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IN THE HIGH COURT OF DELHI AT NEW DELHI

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{CHAT. A. REF. NO.1 OF 2000}

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Judgment delivered on:03.1.2011

**THE COUNCIL OF THE INSTITUTE OF
CHARTERED ACCOUNTANTS OF INDIA**

.... APPELLANT

Through : Mr. Brijender Chaha, Sr.
Advocate with Mr. Rakesh
Agarwal, Advocate

VERSUS

SHRI D R BAHL AND ANOTHER

....RESPONDENTS

Through: Mr. Sandeep Sethi, Sr.
Advocate with Mr. Sindhu
Sinha and Mr. Nikhil Bhalla,
Advocates

CORAM :-

**HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. Council of Institute of Chartered Accountants of India (hereinafter referred to as the 'Council') have made this reference under the provisions of Section 21 (5) of the Chartered Accountants Act, 1949 (hereinafter referred to as the 'Act') for confirming/approving the punishment of "Reprimand" recommended by the Council in its meeting held on 5th December, 1996. The background under which the aforesaid recommendation came to be made is summarized as under.

2. The respondent no.1 herein is a Chartered Accountant by profession and at the relevant time i.e. in the year 1992, he was one of the Associates Chartered Accountant of M/s R.N. Marwah & Co. (hereinafter referred to as the 'Chartered Accountants'). M/s Pure Drinks (New Delhi) Ltd. and sisters concern were the clients of the Chartered Accountants. These Chartered Accountants were in fact the auditors of the Pure Drinks (New Delhi) Ltd. The Chartered Accountants audited the accounts and balance sheets of these companies for the year ending 31st March, 1991.

3. Pointing out certain purported infirmities and irregularities in the said balance sheets of these companies and particularly M/s Pure Drinks (New Delhi) Ltd. and M/s Southern Bottlers Pvt. Ltd., a complaint dated 5th February, 1992 was received by the Council from Mrs. Kaval Rajdeep Singh, one of the Directors of M/s Pure Drinks (New Delhi) Ltd. In this complaint, as many as six irregularities in the aforesaid balance-sheets were alleged. After receiving this complaint, the Council addressed letter dated 23rd March, 1992 to the Chartered Accountants requesting them to disclose the name of the member answerable and also requesting that the said member should send his written statement directly to the Council. Since respondent no.1 herein was admittedly involved in the preparation of these balance sheets, he responded to the aforesaid complaint by submitting his written statement on 19th June, 1992. In the written submissions, he denied all the allegations and submitted that there was no lapse, irregularities or inaction on his part in discharging his duties as Chartered Accountant while preparing the balance sheets. This written statement was forwarded to the

complainant, who gave her rejoinder on 8th August, 1992. After eliciting comments of the respondent no.1 on the said rejoinder and considering the same, the Council in its meeting held in February, 1994 came to a prima-facie opinion that the respondent no.1 was guilty of professional and other misconducts. It, thus, referred the matter to the Disciplinary Committee for enquiry. The Disciplinary Committee conducted the enquiry in which full opportunity was given to respondent no.1 to defend. After the conclusion of the enquiry, the Disciplinary Committee submitted its report on 11th January, 1995 finding this respondent guilty of gross negligence under Clause (7) of Part I of IInd Schedule of the Act in terms of Section 21 read with Section 22 of the Act. This was in respect of two allegations out of six made by the complainant in her complaint. In so far as other four allegations are concerned, the report of the Disciplinary Committee did not find any lapse on the part of the respondent no.1 and exonerated him of those charges. This report was forwarded by the Council to respondent no.1 for making representation, if any. The respondent no.1 submitted his representation dated 15th May, 1996. The representation of the complainant was also sought for the Council and which was submitted by her on 18th August, 1996 and 25th November, 1996. Thereafter, meeting of the Council was held on 5th December, 1996 in which the report of the Committee alongwith the representation of respondent no.1 as well as complainant were considered. On considering the entire matter, the Council accepted the report of the Disciplinary Committee and recommended that respondent no.1 be "reprimanded". It is this recommendation which is forwarded by the Council to this Court by means of present Reference.

4. The respondent no.1 has opposed the prayer made in this reference on various grounds. Apart from questioning the findings on merits, two other submissions are made by the respondent no.1 which are as follows:-

- (i) It is stated that Council is guilty of laches in proceedings as it left the matter hanging in fire without taking prompt action in making reference. In this behalf, it is pointed out that the complaint is of February, 1992 and it took two years to the Council to take prima facie view in its meeting held on 26th February, 1994. It is also pointed out that though the report of the Disciplinary Committee is of 11th January, 1995 which was accepted by the Council on 5th December, 1996, it took four years for the Council to make present reference and this delay is wholly unexplained. It is thus stated that from the date of making the complaint till the date when the reference was made, more than eight years passed by which has resulted in extreme prejudice to the respondent. The submission of learned Sr. Counsel appearing for the respondent no.1 is that this reference petition be not accepted and in support of this plea, reliance is placed on a Division Bench of this Court in the matter of **Council of Chartered Institute of India Vs. Dinesh Kumar**, 1991 (21) TRJ 238.
- (ii) Another submission which is made by the respondent no.1 is that the Council has merely accepted the report of the Disciplinary Committee without arriving at its own finding and giving its own reasons. In support of this submission, it is contended that though opportunity was given to the respondent to file his written submissions which were in fact filed

but in the findings of the Council, none of the contention raised by respondent no.1 have been dealt with and thus it not only showed non-application of mind but the report also becomes non-speaking.

5. After hearing the counsel for the parties, we are of the opinion that this reference petition needs to be filed and it is not a fit case where this Court should exercise its discretion because of laches and delays which remained unexplained. As pointed out above, though the meeting of the Council was held in December, 1996, this reference is made only in July, 2000. There is not even a whisper as to why the Council took more than 3 ½ years in making present reference. On these facts, the ratio of the decision of this Court in the case of **Dinesh Kumar** (supra) squarely applies wherein this Court returned the reference and directed it to be filed under almost similar circumstances. That was a case where Disciplinary Committee prepared the report in December, 1993 which was communicated to the concerned respondent in April, 1997. The Council had considered the said report after four years. Since this delay was not explained, this Court was of the view that there were unexplained laches in the matter and in these circumstances directed the proceedings to be filed.

6. In the present case, we find that the complaint is of the year 1992. The reference was made in the year 2000. Even otherwise, the charges allegedly proved against the respondent no.1 are not of serious nature. We have also gone through the representation/reply submitted by the respondent no.1 to the enquiry report of the

Disciplinary Committee. In this representation, the respondent no.1 has made an endeavour to demonstrate that he had not committed any wrong and in fact had discharged his duties with due diligence and had complied with all the provisions in preparing the balance sheets.

7. Be as it may, even the Council has also recommended only "reprimand". Going by these facts coupled with the aforesaid latches, we are of the opinion that it may not be proper to approve the aforesaid recommendation when almost 19 years have passed since the complaint was made. We thus direct the reference be filed.

8. There shall be no order as to costs.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

JANUARY 3, 2011
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