

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 18th November, 2010

+ CHAT.A.REF.-1/2007

COUNCIL OF INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA

..... Petitioner

Through: Mr.Rakesh Aggarwal, Advocate

versus

KUL RATTAN BHASIN & ANR.

..... Respondents

Through: Mr.Gunjan Kumar for R-1

Mr.Pankaj Batra for R-2

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 under Section 21(5) of the Chartered Accountants Act, 1949 (hereinafter referred to as Act) in pursuance of report dated 14.05.2005 of Disciplinary Committee of the Institute of Chartered Accountants, the Council of the Institute under Section 21 of the Act has decided to recommend to this court that the respondent be removed from the register of Members for a period of two years, for confirming the punishment under Section 21(6) by this court in respect of Kulrattan Bhasin, CA, New Delhi (hereinafter referred to as respondent).

2. Sh.Shyam Mohan, Manager of AMU, ANZ Grindlays Bank,

New Delhi (hereinafter referred to as the complainant) had made complaint against the respondent as under:-

“1.2 The Complainant-bank sanctioned a loan of Rs.1,84,000/- on the request of the Respondent relying on the bonafides and authenticity of the income-tax returns submitted by the Respondent to the complainant-bank which were forged and fabricated. The Respondent intentionally submitted the forged and fabricated income-tax returns to induce the Complainant-bank to extend loan to him. Later, the Income Tax Authorities have confirmed that the said Income Tax Returns have not been filed at all.”

3. On receiving the said complaint, the Council for the Institute of Chartered Accountants of India (hereinafter referred to as the Council) sent the copy of the said complaint to the respondent vide letter dated 30.06.2000 with a request to submit his written statement as required under Regulation 12(7) of the Chartered Accountants Regulation, 1988. Even after reminder dated 07.02.2002, the respondent did not file his written statement. However, in Regulation 12(11) of the Chartered Accountant Regulation, 1988, the papers containing the complaint were considered, obviously in the absence of the written statement. In Council's meeting held in April, 2003 the council was of the opinion that prima facie the respondent was guilty of professional and/or other misconduct. Therefore, the Council decided to refer the case to the Disciplinary Committee for inquiry. The Disciplinary Committee of the Council submitted its report dated 14.05.2005 and held the respondent guilty of

“other misconduct” within the meaning of Section 21 read with Section 22 of the Chartered Accountants Act, 1949 and also within the meaning of Clause-11 of Part-I of the first schedule to the Chartered Accountants Act, 1949. Copy of the same was provided to the respondent. Thereafter, the respondent submitted his representation dated nil on 06.07.2005 against the final report of Disciplinary Committee.

4. After considering the representation of the respondent, the Council decided to recommend to this Court that the name of the respondent be removed from the register of the Members for a period of two years. Hence, the present reference.

5. As already narrated in the foregoing paras, the complaint against the respondent was that the complainant-bank sanctioned a loan of Rs.1.84 lacs on the request of the respondent relying on the bonafides and the authenticity of the Income Tax Returns submitted to the complainant bank of three years i.e. 1996-97, 1997-98 & 1998-99, which were forged and fabricated. It was alleged, that the respondent intentionally submitted the forged and fabricated returns to induce the complainant bank to extend loan to him. On confirmation, the Income Tax authorities informed that the said Income Tax returns had not been filed at all.

6. During the hearing on the aforesaid complaint, the complainant's representative Sh.Sanjay Dhull and the respondent were

present on 05.11.2003. At the request of the respondent the Committee provided him the complete set of the papers. Thereafter, the case was fixed on 26.12.2003 for hearing. During the hearing, the respondent informed the Committee that the Bank had filed a suit against him at District Courts, Tis Hazari, Delhi, which was dismissed vide court order dated 31.05.2002. Admittedly, no appeal against the said order had been filed by the bank. In the meantime, this case was fixed for hearing on different dates somehow on the one pretext or the other the hearing was adjourned.

7. Both the complainant and the respondent argued their case before the Committee and both the parties submitted detailed submission also. The Committee found that the complainant had submitted certified zerox copies of the personal income tax acknowledgement form of the income tax returns for the assessment years 1996-97, 1997-98 & 1998-99. These acknowledgements, according to the complainant, were enclosed by the respondent along with the loan application submitted by him to avail professional loan of Rs.1.84 lacs. The respondent issued Post Dated Cheques for repay his loan, however, the cheques were bounced on presentation.

8. The complainant submitted before the Committee that he was not assessed to tax in the concerned ward. This created suspicion about

the bona fides of the information submitted by the respondent. The complainant initiated criminal and other proceedings against the respondent and also similarly initiated disciplinary proceedings by filing form No.8 with the Institute of Chartered Accountants of India against the respondent alleging "Other Misconduct". The specific charge made out was that the respondent intentionally submitted forged and fabricated income tax returns to induce the complainant bank to extend loan to him.

9. During the proceedings, the respondent had submitted that he was approached by one of the DSC (Direct Selling Agent) who obtained his signature on some blank applications and later on submitted the same with false documents to get the commission after getting the loan sanctioned. The respondent in this manner pleaded ignorance about the enclosure of the forged and fabricated income tax return acknowledgements found enclosed with the bank application. Although, the respondent had admitted furnishing of other enclosures such as passport copy, certificate of membership, ration card etc. but denied enclosing the income tax return acknowledgement forms. He denied that he did not fill up the loan application form but admitted affixing of his signatures on the blank form, which according to him, must have been filled up subsequently by the agent who might have enclosed fabricated acknowledgement forms.

10. As submitted by the respondents, he qualified in the year 1980 and was in employment up to 1987 during which period he was assessed to tax and he was also a member of the Institute holding COP (Certificate of Practice). However, the same certificate was cancelled from 01.08.1987 due to non-payment of annual fees and his name from the list of Members was also removed with effect from 01.10.1998 and continued to be deleted till 30.04.2002 due to non-payment of fees. As submitted, from 1987 to 2002 he was carrying on the business of an electronic showroom and was not in the profession at all. His certificate of membership of practice was restored with effect from 01.05.2002 and, thereafter, he commenced practice as a Chartered Accountant. The respondent conceded to the extent that he was not assessed to tax from 1987 to 2002, however, he filed the Income Tax return for the assessment year 2002-03 on 01.10.2003.

11. In addition to the Income Tax return forms, the respondent attached his visiting /business card along with the loan application submitted on 13.07.1998, wherein it is clearly indicated that he was practicing as a Chartered Accountant in the firm name, M/s K.R.Bhasin & Co. The application form and the visiting card of the respondent are annexed with the present reference at page 59.

12. The respondent had taken the defence in his representation dated nil that the Disciplinary Committee had failed to appreciate that the loan application was never filled up by the respondent. He had further informed vide its representation in para-11 that he had already repaid the loan amount in June, 2005 and nothing is due to him.

13. On perusal of the representation submitted by the respondent, para-11 is contrary to para-5 of the same representation whereas he had admitted that he had taken a personal loan from the complainant-bank in August, 1998 as professional under the category of the Chartered Accountants from one of DSA (Direct Selling Agent) of the complainant-bank based in Green Park and he got the signature on printed application form and took proof of residence and identity and proof of membership with the institute and a loan of ₹ 1,84,000/- was extended to him. He further submitted that he had executed some blank papers/form in good faith in favour of the complainant-bank.

14. Mr. Aggarwal, learned counsel appearing for the Council argued that the respondent had admitted his visiting/business card which was affixed on loan application form. Though as per his own submission, his certificate of practice was cancelled from 01.08.1987 due to non-payment of annual fee and his membership was also removed w.e.f. 01.10.1988 till 30.04.2002 and the same was restored on 01.05.2002

when the respondent had deposited the fee for previous years as well. Although he was not a member of the Institute from 01.08.1987 to 01.05.2002 but he continued to be in practice which is proved by his own visiting card/business card which was affixed on an application form for loan. Further the complainant-bank had disbursed the professional loan in the category of Chartered Accountants as mentioned in the receipt which is annexed at page 66 of the paper book. Furthermore, the respondent has admitted his ration card and signature on the income tax return for the years 1996-1997, 1997-1998 and 1998-1999.

15. Learned counsel for the Council further argued that the respondent has made concocted story and his afterthought that the application form was filled up by the DSA and he simply put his signature thereon, cannot be believed for the reason the respondent is a qualified Chartered Accountant and holding certificate of practice.

16. Further, learned Counsel appearing for the Institute contended that the Council has found the respondent guilty of misconduct other than the professional misconduct on the basis of the material on record gathered during the inquiry conducted by the Disciplinary Committee, which has been statutorily constituted. The Council has upheld the finding of the Disciplinary Committee that the respondent's conduct was unbecoming as a member of the Institute.

17. It was contended that the professional body was entitled to take disciplinary action against the member who acted against professional ethics violating the principle of integrity and truthfulness. He referred to the Code of Conduct issued by the Institute of Chartered Accountants of India (relevant edition), pointing out that the members of the Institute were required to maintain high standards of integrity and professional behaviour. He also referred to the universally recognized principles of ethics which were adopted in the profession of accountancy, including by the Institute, and submitted that the expression "other misconduct" appearing in Section 21(1) would embrace every conceivable misconduct which may not have been scheduled as a professional misconduct.

18. We have heard learned counsel for the parties. The respondent being chartered accountant enjoys the faith and trust of the parties. The parties disclose all secrets of business to their chartered accountants; therefore, this profession requires upmost sincerity, faithfulness and honesty towards their clients. Therefore, there is no place of forgery, cheating, dishonesty, unfaithfulness and carelessness in any of the profession whether of a doctor or advocate or a Chartered Accountant. These professions are of zero tolerance; therefore, no misconduct can be tolerated.

19. In the present case, as per his own submission, he was not a member of the institute since 01.08.1987 till 01.05.2002 in spite of that he was maintaining his visiting card/business card and during this period he only applied for professional loan. It is not material while deciding this case whether the loan amount has ultimately paid or not. We have to see whether there is any misconduct committed by the respondent being member of the Institute or not. Although, the learned counsel for the respondent has not argued before us, but he has taken the plea in his representation that during the alleged misconduct, he was not a member of the Institute, therefore, the Council had no power to hold him guilty for the misconduct. Being a legal issue, we are taking up this issue for consideration.

20. Section 2(2)(i) and (ii) defines 'in practice' is reproduced below:-

“(2) A member of the Institute shall be deemed “to be in practice” when individually or in partnership with chartered accountants (in practice), he, in consideration of remuneration received or to be received-

(i) engages himself in the practice of accountancy; or

(ii) offers to perform or performs services involving the auditing or verification of financial transactions, books, accounts or records, or the preparation, verification or certification of financial accounting and related statements or hold himself out to the public as an accountant; or”

21. On bare reading of the aforesaid Section 2(2) of the Act, if any member of the institute engages himself in the practice of accountancy or offer to perform or performs services involving the auditing or verification of the financial transactions etc. holding himself out to the public as an accountant. We have no material on record whether he actually had performed any service to this effect. However, it is proved from the visiting/business card that he had offered to perform his services as chartered accountant and had hold himself out to the public as accountant. Therefore, as per this section, under these circumstances, he was deemed to be in practice.

22. First of all, Section 2(2)(i)(ii) qualifies his services as deemed to be in practice. Second, he by depositing the fee for the previous years on 01.05.2002 also attract the action by which an order for enquiry was initiated by the decision taken in the 233 meeting of the council held on 7th, 8th April, 2003 and continued on 24th and 25th April, 2003 at New Delhi and the council was of the prima facie opinion that the respondent was guilty of professional/and/or other misconduct. It was, therefore, decided by the council to refer the case to the Disciplinary Committee for enquiry. On this date, the respondent was very much member of the institute. Thereafter, after conducting the due enquiry, the Disciplinary Committee had submitted his report dated 14.05.2005 found him guilty of

“Other Misconduct” was within the meaning of Section 21 read with Section 22 of the Chartered Accountants Act, 1949 and also within the meaning of Clause 11 of part-1 of the first schedule to the Chartered Accountants Act, 1949.

23. For convenience, we are reproducing the Section 22 of Professional Misconduct 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 instill 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."

24. The contention canvassed on behalf of the respondent that such "other conduct" should be a conduct notified in the gazette of India under Part II (2) of the Schedule, runs counter to the express provisions of section 22 which, in terms, provides that, nothing in section 22 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. If the Council specifies any other act or omission by notification in the gazette under Part II (2), that would be deemed to be a professional misconduct, because, as provided in the opening words of Part II of the

Second Schedule, "A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he is guilty of such other act or omission as may be specified by the Council in this behalf, by notification in the Gazette of India under Clause (2) of Part II. It is not possible to encompass within a statutory enactment all myriad situations that arise in the course of profession that would amount to misconduct. Thus, "other misconduct" will be any misconduct which is not specified in the Schedule or notified there under.

25. The other ground he has taken in his representation submitted on 06.07.2005 that, the income tax returns in question were not filed by him, and if at all filed, might have been prepared/filed by the DSA. However, the respondent has admitted his signature on the loan application form and all documents attached with 'for professional loan'. Therefore, we cannot believe his submission that the income tax returns were prepared by the DSA. If at all these were prepared and filed by DSA, it was certainly with his consent. Therefore, we discard this submission also.

26. We deem it appropriate to mention the following judgments which, according to us, closely relate 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. Mukherjee*, [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]3SCR442, 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.

27. We may further recall that the International Federation of Accountants, of which Institute of Chartered Accountants of India and Institute of Cost & Works Accountants of India are members, "recognizing the responsibilities of the accountancy profession as such, and considering its own role to be that of providing guidance, encouraging continuity of efforts, and promoting harmonization, has deemed it essential to establish an international Code of Ethics for Professional Accountants to be the basis on which the ethical requirements (code of ethics, detailed rules, standards

of conduct etc.), for professional accountants in each country should be founded." The International Code is intended to serve as a model on which to base the national ethical guidance. It sets standards of conduct for professional accountants and states the fundamental principles that should be observed by them. The International Code of Ethics for professional accountants is established on the basis of that the objectives and fundamental principles are equally valid for all professional accountants, whether they be in public practice, industry, commerce, public sector or education.

28. A hallmark of any noble profession is adherence by its members to a common code of values and conduct established by its administrative body, including maintaining an outlook which is essentially objective and acceptance of a duty to the society as a whole. Acceptance of its responsibility to public is a distinguishing mark of a profession. A large section of public relies on the objectivity and integrity of professional accountants to maintain the orderly functioning of commerce. Such reliance imposes a public interest responsibility on the accounting profession. Professional accountants have an important role to play in the society. Investors, creditors, employees and other sectors of the business community as well as the government and the public at large rely on professional accountants for sound financial accounting and reporting,

effective financial management and competent advice on a variety of business and taxation matters. The attitude and behaviour of the professional accountants in providing such services have an impact on the economic well-being of their community and the country.

29. Professional accountants may encounter in the course of their work offences, such as, theft, obtaining undue gain by deception, false accounting and suppression of documents; fraud, forgery and offences in relation to companies; perjury and offences under the Prevention of Corruption Act; bankruptcy or insolvency offences, frauds on creditors or customers, false trade descriptions, and offences arising out of relations between employers and employees; conspiracy, soliciting or inciting to commit crime and attempting to commit crime; offences in relation to direct and indirect taxation (including value added tax and excise duties). A professional accountant cannot be an accessory to the commission of such offences nor can he incite the taxpayers to adopt illegal means to evade taxes when it is his professional duty to make clear to the person engaging him.

30. 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 22. 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.

31. The facts of the present case reveal that the respondent has proved himself to be capable of infamous conduct. The recommended

punishment of removal of his name for two years would, in our opinion, be a mockery of the proceedings in view of the serious nature of misconduct. Taking into consideration his age as 58 years as per documents submitted before the Income Tax Office, in our opinion, interest of justice will be met if the respondent is removed forthwith from the membership of the institute for a period of five years. We, accordingly, while upholding the finding of the Council holding the respondent guilty of misconduct, direct that the respondent be removed forthwith from the membership of the institute for a period of five years. The Reference stands disposed of accordingly, with no order as to costs.

SURESH KAIT, J.

A.K. SIKRI, J.

NOVEMBER 18, 2010
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