

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 29th November, 2010

+ **CHAT.A.REF.-4/2005**

COUNCIL OF INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA

..... Petitioner

Through: Mr.Brijender Chahar,
Sr. Advocate with Mr.Rakesh
Aggarwal & Mr.Pulkit Aggarwal,
Advocates

versus

Y.K. GUPTA, F.C.A.

..... Respondent

Through: Mr.Ashok Bhalla,
Advocate
AND

R.S.A. No.180/2004

Y.K. GUPTA

..... Appellant

Through: Mr.Ashok Bhalla,
Advocate

versus

THE INSTITUTE OF CHARTERED
ACCOUNTANTS & Ors.

..... Respondents

Through: Mr.Brijender Chahar,
Sr. Advocate with Mr.Rakesh
Aggarwal & Mr.Pulkit Aggarwal,
Advocates for
R-1-3

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to the Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

SURESH KAIT, J.(Oral)

1. This reference is made under Section 21(5) of the
Chartered Accountants Act, 1949 (hereinafter to be referred as

Act) in pursuance of report dated 03.02.2002 of Disciplinary Committee of the Institute of Chartered Accountants. The Council of the Institute vide its decision dated 05.02.2004, under Section 21 of the Act, has recommended to this court that the respondent be removed from the Register of Members for a period of six months by confirming the punishment proposed by the Council in respect of Sh.Y.K.Gupta, CA, New Delhi (hereinafter referred to as Respondent). Simultaneously, the respondent has also challenged the said decision of the Council by filing the suit for declaration, mandatory injunction and perpetual injunction which was dismissed by the learned Civil Judge vide order dated 12.08.2000. The same was also dismissed as infructuous vide order dated 01.05.2004 when it went in for revision. By challenging the same, the respondent has preferred RSA No.180/2004 which is tagged with the Reference.

2. The Central Bureau of Investigation, Special Crime Branch, New Delhi, through Sh.J.C.Dabas, the then Superintendent of Police (hereinafter to be referred as the complainant) made the following allegations against Sh.Y.K.Gupta:-

“The respondent issued a bogus certificate dated 15th February, 1984 certifying the value of the exports made by a fictitious firm, M/s Impex Services, Amritsar on the basis of which advance import licence dated 25th February, 1984 for Rs.26,08,522/- was issued by the

Chief Controller of Imports & Exports, Amritsar.
Consequently, the Government of India was
cheated to the tune of Rs.1,99,15,818/- against
the import of polyester filament yarn.”

3. The Respondent was duly served with the copy of the complaint which was sent by the Council vide its letter dated 26.07.1989. In response thereto, the Respondent vide letter dated 01.08.1989 requested for some documents to file his written statement. However, the Council vide letter dated 15.11.1989 again advised him to file his written statement and also informed him that the Institute was not empowered, under the Chartered Accountants Regulations, 1988 to call for further documents at that point of time. The respondent again requested the Council to furnish documents vide his letter dated 17.11.1989 to which the Council again advised him to file the written statement. The respondent vide letter dated 21.03.1990 expressed his inability to submit his written statement in the absence of relevant documents. The request pertaining to stay of proceedings was turned down by the Council vide its letter dated 17.05.1990 informing that the disciplinary proceedings against the respondent could not be stayed and the matter would be processed on the basis of his first letter dated 01.08.1989 treating the same as his written statement. The respondent submitted his comments on 07.07.1990 to the rejoinder of the complainant which was submitted on 13.06.1990. In accordance

with the provisions contained in Regulation 12(11) of the Chartered Accountants Regulations, 1988 and taking into consideration the complaint, the written statement, the rejoinder and the comments in its 149th meeting held in June, 1991 the Council was prima facie of the opinion that the Respondent was guilty of professional and/or other misconduct and accordingly referred the case to the Disciplinary Committee constituted under the said Act for enquiry.

4. A bare perusal of the complaint reveals that Sh.Y.K.Gupta, Chartered Accountant had issued a letter dated 15.02.1984 certifying that M/s Impex Services, 3 Rani Ka Bagh, Shopping Complex, Amritsar exported readymade Hosiery Products for value of `22.56 lacs during 1980-81, for `35.71 during 1981-82 and for `21.85 lacs during 1982-83. However, during the course of investigation it transpired that there was no firm at the aforementioned address. It was further revealed that the aforesaid firm was fictitious and one room was taken on rent to receive the letters. M/s Impex Services based on the aforesaid address applied for an advance import licence and the same was issued bearing NO. P/K/3071749 dated 25.02.1984 for `26.08 lacs on the basis of Certificates given by Sh. Y.K. Gupta which stated that the aforesaid firm has exported "Hoisery Products" during the years 1980-83 of `80.12 lacs. The Charted

Accountant certificate which was essential for issuance of an advance import licence was alleged to be bogus. Further interrogation revealed that Sh.Y.K.Gupta issued the said bogus certificate on the basis of documents brought before him. However, he could not tell as to who had brought the said records before him, as he was not maintaining any books of accounts. Further it was also transpired that Polyester filament yarn was imported vide against this licence and the same was sold in the open market and that the export order was also bogus as alleged.

5 The Disciplinary Committee framed following specific issues on which the further enquiry was to be made:-

- a) To examine whether at the relevant time M/s Impex Services was registered firm or not and to examine the genuineness of the firm M/s Impex Services.
- b) To summon the partners of M/s Impex Services along with the books of accounts and to verify the correctness of export figures certified by the Respondent in the certificates dated 15th February, 1984 and 22nd February, 1984 and also to verify about the correctness of the product mentioned in the certificate.
- c) To summon the necessary documents from firm's bankers Bank of India and verify the genuineness of the certificate presented by the respondent before the Council as part of his working papers.
- d) To examine the working papers produced by the Respondent before the Council.

6. On perusal of the documents placed on record and those produced before the Disciplinary Committee and further recording the evidence of the witnesses and after hearing the

submissions made by the parties, the Committee submitted its report dated 15.01.1995 wherein the Committee was of the opinion that the Respondent was guilty of professional misconduct under Clauses (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in terms of Section 21 read with Section 22 of the Act. The respondent submitted his written representation dated 23.04.1996. The report of the Disciplinary Committee was considered by the Council in its meeting held from 01st to 04th July, 1998 at New Delhi. The parties were informed of consideration of the decision made by the Council that, the report , written representation of the Respondent and the osral submissions made by the parties, the Council decided that a further inquiry was necessary in the matter by the Disciplinary Committee and vide Institute's letter dated 23.12.1998.

7. However, in between, aggrieved by the above decision of the Council, the respondent filed suit for declaration, mandatory injunction and perpetual injunction against the Institute before the Civil Judge, Tis Hazari Courts, Delhi declaring that the report dated 15.01.1995 of the Disciplinary Committee was illegal, invalid and inoperative and that the order of the Council directing further enquiry was illegal, invalid and without jurisdiction. The matter was contested by the Institute and the Id. Trial Court

Judge vide his orders dated 12.08.2000 dismissed the suit of the Respondent herein. Aggrieved by the above judgment, the respondent filed an appeal before the Senior Civil Judge, Tis Hazari Courts being RCA No.289/2000. Keeping in view the fact that the enquiry against the respondent herein was completed and pending as being referred to this court for final disposal, the Id. Sr. Civil Judge vide his order dated 01.05.2004 dismissed the appeal as having become infructuous. The respondent filed RSA. However, the Disciplinary Committee decided to proceed with further enquiry as there was no stay of the proceedings in the said LPA, and gave its report to the council.

8. The respondent submitted before the Council that the firm was not fictitious and was in existence firstly at Jalandhar and then at Amritsar. The Respondent had not submitted the working papers before the Disciplinary Committee as he was legally advised not to part with the working papers to any authority because the complaint belongs to Police and CBI and the criminal cases are pending against many proprietary firms. The complainant however, requested for an opportunity of being heard after perusal of the working papers.

9. On consideration of the documents produced and the oral submissions made by the parties, the Council decided that a

further enquiry was necessary to be made in the matter by the Disciplinary Committee on certain specific issues. Accordingly the case was listed for hearing on 08.08.2001. After the hearing on 08.08.2001, the case was adjourned to 28.09.2001 for final submissions of the Respondent and Complainant. On 28.09.2001, the counsel for the Respondent made a reference to an application dated 07.08.2001 which was received in the Institute's Office on 09.08.2001 i.e. after the hearing in which the Respondent had requested to adjourn the matter till the disposal of the matter pending before the learned Senior Civil Judge, Tis Hazari Courts, Delhi. Since this application was received only on 09th August, 2001 and the Committee had already proceeded with the matter and recorded the evidence of the Complainant on 08th August, 2001 a copy of the recorded evidence was provided to the Respondent. Further, the Respondent has not availed opportunity to cross-examine the witness by being present on 08th August, 2001, hence his request for re-examination of witnesses was refused.

10. The first issue before the Disciplinary Committee was to examine whether at the relevant time M/s Impex Services was a registered firm or not and to examine the genuineness of the firm. For this purpose summons were issued to Bank of India, Jalandhar Branch and Sh.S.Karthik, Chief Manager, Bank of India

deposed before the Committee. Photocopies of the Certificates were given to confirm whether they are genuine and whether the signatures of the Bank personnel belonged to those persons who were at that relevant time associated with the Bank and also whether their signatures tallied with their signatures in the cyber book. Sh.S.Karthick confirmed the signatures from the bank as that of the signature of the Accountant. Based on the Accountant's signature, the Chief Manager had also signed. He was asked to furnish a confirmation within a period of 15 days i.e. before 20th August, 2001. Subject to the furnishing of these particulars, the witness was discharged. Vide his letter dated 23.08.2001, Sh.S.Karthick, Chief Manager, Bank of India, Jalandhar, submitted as under:-

- (i) The customer, M/s Impex Services does not have any account with us now and they are reported to have closed their account several years back, though the exact date of the closure of their account is not presently available with us.
- (ii) As advised to you earlier in our communications to you and also, when the undersigned appeared in person before the Disciplinary Committee, the Bank has a system of destruction of old records at regular intervals of time and as such we do not have either the copy of account opening form nor statements of their accounts.

- (iii) The signatures appearing on the certificates indicated above appear to tally with signature of Mr.E.Balakrishnan, an authorized official of the Bank at the time of issue of the certificate. However, Mr.Balakrishnan is no more in the services of the Bank and has retired long back.
- (iv) The certificate per se does not indicate the item of commodity nor the quantity exported.

11. Sh. Harikesh, CBI Inspector in his deposition stated that the firm M/s Impex Services was in existence and was registered with Handloom Board. He stated that the firm was exporting some other items and not readymade garments. In the certificate, RBI Code Number of the firm is given and it implies that the firm was registered with RBI. The CBI Inspector was unable to either confirm or deny this fact. As regards the deposition given by the owner of the premises at No.3, Ranika Bagh, Amritsar, it was explained that the firm was originally located at Jalandhar and shifted its base to Ranika Bagh, Amritsar in 1984.

12. Considering the deposition given by Mr.Karthick, Chief Manager, Bank of India and also Sh.Harikesh, CBI Inspector on behalf of the Complainant; the Disciplinary Committee, reiterated its earlier opinion in its report dated 03.02.2002 and was of the view that the Respondent was guilty of professional misconduct falling within the meaning of Clause (7) and (8) of Part I of the

Second Schedule to the Chartered Accountants Act, 1949 in terms of Section 21 read with Section 22 of the Act.

13. Considering the reports of the Disciplinary Committee dated 03.02.2002 & 15.01.1995 and the written representations submitted by both the parties along with the oral submissions made by the representative from the Complainant department, the Council decided to accept the reports of the Disciplinary Committee and accordingly found the Respondent guilty of the professional misconduct falling within the meaning of Clauses (7) and (8) of Part-I and Second Schedule to the Chartered Accountants Act, 1949 in terms of Section 21 read with Section 22 of the said Act. The Council further decided to recommend to the High Court that the name of the Respondent be removed from the Register of Members for a period of six months. Hence, the present reference.

14. For our reference, we are reproducing the Section 22 of the Chartered Accountants Act, 1949 as under:

"22. Professional misconduct defined -

For the purposes of this Act, the expression "professional misconduct" shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under sub-section (1) of section 21 to inquire into the conduct

of any member of the Institute under any other circumstances."

A Code of Ethics is a legally binding statement of conduct. The Code of Conduct issued by the Institute proclaimed as follows :

"Code of Conduct -

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A client, before engaging the services of a professional man, requires to be assured: (i) that he has the required competence and (ii) that he is a man of character and integrity. As regards the first, evidence is available to the client in the form of a certificate that the accountant has undergone the training and passed the examination, and as regards the second, he would have an assurance only if the professional body to which he belongs has adopted a code of professional conduct. The noble traditions set up by the learned professions, such as, Ecclesiastics, Medicine and Law, have been followed by others, with a view to instil public trust and confidence. The over-riding motto has been 'pride of service in preference to personal gain'. A code of professional conduct may have the force of law, as is the case in this country in some matters, as well as the result of discipline and established conventions voluntarily undertaken by the members, any breach whereof would result in the person being disentitled to continue as a member of the professional body. In any event, it has a great deal of practical value in so far as it proclaims to the public that the members of the profession will carry on their duties and responsibilities, having regard to the public interest. This, in turn, will give an assurance to the public that in the event of a member straying away from the path of duty, he would be suitably dealt with by the professional body.

Human nature being what it is, a man can be selfish - to place his personal gain above service. Therefore, persons who as individuals and as a class are willing to place public good above their personal gain deserve praise and honour. This is the main

reason why professional men have enjoyed prestige and honour. But such a relationship can be maintained or enhanced only if the professional body would interpret the concept of public interest and the necessity for the professional man to watch it as broadly as possible. It is also necessary for it to guide and compel the members to live up to these high standards."

15. We deem it appropriate to mention the following judgments which according to us closely relates to the facts and circumstances of the case before us:-

- a) The decision of the Supreme Court in ***Council of the Institute of Chartered Accountants v. B. Mukherjea, [1958] 1 SCR 371*** , which was rendered in the context of the provisions of Sections 21 and 22 of the said Act and was cited for the proposition that the misconduct alleged on the part of the Chartered Accountants may not attract any of the provisions in the Schedule and may not, therefore, be regarded as falling within the first part of Section 22; but if the definition given by Section 22 itself purports to be an inclusive definition and as the section itself in its latter portion specifically preserves the larger powers and jurisdiction conferred upon the Council to hold inquiries by Section 21 sub-section (1), it would not be right to hold that such disciplinary jurisdiction can be invoked only in respect of conduct falling specifically and expressly within the inclusive definition given by section 22. Section 8 sub-sections (v) and (vi) support the argument that the disciplinary jurisdiction can be exercised against Chartered Accountants even in respect of conduct which may not fall expressly within the inclusive definition contained in

Section 22. It was held that if a member of the Institute was found, prima facie, guilty of conduct which, in the opinion of the Council, renders him unfit to be a member of the Institute, even though such conduct may not attract any of the provisions of the Schedule, it would still be open to the Council to hold an inquiry against the member in respect of such conduct and a finding against him in such an inquiry would justify appropriate action being taken by the High Court under Section 21(3).

- b) There is yet another decision of the Supreme Court in the matter of **Mr. "P", an Advocate, reported in AIR 1963 SC 1313**, which was rendered in context of misconduct of an advocate to point out that the Supreme Court, in paragraphs 7 and 8 of its judgment, held that wherever conduct proved against an Advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely be held that it involves moral turpitude. The Supreme Court observed that, in dealing with the matter of professional propriety, we cannot ignore the fact that the profession of law is an honourable profession and it occupies a place of pride in the liberal professions of the country. Any conduct which makes a person unworthy to belong to the noble fraternity of lawyers or makes an advocate unfit to be entrusted with the responsible task of looking after the interests of the litigant must be regarded as conduct involving moral turpitude. It was held that; "An Advocate invites disciplinary orders not only if he is guilty of professional misconduct; but also if he is guilty of other misconduct; and this other misconduct which may not be directly concerned with his professional activity, as such, may nevertheless be of such a dishonourable or infamous

character as to invite the punishment due to professional misconduct itself".

- c) The decision of the Supreme Court in ***N.G. Dastane v. Shrikant S. Shivde, reported in [2001] 3 SCR 442***, which was rendered in context of the provisions of Section 35 of the Advocates Act, 1961, by which the State Bar Council was empowered to refer the case for disposal to its disciplinary committee when it had reason to believe that any advocate on its roll has been guilty of "professional or other misconduct", was cited to point out that, it was held by the Supreme Court; "The collocation of the words "guilty of professional or other misconduct" has been used for the purpose of conferring power on the disciplinary committee of the State Bar Council. It is for equipping the Bar Council with the binocular as well as whip to be on the qui vive for trading out delinquent advocates who transgress the norms or standards expected of them in the discharge of their professional duties. The central function of the legal profession is to help promotion of administration of justice. Any misdemeanor or misdeed or misbehaviour can become an act of delinquency, if it infringes such norms or standards, and it can be regarded as misconduct". The Supreme court held that an advocate abusing the process of court is guilty of the misconduct.
- d) The decision of the Mysore High Court ***in H.A.K. Rao v. Council of the Institute of Chartered Accountants of India, reported in AIR 1965 MYS 112*** refers to the proposition that, failure to conform to the statutory requirements may lead to disciplinary action being taken against the concerned member, and that may result in interference with his right to carry on as a Chartered

Accountant; but this result is merely incidental to his being a member of the institute. If a member does not wish to conform to the requirements of the institute, it would be open to him to relinquish his membership of the institute.

16. The Code of Conduct issued by the Institute of Chartered Accountants of India records that it is necessary for the Institute "to guide and compel the members to live up to these high standards. The prestige and confidence enjoyed by a profession, to a great extent, is dependent on strictness and scrupulosity with which such a Code is interpreted and not necessarily by legislation or regulations as much by self-discipline". It is also stated that the Council in addition to "professional misconduct" as defined in Section 22 of the Act has been given power to inquire into the conduct of any member of the institution under circumstances other than those specified in the Schedules to the Act. The Council is not debarred from inquiring into the conduct of any member of the institute under any other circumstances, as asserted in the Code. This aspect is fully borne out by the expression "professional or other misconduct" occurring in Section 21. The power of the Council to inquire into "other misconduct" which is not mentioned in the Schedules is placed beyond any pale of controversy by the decision of the Supreme Court in ***Institute of Chartered Accountants v. B.***

Mukharajea (supra) in which the Supreme Court has, in terms, held that, if a member of the Institute is found, prima facie, guilty of conduct which, in the opinion of the Council, renders him unfit to be a member of the Institute, even though such conduct may not attract any of the provisions of the schedule, it would still be open to the Council to hold an inquiry against the member in respect of such conduct and a finding against him in such an inquiry would justify appropriate action being taken by the High Court. It was held that though the definition of the material expression used in Section 21(1) refers to the acts and omissions specified in the schedule, the list of the said acts and omissions is not exhaustive; and in any event, the said list does not purport to limit the powers of the Council under Section 21(1), which may otherwise flow from the words used in the said sub-section itself. It was held that it would not be right to hold that such disciplinary jurisdiction can be invoked only in respect of conduct falling specifically and expressly within the inclusive definition given by Section 15. Members of the Institute are bound to act in a manner consistent with the good reputation of the profession. They should refrain from any conduct which might bring discredit to the institute. Members should be guided not merely by the terms, but also by the spirit of the Code of Conduct and the fact that particular conduct does not receive mention does not

prevent it from being unacceptable or discreditable conduct, thus making a member liable to disciplinary action. After all, Code of Ethics draws community ethics and moral principles into the professional institutions. There is a need to arrive at a balance between the interests of the member as a citizen in expressing views in the matters of public concern and the interest of the institution in preserving the status and dignity of the professionals rendering service as Chartered Accountants.

17. After going through the pleadings of both the parties, the fact remains that the signatures appearing on the certificates appear to tally with the signatures of Mr.E.Balakrishnan, an authorized official of Bank at the time of issuance of the certificate.

18. Sh.Harikesh, CBI Inspector in his deposition states that the firm M/s Impex Services was in existence and was registered with Handloom Board. He further states that the firm was exporting some other items and not "Readymade Garments". In the certificate, RBI Code number of the firm is given and it implies that the firm was registered with RBI. The CBI Inspector was unable to either confirm or deny this fact.

19. As regards the deposition given by the owner of the premises as No.3, Rani Ka Bagh, Amritsar, it was explained that

the firm was originally located at Jalandhar and shifted to Rani Ka Bagh, Amritsar only in 1984.

20. The Committee observed that in the certificate dated 15.02.1984, the product "Readymade Garments" is mentioned while in the certificate dated 22.02.1984 "Readymade Hosiery Products" is mentioned. During the course of the deposition before the Committee it was brought on record that export was made to European countries which has not been refuted by the respondent. The Committee observed that the export to these countries can be executed only after obtaining the quota from AEPC. In response to this, the respondent stated that the firm had exported "Readymade Hosiery Garments" for which quota from AEPC was not necessary. The word "Readymade Garments" used in the first certificate will include "Readymade Hosiery Garments". Similarly, the word "Readymade Hosiery Product" used in second certificate will include "Readymade Garments". The respondent asserted that there was no mistake on his part and he had certified the correct product. Thus, according to him the correct product was "Readymade Hosiery Garments".

21. We feel that there was utter confusion over the 'Readymade Hosiery Garments' and "Readymade Garments". At a glance, "Readymade Garments" and "Readymade Hosiery Garments" seems to be "Readymade Garments" whether that is

of Hosiery or otherwise. The Committee has not collected any evidence on record or any expert opinion of the concerned Ministry, whether the “Readymade Hosiery Product” used in the second certificate would include “Readymade Garments” also. Mr.Brijender Chahar, Sr. Advocate appearing on behalf of the Council also could not show any material or evidence in this regard.

22. The hard reality of the case is that the respondent has been fighting for the last 25 years and the Council has suggested to delete the name of the Respondent for a period of six months. We are of the considered opinion that keeping the long and multiple litigations into view and the age of the Respondent, we feel it appropriate not to confirm the six months’ punishment and that is due to the sufferage caused by the time spent in litigation.

23. Accordingly, the present reference in question is dismissed with no order as to costs. Consequently, the RSA No.180/2004 filed by the Respondent herein has now become infructuous and stands disposed of accordingly.

SURESH KAIT, J.

A.K. SIKRI, J.

NOVEMBER 29, 2010
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