

BEFORE THE APPELLATE AUTHORITY

(Constituted under the Company Secretaries Act, 1980)

APPEAL NO. 03/ICSI/2013

IN THE MATTER OF

Dr. Baiju Ramachandran Appellant
Through G.Somanathan Nair Thiruvananthapuram, Advocate

Versus

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

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 brief facts relevant for the purpose of deciding this appeal are that the appellant had filed nomination papers to contest elections of the Institute of the Company Secretaries of India for Southern India Regional council (SIRC) in the year 2010. The Respondent No. 2 filed a complaint against the appellant with the Institute under section 21 of the Companies Secretaries Act 1980 read with rule 3(1) of the Company Secretaries (Procedure of Investigation of Professional and other misconduct) Rules 2007 (hereinafter called the Rules) alleging that the appellant defrauded the Institute and the members by giving a false affidavit along with nomination forms filed by him. In the nomination form, he had stated his having obtained first rank in LLB examination, MMM examination and M.Com examination. However, as per his verification, the appellant had not obtained first rank either in LLB or in MMM examinations. Thus, he furnished wrong information in the nomination form and filed a wrong supporting affidavit verifying the correctness of

information about his academic achievements. As per respondent no. 2, the false statement made by the appellant about his academic achievement influenced the members of the Institute and he got elected in ICSI election 2010.

2. On the complaint of Respondent no. 2, the Director (Discipline) sought the response of the appellant. The appellant denied the allegations. He submitted that he had obtained first position in M.Com examination and he mentioned about the first rank in M.Com examination only. He stated that although he had filed four nomination forms, but he attached a demand draft for election fee and security deposit for election along with his form dated 22.9.2010. This form was hand-filled by him. This form of 22.9.2010 was scrutinised and accepted as valid nomination form. The other forms were neither scrutinised nor accepted as valid nomination forms.

3. The Director (Discipline) after examining the complaint, response and rejoinder as well as documents gave a prima facie opinion that the appellant was guilty of professional misconduct under clause (2) of Part IV of First Schedule of Company Secretaries Act, 1980 for contravening Rule 42(4)(xii) of the Election Rules observing that the appellant despite having opportunity to correct the error in his particulars submitted to ICSI, did not do so.

4. The Board of Discipline after holding enquiry concurred with the opinion of the Director (Discipline) and came to conclusion that the statement made by the appellant in the nomination form, supported by affidavit, was in violation of the Election Rules, since the appellant had mis-stated about his merits and did not correct the error subsequently when the information was published by the Institute. The Board of Discipline held the appellant guilty for professional misconduct and awarded him a penalty of fine of Rs.10,000/-.

5. The notice of hearing of appeal was sent to the appellant and to the respondents. The parties that appeared before the Appellate Authority were heard



and the documents were perused. A perusal of the record of the nomination papers would show that the appellant had sent the security deposit and nomination fee for election to the Council only with one form dated 22nd September, 2010. The check list for scrutiny of nomination attached by the Institute with the nomination forms also shows that nomination form filed on 22nd September, 2010 contained details of DD no. and date for nomination fee. Security deposit was also made only with the form dated 22.9.2010. This form is hand filled by the appellant and this form was scrutinised by the Institute for the purpose of election. With other nomination forms, no security deposit or nomination fee was filed. Another form on record dated 23.9.2010 is also hand filled and in this hand filled form, the same particulars which have been given in the form dated 22.9.2010 have been repeated.

6. In the two type written forms with which the required security deposit and nomination fee were not filed, the appellant had stated that he obtained first rank in M.Com, LLB and MMM.. However, in the two hand written forms, the appellant had written three qualifications and written first rank against the first qualification i.e. M.Com.

The column in the form seeking information read as under:-

- a)
- b) Merit awards (limited upto first three positions) in the examinations of recognized universities and the examinations conducted by the Institute;
-

7. The appellant contended that he was supposed to write qualifications in which he had obtained merit awards for the examination of recognised universities. In all the three qualifications mentioned by him, he had obtained merit awards for his performance, only in M.Com examination, he had obtained first rank. He, therefore, mentioned first rank in his hand written form against M.Com. About typewritten forms he stated that same were typed in his office by his clerk who did not copy it correctly from the hand written form. But since he had already filed a



hand written form with correct information, he did not scrutinise the forms properly and signed it.

8. He stated that he had no intention to make a false statement. He had stated about his qualifications and ranking as per the requirements of the nomination form. He also stated that he holds around 15 qualifications, details of which he had given in the nomination forms. Out of these, in three qualifications he was placed among first three positions in the universities, so he mentioned those three qualifications against the column stated above in para-6 and against M.Com he mentioned first rank as he had obtained first position in M.Com. There was thus no false statement made by him, nor did he have any intention to do so.

9. The Council for the Institute on the other hand submitted that the appellant had written first rank in such a manner in the nomination form appearing as if he had obtained first rank in all the three qualifications, namely, LLB, MMM and M.Com. Therefore, he had made a false statement.

10. We consider that only that nomination form of the appellant could be taken into consideration which was scrutinised and accepted by the Institute. It was obligatory on the Returning officer to accept one nomination form as valid and to reject other nomination forms as invalid as they were not submitted with requisite nomination fee and security deposit. The scrutiny form of the Institute available on the original file shows that three scrutinisers finally scrutinised the nomination form on 16.10.2010. Prior to that the nomination forms were checked and a check list prepared by five officials of the Institute and it was recommended for acceptance. Thus the nomination form of the appellant was seen and checked by eight persons of the Institute. Three scrutinisers and five other officials have signed the check list for scrutiny of the nomination. However, what is strange is that this scrutiny paper is attached with all the four nomination papers and no particular nomination was accepted or rejected. We consider that it was obligatory on the Returning Officer to

mention on record as to which nomination form was accepted. The Returning officer was obliged to discard nomination forms which were not accepted or not considered.

11. Since the nomination fee and security deposit had accompanied only one nomination form dated 22.9.2010, only this nomination form could have been looked into by the Institute as well as by the Disciplinary Committee and the Director (Discipline). Other nomination forms could not have been looked into.

12. As per the nomination form dated 22.9.2010, the appellant had mentioned his ranking against Column B as under:-

B) Merit awards (limited upto first three positions) in the examinations of recognized universities and the examinations conducted by the Institute;	{	M. Com	1 st Rank
		LLB	
		MMM	

It is apparent that the appellant had mentioned first rank against only M.Com and not against LLB and MMM. The allegation made by respondent in respect of false statement made by appellant thus does not seem to be true.

Rule 42(4)(xii) of the election rules reads as under:-

“42. Disciplinary action against member in connection with conduct of election.

.....

(4) A member shall not adopt one or more of the following practices with regard to the election to the Council, namely:

.....

(xii) 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.”

13. It is apparent from the reading of the Rule that a false statement must be made by a person knowing it to be false or without knowing it to be true. This shows that the element of mens rea is to be inferred from the above rule, meaning thereby that the person making false statement must have an intention to do so. However, in the present case, there seems to be no intention of the appellant to make a false

statement about rank held by him. The appellant was holding 15 qualifications, most of them post graduate qualifications. If a voter could not be influenced by 15 qualifications, he would not have been influenced by the rankings of three qualifications. We consider that there could not have been a mala fide intention on the part of the appellant to influence the voters by mentioning rank.

14. The other ground raised against the appellant is that he, despite having an opportunity to correct the informant did not do so. After the nomination forms are filed, the Institute publishes a list of candidates and their particulars. The Institute in this case, while publishing the list of candidates and particulars mentioned first rank of the appellant against all the three qualifications and these particulars and information were circulated to the Members. It is apparent that the person who typed the list of candidates and their particulars, misread information given in Column (b) above and instead of reading first rank against M.Com only, he read first rank against all the three degrees. The putting of bracket on the left side of the qualifications makes it clear that the appellant had no intention to state first rank against the three qualifications. Otherwise he would have put the bracket on the right hand side of the qualifications and then written first rank. He had to put bracket on left hand side because the academic qualifications to be mentioned in column (a) overran the space provided therein. He put bracket on the left side to show that those 15 qualifications fell in column A. Similarly, against these three qualifications, he put bracket on left side to show that these fell in Column B. The clerk typing the particulars to be circulated by the Institute did not read the column properly.

15. Election Rule 15 does not cast a duty on the candidate to intimate to the Institute an error in the list of candidates or the particulars of the candidate published by it before or after the particulars have been published and circulated to the members. If no duty was cast on the appellant to intimate to the Institute or to

the Returning Officer an error in the list published by it, the appellant cannot be held guilty for violation of any rules. While it was obligatory on the appellant to state correct particulars in the nomination form, it was also an obligation on the Institute to publish the particulars of the candidates correctly for information of the members. The appellant cannot be punished for an error of the Institute or on the ground that he did not approach the Institute for correction of the mistake. It cannot be said that the appellant made a false statement to the Institute knowing it to be false. We come to conclusion that the appellant had not given a false statement in the nomination form nor the affidavit filed by the appellant was false.

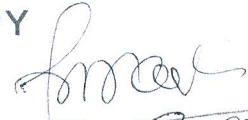
16. We therefore allow this appeal. The appellant had not contravened any of the provisions of the election rules nor was he guilty of professional misconduct on that account. The respondent no. 1 is directed to refund the penalty deposited by the appellant.

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

**RAKESH CHANDRA
MEMBER**

**PAVAN KUMAR VIJAY
MEMBER**

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28-03-2014
**DEPUTY REGISTRAR
APPELLATE AUTHORITY
'ICAI BHAWAN'
A-29, SECTOR-62, NOIDA**

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