly letter Ref Nos. G/DD/Com-CWA(12)/2012/04/15 and G/DD(M-7197)/CWA(12)/3/04/2015 both dated 29th April 2015 were sent to the complainant and the respondent requesting to make themselves available before the Disciplinary Committee on 8th May 2015 at the Institute headquarters at Kolkata for making oral submissions, if any, in terms of Rule 18 (6) of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The respondent, however, vide his e-mail dated 6th May 2015 sent at or about 15.50 hrs expressed his inability to attend the said meeting as he cannot reschedule his clients, meetings and assignments owing to shortage of time, and has requested to adjourn this submission to the last week of June 2015. The Committee members took note of the same. The complainant also vide his letter dated 7th May 2015 (received by the Disciplinary Directorate on 11th May 2015) expressed his inability to attend the said meeting as it was difficult for them to make travel arrangements at a short notice.

19. The Committee members decided that another opportunity be given to the Complainant and the Respondent at the next meeting of the Committee for making oral submissions if any, in terms of Rule 18 (6) of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Accordingly, notice dated 25th June 2015 was served to both the parties requesting them

to be present before the Disciplinary Committee on 9th July 2015 at Delhi office of the Institute for making oral submissions, if any. Shri EVPS Krishna, respondent did not appear for the oral submissions but Shri D. Ravi representing Panineeya Sanskriti College Trust, Complainant appeared for making oral submissions in terms of Rule 18(6) of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and reiterated whatever he had stated in his complaint. He categorically mentioned that the respondent in connivance with one, Shri T.S. Kohli had created a false document of MOU by deceptions and hence, he is guilty of forgery. The complainant also mentioned that the Respondent was in judicial custody.

20. The respondent was once again requested vide letter No. G/DD(M-7197).CWA(12)/6/06/2016 dated 17th June 2016 to appear for making oral submissions in terms of Rule 18(6) of the Rules at the Delhi office of the Institute but on this occasion too, the respondent stayed away from making oral submissions. The Committee members noted with concern the allegation made by the complainant against the respondent which was a grave one as it involved defrauding the complainant along with the help of respondent's accomplice. The Disciplinary Committee also noted that the respondent has been continuously evading appearance for making oral submissions before the Committee. The Committee directed the Secretary to issue a letter to the Respondent for giving him an opportunity to be heard in terms of Rule 19(1) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 in the next meeting of the Committee before passing any order under sub-section (3) of Section 21B of the CWA Act, 1959.

21. In the meantime, the Disciplinary Directorate was in receipt of a letter dated 7th October 2016 from the respondent intimating that the dispute between Panineeya Sanskrit College Trust, complainant and Guru Nanak Educational Society, in respect of which Panineeya Sanskrit College Trust, had filed the instant complaint, which is since settled amicably and a Memorandum of Understanding dated 30th July 2016 has been entered and executed which has been registered as Document No.368/2016 Book-IV in the office of the Sub-Registrar, L.B. Nagar, Hyderabad. A copy of the MoU dated 26.09.16 has also been enclosed herewith. On receipt of the said letter, a letter Ref. No. G/DD/Com-CWA(12)/10/2016 dated 31st October 2016 was sent by the Disciplinary Directorate to Shri D. Ravi, Chairman & Managing Trustee, Panineeya Sanskrit College Trust intimating

them about the receipt of the letter, in question, from Shri E.V.P.S. Krishna, respondent and requesting them to confirm:

i. Whether the declaration dated 26th September 2016 has been signed by the complainant on behalf of the Trust.
ii. Whether, the complainant would like the complaint against Shri E.V.P.S. Krishna, respondent to be withdrawn.

The complainant, vide his letter dated 18th November 2016, confirmed that the declaration dated 26th September 2016 was signed by Shri D. Ravi, Advocate/Trustee representing Panineeya Sanskrit College Trust and the Trust also wishes to withdraw its complaint against Shri E.V.P.S. Krishna, respondent.

22. Another letter dated 12th December 2016 was sent by the complainant to the Director (Discipline) intimating that an extraordinary meeting of the Trust was scheduled to be held on 31st December 2016 wherein the decision for adopting and sending a resolution for withdrawal of the complaint against Shri EVPS Krishna, respondent will be officially taken and a formal resolution duly signed by their Chairman along with the signatures of majority number of members of the Trust will be sent to Disciplinary Directorate to put an end to these complications. They have, in the last paragraph of the letter under reference, requested to consider the said letter and to expedite the process of disposing the complaint of the Trust at the earliest.

23. There can be no doubt that the activities of the respondent have brought disrepute to the profession as the alleged activities of the respondent have tarnished the image of the Institute. Thus, Shri EVPS Krishna has been found to be guilty of violations of:

I. Clause (2) of Part IV of the First Schedule of the Cost and Works Accountants Act, 1959, as amended &

II. Clause (4) of Part II of the Second Schedule of the Cost and Works Accountants Act, 1959 as amended.

24. Findings:- The findings of the Disciplinary Directorate are:

a. Criminal conspiracy in terms of Section 120B of IPC
b. Violation of CWA rules and regulations
c. Forgery and deceitful activities
d. Making false claim, cheating etc
e. Acting as an arbitrator without having any authority to act.

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c. Forgery and deceitful activities
d. Making false claim, cheating etc
e. Acting as an arbitrator without having any authority to act.

25. The respondent was requested several times to appear for making oral submissions in terms of Rule 18(6) of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 but he did not appear on one pretext or the other. However, finally he appeared for hearing under Rule 19(1) in the 29th meeting of the Disciplinary Committee held at Mumbai on 3rd March 2017 The respondent appeared before the Committee on the appointed date and time and stated that complainant wants the complaint to be withdrawn and now since the educational institution of Panineeya Sanskriti College Trust has been developed and the criminal complaint at Hyderabad Court was likely to be decided in his favour, he pleaded to close the case.

26. It is pertinent to mention here that Ministry of Corporate Affairs, by a letter No, 12/23/2010-PI dated 13th December 2010 had directed that as soon as it comes to the notice of the Institute that either on the basis of press reports or otherwise, that a member of the Institute has been, or appears to have been, arrested by the police or any law enforcing agency, it shall take steps to obtain the details in respect of the matter and if he is really arrested, the details of such member should be put up on the Institute website till the disciplinary proceedings are completed. Accordingly, the said information is hosted on the Institute website in compliance with the direction of MCA.

27. Although the Trust has by its letter dated 10th April 2017 expressed its intention to withdraw the complaint against Shri EVPS Krishna, there can be no second opinion on the fact that the image of the profession and that of the Institute has been tarnished considerably by the act of the respondent. The withdrawal of the complaint by the complainant can neither reverse nor undo the alleged act of the respondent.

28. The Committee, therefore reprimands the respondent under clause (a) of sub-section (3) of Section 21B of the Cost and Works Accountants Act, 1959.

(Manas Kumar Thakur)

Dated:- 5th May 2017

Presiding Officer, Disciplinary Committee