

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No. 1721 of 2010 & CM No. 3432 of 2010 (for stay)

P. RAMA KRISHNA Petitioner

Through: Mr. S. Ganesh and Mr. Neeraj
Kishan Kaul, Senior Advocates with Mr.
Atul Dua, Mr. Amar Dave, Ms. Taru Gupta
and Ms. Payal Chatterjee, Advocates.

versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF
INDIA THR: ITS SECRETARY & ORS. Respondents

Through: Mr. Parag Tripathi, ASG and Mr.
C.S. Vaidyanathan, Senior Advocate with
Mr. Rakesh Agrawal and Mr. Anuj
Bhandari, Advocates.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be
allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

JUDGMENT

16.04.2010

S. Muralidhar, J. (open court)

Introduction

1. This petition *inter alia* involves the interpretation of Section 21D of the Chartered Accountants Act, 1949 ('CA Act'). It arises in the context of disciplinary proceedings initiated under the CA Act by the Respondent No.1 Institute of Chartered Accountants of India (ICAI) against the Petitioner who happens to be the 'concurring review partner' of the firm Lovelock & Lewes ('L&L') and in particular his role in the audit of the accounts of Global Trust Bank Limited ('GTBL') for the accounting year ending 31st March, 2001.

2. The Petitioner, by this writ petition under Article 226 of the Constitution, seeks the quashing of a communication dated 19th February 2010 addressed to him by the Director (Discipline) ICAI informing him of the ‘decision’ of the Council of ICAI holding him, inter alia, guilty of professional misconduct within the meaning of Clauses (6), (7), (8) and (9) of Part I of the Schedule to the CA Act with respect to “Charge Nos. 2, 3 and the second leg of Charge No.4”. It was mentioned in the said communication that “a detailed finding of the Council” would be sent to him “in the due course.”

Background facts

3. Between 3rd and 21st March 2002 the Department of Company Affairs (‘DCA’), Government of India carried out an inspection of the books of accounts of GTBL in exercise of its powers under Section 209A of the Companies Act, 1956. The DCA requested L&L, the chartered accountant firm which conducted the audit of GTBL to provide certain details. Thereafter L&L, the DCA and the Reserve Bank of India (‘RBI’) exchanged correspondence. The affairs of the GTBL were investigated extensively by a Joint Parliamentary Committee (‘JPC’). According to the Petitioner, in its report dated 19th December 2002 the JPC concluded that there were only minor procedural infractions and that there had been no substantial or significant deviations in the functioning of the GTBL.

4. The ICAI on 26th July 2004 wrote to L&L seeking clarifications in relation to certain alleged irregularities in the audit undertaken of

GTBL for the years 2000-01. By a letter dated 9th August 2004, L&L submitted a reply the receipt of which was acknowledged by the ICAI by its letter dated 11th August 2004. It is stated that for over two years thereafter nothing was heard from the ICAI.

5. In the meanwhile the Chartered Accountants (Amendment) Act, 2006 was notified on 17th November 2006. The entire scheme of the provisions relating to enquiry into misconduct of members of the ICAI underwent a change. Under Section 21 of the unamended CA Act the Council of the ICAI was to form a prima facie opinion, either on the receipt of information or of a complaint, whether any member was guilty of misconduct and thereafter cause an enquiry to be held by the Disciplinary Committee (DC). The findings of the DC would thereafter be considered by the Council. With effect from 17th November 2006, the earlier Section 21 was replaced with new Sections 21 and 22. Sections 21A to 21D and Sections 22A to 22G were inserted in the CA Act. In terms of the amended Section 21 (1) of the CA Act, the Council was to establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) who was to arrive at a prima facie opinion on the misconduct of a member. If the member was found guilty of professional or other misconduct as mentioned in the First Schedule to the CA Act, then the matter would be placed before a Board of Discipline (BOD), constituted by the Council under Section 21A(1) of the CA Act. If the Director (Discipline) under Section 21 (3) was of the prima facie view that the member was guilty of any professional

or other misconduct as mentioned in the Second Schedule of the CA Act then the matter would be placed before the DC. Against the decision of either the BOD (under Section 21A) or the DC (under Section 21B) the aggrieved member could apply under Section 22-G to an Appellate Authority (AA) to be constituted under Section 22-A of the CA Act. Under the unamended Section 21 of the CA Act, a reference had to be made by the Council to the High Court in the event that a member was found guilty of professional misconduct and where the punishment was either removal of the member from the register either permanently or for a period of five years. Under the amended provisions, the reference to the High Court was replaced with an appeal to the AA comprising a Chairperson who has to be a sitting or a retired Judge of a High Court and two other members.

6. Section 21D of the CA Act is a transitional provision which reads as under:

“All complaints pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to the commencement of the Chartered Accountants (Amendment) Act, 2006, shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Chartered Accountants (Amendment) Act, 2006.”

7. In the present case a question has arisen on the interpretation of the words “all complaints pending before the Council or any enquiry initiated by the Disciplinary Committee” occurring in Section 21D.

The question has arisen in the context of the fact that on 1st December 2006 L&L received a show cause notice from the ICAI regarding the alleged failure of L&L in the audit conducted for the GTBL for the years 2000-01. It was stated that the response by L&L on 9th August 2004 to the request for clarifications by the ICAI was ‘found to be unsatisfactory’. In the said show cause notice dated 1st December 2006, the ICAI sought the names of the members who were with L&L who would be answerable for the charge of misconduct and their respective written statements. The show cause notice charged L&L and the concerned members of the ICAI who were involved in the audit of GTBL with misconduct under Clauses 7, 8 and 9 of Part I of the Second Schedule to the CA Act.

8. By a letter dated 27th December 2006 from L&L to the ICAI, the names of the members of the ICAI who were involved in the audit conducted by the L&L were furnished. According to the Petitioner while Mr. S. Gopalakrishnan was the partner who had signed the audit report of GTBL, the Petitioner was only “a concurring review partner” in respect of the audit. Without prejudice to his rights and contentions, the Petitioner submitted on 27th February 2007, a response to the show cause notice. Thereafter on 23rd October 2007, the ICAI issued a letter informing the Petitioner that it had arrived at the prima facie opinion that the Petitioner was guilty of professional misconduct and that it had decided to cause an enquiry by the DC into such misconduct. According to the Petitioner since the show cause notice was dated 1st December 2006, which was after the coming into force of the

amended Act on 17th November 2006, it was the amended CA Act which would apply.

9. The hearings thereafter proceeded before the DC and concluded on 1st August 2008. After over six months by a letter dated 6th February 2009, the ICAI informed the Petitioner that the report dated 2nd February 2009 of the DC, a copy of which was enclosed with the letter, would be placed before the Council at its next meeting. In his letter dated 16th February 2009 to the Council the Petitioner sought time to file his written submissions to the report of the DC. He also requested for extension of time since he had to consult the signing partner Shri S. Gopalakrishnan who was by that time in judicial custody in relation to some other case involving the audit of the accounts of the Satyam Group of companies. The Petitioner furnished his written submissions on 11th December 2009. The report of the DC was ultimately considered by the Council at its meetings on 13th January and 3rd February 2010. According to Petitioner the hearing before the Council on 3rd February 2010 concluded by about 3 pm. The Petitioner was informed that the Council would consider the Petitioner's detailed written submissions before reaching a conclusion. The Council's hearings in the other cases continued till late in the evening of 3rd February and concluded on 4th February 2010.

10. According to the Petitioner, the President of the ICAI gave an interview to CNBC TV18 channel which was telecast in the evening of 3rd February 2010. In the said interview, the President of the ICAI

announced that the Petitioner had been found guilty of professional misconduct with regard to the audit of the accounts of GTBL. According to the Petitioner, the President of the ICAI did not take part in the hearings of the Council which took place on 13th January and 3rd February 2010. The Petitioner was surprised to know that the decision of the Council was already being announced by the President of the ICAI on television on the same evening even before the Council actually took a decision in the matter. It is stated that a similar news report was also published and telecast on 6th February 2010. Copies of the transcript of the two telecasts have been annexed to the petition.

11. According to the Petitioner, the above announcement by the President of the ICAI of the decision of the Council at its meeting held on 3rd February 2010, the minutes of which could not have been recorded and signed on that very day, reflected the arbitrary and pre-determined manner in which the Council has proceeded in the matter. The Petitioner wrote to the ICAI on 5th February, 10th February and 17th February 2010 seeking a copy of the decision of the Council which had been divulged by the President of the ICAI on the TV on 3rd February 2010 itself.

12. In the meanwhile the elections to the Council took place. The Council which considered the Petitioner's case on 3rd February 2010 stood dissolved on 11th February 2010. The new Council took charge on 12th February 2010. A copy of the relevant announcement in the Journal of the ICAI to this effect has been enclosed. On 22nd February

2010 the Petitioner received the impugned communication dated 19th February 2010 from the Director (Discipline) ICAI conveying the decision of the Council holding the Petitioner guilty of professional misconduct, the details of which have already been referred to hereinbefore.

Present petition and orders

13. The present petition was thereafter filed. The relevant portion of the order passed by this Court on 12th March 2010 reads as under:

“3. Mr. S. Ganesh, learned Senior counsel appearing for the Petitioner submits that the impugned order dated 19th February 2010 purports to communicate a decision taken by the Disciplinary Committee of the Council at a meeting held on 3rd February 2010 at New Delhi. He further submits that at least one week prior to this communication, on 12th February 2010 a new Council was in place. He further states that it is not known whether in fact the decision of the previous Council was signed prior thereto and satisfied the requirement of law as envisaged under Section 21 of the Chartered Accountants Act.

4. He submits that although the impugned order states that a detailed finding of the Council would be sent to the Petitioner, till date no further communication has been received.

5. Notice. Mr. Laliet Kumar, counsel for the Respondent No.5 accepts notice. Issue notice to the remaining Respondents, returnable on 19th March 2010. Dasti in addition.

6. Since there is an apprehension expressed that the records of the Institute concerning the proceedings should be properly preserved during the pendency of this petition, this Court requires the Respondents Institute to produce the entire record of the case on the next date.

7. List on 19th March 2010. Order Dasti to the parties.”

14. On 19th March 2010, Mr. C.S. Vaidyanathan, learned Senior counsel for the ICAI stated on instructions that the ICAI would file its reply to the petition by 25th March 2010 and that till the next hearing it did not plan to take any steps pursuant to the impugned decision of the previous Council. The Petitioner’s counsel were permitted to inspect the records of the ICAI which were brought to the Court on that day.

15. In its counter affidavit, the ICAI has taken a preliminary objection that the petition is premature. It is submitted that the meeting of the Council held on 3rd February 2010 was chaired by Shri S.L. Daga who was authorized to approve and sign the decision of the Council. Shri Manoj Fadnis, a member of the Council, was authorized to prepare the findings of the Council. Annexed to the counter affidavit as Annexure R-3 is a “summary of the decisions” of the Council at its meeting held on 3rd February 2010. The said ‘summary’ has been purportedly signed by Shri S.L. Daga with the date of 3rd February 2010. It is further stated by ICAI in its counter affidavit in para 2 (xviii) that “preparation of the detailed findings of the Council takes time” and,

therefore, it was stated that in the letter dated 19th February 2010 that “the detailed findings of the Council would be sent in due course”. The ICAI maintains that in the present case it “has not deviated from its practice regarding the manner of preparation of findings and communication thereof.” The ICAI states that once the findings of the Council “are finalised in terms of the procedure being followed, a copy thereof shall be sent to the Petitioner and a reference under Section 21(5) of the Act shall on thereafter be filed before the Hon’ble High Court.” It is accordingly submitted that the writ petition challenging the decision of the Council is premature. It is further submitted that since the place of business of L&L, and therefore the Petitioner, is in Hyderabad the reference should be made to the High Court of Andhra Pradesh. It is accordingly submitted that this Court lacks territorial jurisdiction to entertain the writ petition.

16. On merits it is submitted by the ICAI that under Section 21D of the amended CA Act, the proceedings concerning the Petitioner were ‘pending’ as on 17th November 2006. The stand taken is that the proceedings commenced upon information received in relation to the affairs of L&L long prior to 17th November 2006. Therefore, the unamended Section 21 would apply. The contention of the Petitioner that he was only a concurring review partner and that it was Shri S. Gopalakrishnan, who was in judicial custody was the signing partner, has been denied as not having any substance. The fact that the President of the ICAI gave an interview to CNBC on 3rd February 2010 and that a further news report on that basis was published on 6th

February 2010, is not denied.

17. In the rejoinder it is *inter alia* pointed out by the Petitioner that Annexure R-3 which is described as a summary of the decision of the Council at its meeting held on 3rd February 2010 lists out not only the summary of the decision in respect of the Petitioner's case but in respect of six other cases which were not even listed for hearing before the Council on that day but on the next day i.e. 4th February 2010. It is submitted that the 'summary of the decisions' was not prepared on 3rd February but much later and signed by Shri S.L. Daga with the back date of 3rd February 2010. It is pointed out that the Council had not yet approved the minutes of the meeting held on 3rd and 4th February 2010. After 11th February 2010 the previous Council had no existence in law and therefore could neither approve of any decision taken by it on 3rd February nor authorize any member to prepare and sign the 'findings' to support the decision on its behalf. In any event there was no such procedure under the CA Act. Shri S.L. Daga ceased to be a member of the Council after 11th February 2010 and therefore the preparation of the so-called 'summary of the decisions' and it being signed by Shri S.L. Daga was illegal and contrary to the provisions of the CA Act.

18. In view of the above averments, this Court, at the hearing of the case on 12th April 2010, required the ICAI to produce the minutes of the meeting of the Council held on 3rd February 2010. On 13th April 2010, learned counsel for the ICAI informed the Court that the

minutes of the Council's meeting held on 3rd February 2010 had not yet been drawn up. Although the draft of the 'findings' had been prepared, they were yet to be finalized. In any event neither document was in the records of the ICAI.

19. The Court has heard the submissions of Mr. S. Ganesh and Mr. Neeraj Kishan Kaul, learned Senior counsel appearing for the Petitioner and Mr. C.S. Vaidyanathan, Senior counsel and Mr. Parag Tripathi, learned Additional Solicitor General appearing for the ICAI.

Preliminary objection to the maintainability of the writ petition

20. The Court would first like to deal with the preliminary objection of the ICAI that the Petitioner should await the detailed findings of the ICAI and thereafter approach the concerned High Court to which a reference would be made under the unamended Section 21 (5) of the CA Act. It is submitted that the writ petition is not only pre-mature but that this Court does not have territorial jurisdiction. In response, it is pointed out by learned Senior counsel appearing for the Petitioner that there are in fact no 'findings' of the Council in the matter as yet. Referring to the decision of the Supreme Court in ***Institute of Chartered Accountants of India v. L.K. Ratna (1986) 4 SCC 537*** it is pointed out that there could be no 'decision' of the Council in terms of the unamended Section 21 of the CA Act without there being such findings.

21. This Court would like to, at the outset, note that the scope of the

present proceedings under Article 226 of the Constitution is limited to examining if the ICAI has, in conducting the disciplinary proceedings against the Petitioner, followed the procedure outlined under the CA Act and whether in arriving at the ‘decision’ conveyed to the Petitioner by the impugned communication dated 19th February 2010, the Council has proceeded in accordance with law. In other words, this Court is not so much concerned with the ‘decision’, if any, arrived at by the Council as much as it is with the procedure in arriving at such decision. If the Petitioner is able to demonstrate that there is an infraction of the statutory procedure, then obviously the resultant decision would be unsustainable and the question of making any reference to a High Court of such decision would not arise.

22. There is no denial by the ICAI in its counter affidavit that the findings of the Council are yet to be recorded. In the summary of the decision appended as Annexure R-3 to the counter affidavit in column 2, it is stated as under:

“In pursuance of the decision taken by the Council at its 166th meeting held between 16th and 18th January, 1994, the following resolution was passed:

- 1) CA. S.L. Daga, Chairman of the meeting at the time of consideration of the report be authorised to sign the finding of the Council in the case, on behalf of the Council.
- 2) The member entrusted with drafting of the finding, namely, CA. Manoj Fadnis, FCA, would sign the office copy of the finding for identification.”

23. It requires to be noticed that the above resolution refers to an earlier resolution of 1994, a copy of which has not been enclosed. Be that as it may, the above resolution authorizes Shri S.L. Daga to sign the 'findings' of the Council. It authorises Shri Manoj Fadnis who was entrusted with the drawing up of the findings to "sign the office copy of the findings for identification." Therefore Shri Manoj Fadnis and Shri S.L. Daga were only to draw up and sign the 'findings' of the Council in the case. What has been signed by Shri Daga and filed as Annexure R-3 to the counter affidavit of the ICAI is not the 'findings' but a 'summary of the decisions', for which there is no authorization of the Council. There as admittedly no findings drawn up yet. In para 2 (xviii) of the counter affidavit, it is categorically stated that "preparation of the detailed findings of the Council takes time" and therefore only the summary decision was communicated to the Petitioner by the letter dated 19th February 2010. It is a matter of concern that no findings have been drawn up although the meeting of the Council took place more than 2 months ago on 3rd February 2010. Further the Council which purportedly took that 'decision' after arriving at its findings no longer exists in law.

24. The petitioner is justified in questioning the very legality of the above procedure of postponing the drafting of the findings which in terms of the law explained by the Supreme Court in ***L.K. Ratna*** are imperative to the 'decision' of the Council. The challenge to such procedure can therefore not be characterized as pre-mature or

misconceived. Since the meeting of the Council took place in Delhi and the above 'summary' was also drawn up in Delhi the cause of action in the above context has arisen within the jurisdiction of this Court. The very procedure adopted by the ICAI in this case prior to arriving at the 'decision' is in question. Since there are no findings, the question of a reference being made to the concerned High Court by the ICAI does not arise as of now. Consequently, there is no substance in the preliminary objection as to maintainability. It is rejected as such.

The legality of the 'decision' of the Council of the ICAI

25. It is not in dispute that the Council which met on 3rd February 2010 to consider the DC's report in relation to the Petitioner stood dissolved on 11th February 2010. Under Regulation 168 of the CA Regulations, the minutes of the meetings of the Council had to be drawn up and they have to be confirmed by the Chairman at the subsequent meeting of the Council. The ICAI itself states that the minutes of the meeting of the Council held on 3rd February 2010 have not even been drawn up till date i.e. more than two months after the date of meeting. None of the members of the Council which met on 3rd February 2010 are today continuing as members of the newly elected Council. The Chairman of the meeting of 3rd February 2010 does not continue as a member. In that context, it is difficult to understand on what basis the minutes of that meeting of the Council of 3rd February 2010 will now be drawn up and by whom and who will approve it. The question certainly arises as to how the members

of a newly elected Council who were not the members of the previous Council which met on 3rd February 2010 are supposed to confirm the minutes of the meeting of that Council.

26. The Council which met on 3rd February 2010 knew that its term was coming to an end shortly since the process of holding elections to the new Council was already underway. One would have expected that Council to therefore have ensured that the minutes of its meeting were drawn up immediately and signed by the members who attended the meeting even before the said Council stood dissolved. If one goes by the practice adopted by the Ethics Committee of the Medical Council of India ('MCI') under the MCI Act, the decisions of which are challenged in this Court, every member signs the decision of such Ethics Committee. The practice of authorizing one member of the Council to draw up the 'findings' and another to sign them, without such findings being seen and approved by the entire Council is not a procedure that has any basis in either the CA Act or the Regulations. Also, there appears to be no legal basis for the preparation and signing of a 'summary' of the decision of the Council by the Chairman of the meeting of that Council. In the context of the meetings of the Council the relevant provision is Regulation 168 which reads as under:

“168. Record of minutes

- (1) The minutes of a meeting of the Council shall be recorded by the Secretary.
- (2) The minutes, after having been approved by the members and signed by the Chairman of the next meeting, shall be sufficient evidence of the proceedings of the Council.”

27. In the considered view of this Court Regulation 168 has to be interpreted strictly and viewed as mandatory. This is particularly in the context of disciplinary proceedings where the ‘decision’ of the Council has to be supported by reasons or ‘findings’ as explained by the Supreme Court in ***L.K.Ratna*** while interpreting the unamended Section 21 of the CA Act. The minutes of the meeting of the Council, should be drawn up within as short a time thereafter as practicable, be circulated to all the members and signed by each of them by way of approval. If such a procedure is strictly followed then the situation that has arisen in the present case can be avoided. The alternative is to ensure that there is sufficient time between the last meeting of a Council and its dissolution and if that cannot be ensured, to not have such a Council which is on its way out to transact important items of business like taking decisions in disciplinary matters.

28. In the present case shows that there are no minutes drawn up yet of the meeting of the Council held on 3rd February 2010. This means that there is no official record whatsoever of what transpired at the meeting of the Council on 3rd February 2010. The resolution of the Council authorising Shri S.L. Daga to sign the ‘findings’ of the Council has also neither been drawn up, nor signed by the members of that Council and does not form part of the record. One has to simply accept the ICAI’s ‘summary of decision’ signed by Shri S.L. Daga as evidencing what transpired at the meeting of the Council held on 3rd February 2010. This is indeed an unhappy state of affairs. A writ Court when approached under Article 226 of the Constitution for a

issuing a writ of certiorari to quash the decision of a statutory authority, must be able to examine the record which substantiates such decision. The record of the ICAI in the present case does not show any 'decision' or 'resolution' of the Council of the ICAI on the basis of which the communication dated 19th February 2010 has been written to the Petitioner.

29. The petitioner is justified in his contention that after 11th February 2010 the Council which met on 3rd February 2010 has no legal status. That Council simply ceased to exist. The subsequent Council cannot, in the scheme of things, possibly ratify the decision of the previous Council of 3rd February 2010 when not even the minutes of the meeting of that Council signed its members is available on record. A weak explanation is offered by the ICAI for including in the 'summary of decisions' taken by the Council at its meeting held on 3rd February 2010, the cases which were not even listed for consideration before it on that date. It is stated that the Council had advance intimation that the parties whose cases were to be considered on 4th February 2010 were not in any event going to appear. Therefore it was decided to take up those cases on 3rd February 2010 itself. While this explanation is really not convincing, the fact remains that the above procedure of preparing a 'summary of decision' without in fact preparing detailed 'findings' knowing full well that the Council which took such a decision is going to cease to exist within 8 days of such meeting is most unsatisfactory and fraught with danger. It is also intriguing that the summary of the decisions in all those cases could

be drawn up and signed by Shri Daga on 3rd February 2010 itself. Without commenting more on that document, this Court holds that Annexure R-3 purporting to be the 'summary' of the 'decisions' is not a legally tenable document evidencing the 'decision' of the Council for the purposes of the unamended Section 21 CA Act.

30. For all the aforementioned reasons, this Court is of the view that the so-called 'decision' of the Council purportedly taken on 3rd February 2010 in relation to the petitioner cannot be sustained in law. That so-called decision, the summary of which was purportedly signed by Shri S.L. Daga on 3rd February 2010 in relation to the Petitioner's case, is hereby quashed.

The applicability of provisions of the amended Act

31. The next question that arises for consideration is to the further proceedings that are to take place and whether they should be in terms of the unamended provisions of the CA Act or the amended provisions.

32. It was submitted by Mr. Parag Tripathi, learned ASG that although the wording of Section 21D of the CA Act is ambiguous, they should be interpreted broadly to include pending proceedings which commenced on 'information' received by the ICAI. According to him cue should be taken from the unamended Section 21 of the CA Act which treats both 'information' and 'complaint' on par. He submits that the information on the basis of which disciplinary proceedings

commenced against the Petitioner was relatable to the letter dated 26th July 2004 written by ICAI to L&L. According to him, therefore, it is the unamended Section 21 and the procedure thereunder that should apply to the petitioner's case hereafter.

33. Mr. S. Ganesh, learned Senior counsel for the Petitioner pointed out that Section 21D is very specific when it states that "all complaints pending or any enquiry initiated by Disciplinary Authority" would alone continue under the unamended Section 21 of the CA Act. As far as the present case is concerned, admittedly, it was commenced on the basis of the 'information' received by the ICAI. Therefore no recourse can be had to Section 21D to continue the disciplinary proceedings which were pending as on 17th November 2006 under the unamended Section 21 of the CA Act. He submits that in any event the disciplinary proceedings could be said to have commenced only with the issuance of the show cause notice dated 1st December 2006, which in any event was after the amended provisions came into force. There was no question of the commencement of disciplinary proceedings prior to 1st December 2006 even under the unamended Section 21 of the CA Act since it was to be preceded by the prima facie opinion to be formed by the Council. It was only the show cause notice dated 1st December 2006 which evidenced the formation of that prima facie opinion. Viewed from any angle therefore the disciplinary proceedings had to now recommence only under the amended provision and not under the unamended Section 21 of the CA Act.

34. This Court finds merit in the contention of learned Senior counsel for the Petitioner. As already noticed hereinbefore an entirely new scheme has been introduced in the CA Act which came into force on 17th November 2006. Section 21D as already noticed is not happily worded. What it permits continuance of are disciplinary proceedings that commenced on a complaint or ‘any enquiry initiated by the DC.’ In fact no disciplinary proceedings are “initiated” by the DC. In the instant case the disciplinary proceedings against the Petitioner were initiated, with the show cause notice dated 1st December 2006, on information received and not on a complaint. It is not possible for this Court to ‘broadly’ construe the wording of Section 21D to include proceedings that commenced on information received by the ICAI. This provision relates to disciplinary enquiry which has adverse consequences for the persons facing such enquiry. It has to be interpreted strictly and not liberally as was suggested by the learned ASG. When the Parliament has introduced a new scheme under Section 21 and other provisions of the amended CA Act, it is not possible to revert to the unamended Section 21 to understand the scope of the amended provisions.

35. There can be no doubt that the commencement of the disciplinary proceedings against Petitioner took place only on 1st December 2006 when the show cause notice was issued. The earlier communication dated 26th July 2004 only sought clarifications regarding alleged irregularities. There was no indication at that stage that L&L and/or its partners would be facing disciplinary proceedings. A prima facie

opinion had to be formed by the Council on the basis of the replies received from L&L and only thereafter disciplinary proceedings could commence even under the unamended Section 21 of the CA Act. Viewed from any angle, it can be said to have commenced only on 1st December 2006. By that time the amended provisions had come into force. Resort cannot be by the ICAI to Section 21D to continue the disciplinary proceedings against the Petitioner under the unamended Section 21 of the Act. Therefore this Court holds that as far as the present case is concerned, further disciplinary proceedings against the Petitioner can continue only under the amended provisions of the CA act and not under the unamended Section 21 of the Act.

Further proceedings against the Petitioner

36. The further question that arises is at what stage the proceedings against the Petitioner should recommence. For this, it is necessary to refer to the scheme of the amended provisions. As already noticed, the prima facie opinion has now to be formed not by the Council but by the Director (Discipline) who heads the Disciplinary Directorate in terms of Section 21(1) of the amended CA Act. In terms of Section 21(4) the procedure to be adopted by the Director (Discipline) is set out in the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 ('CA Rules') which were notified in the official Gazette on 27th February 2007. Rule 7 deals with the meaning and processing of 'information' received against a member. Rule 9 deals with the procedure for examining a 'complaint'. Rule 11 clarifies that the

procedure adopted in relation to a complaint will ipso facto be the procedure for dealing with 'information' as well. Under Rule 9 the Director (Discipline) has to form a prima facie opinion and then place the matter before either the Board of Discipline or the DC.

37. In the instant case, the admitted position is that the Petitioner's case would be covered under the Second Schedule to the CA Act and in the event that the Director (Discipline) forms a prima facie opinion that he is guilty of professional misconduct as specified in Second Schedule, he will have to place the matter before the DC. Consequently, this Court holds that the petitioner's case should now be placed before the Director (Discipline), who will consider the show cause notice dated 1st December 2006, the reply filed thereto by the petitioner including the written submissions filed by him which formed part of the record of the case before the Council when it met on 3rd February 2010. Uninfluenced by the opinion expressed by the DC earlier, the Director (Discipline) will now form an independent opinion on the material available on record and proceed thereafter in accordance with Section 21 and other relevant provisions of the amended CA Act read with CA Rules.

Conclusion and directions

38. For the aforementioned reasons, this Court quashes the decision of the Council purportedly taken at its meeting on 3rd February 2010 and communicated by the letter dated 19th February 2010 written by the ICAI to the Petitioner. The proceedings against the petitioner will

now recommence under the amended Section 21 of the CA Act before the Director (Discipline) who will proceed in the matter in terms of what is stated in para 37 above and in accordance with amended CA Act and CA Rules thereunder. It is clarified that this Court has not expressed any opinion whatsoever on the merits of the case and all contentions thereon of either party are left open.

39. The writ petition is accordingly allowed with costs of Rs.10,000/- which will be paid by the ICAI to the Petitioner within a period of four weeks. The pending application is disposed of.

S.MURALIDHAR, J

APRIL 16, 2010
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