

THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 115/2012

In the matter of complaint of professional or other misconduct filed by Shri Vimal S V, ACS - 25061 against Dr. Baiju Ramachandran, ACS - 16505 (CP No. 7071).

Date of Decision: 24th October, 2013

Coram: Sudhir Babu C, Presiding Officer
Umesh H Ved, Member
Sutanu Sinha, Member

ORDER

1. A complaint in Form 'I' dated 11th January, 2012 was filed under Section 21 of the Company Secretaries Act, 1980 read with sub-rule (1) of Rule 3 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (the Rules) by Shri Vimal S V, ACS-25061 (hereinafter referred to as 'the Complainant' against Dr. Baiju Ramachandran, ACS-16505, (hereinafter referred to as 'the Respondent').
2. The Complainant in his complaint has *inter-alia* alleged that the Respondent had defrauded the Institute and members by giving false affidavit stating that he has obtained first rank in LL.B from the University of Kerala and the same has also been included in the "List of Candidates and their particulars" published by the Institute during the Council/Regional Councils Elections 2010". The Complainant further alleged that the Respondent has not obtained first rank in the said examination from the University of Kerala which can clearly be ascertained from the rank list issued by the authorities of the University of Kerala evidencing this false affidavit of Dr. Baiju Ramachandran. The Complainant further stated that in the said affidavit the Respondent had also stated that he has obtained first rank in MMM examination from Annamalai University, however, there is no evidence that he has obtained first rank in the said examination. The Complainant further stated that the Respondent has managed to influence the Members of the Institute by giving wrong information about his academic achievements and got elected in the ICSI Elections, 2010 conducted by the Institute which amounts to manipulating the ICSI Elections, 2010.
3. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 20th January, 2012 calling upon him to submit the written statement followed by a reminder dated 15th February, 2012. The Respondent submitted the written statement dated 9th February, 2012 (received in the Institute on 16th February, 2012). The Respondent *inter-alia* stated that he has not given any wrong or misleading information in the said statement submitted along with the nomination for the Elections, 2010. He further stated that he had only mentioned the 1st rank won by him against his M.Com qualification from the Kerala University. Further, the said noting pertains only to



Sutanu Sinha

Umesh H Ved

Sudhir Babu C

the M.Com qualification and not to other qualifications. The Respondent further stated that he is having only 3rd rank in the LL.B. examination and the noting of first rank was mentioned against M.Com only and not for other qualifications. The Respondent further stated that he has not given any wrong or misleading information in the said statement given along with the nomination for the ICSI Elections, 2010. On perusal of the said statement, it can be seen that it is against the column 'merit awards in the examinations of recognized universities and the examinations conducted by the Institute that his M.Com (Kerala University), LL.B. (Kerala University) and MMM (Annamalai University) are stated. He further stated that the said column does not make any mention of 'Rank in the examination' which is totally different from 'merit awards'. The Respondent further stated that due to space constraint, the space available for printing the information regarding merit awards got by each candidate the word 'first rank' is printed as the first line of the said column. The Complainant has chosen to exploit the said printing adjustment by misrepresenting it as university first rank in all the qualifications written therein. In fact the 'first rank' in the said column of the said publication pertains to first written qualification there under. The Respondent further stated that the space adjustment in the publication is not sufficient to canvas the minds of the voters/members of the Institute as our members constitute intellectual constituency which cannot be influenced by showing academic achievements alone. The electors herein are capable of assessing the organizational abilities and track records of the candidates contesting in the election.

4. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was sent to the Complainant vide letter dated 21st February, 2012 asking him to submit the rejoinder. The Complainant submitted the rejoinder dated 12th March, 2012.
5. The Complainant reiterated the contents of his original complaint and stated that the "list of candidates and their particulars" published by the Institute in the "Election 2010" states that the Respondent has obtained first rank in LL.B from Kerala University and first rank in MMM from Annamalai University. This statement is absolutely false and misleading as the Respondent has actually obtained only a third rank in LL.B from the Kerala University and no rank in MMM from Annamalai University which is admitted by the Respondent in his written statement. Thus, the Respondent has undoubtedly influenced the members by providing wrong information about him through the Institute's publication by creating an impression that he is such a meritorious candidate and got elected in the ICSI Elections, 2010. The Complainant further stated that the Respondent himself has accepted in his written statement that he had only a 3rd rank in LL.B. from the University of Kerala and no rank in MMM from Annamalai University which is clearly evident beyond doubt that the Respondent has succeeded in defrauding our esteemed Institute and the Members of the Institute by deliberately furnishing false information regarding his 'educational achievements' with an intention to obtain the votes of the members in the ICSI Elections, 2010.
6. The Complainant further stated that statement submitted by the Respondent with regard to the ICSI Elections, 2010 vide Sub Rule 4 of Rule 9 read with Schedule 4 of the Company Secretaries (Election to the Council) Rules, 2006



('The Election Rules') has the same sanctity of an affidavit as the candidate specifically verify that all the particulars mentioned in the said statement are true to the best of his/her knowledge and belief. The Complainant further stated that if there is any misstatement unintentionally occurred in the said statement furnished by the candidates as per sub-rule (4) of Rule 9 read with Schedule 4 of the Election Rules', such candidates have an opportunity to correct such errors occurred in the particulars furnished that have come to their knowledge as per Rule 15(3) of the Election Rules of the Institute.

7. The Complainant further stated that the Respondent cunningly drafted and misrepresented the readers in such a way that it created an impression that the Respondent is having very high caliber to get first rank in all these examinations and has managed to obtain their votes for winning the election conducted by the Institute in 2010. The Complainant further stated that the Respondent has also not taken any effort to correct the said serious errors occurred in the particulars furnished by him as per the Rule 15(3) of the Election Rules. So, it is quite apparent that the Respondent has actual intention to defraud the Institute as well as the Members of the Institute by publishing his 'Smart and meritorious' academic achievements in the 'List of candidates and their particulars' published by the Institute in Election 2010, since as per statement pursuant to Sub-rule 4 of Rule 9 read with Schedule 4 of the Election Rules, it is clearly mentioned that "Merit Awards(limited to first three positions) in the examinations of recognized universities and the examination conducted by the Institute".
8. Pursuant to Rule 9 of the Rules, the Director (Discipline) examined the complaint, written statement, rejoinder and other material on record; *prima-facie* observed that the Complainant has attached a list of candidates for the SIRC and their particulars wherein it appears that the Respondent has obtained the first rank in three qualifications, though he has admitted to have obtained First Rank in only one qualification i.e. in M.Com after this complaint was made. Further, the typed copy of the Statement pursuant to sub-rule (4) of Rule 9 read with Schedule 4 of the Election Rules submitted to the ICSI, duly verified by the Respondent himself on 28.09.2010 clearly states that he got First Rank in M. Com, LL.B, and MMM, though it was not so. The statement of the Respondent tantamount to violation of Rule 42(4) (xii) of the Election Rules. The Respondent, as per Rule 15(3) of the Election Rules had an opportunity to correct the errors in his particulars submitted to the ICSI but he did not do so. Hence, the Respondent is *prima-facie* 'Guilty' of misconduct under Clause (2) of Part IV of the First Schedule of the Company Secretaries Act, 1980 as the Respondent has contravened Rule 42(4)(xii) of the Election Rules.
9. The Board at its meeting held on 4th April, 2013 had considered the *prima-facie* opinion of the Director (Discipline) dated 22nd March, 2013; the material on record and agreed with the *prima-facie* opinion of the Director (Discipline) that the Respondent is 'Guilty' of Professional Misconduct for contravening clause (2) of Part IV of the First Schedule of the Company Secretaries Act, 1980 as the Respondent has contravened Rule 42(4) (xii) of the Election Rules and decided to proceed further in the matter in accordance with the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007.



A handwritten signature in black ink, appearing to read "Anurag Sharma".

Handwritten initials "DW" in black ink.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal stroke.

10. Accordingly, a copy of the *prima-facie* opinion of the Director (Discipline) was sent to the Respondent and the Complainant *vide* letters dated 5th April, 2013 calling upon them to submit the written statement and the rejoinder, respectively.
11. The Respondent *vide* his e-mail dated 17th April, 2013 requested for additional time to submit his written statement which was granted to him *vide* letter dated 18th April, 2013. A copy of the said letter was also addressed to the Complainant.
12. The Respondent *vide* letter dated 1st May, 2013 submitted the written statement. A copy of the written statement was forwarded to the Complainant *vide* letter dated 6th May, 2013 to submit the rejoinder. The Complainant *vide* e-mail dated 29th May, 2013 submitted the rejoinder dated 17th May, 2013.
13. The parties were called upon to appear before the Board on 17th June, 2013 *vide* letters dated 5th June, 2013.
14. Mr. S Kumar, Advocate appeared before the Board on 17th June, 2013 on behalf of Dr. Baiju Ramachandran, the Respondent and submitted the authority letter of the Respondent authorising him to appear on his behalf. The Board took note of the same.
15. Mr. S Kumar, Advocate sought the following information:
 - i. What is the nature of the complaint? Whether it is Election Complaint or it is complaint under Section 21 of the Company Secretaries Act, 1980?
 - ii. What is the procedure to deal with the complaint under Section 21 of the Company Secretaries Act, 1980 with specific reference to Clause (2) of Part IV of the First Schedule?
 - iii. What is the process / procedure for filing the complaint under the Election Rules?
 - iv. Under the Election Rules, the candidate has the option to send multiple nomination forms. Which nomination form is taken into consideration and what is the fate/validity of the other forms?
 - v. Who is responsible for compilation, preparation and presentation of the particulars of the candidates under sub-rule (3) of Rule 15 of the Election Rules and which nomination form is taken into consideration for this purpose?
 - vi. Mr. Kumar further requested the Hon'ble Board of Discipline to place on record the original nomination form which was taken into consideration.
16. The Board informed Mr. S Kumar, Advocate that the *prima-facie* opinion of the Director (Discipline) was agreed by the Board of Discipline which was sent to the parties asking them to submit their written statement / rejoinder respectively. The Board further asked Mr. S Kumar, Advocate as to why the Respondent did not raise the said queries in his written statement. The Board also asked Mr. S Kumar, Advocate whether he wants to say anything on the written statement of the



Subramaniam Srinivasan

Dr.

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Respondent for which he said that he will submit his arguments after he is clarified on the above queries. The Board considered the material on record and informed Mr. S Kumar, Advocate that whatever the information sought by him should be addressed to the Board and not to the Director (Discipline). The Board further advised Mr. S Kumar, Advocate to submit the information sought by him in writing to the Board, which he agreed to. The Board further asked him whether he would like to argue the matter on merits, to which he stated that he will argue on receipt of the information as sought by him. Thereafter, the Board decided to provide another opportunity of hearing to the parties and adjourned the matter.

17. An email dated 5th July, 2013 was received from Mr. S Kumar, Advocate of the Respondent and the same was circulated to the Members of the Board of Discipline vide email dated 9th July, 2013. The Board on 13th August, 2013 deliberated on the matter and decided that the reply to the email of Mr. S Kumar is uncalled for. The Board thereafter decided to call the parties before it for hearing. Thereafter, the matter was adjourned.
18. Accordingly, vide letter dated 4th September, 2013 the parties were called upon to appear before the Board on 11th September, 2013.
19. The Board was apprised that the Complainant vide his letter dated 7th September, 2013 (received on 11th September, 2013) has requested to adjourn the hearing. The Board considered his request.
20. Mr. S Kumar, Advocate appeared before the Board on behalf of the Respondent and made oral submissions and filed his written arguments. The Board decided that the copy of the written arguments so submitted by him be sent to the Complainant asking him to submit his comments if any, on the same. The Board also informed Mr. S Kumar about the request of the Complainant for adjournment of hearing. Mr. S Kumar noted the same. The Board thereafter adjourned the matter with the direction that the parties be called at its next meeting.
21. The written arguments of the Respondent was sent to the Complainant vide letter dated 12th September, 2013 asking him to submit the written arguments, if any, within 7 days of the receipt of the letter. However, no written arguments were received from the Complainant.
22. The Respondent vide letter dated 17th September, 2013 *inter-alia* stated that his Counsel Mr. S Kumar had represented him and appeared before the Board of Discipline on 17th June, 2013 and 11th September, 2013. However, the Complainant did not appear in both the meetings and on 11th September, 2013 his Counsel was informed that the Complainant desired to appear before the Board for making submissions and accordingly, had requested to hold another meeting. The Respondent further requested that he may be given liberty to file additional arguments after hearing the Complainant. The Respondent also stated that the complaint has been considerably delayed and the Complainant is perhaps resorting to delay tactics. The Respondent further stated that another opportunity may be provided to him to make submissions. The Respondent further requested that the next hearing may be fixed at the earliest date and the last and final opportunity be provided to the Complainant to make his submissions, if any.

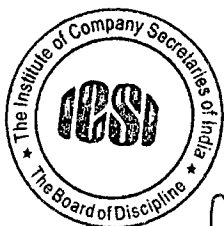


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23. Accordingly, vide letters dated 20th September, 2013 the Board called upon the parties to appear before the Board on 24th October, 2013 at Thiruvananthapuram.
24. The documents submitted by Dr. Baiju Ramachandran for contesting the Southern India Regional Council Elections, 2010 were summoned vide letter dated 20th September, 2013.
25. On 24th October, 2013, the Complainant along with Mr. Shyam Sundar, Advocate appeared before the Board and made oral submissions. The Respondent along with Mr. S Kumar, Advocate also appeared before the Board and made oral submissions.
26. The Board showed to the Respondent the three nominations alongwith statement dated 22nd September,2010 , 23rd September,2010 and 28th September,2010 filed by him pursuant to Sub-rule(4) of Rule 9 read with Schedule 4 of the Election Rules for the ICSI Elections,2010 wherein under the "merit award" column he had purportedly claimed first rank in M Com, LLB and MMM. The Board thereafter, asked the Respondent as to whether he has obtained the first rank in all three qualification (M Com, LLB and MMM) to which the Respondent submitted that he had obtained the 1st rank only in M Com from the Kerala University.
27. Mr. S Kumar, Advocate contended that the only allegation of the Complainant is that the Respondent has given false information to the Returning officer in the statement pursuant to Sub-rule(4) of Rule 9 read with Schedule 4 of the Election Rules about his academic achievements and managed to influence the members in getting elected to the SIRC and that the conduct of the Respondent amounts to manipulating the ICSI elections 2010. Mr. S Kumar, Advocate further stated that since the present complaint has not been filed in accordance with sub-regulation (4) of Regulation 114 of the Company Secretaries Regulations, 1982, the complaint does not merit consideration at all.
28. Thereafter, the Board observed that sub-regulation (4) of Regulation 114 of the Company Secretaries Regulations, 1982 is not applicable in the instant case as the dispute is not between the contesting candidates. The Board further observed that the Complainant has attached a list of candidates for SIRC and their particulars wherein it is clearly appearing that the Respondent has obtained the first rank in three qualifications, though he has admitted to have attained First Rank in only one qualification i.e. in M.Com after this complaint was made. The Board concurred with the prima facie opinion of the Director (Discipline) and came to the conclusion that the statement of the Respondent is certainly a violation of Rule 42(4) (xii) of the Election Rules. The arguments advanced by the Respondent do not find any merit. In fact this is a clear cut case of falsification wherein the Respondent has mis-stated about his qualifications and thereby made tall claims.



Judane Sinha

Dw

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Rule 42(4) (xii) of the Company Secretaries (Election to the Council) Rules, 2006 reads as under-

" Contravention or misuse of any of the provisions of these Rules or making of any false statement knowing it to be false or without knowing it to be true, while complying with any of the provisions of these Rules."

Rule 42 (1) of the Company Secretaries (Election to the Council) Rules, 2006 reads as under:

"(1) A member shall be deemed to have brought disrepute to the Council under item (2) of Part IV of the First Schedule of the Act if, in connection with an election to the Council of the Institute, he is found to have contravened the provisions of sub-rule (2) or all or any of the clauses of sub-rule (3) or sub-rule (4) of this rule."

29. The Board observed that the aforesaid Rule is a deeming provision under which a member shall be inevitably deemed to have brought disrepute to the Council under item (2) of Part IV of the First Schedule of the Act. Clause (2) of Part IV of the First Schedule of the Company Secretaries Act, 1980 reads as under-

"PART IV

Other misconduct in relation to members of the Institute generally

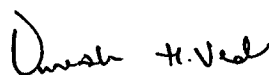
A member of the institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if—

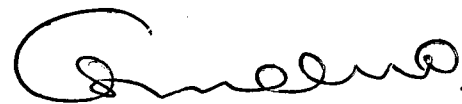
(1)....

(2) in the opinion of the Council, he brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work.

30. The Board deliberated the matter at length and considering the nature of issues involved and in totality of the circumstances of this case held Dr. Baiju Ramachandran, the Respondent 'Guilty' under Clause (2) of Part IV of the First Schedule of the Company Secretaries Act, 1980 as he contravened Rule 42(4)(xii) of the Company Secretaries (Election to the Council) Rules, 2006 and decided to give him an opportunity of being heard in terms of Section 21A (3) of the Company Secretaries Act, 1980 before passing any order.


(Sufanu Sinha)
Member


(Umesh H Ved)
Member


(Sudhir Babu C)
Presiding Officer

Chennai ^A
Date: 08 November, 2013

