

From:

The Registrar
Appellate Authority
ICAI Bhawan, I.P.Marg
New Delhi 110 002.

To:

1. R.R. Mallar
3, Silver Casade, Ist Floor,
110AA, Senapati Bapat Marg, Dadar (W)
Mumbai 400 002.
2. Bipin s Acharya
B3 Ripple Apartment,
Near Hindu Mahila Milan Mandir.
Narayan Nagar, Paldi,
Ahmedabad 380007.
3. The Secretary
Institute of Company Secretaries of India
ICSI House, 22, Institutional Area Lodhi Road,
New Delhi-110 003.

APPEAL NO. 13/ICSI/2012

R.R. Mallar

Versus

..... Appellant

Bipin S. Acharya & ICSI, New Delhi

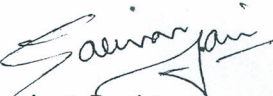
..... Respondents

Dear Sir/Madam,


I am directed to forward herewith a copy of order dated 04-Mar-2013, passed by the Hon'ble Appellate Authority in the above noted case / appeal for information and immediate compliance/ necessary action.

Please acknowledge receipt.

Yours faithfully,


Asst. Registrar
For Registrar

End. No. AA/NODA/14/2013, Dated : Mar 05, 2013.


Asst. Registrar

APPELLATE AUTHORITY
(Constituted under The Company Secretaries Act, 1980)

APPEAL NO. 13/ICSI/2012

IN THE MATTER OF

R.R.Mallar, (M No.008836)
3, Silver Cascade, 1st Floor,
110AA, Senapati Bapat Marg, Dadar (W),
Mumbai -400 02.Appellant

(through: None)

versus

1. Bipin S. Acharya,
B3 Ripple Apartment,
Near Hindu Mahila Milan Mandir,
Narayan Nagar, Paldi,
Ahmedabad 380007.
2. Director (Discipline),
The Institute of Company Secretaries of India,
ICSI House, 22 Institutional Area,
Lodhi Road, New Delhi - 110 003.Respondents

(through: Sh R.D.Makheeja, Advocate)

JUDGEMENT

By this appeal, the appellant has assailed Order dated 25th August, 2012 of the Disciplinary Committee of the Institute of Company Secretaries whereby the name of the appellant was removed from the Register of Members of the Institute for a period of 180 days.

2. An information was sent by Respondent No. 1 (Shri Bipin S. Acharya) against the appellant that the appellant while holding a Certificate of Practice No.3439 was also practicing as an Advocate at Bombay High Court. He was one of the country's leading and most experienced consulting lawyers. It was stated by the informant that as per provisions of Companies Secretaries Act and Rules framed thereunder, a Company Secretary holding the Certificate of Practice cannot engage himself in any other business or occupation/profession. He has also submitted that a member of Institute holding a Certificate of Practice is required to get his certificate renewed every year and he has to file an application in Form D. In the application, he is required to categorically state that he is not enrolled as a member of any Bar Council. It was submitted that since appellant was occupied in the profession as an Advocate in contravention of provisions under Rule 168 of the Company Secretaries

Regulation 1982, this amounted to professional misconduct on the part of the appellant and it should be enquired into. Along with the complaint, the complainant forwarded photocopies of the website of the appellant created under the name 'Mallar Law Consulting (Advocates, Consulting Lawyers, Trade Marks, Attorneys and Company Secretaries)'. In this web page, the appellant described himself a Member of International Bar Association, Trademark, Patents, Design & Copyright Attorney and an Advocate at Bombay High Court, apart from being a Fellow Member of Institute of Company Secretaries.

3. A copy of the complainant/information was sent to the appellant for response. The appellant in his written statement dated 20.6.2011 did not deny the fact that he was enrolled as an Advocate. He stated that he had been teaching regularly for many years in many institutes and was also regular Guest Faculty. He did not have significant practice as a Company Secretary and due to his vast experience in corporate world, the corporate world knew him more as a corporate lawyer than as a Company Secretary. Practicing only as a Company Secretary may hamper his name & fame, so he was seriously considering to surrender his Certificate of Practice (COP) instead of wasting his time and time of the Institute in defending against motivated charges of the complainant. After receiving this reply, a prima facie opinion was formed by the Director (Discipline) holding him guilty of professional misconduct and matter was sent to Disciplinary Committee. The Disciplinary Committee sent a notice to the appellant for filing written submissions as well as for personal appearance vide its letter dated 16.12.2011. The appellant did not appear personally and sent a letter dated 17.1. 2012 and in the letter he reiterated the stand taken by him before the Director (Discipline) and told Disciplinary Committee that he has decided to surrender his COP w.e.f June, 2012. Bipin S. Acharya, who had made complaint against the appellant, in the meantime, had died on 28th January, 2012. The Disciplinary Committee after considering Regulation 168 (1) of the Companies Secretaries Act which barred a Company Secretary from the profession or the profession of an Advocate gave a report dated 9th July, 2012 arriving at a conclusion that the appellant was guilty of professional misconduct within the meaning of clause(1) of part II of the Second Schedule of the Company Secretaries Act, 1980, since he was holding a Certificate of Practice of the Institute and was also in occupation as a lawyer/advocate. The Disciplinary Committee decided to offer an opportunity to the appellant before passing an order under section 21(B) against the appellant. The appellant did not appear before the Committee even at the time of this hearing. The Committee on consideration of the

matter in its meeting held on 16th August, 2012 decided to remove the name of the appellant from Register of Members for a period of 180 days.

4. In the present appeal, the appellant has assailed the order of the Committee on the ground that the Disciplinary Committee failed to consider the written submissions filed by him and mechanically followed the prima facie opinion of the Director (Discipline). The Disciplinary Committee did not decide the preliminary objections raised by the appellant in respect of maintainability of the application filed by the complainant, as the complaint/information was not accompanied with prescribed fee of Rs.2500/- and when the Institute had written to the complainant to file complaint with prescribed fee, the complainant had refused to pay the prescribed fee. It is also submitted that Disciplinary Committee failed to appreciate that the prime facie opinion formed by the Director (Discipline) was invalid and the case of the appellant did not fall within the ambit of Regulation 168 (1) of the Companies Secretaries Act, since there was no evidence led by complainant to show that the appellant was really engaged as a lawyer or had appeared as a lawyer in the courts. He submitted that any Company Secretary / practicing Company Secretary is also a consulting lawyer or a corporate lawyer and so long as he does not appear as an Advocate in the courts, no action can be taken against him under Regulation 168 (1).

5. The appellant did not appear to substantiate the contentions raised by him before this Authority. He had not appeared either before Director (Discipline) or Disciplinary Committee. We have considered the grounds raised by the appellant. The Appellate Authority also got it verified independently whether the appellant was registered as an Advocate with Bar Council of Bombay High Court or not and it transpired that the appellant was registered as an Advocate. The appellant has his registration with Bar Council of Maharashtra. This fact, is not even denied by the appellant. In a nutshell, the contention of appellant is that though he was registered as an Advocate, he was not appearing in the courts and he was only a consulting lawyer and is therefore not covered under regulation 168(1)

6. Any person who intends to practice in courts has to get himself registered as an Advocate. A person can work as a legal consultant even without being registered as an Advocate. Registration as a member of Bar Council is required only when somebody wants to practice as an Advocate and appear in courts. Without being registered as a member of the Bar Council, one cannot appear before the courts in India but without being registered as a member of the Bar Council, one can give legal advice to his clients, business world, commercial world or to whomsoever he

intends to give. There is no bar on giving legal advice on a professor imparting legal knowledge or teaching. The plea taken by the appellant that he was registered only for the namesake so that he may give legal advice is, therefore, a baseless plea. Whether a person who is registered as an Advocate is appearing in the courts or not is within his special knowledge, neither the Bar Council nor the Institute of Companies Secretaries would be knowing what would be the number of appearances made by such person. It is settled law that if something is within the special knowledge of a person, the onus to prove lies on him. It was for the appellant to come and depose before the Disciplinary Committee to the fact that he was registered as an Advocate only for the namesake so that he was able to write himself as a consulting lawyer and give consultation and be invited as an expert lawyer for lecture. However, he did not bother to appear before the Disciplinary Authority to give this evidence. Even otherwise a person who is registered as a Company Secretary is not authorized to get himself registered as an Advocate without general or specific permission of the Council of the Institute by a resolution to that effect. Regulation 168 reads as under:-

“A Company Secretary in Practice shall not engage in any business or occupation other than practicing as Company Secretary without the general or specific permission of the Council by a resolution to that effect. However, a Company Secretary in Practice is not barred to act as a Secretary, trustee, executor, administrator, arbitrator, receiver, appraiser, valuer, internal auditor, management auditor, management consultant or as a representative on financial matters including taxation and may take up an appointment that may be made by the Central or any State Government, Court of Law, Labour Tribunals, or any other statutory authority without prejudice to the discretion of the Council to prohibit such appointment. The Council has decided w.e.f. 1st June, 1991 not to permit a member in practice to provide these services as an employee of an organization.”

7. There is no general resolution passed by the Council to permit a person to get himself registered as an Advocate for non practicing purpose. In the application for issuance of renewal of Certificate of Practice, a Company Secretary has to state as under:-

“I state that I am/shall be engaged in the profession of Company Secretary only on whole-time basis and not in any other profession, business, occupation or employment. I am not enrolled as an Advocate on the rolls of

any Bar Council do not hold certificate of practice from any professional body including ICAI and the ICWAI."

8. The ground taken by the appellant about maintainability of complaint without fee of Rs.2500/- is equally untenable. The Institute has not only an authority to take suo-moto action as and when a professional misconduct of a member comes to its knowledge but has an obligation to do so since it has an obligation to keep the professional stream pure and blemish free. The Institute was within its rights to proceed against appellant and treat the same as information.

9. Thus the appeal filed by the appellant has no merits and the same is accordingly dismissed.

Sd/-
Justice (Retd.) S.N. DHINGRA
CHAIRPERSON

Sd/-
Rakesh Chandra
MEMBER

Sd/-
G. GEHANI
MEMBER

Sd/-
PAVAN KUMAR VIJAY
MEMBER

New Delhi
Dated this 4th day of March, 2013.



TRUE COPY

Yi
DEPUTY REGISTRAR
APPELLATE AUTHORITY