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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA No. 396/2010

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Reserved on: 31st May, 2011

Date of Decision: 30th September, 2011

THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA & ORS.

..... Appellants

Through: Mr.Arvind K. Nigam, Sr. Adv. with
Mr.Amitesh Bakshi and Mr.Raghav
Tandon, Advs.

Versus

P. RAMA KRISHNA & ANR.

..... Respondents

Through: Mr. Amar Dave, Ms. Taru Gupta and
Ms.Payal Chatterjee, Advs. for R-1.
Mr. Mohit Jolly, Adv. for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

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| 1 | Whether reporters of the local papers be allowed to see the judgment? | |
| 2 | To be referred to the Reporter or not? | Yes |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

SANJIV KHANNA, J.

This intra court appeal under Chapter X of the Letter Patents Act has been filed by the Institute of Chartered Accountants of India, the Council and the Disciplinary Committee of the said Institute, Ms. Vandana D. Nagpal, Director (Discipline). The main contesting respondent is P. Rama Krishna, respondent No. 1, who had filed Writ

Petition (Civil) NO. 1721/2010, which has been allowed by the learned Single Judge vide judgment dated 16th April, 2010.

2. At the outset, it may be stated that a very limited but an interesting issue arises for consideration in the present appeal. The appellants have substantially accepted the judgment of the learned Single Judge quashing the decision of the Council dated 3rd February, 2010, consequent upon which the communication dated 19th February, 2010, was written to the first respondent. The said communication has also been quashed. As the appellants have accepted the decision to this extent, we need not go into the said factual aspects or merits of the decision of the learned Single Judge.

3. The issue raised in the present appeal involves interpretation of Section 21D of the Chartered Accountants Act, 1949 (CA Act, 1949, for short). In order to appreciate the controversy and in what circumstances interpretation of the aforesaid Section is required, some basic and essential facts may be noticed.

4. Between 3rd and 21st March, 2002, the Department of Company Affairs, Government of India had carried out inspection of books of

accounts of Global Trust Bank Limited under Section 209A of the Companies Act, 1956. Affairs of Global Trust Bank Limited were also investigated extensively by a Joint Parliamentary Committee. Accounts of Global Trust Bank Limited were audited by Lovelock & Lewes (L&L, for short), Chartered Accountants, who were also asked to furnish certain details to the Department of Company Affairs and the Reserve Bank of India.

5. On 6th December, 2002, Reserve Bank of India made a complaint to the appellant institute alleging misconduct by the L&L and asking for action to be taken against them. Paragraph 2 of the said letter reads as under:-

“2. We have been informed by the Department of Company Affairs (DCA), Government of India that the inspection of the Bank conducted by them under Sec. 209A of Companies Act, 1956 revealed violations of Sec. 227, 228, 292 and 211 of the Companies Act by the Auditors of the Bank. The report contained comments to the effect that though the auditor had certified that the audit report was based on the audit of the book and records of the branches of the bank, they had actually not audited such branch records. Since the Department’s observation effectively amounts to a statement that the certificate furnished by the auditor of the bank books was not correct, we are referring the matter to your Institute for such action as you may consider necessary. The action taken in this regard may kindly be intimated to us in due course.”

6. By letter dated 16th December, 2002, the appellant institute informed the Reserve Bank of India that their letter dated 6th December, 2002, had been forwarded to the Disciplinary Committee of the appellant institute for due processing. By another letter dated 29th January, 2003, the appellant institute informed the Reserve Bank of India that they had not received any reference from the Department of Company Affairs and the Reserve Bank of India should arrange for sending such reference together with supporting documents to enable the institute to proceed further. In this letter it was stated as under:-

“I take this opportunity to bring to your kind notice that if the RBI desires to lodge a formal complaint in this regard, it may do so in which case the process of delivery of justice is quick. The relative advantage in filing a complaint and the relevant provisions of the Chartered Accountants Act and the Regulations framed thereunder are enclosed for your information please.”

7. A note enclosed with the letter explained relative advantages of a formal 'complaint' as compared to a mere 'information' case. This was followed by correspondence between the appellant institute and the Reserve Bank of India. The Department of Company Affairs also wrote one letter dated 14th May, 2003, calling upon the Reserve Bank of India to file a complaint and enclosed therewith a relevant extract from the

inspection report. The Reserve Bank of India, however, expressed their reluctance to file a formal complaint and by their letter dated 19th June, 2003, wrote to the appellant institute stating as under:-

“In continuation of our letter DBS.ARS.No. 381/08.35.005 /2002-2003 dated December 6, 2002 on the captioned subject, we forward herewith a copy of the extracts of the report of the inspection under Sec 209A of the Companies Act, 1956 received from the Ministry of Finance & Company Affairs, Department of Company Affairs, Government of India, New Delhi.

You are requested to examine the matter in the light of the above report and decide whether the audit firm M/s Lovelock & Lewes, Hyderabad, had discharged their duties properly or not. You may also let us know the action taken in this regard at an early date.”

8. The appellant institute by their communication dated 10th July, 2003, to the Reserve Bank of India, recapitulated the background of the matter and stated as under:-

“3. Our letter of even number dated 29th January, 2003, through which you were inter alia requested to use your good offices to procure from the DCA relevant details/ supporting documents pertaining to the matter and send to us and also to lodge a formal complaint, if you so desire, in the matter. Since we have not received any formal complaint in this matter, we presume that your present letter of 19th June, 2003, is in response to our letter of 29th January, 2003, whereby you have requested the Institute to deal with the matter only under “information” route and not under the complaint route.”

9. This was followed by another detailed communication dated 22nd July, 2004, written by the appellant institute to the Reserve Bank of India. In this letter, it was stated that the institute was in process of reviewing the matter and requested the Reserve Bank of India for help to procure documents from the Department of Company Affairs. The extracts of the report of the Department of Company Affairs were commented upon.

10. By letter dated 26th July, 2004, written by the appellant institute, L&L Chartered Accountants were asked to send their reply along with supporting documents. The said letter is relevant and for the sake of convenience, a portion thereof is reproduced below:

“The Reserve Bank of India has drawn our attention towards alleges irregularities in the above audit. We understand that –

- (a) the audit of Global Trust Bank Limited for the above period was conducted by your firm;
- (b) for the year ended, 2002, the quantum of gross NPAs reported by the Bank as reflected in the Balance Sheet (audited by you) was reported as Rs.430.34 crores as on 31st March, 2002. The Special Assignment Report submitted by an Independent firm of Chartered Accountants, however, reckoned the gross NPAs of the Bank at Rs.1542.79 crores (the Annual Financial Inspection carried out by the RBI itself identified the NPAs at Rs.1711.93 crores). Thus, the NPAs as reflected in

the audited Balance Sheet was alleged to be significantly understated. Consequently, the bank's financial position was significantly different from that disclosed in the published balance sheet;

- (c) for the year 2000-01, the Department of Company Affairs carried out an inspection under Section 209A of the Companies Act, 1956 which revealed various irregularities including violation of Sections 227, 228, 292 and 211 of the Companies Act, 1956.
- (d) Various news items have appeared, copies of some of them are enclosed herewith.

You are requested to send your reply to the above stating factual position duly supported by relevant documents. Your reply may reach us at the earliest, in any case, not later than 11th August, 2004 to enable us to consider the matter in terms of the provisions of the Chartered Accountants Act, 1949 and the Regulations framed thereunder."

11. L&L were asked to submit their reply not later than 11th August, 2004 along with documents to consider the matter in terms of the provisions of CA Act, 1949 and the Regulations. L&L submitted their reply dated 9th August, 2004, along with supporting documents. Thereafter, correspondence was exchanged between the Reserve Bank of India and the Institute of Chartered Accountants asking for documents etc.

12. Provisions of CA Act, 1949, relating to misconduct and the procedure and penalties, underwent substantial modification and

amendments by the Chartered Accountants (Amendment) Act, 2006 (hereinafter referred to as the Amendment Act, 2006).

13. Sections 21 and 22 of the unamended CA Act, 1949 read as under:-

“21. Procedure in inquiries relating to misconduct of members of institute.

[\(1\)](#) Where on receipt of information by, or of a complaint made to, it, the Council is prima facie of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee, and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed, and shall report the result of its inquiry to the Council.

[\(2\)](#) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed or the complaint shall be dismissed, as the case may be.

[\(3\)](#) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record a finding accordingly and shall proceed in the manner laid down in the succeeding sub-sections.

[\(4\)](#) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely:

[\(a\)](#) reprimand the member;

(b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit: Provided that where it appears to the Council that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in clause (a) or clause (b), but shall forward the case to the High Court with its recommendations thereon.

(5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is misconduct other than any such misconduct as is referred to in sub-section (4), it shall forward the case to the High Court with its recommendations thereon.

(6) On receipt of any case under sub- section (4) or sub-section (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the Council and to the Central Government, and shall afford such member, the Council and the Central Government an opportunity of being heard, and may thereafter make any of the following orders, namely:--

(a) direct that the proceedings be filed, or dismiss the complaint, as the case may be;

(b) reprimand the member;

(c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit;

(d) refer the case to the Council for further inquiry and report.

(7) Where it appears to the High Court that the transfer of any case pending before it to another High Court, will promote the ends of justice or tend to the general convenience of the parties, it may so transfer the case, subject to such conditions, if any, as it thinks fit to impose, and the High Court to which such case is transferred shall

deal with it as if the case had been forwarded to it by the Council.

Explanation I.-- In this section" High Court" means the highest civil court of appeal, not including the Supreme court, exercising jurisdiction in the area in which the person whose conduct is being inquired into carries on business, or has his principal place of business at the commencement of the inquiry: Provided that where the cases relating to two or more members of the Institute have to be forwarded by the Council to different High Courts, the Central Government shall, having regard to the ends of justice and the general convenience of the parties, determine which of the High Courts to the exclusion of others shall hear the cases against all the members.

Explanation II.-- For the purposes of this section" member of the Institute" includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

[\(8\)](#) For the purposes of any inquiry under this section, the Council and the Disciplinary Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908 .), in respect of the following matters, namely:--

[\(a\)](#) summoning and enforcing the attendance of any person and examining him on oath;

[\(b\)](#) the discovery and production of any document; and

[\(c\)](#) receiving evidence on affidavit.

[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.

22A. Appeals.

(1) Any member of the Institute aggrieved by any order of the Council imposing on him any of the penalties referred to in sub- section (4) of section 21, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to the High Court: Provided that the High Court may entertain any such appeal after the expiry of the said period of thirty days, if it is satisfied that the member was prevented by sufficient cause from filing the appeal in time.

(2) The High Court may, on its own motion or otherwise, after calling for the records of any case, revise any order made by the Council under sub- section (2) or sub- section (4) of section 21 and may--

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, confirm, or enhance the penalty imposed by the order;

(c) remit the case to the Council for such further inquiry as the High Court considers proper in the circumstances of the case; or

(d) pass such other order as the High Court thinks fit: Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard and no order imposing or enhancing a penalty shall be passed unless the person concerned has also been given an opportunity of being heard.

Explanation.-- In this section " High Court" and" member of the Institute" have the same meanings as in section 21.] ”

14. Regulations 12 and 13 of the Chartered Accountants Regulations, 1988 (Regulations, for short) read as follows:

12 . COMPLAINTS AND ENQUIRIES RELATING TO MISCONDUCT OF MEMBERS.-

(1) Subject to the provisions of this regulation, a complaint against a member under section 21 shall be investigated and all other enquiries relating to misconduct of such member shall be held by the Disciplinary Committee:

Provided that if the subject matter of a complaint is, in the opinion of the President, substantially the same as or has been covered by any previous complaint or information received, the Secretary shall file the said complaint without any further action and inform the Complainant accordingly.

(2) A complaint under section 21 shall be in the appropriate Form duly verified and shall be in triplicate.

(3) Such complaint shall contain the following particulars namely:

(a) the acts and omission which, if proved, would render the person complained against guilty of professional or other misconduct;

(b) the oral and or documentary evidence relied upon in support of the allegations made in the complaint,

(4) Every complaint, other than a complaint made by or on behalf of the Central or any State Government, shall be accompanied by a deposit of one hundred rupees which will be forfeited if the Council, after considering the complaint, comes to the conclusion that no prima facie case is made out and moreover that the complaint is either a frivolous one or is made with mala fide intention.

(5) The Secretary shall return a complaint which is not in the appropriate Form or which does not contain the aforesaid particulars to the Complainant for representation after removing the objections thereto and within such time as the Secretary may specify.

(6) Ordinarily within sixty days of the receipt of a complaint under section 21, the Secretary shall:-

(a) if the complaint is against a member, send a copy thereof to such member at his professional address as entered in the Register;

(b) if the complaint is against a firm, send a copy thereof to the firm at the address of its head office, as entered in the register of offices and firms, with a notice calling upon the firm to disclose the name of the member who is answerable to the charge of misconduct and requiring it to send a copy of the complaint to him.

Explanation - A notice to the firm shall be deemed to be a notice to all the members who are partners or employees of that firm.(7) A member against whom the complaint is made (hereinafter referred to as the Respondent) may, within fourteen days of the service of a copy of the complaint under sub-regulation (6), or within such time as may be extended by the Secretary, forward to the Secretary in triplicate, a written statement in his defence verified in the same manner as the complaint.

(8) On receipt of the written statement, if any, the Secretary shall send a copy thereof to the Complainant and the Complainant may, within 14 days of the service of a copy of the written statement, or within such time as may be extended by the Secretary, forward to the Secretary, in triplicate, his rejoinder on the written statement, duly verified in the same manner as the complaint.

(9) On receipt of the Complainant's rejoinder, if any, the Secretary shall send a copy thereof to the respondent and the respondent may within 14 days of the service of a copy of the rejoinder, or within such time as may be extended by the Secretary, forward to the Secretary, in triplicate, his comments on the rejoinder, duly verified in the same manner as the complaint.

(10) On a perusal of the complaint, the written statement, if any, the Complainant's rejoinder on the written statement, if any, and the respondent's comments on the Complainant's rejoinder, if any, the President may call for such additional particulars or documents connected therewith either from the Complainant or the respondent as he may consider expedient.

(11) (i) If on a perusal of the complaint, the written statement, if any, the Complainant's rejoinder to the written statement, if any, and the respondent's comments on the Complainant's rejoinder, if any, and other relevant documents, the Council is prima facie of opinion that the respondent is guilty of professional and or other misconduct, the Council shall cause an enquiry to be made in the matter by the Disciplinary Committee.

(ii) If, on the other hand, the Council is prima facie of opinion that the respondent is not guilty of any professional or other misconduct, the complaint shall be filed and the Complainant and the respondent shall be informed accordingly.

(12) (i) Any notice issued by the Secretary under this regulation shall be sent to the member or the firm, as the case may be, by registered post with acknowledgement due.

(ii) If any such notice is returned unserved with an endorsement to the effect that the addressee had refused to accept the notice, the notice shall be deemed to have been served.

(iii) If the notice is returned with an endorsement to the effect that the addressee cannot be found at the address given, the Secretary shall ask the Complainant to supply to him the correct address of the member or the firm, as the case may be.

(iv) A fresh notice shall be issued to the member or the firm at the correct address.

(13) The provision relating to a notice shall apply 'mutatis mutandis' to a latter.

13. INFORMATION RELATING TO MISCONDUCT OF MEMBERS.-

The procedure laid down in sub-regulation (1) and sub-regulations (6) of (13) of regulation 12 shall, so far as may be, apply to an information received under section 21.”

15. Post Amendment Act, 2006, Sections 21 to 21C of the CA Act, 1949, read as under:-

“MISCONDUCT

21. Disciplinary Directorate.

(1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or, as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.

21A. Board of Discipline.

(1) The Council shall constitute a Board of Discipline consisting of--

(a) a person with experience in law and having knowledge of disciplinary matters and the profession, to be its presiding officer;

(b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy;

(c) the Director (Discipline) shall function as the Secretary of the Board.

(2) The Board of Discipline shall follow summary disposal procedure in dealing with all cases before it.

(3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:-

(a) reprimand the member;

(b) remove the name of the member from the Register up to a period of three months;

(c) impose such fine as it may think fit which may extend to rupees one lakh.

(4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima-facie case; and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

21B. Disciplinary Committee.

(1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

(2) The Disciplinary Committee, while considering the cases placed before it shall follow such procedure as may be specified.

(3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely: -

(a) reprimand the member;

(b) remove the name of the member from the Register permanently or for such period, as it thinks fit;

(c) impose such fine as it may think fit, which may extend to rupees five lakhs.

(4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.

21C. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court.

For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) the discovery and production of any document; and
- (c) receiving evidence on affidavit.

Explanation.- For the purposes of sections 21, 21A, 21B, 21C and 22, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.”

16. Thereafter, in exercise of powers under Section 29A read with Section 21(4) and sub-sections (2) and (4) of Section 21B of the CA Act, 1949, the Chartered Accountants (Procedure for Investigation of Professional and other Misconduct and Conduct of cases) Rules, 2007, have been enacted. These deal with the procedure of investigation relating to complaints and information etc. We are not reproducing the

said Rules but what is relevant is that new Rules were enacted after the amendments were made in the CA Act, 1949.

17. Amendments/modifications made by the Amendment Act, 2006, became effective from 17th November, 2006. The Amendment Act, 2006, enacted a transitional provision in the form of Section 21D. As noticed above, the core issue relates to interpretation of the said Section. Section 21D reads as under:-

“21D. Transitional Provisions.

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.”

18. The contention of the first respondent is that the CA Act, 1949 makes a distinction between the term ‘complaint’ and ‘information’ and that the two terms carry different meanings. Even in the Rules and Regulations, ‘information’ and ‘complaint’ are consciously treated distinctly. Section 21 treated/treats the ‘information’ and ‘complaint’ as two separate terms. Reference was made to the Naresh Chandra Committee report which had specifically recommended separate

procedure for dealing with 'information cases' and 'complaint cases', thereby recognizing that these are two distinct categories. Reference was made to the amended Section 21 including sub-section (2) to impress that it is the Director (Discipline) who has the authority to deal with all pending 'information cases' where enquiry has not been initiated by the Disciplinary Committee. It was submitted that the legislative intent as gathered from the language is crystal clear that all pending 'information cases' where enquiry by Disciplinary Committee had not been initiated, the new procedure stipulated by the Amendment Act, 2006, will apply and the old procedure will not apply. It was urged that the legislature has drawn a distinction between the complaints which were pending before the Council and any 'information case' which was before the Council as on 17th November, 2006, when the Amendment Act, 2006 was enforced. Complaint does not include 'information'. Reliance was placed on ***G.K. Choksi & Co. vs. Commissioner of Income Tax, Gujarat***, 2008 (1) SCC 246 and ***Kailash Nath Aggarwal Vs. Paradeshia Industrial & Investment Corporation of U.P. Ltd.***, 2003 (4) SCC 305, for the proposition that when two separate

terms are used by the Legislature, they have to be construed as carrying different meanings.

19. It was further pleaded that in case 'information' is read as synonymous to 'complaint' an anomalous situation will arise. 'Information' received before 17th November, 2006, which is not noticed and not acted upon will be considered to be covered by the amended Act but when noticed, the unamended Act will apply. Information converts into a disciplinary case only when such information is considered substantial enough to take cognizance of and an enquiry gets initiated before the Disciplinary Committee. The Legislature has, therefore, deliberately referred to term 'complaint' and not 'information' in Section 21D, which is carefully worded. Reliance was placed on ***Thyssen Stahlunion GMBH Vs. Steel Authority of India Ltd.***, 1999 (9) SCC 334 and ***Qudrat Ullah vs. Municipal Board Bareilly***, 1974 (1) SCC 202.

20. Lastly, it was submitted that even if there is a lacuna, the same cannot be filled up or rectified by the Court. Reliance was placed on ***Raghunath Rai Bareja and Anr. Vs. Punjab National Bank and Ors.***,

2007 (2) SCC 230; ***J.P. Bansal vs. State of Rajasthan and Anr.***, 2003 (5) SCC 134; ***Shiv Shakti Coop. Housing Society, Nagpur vs. Swaraj Developers & Ors.*** 2003 (6) SCC 659; ***State of Jharkhand & Anr. Vs. Govind Singh*** 2005 (10) SCC 437; ***Grasim Industries Limited vs. Collector of Customs, Bombay*** (2002) 4 SCC 297; and ***Union of India & Anr. Vs. Deoki Nandan Aggarwal*** 1992 Supp(1) SCC 323.

21. Needless to state that the appellants have urged to the contrary.
22. The difference in procedure prior to and after the Amendment Act, 2006, is apparent. As per the unamended Act, on receipt of information or a complaint, the Council is required to form a prima facie opinion whether the member of the institute is guilty of any professional or other mis-conduct. If the Council is of the prima facie opinion that the member is guilty of any professional or other misconduct, reference of the case is made to the Disciplinary Committee, a permanent standing committee under Section 17 of the CA Act, 1949. The Disciplinary Committee thereafter is required to hold an enquiry and submit a report to the Council. If on receipt of the report, the Council holds that the member is not guilty of any

professional or other misconduct, the proceeding is required to be filed or the complaint dismissed.

23. If on the receipt of the report of the Disciplinary Committee, the Council holds that the member is guilty of professional or other misconduct, then the Council will record its findings and proceed in the manner stipulated. Section 21 makes distinction between professional misconduct specified in the First Schedule and the Second Schedule. For professional misconduct specified in the First Schedule, the Council after hearing the member, can make an order of reprimand or recommend removal of name of the member from the register for a period not exceeding five years. As per the proviso to sub-section 4 to Section 21, in case the Council is of the opinion that the name of the member ought to be removed from the register for a period exceeding five years or permanently, it is required to forward the case to the High Court with its recommendation. Thus in cases not covered by the First Schedule and covered by the proviso to sub-section 4 to Section 21, the recommendation of the Council have to be forwarded to the High Court. Sub-section 6 to Section 21 relates to the procedure to be

followed when reference is made to the High Court under sub-section 4 or sub-section 5 to Section 21 of the CA Act, 1949.

24. Section 22A deals with appeals to the High Court from penalties referred to in sub-section 4 to Section 21. These obviously will not apply when reference is made to the High Court under the proviso to sub-section 4 or sub-section 5 of Section 21 of the CA Act, 1949.

25. Regulations 12 and 13 of the Chartered Accountants Regulations, 1988 quoted above prescribe the procedure to be followed under Section 21. Regulation 12 deals with complaints and enquiries relating to misconduct of members. Regulation 13, however, stipulates that the procedure laid down and prescribed in Regulation 12(1) and sub-regulation 6 to 13 to Regulation 12 so far as may be will equally apply to the information cases. Thus, the Regulations prescribe that virtually same procedure to the extent possible shall apply to the complaints cases and information cases. A perusal of sub-regulations 2 to 5 would indicate that they pertain to particulars or the format in which the complaint should be made, deposit of fee by the complainant, withdrawal of the complaint and if the complaint is not in proper

format, the complaint may be represented after removing objections etc. It is obvious that these formalities/aspects are not required in information cases. Thus, almost identical procedure is prescribed under the 1988 Regulations for enquiries relating to misconduct of members either on information or on a complaint.

26. After the amendment Act, 2006 an entirely different procedure has been prescribed with the requirement that the Council shall establish a disciplinary directorate headed by an officer designated as Director (Discipline) and other employees for making investigation. Section 21(2) post amendment requires the Director (Discipline) to arrive at a prima facie opinion on the occurrence of alleged misconduct and then depending upon whether the professional or other misconduct falls in the First Schedule or Second Schedule, the procedure as specified is to be followed. Section 21A states that the Council shall constitute a Board of Discipline and the Director (Discipline) shall be the Secretary of the Board and at the first instance shall examine the report of the Director (Discipline). Section 21B relates to Disciplinary Committee, its constitution and the power of the

Disciplinary Committee to deal with cases of professional or other misconduct mentioned in the Second Schedule or both in the First Schedule and the Second Schedule.

27. Section 22A states that an Appellate Authority shall be constituted by a notification issued by the Central Government and the Appellate Authority shall hear appeals.

28. It is important to note that the First and the Second Schedules were amended by the Amendment Act, 2006 and have been made more exhaustive and in some cases penalties have been made stricter and more stringent.

29. A statute is an edict of the legislature and the conventional way of interpreting or construing the statute is to seek the intention of its' makers. A statute is to be construed "according to the intent of them that make it" (Page 3 of G.P. Singh's Principles of Statutory Interpretation, 11th Edition, 2008).

30. Keeping in view the aforesaid principle in mind, one has to interpret Section 21D of the CA Act, 1949. A scrutiny of the said Section

shows that it makes a distinction between pending matters and matters which can be categorized as new matters with reference to the date 17th November, 2006. This is the fundamental and basic purpose behind enacting the said provision. This purpose and objective behind Section 21D has to be kept in mind. As noticed above, the procedure prescribed in the unamended Section 21 stipulates that complaints/informations shall be examined by the Council, who shall form a prima facie opinion on whether or not the member is guilty of professional or other misconduct and when the Council forms the prima facie opinion that a member is guilty of professional or other misconduct, reference is made to the Disciplinary Committee for report. Consequent upon the report and the opinion formed, the Council awards or recommends punishment and thereupon reference or an appeal is maintainable before the High Court. The intention of the legislature, therefore, is clear that all pending matters before the Council or any enquiry pending or initiated by the Disciplinary Committee or any reference or appeal before the High Court shall continue to be governed by the unamended provisions. The amendment made by the Amendment Act,

2006 will not apply to the pending matters before the Council, enquiry initiated by the Disciplinary Committee or appeal or reference before the High Court. The intention is not to disturb pending cases or the existing proceedings.

31. No doubt Section 21, both unamended and post amendment, refers to information and complaint but it would be incorrect to hold that the legislature wanted to make a distinction between complaint or information cases in Section 21D of the CA Act, 1949. Such distinction may be relevant and material as in the case of a complaint there is a complainant, a third party, who wishes to prosecute and has an interest, whereas in the case of information the action may be suo motu or information may be provided by the third party who does not want to, for various reasons, file a formal complaint; but the said distinction is not relevant for Section 21D of the CA Act, 1949. In view of this difference between a complaint and information case, some specific procedures or requirements have been prescribed for complaint cases. In case of information, there is greater flexibility and latitude. Other than this, there cannot be any distinction between

information which is made basis of disciplinary proceedings or enquiry and a complaint case. The object and purpose, both in an information case and in a complaint case, is to find out and enquire into the allegations of professional or other misconduct. This is the purpose and the primary aim of the proceedings. Under Regulation 13 of 1988 Regulations, the procedure prescribed is the same and no distinction in substance is made. If information cases and complaint cases are treated differently for the purpose of Section 21D of the CA Act, 1949, an anomalous situation would arise, which can lead to difficulties and even challenge to the amended provisions. In a complaint case the old procedure and the punishment prescribed in First Schedule and the Second Schedule will apply, but in an information case which is still pending before the Council, the new procedure and the new (even harsher/stringent) punishments and the amended Schedules 1 and 2 will apply. It is difficult to fathom any reason and ground why any such distinction should be made or this is the legislative intention, as the word “complaint” is mentioned in Section 21D of the CA Act, 1949. The word “complaint” as used in Section 21D would include all pending

matters including information cases on which the Council has applied its mind after they have been brought to the notice of the Council. The word “complaint” as used in Section 21D does not refer to the complaints made by third parties but also information whether made available by a third person or comes to the knowledge and has been considered by the Institute/Council. The word “complaint” in Section 21D has to be given a broader and a wider meaning to give full effect to the legislative intent behind Section 21D. In common parlance also the word “complaint” means and refers to a pending matter before the prescribed authority authorized to make enquiry into the allegations. The source of information may not be relevant.

32. The decisions relied upon by the first respondent are distinguishable for the reason that it is a duty of the Courts to act upon the true intention of the legislature. The words used by the legislature have to be interpreted with guidance furnished by the accepted principles of interpretation. When two interpretations are possible, the court is to choose that interpretation which represents the true intention of the legislature and give a true meaning to the statutory

provision. In G.P. Singh's "Principle of Statutory Interpretation" at page 3, 11th Edition, 2008, it has been observed as under:-

".....The task is often not an easy one and the difficulties arise because of various reasons. To mention a few of them: Words in any language are not scientific symbols having any precise or definite meaning, and language is but an imperfect medium to convey one's thought, much less of a large assembly consisting of persons of various shades of opinion. It is impossible even for the most imaginative Legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. The function of the courts is only to expound and not to legislate. The numerous rules of interpretation or construction formulated by courts are expressed differently by different judges and support may be found in these formulations for apparently contradictory propositions.

The problem of interpretation is a problem of meaning of words and their effectiveness as medium of expression to communicate a particular thought. A word is used to refer to some object or situation in the real world and this object or situation has been assigned a technical name referent. "Words and phrases are symbols that stimulate mental references to referents." But words of any language are capable of referring to different referents in different contexts and times....."

33. In ***State of Rajasthan Vs. Babu Ram*** AIR 2007 SC 2018 it was observed that words in a statute are to be first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to

some absurdity or unless there is something in the context or in the object of the Statute to suggest the contrary. In this context, we have referred both the absurdity as well as the object and context in which the word 'complaint' has been used to hold that the word 'complaint' includes 'information', which is pending before the Council and on which the Council has applied its mind i.e. initial cognizance has been taken.

34. Similarly, in *M/s Girnar Traders Vs. State of Maharashtra (2007)7 SCC 555* it has been held that if plain interpretation of a word apparently leads to some injustice or is at variance or is not required by the scope and object of the legislation, the Courts should not hesitate to interpret the word so as to achieve the intention of the legislature and to produce a rational construction. In paragraph 39 it has been held as follows:-

“39. Where the legislature has used words in an Act which if generally construed, must lead to palpable injustice and consequences revolting to the mind of any reasonable man, the court will always endeavour to place on such words a reasonable limitation, on the ground that the legislature could not have intended such consequence to ensue, unless the express language in the Act or binding authority prevents such limitation being interpolated into the Act. In construing an Act,

a construction ought not be put that would work injustice, or even hardship or inconvenience, unless it is clear that such was the intention of the legislature. It is also settled that where the language of the legislature admits of two constructions and if construction in one way would lead to obvious injustice, the courts act upon the view that such a result could not have been intended, unless the intention had been manifested in express words. Out of the two interpretations, that language of the statute should be preferred to that interpretation which would frustrate it. It is a cardinal rule governing the interpretation of the statutes that when the language of the legislature admits of two constructions, the court should not adopt the construction which would lead to an absurdity or obvious injustice. It is equally well settled that within two constructions that alternative is to be chosen which would be consistent with the smooth working of the system which the statute purported to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion in the working of the system. (See *Collector of Customs v. Digvijaysinhji Spg. & Wvg. Mills Ltd.*, at p. 899 and *Kesavananda Bharati v. State of Kerala*.) The court must always lean to the interpretation which is a reasonable one, and discard the literal interpretation which does not fit in with the scheme of the Act under consideration."

35. In ***M/s. P. VaikuntaShenoy & Co. Vs. P. Hari Sharma*** AIR 2008 SC 416, it was held that purposive interpretation should be given to harmonize and effectuate the effect of the legislation. The Courts must always lean to the interpretation which is a reasonable one and discard the literal interpretation which does not fit in with the scheme of an enactment.

36. In ***Bihar State Council of Ayurvedic and Unani Medicine Vs. State of Bihar & Others***(2007) 12 SCC 728 it has been observed and held as follows:-

“51. In our opinion, where the legislature has used words in an Act which if generally construed, must lead to palpable injustice and consequences revolting to the mind of any reasonable man, the court will always endeavour to place on such words a reasonable limitation, on the ground that the legislature could not have intended such consequence to ensue, unless the express language in the Act or binding authority prevents such limitation being interpolated into the Act. In construing an Act, a construction ought not be put that would work injustice, or even hardship or inconvenience, unless it is clear that such was the intention of the legislature. It is also settled that where the language of the legislature admits of two constructions and if construction in one way would lead to obvious injustice, the courts act upon the view that such a result could not have been intended, unless the intention had been manifested in express words. Out of the two interpretations, that language of the statute should be preferred to that interpretation which would frustrate it. It is a cardinal rule governing the interpretation of the statutes that when the language of the legislature admits of two constructions, the court should not adopt the construction which would lead to an absurdity or obvious injustice. It is equally well settled that within two constructions that alternative is to be chosen which would be consistent with the smooth working of the system which the statute purported to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system. (See *Collector of Customs v. Digvijaysinhji Spg. & Wvg. Mills Ltd.*, SCR at p. 899 and *Kesavananda Bharati v. State of Kerala.*)”

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53. In series of judgments of this Court, these exceptional situations have been provided for. In *Narashimaha Murthy v. Susheelabai* (SCC at p. 658, para 20), it was held that:

“20. ... the purpose of law is to prevent brooding sense of injustice. It is not the words of the law but the spirit and internal sense of it that makes the law meaningful.”

54. In *American Home Products Corp. v. Mac Laboratories (P) Ltd.* (AIR at p. 166, para 66), it was held that: (SCC p. 508, para 66)

“66. ... It is a well-known principle of interpretation of statutes that a construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly....”

55. Further, in *State v. Sat Ram Dass*, the Punjab High Court held that: (AIR p. 498, para 4)

“4. ... To avoid absurdity or incongruity even grammatical and ordinary sense of the words can in certain circumstances be avoided;”

37. The intention of the legislation in enacting Section 21D of the CA Act, 1949 is to draw out or make a distinction between the cases pending before the Council on a complaint or on information, and ensure that the amended provisions would apply to a fresh complaint or information and the unamended Act will apply to the pending

complaints or information. It is inconceivable and there is no good reason or cause why distinction should be made between 'information' and 'complaint' for the purpose of deciding whether the amended or unamended provision would apply. The legislation intent behind incorporating Section 21D is to make the legal position beyond doubt or cavil so that there is no dispute. Even under Section 6 of the General Clauses Act the position is the same. In these circumstances, we would prefer the interpretation placed by the appellant on the word 'complaint' as used in Section 21D. The word complaint includes information cases which were pending before the Council on 17th November, 2006. In the facts of the present matter as discussed above, proceedings or complaint in the form of information was pending before the Council on 17th November, 2006 and accordingly the unamended provisions will apply.

38. In view of the aforesaid reasoning, the present appeal is allowed and it is held that the procedure prescribed by the unamended C.A. Act, 1949 i.e. Sections 21, 22 and 22A would be applicable to pending proceedings in information case and not the procedure prescribed after

the amendment made by the Chartered Accountants (Amendment) Act, 2006. As already held above, the appellants have not challenged the other findings and directions given by the learned single Judge. The appeal is accordingly disposed of. In the facts of the case there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(DIPAK MISRA)
CHIEF JUSTICE

September 30th, 2011
Kkb/VKR/NA