

BEFORE THE APPELLATE AUTHORITY

(Constituted under the Company Secretaries Act, 1980)

APPEAL NO. 02/ICSI/2013

IN THE MATTER OF

Sh. Pradeep K.Mittal Appellant
Through Mr. Nidesh Gupta, Sr. Advocate with
Shri Saurabh Kalia and Manoj Kr. Sinha, Advocates

Versus

The Board of Discipline and ors.
Through Shri R.D.Makheeja, Advocate for Respondent No. 1 Respondents

CORAM:

HON'BLE THE CHAIRPERSON
HON'BLE MR. RAKESH CHANDRA, MEMBER
HON'BLE MR. PAVAN KUMAR VIJAY, MEMBER

Date of Hearing: 07-02-2014

Date of Order : 14-02-2014

Order

The appellant has preferred this appeal against the order dated 13th September, 2013 of the Board of Discipline of the Institute of Company Secretaries of India whereby the appellant was rewarded a punishment of 'reprimand' by the Board.

2. The brief facts relevant for the purpose of deciding this appeal are that the appellant had contested the election to Central Council of the Institute from Northern India in December, 2010. Two of the members of the Institute namely Shri S.K. Jain and Shri Sunil Kumar Khemka (respondents No. 2 and 3) made allegations against the appellant to the Institute through e-mail that the appellant had contravened clause(d) of the sub rule 3 of rule 42 of the Company Secretaries

(Election to the Council) Rules, 2006 (hereinafter called election rules) as the appellant circulated and distributed manifesto/circular to the members of the constituencies outside Northern India. The Director (Discipline) sent a copy of the complaint to the appellant and the appellant sent his explanation to the Director (Discipline). The explanation given was that the appellant had advised his staff to send election profile to members/voters located within Northern India region. However, the staff might have mis-understood the instructions and through oversight sent election profile to some members outside the Northern India regional constituents. The appellant also took objection to the fact that the respondents No. 2 and 3 instead of making a formal complaint in the prescribed form had only sent emails to the Institute and the Institute should not have acted on emails despite the office of Director (Discipline) telling the respondent to file the complaint along with a fee of Rs.2500/-. The respondents in fact refused to file the complaint in the prescribed form and did not deposit the requisite fee. The complaint was, therefore, liable to be rejected.

3. The Director (Discipline) considered the two emails as material sufficient to act despite the respondents refusal to file a formal complaint. The Director (Discipline) gave a prima facie opinion that the explanation given by the appellant was sufficient and the appellant was prima facie not guilty of alleged professional misconduct. He sent this opinion to the Board of Discipline.

4. The Board of Discipline instead of agreeing or disagreeing with the opinion of the Director (Discipline) sent the matter back to the Director (Discipline) asking him to seek rejoinder from respondent no. 2 and 3 and to review his opinion based on such response from the two respondents. Accordingly, a copy of the reply received from the appellant was sent to the two respondents and they submitted a rejoinder



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and a supplementary rejoinder to the reply. Thereafter the Director (Discipline) reviewed his prima facie opinion and gave a supplementary opinion wherein he held that prima facie a case was made out against the appellant for violation of rule 42(4)(vii).

5. The Board of Discipline decided to act against the appellant on the basis of the reviewed prima facie opinion. The appellant was asked to send his response to the reviewed prima facie opinion. The appellant again denied the allegations and pleaded that he was not guilty of any professional misconduct.

6. Though the two respondents in their initial e-mails to the Institute had alleged that the appellant had circulated his profile and manifesto outside the jurisdiction, in the rejoinder Mr. S.K. Jain alleged that the appellant had violated Rule 42(3)(d) of the Election Rules. The violation of Rule 42(3)(d) of the election rules was alleged on the ground that the appellant had circulated his election manifesto containing his photograph and the ICSI logo in violation of directions issued by Returning Officer. The Director (Discipline) had reviewed his prima facie opinion based on this allegation made in the additional rejoinder.

7. The Board of Discipline vide its order dated 17th June, 2013 held the appellant guilty of violation of rule 42(4)(vii) of the election rules on account of circulation of his profile which contained his photograph along with image of the ICSI logo. The circulation of photograph and ICSI logo was found to have been done by appellant contrary to the instructions issued by returning officer.

8. The Board of Discipline thereafter 'reprimanded' the appellant for violation of these instructions vide its order dated 13th September, 2013.



9. A perusal of the record of the appeal brings out some strange and inconvenient trend of the Board of Discipline. The initial complaint was made in respect of circulating manifesto and profile outside the constituency. The Director (Discipline) in his prima facie opinion had found that no case of professional misconduct was made out. The Board of Discipline is a body constituted under law for making inquiry into the acts of professional misconduct of the members. The Board of Discipline is not a body to invite complaints. In this matter once the Director (Discipline) after conducting an enquiry had formed a prima facie opinion and forwarded it to the Board of Discipline, the Board of Discipline could have either agreed with the prima facie opinion or disagreed and directed the Director (Discipline) to make further inquiry. It had no authority to tell the Director (Discipline) to review his opinion or to ask the complainants, who in fact were not even ready to send a formal complaint and spent Rs. 2500/- as fee, to send rejoinders. From the entire episode it looks as if the entire proceedings against the appellant were in the nature of a witch hunt initiated at the instance of Board of Discipline and not at the instance of the complainants.

10. It is again strange that neither the Director (Discipline) nor the Board of Discipline thought it necessary to have a close look at the directions issued by the Election Officer in terms of Rule 42. The directions issued by the Election Officer have been perused by this Appellate Authority and the counsel of the Institute was confronted with these during arguments. It would be seen that these directions were issued by the Election Officer on 29th November, 2010, after 10 days of the appellant sending his manifesto along with his photograph taken at a function of the Institute which obviously contained a photograph of the logo of the Institute. These directions were not in force when the appellant mailed his manifesto to respondent nos. 2 and 3 on 18th November, 2010 and 19th November, 2010. The



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directions/instructions were issued by the Election Officer undisputedly on 29th November, 2010. It is obvious that on the day when the appellant sent his manifesto and photograph containing image of the logo of the Institute through email, the directions were not in force. It only appears that the Board of Discipline somehow wanted to frame the appellant and accordingly issued directions to the Director (Discipline) to review his prima facie opinion. The Director (Discipline) closed his eyes to the date of issuing instructions and the date of email of the appellant. The Board of Discipline also closed its eyes to the date of issuing instructions and the date of emails.

11. We find that the appellant had not violated any election rule on the date when he sent emails to the respondents as no such instructions were in force at that time. The disciplinary proceedings against the appellant seem to be actuated for exterior reasons and are liable to be set aside. We therefore allow this appeal. The appeal is allowed. The sentence awarded to the appellant is set aside. The Director (Discipline) and the Board of Discipline are directed to be careful in future while proceeding against the honourable members of the Institute. They should treat the members as honourable as they wish the world at large to so treat the members. In fact it is the Board of Discipline and the Director (Discipline) who committed gross misconduct in this case.

12. Before parting with the order we also feel that there is a need to have a relook at election rules prohibiting circulation of his election manifesto by a candidate to persons outside his constituency, for two reasons -one, that in reality, the circulation of his manifesto by a candidate to persons outside his constituency does not really matter, since many voters nonetheless remain outside the constituency and this will not prejudice the position of the candidate in any manner.



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Secondly, in this age of technology, where the election manifestos are being circulated by the means of email, it becomes difficult, to find out which recipient is placed in which constituency. There always remains a chance of circulation of the manifesto to voters outside the candidate's constituency as well, which technically results in the contravention of the rule. It is not feasible to determine the location of the recipient on the basis of his email id. When the manifestos were sent only through the physical mode, this could be determined from postal address, but in an era of communication revolution, when a mail can be forwarded by a recipient to all of his known persons such a rule becomes meaningless. Rules must keep pace with time and technology.

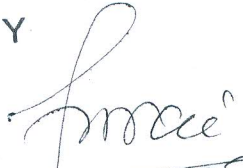
**Justice S.N. DHINGRA(Retd.)
CHAIRPERSON**

**RAKESH CHANDRA
MEMBER**

**PAVAN KUMAR VIJAY
MEMBER**

New Delhi,
This 14th day of February, 2014.

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28.03.2014
**DEPUTY REGISTRAR
APPELLATE AUTHORITY
'ICAI BHAWAN'
A-29, SECTOR-62, NOIDA**



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