

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 5th April, 2011
% Judgment pronounced on: 30th May, 2011

+1. LPA 885/2010

SUBRAMANI GOPALAKRISHNAN Appellant
Through Mr. Shyam Divan, Sr. Advocate with
Mr. R. Sudhinder, Mr. Rahul Ravindran and Ms.
Perna Amitabh, Advocates

versus

INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA & ANR Respondents
Through Mr. Ramji Srinivasan, Sr. Advocate
with Mr. J S Bakshi, Mr. Amitesh S. Bakshi, Mr.
Zeyaul Haque, Mr. Rakesh Agarwal and Mr.
Pulkit Agarwal, Advocates for ICAI/Respondent
No.1
Mr. Jatan Singh, CGSC with Mr. Ashish Kumar,
Advocate for UOI

2. LPA 886/2010

TALLURI SRINIVAS Appellant
Through Mr. T. Andhyarujina, Sr. Advocate
with Mr. R. Sudhinder, Mr. Rahul Ravindran and
Ms. Perna Amitabh, Advocates

versus

INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA & ANR Respondents

Through Mr. Ramji Srinivasan, Sr. Advocate
with Mr. J S Bakshi, Mr. Amitesh S. Bakshi, Mr.
Zeyaul Haque, Mr. Rakesh Agarwal and Mr.
Pulkit Agarwal, Advocates for ICAI/Respondent
No.1
Mr. Jatan Singh, CGSC with Mr. Ashish Kumar,
Advocate for UOI

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? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

DIPAK MISRA, CJ

Keeping in view the similitude pertaining to the legal controversy in both the appeals, despite the fact that there is a slight difference in the factual matrix, these appeals were heard together and are being disposed of by a common order. For the sake of clarity and convenience, the facts from LPA No.886/2010, which arises from the order passed in WP(C) No.2205/2010, shall be expounded for the purpose of adjudication.

2. The appellant, a chartered accountant and a member of the Institute of Chartered Accountants of India (ICAI), was a partner of M/s Price

Waterhouse (M/s PW), a firm of Chartered Accountants registered with ICAI. In the year 2000, the firm was appointed as the statutory auditors of M/s Satyam Computer Services Ltd. (SCSL). The statutory audits of SCSL for the years 2001 to March, 2007 were conducted and the reports were signed by Mr. Subramani Gopalkrishnan, the appellant in LPA No.885/2010 [the petitioner in WP(C) No.5352/2010]. The statutory audit for the quarters ending 30th June, 2007 and 30th September, 2008 were conducted and signed by Mr. Talluri Srinivas, the appellant in LPA No.886/2010. As the factual matrix would further unfurl, on 7th January, 2009, Mr. B. Ramalinga Raju, the then Chairman of SCSL, in a communication send to the Board of Directors, disclosed that the balance sheet of SCSL as on 30th September, 2008 carried inflated (non-existent) cash and bank balances of Rs.5,040 Crores (as against Rs.5361 Crores reflected in the books) and accrued non-existent interest of Rs.376 Crores. The liability was understated to the extent of of Rs.1230 Crores on account of funds arranged by him and the accounts overstated the debtors position by Rs.490 Crores (as against Rs.2651 crores reflected in the books). Quite

apart from the above, there were many other disclosures which eventually led to his arrest and a criminal trial which we shall refer to at a later stage.

3. On 10th January, 2009, the ICAI corresponded with M/s PW, Bangalore, referring to the letters of Mr. Raju, the Chairman of SCSL, that the said firm had failed to carry out necessary checks which were required while undertaking the audit of the financial statements and certifying the quarterly results of the company. The ICAI alleged that the firm had violated the accounting principles while auditing and certifying the accounts/quarterly results of SCSL for the aforementioned years and quarters and did not give a true and fair view of the accounts and further did not exercise due diligence and were negligent in their professional duties as statutory auditors. The ICAI treated the newspaper report as information within the meaning of Section 21(2) of the Chartered Accountants Act, 1949 [as amended by the Chartered Accountants (Amendment) Act, 2006 which came into effect from 17th November, 2006] (for brevity 'the CA Act'). M/s PW was called upon to disclose the name or names of the member or members who was/were answerable to the allegation/s and send a copy of the aforesaid information letter along with

its enclosures to the said member/members and he/they be requested to send his/their written statement, if any, in triplicate within 21 days from the receipt of the letter. It was also stipulated in the said letter that the member or members who are answerable should also send a declaration duly signed in the enclosed format and in the event the name(s) of the member(s) answerable was not disclosed, all the members who were partners or employees of the firm on the date of occurrence of the alleged misconduct shall be responsible for answering the allegation or allegations contained in the information. After certain correspondences, on 30th January 2009, M/s PW replied to the ICAI stating, inter alia, that the key members were Mr. S. Gopalakrishnana, Mr. S. Talluri, Mr. P. Shiva Prasad and Mr. C.H. Ravindranath. M/s PW informed that Mr. S. Gopalakrishnan and Mr.Srinivas had been arrested by the local police and they were out of reach. As is manifest, on 20th February, 2009, the criminal investigation was transferred to the Central Bureau of Investigation (CBI) and RC No.4(S)/2009 was registered against Mr. S. Gopalakrishnan, Mr. Srinivas and seven other accused persons for offences punishable under Sections 409, 420, 468, 471, 477A, 201 and 120B of the Indian Penal Code. It

is worth noting that at the instance of the CBI, a Multi Disciplinary Investigation Team (MDIT) was constituted and a report was prepared by the ICAI group on 5th April, 2009. One of the conclusions recorded by the said group is to the following effect:

“19.1 The statutory auditors have failed to exercise reasonable care and compliance with various auditing and assurance standards issued by the Institute of Chartered Accountants of India as a generally accepted auditing practice while reporting on the financial statements and the materiality of the misstatements are so huge that it has rendered the financial statements for all these years as untrue and unfair. However, the executive, management and staff have drawn substantial amounts as remunerations, commission, incentives, bonuses, ESOPs. The management has also declared the dividends to its shareholders under the Companies Act, 1956. However, all these overstatements and misstatements have reported the EPS at a higher level in the financial reporting annually as well as quarterly which has directly impacted the movement of the share prices in the stock exchanges market in India and abroad.”

4. As is evincible, on 7th April, 2009, the CBI filed its charge sheet in the Court of the Additional Chief Metropolitan Magistrate (ACMM) arraigning Gopalakrishnan, Srinivas and seven others as accused persons.

The documents which were relied upon by the CBI was the report of the ICAI Group which was a part of the MDIT.

5. At this juncture, the Director (Discipline) of ICAI placed a prima facie opinion before the disciplinary committee and the committee was of the prima facie view that the said chartered accountants were guilty of professional misconduct within the meaning of clauses (5), (6), (7), (8) and (9) of Part I of the Second Schedule to the CA Act. A prima facie opinion was also formed that the said two chartered accountants were guilty of other misconduct within the meaning of Section 22 read with Section 21 of the CA Act. On the basis of the said prima facie opinion, a notice was sent to the chartered accountants enclosing a copy of the prima facie opinion and requiring each of them to send their written statement along with supporting documents and a list of witnesses within 21 days. It is apt to note that at that time, both the appellants herein were in judicial custody and at that juncture, the CBI filed a supplementary charge sheet. On 4th February, 2010, Srinivas was enlarged on bail by virtue of the order passed by the Apex Court in Criminal Appeal No.257/2010 on certain conditions.

6. As pleaded, on 26th February, 2010, notices were issued by the ICAI to Srinivas with respect to the disciplinary proceedings pending against him as well as Ravindranath. Srinivas replied to the ICAI stating that Ravindranath had been cited as a witness in the criminal case pending before the Special Court, CBI against Srinivas. It was contended by Srinivas that his appearance as a witness in the disciplinary proceedings against Ravindranath would severely prejudice his position in the criminal case pending trial. As regards the disciplinary proceedings against him, he asseverated that he would be dealing with that separately and thereafter, on 26th March, 2010, he stated that the initiation of the disciplinary proceedings against him should be deferred since the alleged acts of commission or omission on the basis of which the disciplinary proceedings had commenced not only form the basis of a prima facie opinion but also form the basis of various charges against him in the criminal cases and, hence, any disclosure of his explanation or defences until the final conclusion of the criminal trial pending before the Special Court at Hyderabad would seriously impact his defence in the criminal trial. When the ICAI decided to proceed with the disciplinary

proceedings, Srinivas filed WP(C) No. 2505/2010 and the learned Single Judge initially directed postponement of the disciplinary proceedings for some time.

7. As is reflectible, on 25th June, 2010, Gopalakrishnan was granted bail by the High Court of Andhra Pradesh with certain conditions and thereafter, similar proceeding was initiated against him and he also took the same plea. Being grieved by the action of the ICAI, he preferred WP(C) No.5352/2010.

8. It was urged before the learned Single Judge that the charge sheet in the criminal case and the prima facie opinion formed by the Director (Discipline), ICAI are more or less identical and the list of witnesses in both the proceedings are same and if they are allowed to continue simultaneously, serious prejudice would be caused to the writ petitioners as their defence would be disclosed. A reference was made to the report dated 5th April, 2009 of the ICAI group which formed a part of the MDIT, the conclusion of which formed the basis for the prima facie opinion dated 17th September, 2009 of the Director (Discipline), ICAI and the said report

formed the basis of the charge sheet and, hence, the allegations are identical. It was canvassed that since the criminal case against Srinivas is on identical facts as in the disciplinary proceedings initiated by the ICAI and the charges in the criminal case are of a grave nature, the disciplinary proceedings should be stayed till the conclusion of the criminal case. It was further propounded that as the Special Court is proceeding with the case and it has been conferred the responsibility to proceed with the criminal trial, it is not expected to take further time regard being had to the directions issued by the Apex Court in Criminal Appeal Nos. 2068-72/2010 to the effect that the trial should be concluded by 31st July, 2011 and, therefore, it would be justified to keep the disciplinary proceedings in abeyance. It was also proponed that it was not appropriate on the part of Srinivas to exercise right of silence before the disciplinary committee of ICAI and if he does so, an adverse inference would be drawn against him by the disciplinary committee in regard to various charges which formed the subject matter of the criminal case. Similar submissions in a different way were canvassed on behalf of Gopalakrishnan. In addition, it was contended that Gopalakrishnan had not been discharging any function as

Chartered Accountant ever since his suspension from ICAI and he did not intend to do so till the conclusion of the trial.

9. The aforesaid submissions were resisted by the ICAI, submitting that there was no justification or warrant to stay the disciplinary proceedings against the Chartered Accountants as the charges are not the same inasmuch as the charges levelled in the criminal case pertained to cheating, criminal conspiracy and fraud, whereas the charge sheet in the disciplinary proceeding pertained to negligence, conduct and functioning under the CA Act. That apart, it was contended that the standard of proof in both the proceedings are different and the scope of enquiry are on different platforms. It was highlighted that there were 433 witnesses in the criminal trial whereas there are very few witnesses in the departmental proceedings. Additionally, it was urged that no prejudice would be caused to them; that the examination of documents by certain witnesses are formal in nature and certain witnesses are not to be examined and, hence, the doctrine of prejudice does not get attracted.

10. The learned Single Judge referred to various decisions in the field with regard to the simultaneous continuation of the disciplinary proceedings and posed the question that in a case of this nature, the Court is called upon to examine (a) Are the charges on which the disciplinary proceedings are proposed to be held identical or nearly similar to the charges on which they are facing criminal proceedings? (b) Are the criminal charges of a grave nature? (c) Do the charges involve complicated questions of law and fact?

11. After posing the questions, the learned Single Judge expressed the view as under:

“46. It may at the outset be noticed that in the criminal case, arguments on charge which were in progress when these petitions were argued have been framed by the Special Judge on 25th October 2010. The offences mentioned in the charge sheets do allege that the Petitioners have committed offences which could be characterized as being of a „grave“ nature. These include the offences under Sections 409, 420, 468, 471, 477-A, 201 r/w Section 120-B IPC. Secondly, a comparison of the charges in the disciplinary proceedings with those in the criminal trial indicates that while the charges in the former will all be examined in the latter as well, the converse is not true. There would be additional matters that are

likely to be examined in the criminal trial. This brings up the third limb, i.e. whether the charges involve complicated questions of law and fact? It may be recalled that in B.K. Meena the Supreme Court has reiterated that criminal case should be of a grave nature "involving complicated questions of fact and law." In other words, it is not sufficient for a Petitioner resisting departmental proceedings to show that the criminal case is based on an identical set of facts but that it involves complicated questions of both fact and law.

47. The learned senior counsel for the ICAI was right in the submission that apart from merely stating that the charges involve complicated questions of law and fact there has been nothing actually shown by the Petitioners to demonstrate this. Whether in fact the charges that are stated to have been framed on 25th October 2010 by the Special Judge involve complicated questions of law and fact cannot be determined unless they are studied in some detail and further after the trial progresses. Also, the mere fact that the number of witnesses is large or that the alleged fraud is of a large sum need not by itself mean that the questions of fact and law are complicated. Thirdly, even if in criminal cases, the facts may be invariably complicated, the question of law need not be. Understandably therefore, the learned senior counsel for the Petitioners did not address the Court on this particular aspect except to repeat the requirement of M Paul Anthony that the criminal case involved complicated questions of law and fact. This however is not sufficient if the court has to be persuaded to stay the disciplinary proceedings.

48. The inescapable conclusion is that the third and important limb of the test evolved in the decisions discussed hereinbefore and succinctly summarised in *M Paul Anthony* has not been shown by the Petitioners to be satisfied in their cases viz., that the criminal cases in which they are arrayed as accused involve complicated questions of law and fact. They have therefore been unable to persuade this Court, on the basis of the law explained above, to stay the disciplinary proceedings pending the conclusion of the criminal trial."

12. Be it noted, the learned Single Judge also addressed himself with regard to the right against self-incrimination and referred to the decision in *Romesh Chandra Mehta v. State of West Bengal*, AIR 1970 SC 940 wherein the Apex Court has also referred to the earlier decision in *State of Bombay v. Kathi Kalu Oghad*, AIR 1961 SC 1808 and eventually came to hold that the submission that if the appellants were asked to appear in the disciplinary proceeding under the CA Act, their fundamental right under Article 20(3) of the Constitution would be violated was sans substance.

13. We have heard Mr. Shyam Divan, learned senior counsel along with Mr. R. Sudhinder, Mr. Rahul Ravindran and Ms. Prerna Amitabh for the appellant in LPA 885/2010, Mr. T. Andhyarujina, learned senior counsel

along with Mr. R. Sudhinder, Mr. Rahul Ravindran and Ms. Prerna Amitabh for the appellant in LPA No.886/2010, Mr. Ramji Srinivasan, learned senior counsel along with Mr. J.S. Bakshi, Mr. Amitesh S. Bakshi, Mr. Zeyaul Haque, Mr. Rakesh Agarwal and Mr. Pulkit Agarwal for ICAI and Mr. Jatan Singh, learned standing counsel for the Union of India.

14. Mr. T. Andhyarujina, learned senior counsel appearing for the appellant in LPA No.886/2010, has raised the following contentions:

(A) There is an inter-relationship between the charge sheet filed by the prosecution and the prima facie charges of misconduct levelled against the appellants by the disciplinary committee as both rely on each other. The CBI in its first charge sheet dated 7th April, 2009 relied on the report of the MDIT of the ICAI group which had held that the appellants had failed to exercise reasonable care and compliance with norms and same forms subject matter of the charge sheet of the prosecution. The ICAI charges against the appellant, in turn, relies on the charge sheet filed by the prosecution. The simultaneity, inter-relationship, identity and similarity of evidence

are the four factors which would warrant that the disciplinary proceeding should be stayed till the criminal trial is over.

- (B) The evidence in respect of the charges could be common, for the appellant himself will have to adduce the evidence refuting the charges as well as depose in his defence in the criminal proceedings. It is required on his part to call the audit managers in the disciplinary proceedings and they may be cited as at the instance of the prosecution. He may be required to call the officers of the bank who supplied the information incorporated in the balance sheet and the prosecution would also call bank officials as witnesses and under these circumstances, it is advisable and desirable to keep the disciplinary proceedings in abeyance.
- (C) The continuance of the disciplinary enquiry would compel the appellant to disclose his defence and in the event of such disclosure, prejudice shall be caused to the appellant to defend himself in the criminal proceedings and the same would entail an advantage to the prosecution.

- (D) It is the accepted norm that when there are common facts and evidence in departmental/disciplinary proceedings and criminal prosecution, there is bound to be prejudice to the delinquent, if the disciplinary proceedings are not stayed and as in the present case, the charges in both the disciplinary proceedings as well as in the prosecution are of grave nature and involve complicated questions of law, there should be stay of the disciplinary proceedings.
- (E) The appellant has been suspended from his practice as a chartered accountant by his own firm and is unable to practise and, hence, no prejudice would be caused to ICAI if the proceedings are stayed until the criminal prosecution is completed by 31st July, 2011, as directed by the Apex Court.
- (F) The evidence disclosed by the appellant in the disciplinary proceedings would be known to the CBI in the criminal case. The prosecution has also listed the Director (Discipline) of ICAI as a witness who had formed the prima facie opinion against the appellant for the purpose of issuance of the notice to show cause and, this is bound to cause prejudice to the appellant. The

prosecution has also listed Sh. Uttam Prakash Agarwal as PW-24 and he was the first president of the ICAI and author of the report of the ICAI Multi Disciplinary Team which has arrived at the conclusion that the appellant is guilty of misconduct. Similarly, certain witnesses are common and on their examination the appellant would be put in a disadvantageous position.

15. Mr. Shyam Divan, learned senior counsel appearing for the appellant in LPA No.885/2010, in addition to the submissions put forth by Mr.T. Andhyarujina, has canvassed the following contentions:

- (a) The Supreme Court has directed the trial to be completed by 31st July, 2011 and the trial is proceeding on a daily basis. The appellant has to remain present in the Trial Court everyday during the entire proceeding as an accused as well as instruct the counsel during cross-examination. The appellant has to remain present to closely follow the depositions of the prosecution witnesses and to instruct his counsel pre and post court sessions. The allegations, inter alia, involve complicated questions of facts pertaining to falsification of

accounts and fabrication of documents, etc. which make the appellant's presence imperative to assist his counsel. The appellant has to necessarily spend close to 10 to 12 hours a day to participate in the proceedings and to defend his life and liberty which is extremely time consuming. Therefore, the appellant will not have any effective opportunity to defend himself in the disciplinary proceedings as there will be no time left for preparing himself for the disciplinary proceedings. Therefore, the appellant would be severely prejudiced if the disciplinary proceedings are allowed to continue until the completion of the trial.

- (b) In view of the conditions imposed by the Court in its order dated 25.06.2010 granting bail, it would be physically impossible for the appellant to defend himself before the ICAI without consulting his team members who had conducted the audit. It was, inter alia, a condition of bail that the appellant shall not tamper with any evidence and shall not influence the prosecution witnesses. The appellant's team members have been arrayed as prosecution witnesses. The allegations are regarding alleged fudging of

accounts over seven years. The appellant is required to understand the records for which he would be required to consult the papers alongwith the persons who had conducted the audit. In view of the bail order, the appellant would be constrained to even discuss the matter with his team member which will again seriously prejudice his case.

- (c) The appellant has already retired as a partner of PW. In effect, the appellant is suspended from practice. There can be no prejudice to the ICAI if the proceedings are stayed until the criminal prosecution is completed as mandated by the Supreme Court before 31.07.2011.

16. An additional affidavit has been filed by Subramani Gopalakrishnan, the appellant in LPA No.885/2010, with regard to the progress of the trial. We think it appropriate to reproduce a few paragraphs from the same which have been pressed into service by the learned counsel for the appellant:

“(i) I say that pursuant to the directions of the Hon’ble Supreme Court dated 26.10.2010, the trial in the criminal proceedings is being conducted on a day-to-day basis since 8th November, 2010. I state that as off

date more than 100 witnesses have already been examined and cross-examined. Further the CBI has given up 192 witnesses as informed to the court from time to time, out of 470 witnesses cited in the counter by ICAI and therefore effectively 292 witnesses are over. The CBI files a schedule of witnesses it proposes to examine periodically and the said charts/schedules filed by CBI are used for summoning the witnesses for examination on respective dates. I say that in a span of three months since the commencement of trial 292 witnesses are over. No prejudice would be caused to Respondent if the enquiry is kept in abeyance till 31st July, 2011.

(ii) I state that there are no other proceedings before the trial court other than the Charge sheets filed by CBI in Satyam case which is proceeding on a daily basis from morning till the court raises for the day. I have to remain present in trial court everyday during the entire proceeding as an accused as well as to instruct my counsel during cross-examination. I have to remain present to closely follow the deposition of the prosecution witnesses and to instruct my counsel. I am required to discuss with my counsel pre and post the court sessions to analyze the depositions and to prepare for the next day in the trial. I am required to spend close to 10 to 12 hours a day to participate in the proceedings to protect my life and liberty. It is extremely time consuming and presently all my efforts are consumed in defending myself in the criminal proceedings.

(iii) The steps that are required to be taken to defend the said ICAI proceedings are voluminous. It requires substantial time and effort on the part of the appellant

to take necessary steps. The steps will include like identification of documents and witnesses, understanding the charges and documents, the Practical difficulties is not being able to consult the required persons to formulate any explanation etc. Therefore, it is physically impossible for me to defend myself in the disciplinary proceedings as the trial is proceeding on a daily basis pursuant to the directions issued by the Hon'ble Supreme Court.

17. Mr. Ramji Srinivasan, learned senior counsel appearing for the respondent ICAI, in oppugnation, has raised the following submissions:

- (i) The nature and scope of the criminal proceedings and charges therein are vastly different and wider in scope as compared to the disciplinary proceedings which are narrower and limited in nature, mostly relating to the Accounting Standards.
- (ii) In the disciplinary proceedings, the charges have been framed against the appellant and the co-delinquent and now the matter is listed for evidence on 26.02.2010 when only two witness from the SEBI and CBI are to be examined on the said date. They are witnesses of record.

- (iii) There is no provision for suspension of a delinquent member pending the disciplinary proceedings and an action can be taken only after conclusion of the proceedings under Section 21B(3) of the CA Act (Amended). The petitioner, taking advantage of the fact that the disciplinary proceedings pertaining to his professional misconduct in the matter of Global Trust Bank had not been concluded, has committed professional misconduct in the present matter of 'Satyam' as he continued to have his licence to practise. The conclusion of disciplinary proceedings to its logical end is warranted due to considerations of public policy, public interest and public good.
- (iv) No complicated questions of law and fact are involved. The appellant has not demonstrated so and mere averment in that regard is not sufficient. This is a categorical finding of the learned Single Judge. In the present, unfortunately, the appellants have only in a parrot-like manner repeated the provisions from pages 19 to 24 to demonstrate 'Complicated questions of law.'

- (v) In the criminal proceedings, the charges against the appellant are under Sections 120-B r/w 409, 420, 419, 467, 468, 471 & 477 IPC; while the misconduct alleged in the disciplinary proceedings are within the meaning of clauses (5), (6), (7), (8) & (9) of Part 1 of the Second Schedule and 'other misconduct' under Section 22 read with Section 21 of the Chartered Accountants Act. Clearly the scope in the disciplinary proceedings is very limited as the gravamen of the charge is only with respect to professional and/or other misconduct and not any criminal offence. The matter needs to be proceeded further by the Disciplinary Committee as per the procedure prescribed under Rule 18 of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
- (vi) The approach and objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the delinquent member is guilty of such conduct as would merit his removal from service or a lesser punishment whereas in the criminal proceedings,

the question is whether the offences registered against him are established and if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and the trial in both the cases are entirely distinct and different. The strict standard of proof or applicability of the Evidence Act stands excluded in a disciplinary proceeding.

- (vii) In the criminal proceedings close to 500 witnesses shall be examined and in the disciplinary proceedings may be 5 to 10 witnesses will be examined in all and hence, there is no justifiability to await the verdict of the criminal case.
- (viii) The office bearers of the ICAI who are PWs in the criminal proceedings are not the PWs in the disciplinary proceedings. The present is a matter based on documentary evidence and not ocular evidence and there is no question of any prejudice being caused to the appellant if the disciplinary proceedings are continued. In any event, the appellant has not spelt out as to how and what prejudice

is going to be caused to him. The plea of Article 20(3) of the Constitution is not available to the appellants.

- (ix) The proceedings in the criminal case and departmental proceedings operate in distinct and different jurisdictional areas. In the departmental proceedings, the factors operating in the mind of disciplinary authority may be many, such as enforcement of discipline, etc. The standard of proof required is also different from the criminal trial. In the former, it is preponderance of probabilities while the latter charge has to be proved beyond reasonable doubt following the strict rule of evidence. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative or professional system unsullied. The advisability, desirability or propriety of staying the departmental enquiry is to be seen as per the facts of the matter since stay of disciplinary proceedings cannot be a matter of course.

- (x) The allegations made against the appellant vide notice dated 10.01.2009 do not refer to any allegation of conspiracy or fraud or

cheating. The allegations contained in the CBI charge sheet specifically refer to the allegations and offences pertaining to conspiracy, cheating and fraud. It clearly shows that the allegations made in the charge sheet filed by the CBI and the allegations contained in the show-cause notice issued are not the same.

18. At this juncture, we think it appropriate to refer to the comparative chart which has been filed before us containing the allegations against the appellants in the disciplinary proceedings and the allegations against the accused persons in the criminal proceedings:

Allegations against the Appellant in the Disciplinary Proceedings	Allegations against the Accused as per the Charge sheet
i) That the management of the company manipulated/inflated the profit/ revenue/ cash/debtors/cash and bank balances and understated the liabilities in the financial statements of the company for the years, namely, 2001-02 to 2007-08 and 1.4.2008 to till date and you certified these statements to be true and fair. ii) You have certified all these figures to be true and fair which as	i) Accused S. Gopalakrishnan (A-4) and Srinivas Talluri (A-5) have <u>intentionally</u> <u>mis-represented</u> themselves as partners of M/s Price Waterhouse and their firm M/s Price Waterhouse, Bangalore as 'M/s Price Waterhouse' <u>consciously</u> and <u>dishonestly</u> entered into the said agreement in furtherance of the <u>criminal conspiracy</u> with V. Srinivas (A-3), B. Ramalinga Raju, (A-1) and B. Ramaraju (A-2) thereby S.

per the admission of the Chairman & Managing Director of the company are not correct it means that you have failed to carry out necessary checks which are required while undertaking the audit of the financial statements and certifying the quarterly results of the company. iii) You have violated the accounting principles while auditing/certifying the accounts/quarterly results of the company for the aforesaid years/quarters. iv) In spite of the aforesaid irregularities/manipulations in the financial statements/ quarterly results of the company, you in your audit reports stated that the financial statements together with the notes thereon give a true and fair view. v) You have failed to disclose the material facts known to you as the statutory auditors of the company which were not disclosed in the financial statement of the company. vi) You have failed to report material mis-statement known to you as the statutory auditors of the company, which appeared in the financial statements of the company. vii) You did not exercise due	Gopalakrishnan (A-4) and Srinivas Talluri (A-5) have intentionally <u>cheated</u> the shareholders and other stake holders by personating themselves as partners in 'M/s Price Waterhouse' on which the shareholders & investors placed their reliance. (Page 122) ii) In furtherance of the <u>conspiracy</u> the statutory auditors S. Gopalakrishnan (A-4) and Srinivas Talluri (A-5) thereby accommodated the <u>fraudulent and dishonest acts</u> of B. Ramalinga Raju, A-1 and B. Ramaraju (A-2) V. Srinivas (A-3) and other co-conspirators <u>knowing fully well</u> the implications and consequences of their overt acts. (Page 123) iii) As a <u>quid pro quo</u>, the auditors have been compensated through exorbitant audit fees by B. Ramalinga Raju (A-1), B. Ramaraju (A-2) and V. Srinivas (A-3) for the role played by them in furtherance of the conspiracy. A conspiracy has been made with regard to the Turnover & the Audit fee paid by the peer companies in IT sector viz. M/s Wipro Ltd. and M/s Infosys Technologies Ltd. vis a vis M/s SCSL. The turnover of M/s SCSL in 2006-2007 was Rs.6228 Crores, in
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diligence and were grossly negligent in the conduct of your professional duties as the statutory auditors of the company for all these years. viii) You have failed to obtain sufficient information, which were necessary for expression of an opinion. ix) You have failed to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances. x) Failed to invite attention to any material departure from the general accepted procedures of audit applicable to the circumstances. xi) On account of the manipulations/ falsification of the accounts by the Company for all these years, it is apparent that the same was not possible without your knowing about the same as the Statutory auditor of the company.	2007-2008 was Rs.8137 Crores and the respective Audit Fees paid were Rs.3.67 Crores and Rs.3.73 Crores. The turnover of M/s Wipro in the year 2006-07 and 2007-08 though not available but the Audit Fees paid in 2006-07 was Rs.0.90 crores and Rs.1.10 crores. The turnover of M/s Infosys in the year 2006-07 was Rs.13149 Crores and in the year 2007-08 was Rs.15648 Crores and the respective Audit Fees paid was Rs.0.55 Crores and Rs.0.83 Crores. iv) Above figures show the glaring variation between the audit fees paid by M/s SCSL and other companies which clearly establishes the existence of a well knit <u>criminal conspiracy</u> between the management of M/s. SCSL i.e. B. Ramalinga Raju, A-1, B. Ramaraju (A-2) and Shri V. Srinivas (A-3) and the statutory auditors S. Gopalakrishnan (A-4) and Srinivas Talluri (A-5). In addition to the above audit fee, the auditors received an amount of Rs.1.24 crores and Rs.1.27 crores for the said years towards rendering other services. These amounts were separately in the accounts though mandated as per the reporting norms.
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	v) Specific role of the two petitioners has been again narrated as follows: Shri S. Gopalakrishnan (A-4) He affixed his signature on the financial statements as a partner of M/s Price Water House the statutory auditors for M/s SCSL since the financial year 2001 till 2007. As per the records maintained by 'The Institute of Chartered Accountants of India, Sri S. Gopalakrishnan (A-4), was a partner in the firm M/s Price Water House, Bangalore and not in M/s Price Waterhouse. By affixing his signature on the Audit Reports for and on behalf of Price Waterhouse' he deliberately with the knowledge of its implications and consequences violated the requirements of the Auditing & Assurance Standards. In the Agreement entered between M/s SCSL and M/s Price Waterhouse, instead of affixing his signature, he has signed as 'Price Waterhouse' contrary to the established procedure and practice whereby it is incumbent on an individual partner of the firm to affix his signature as a representative of the Auditor firm authenticating the contents of the report. He having
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	been aware of the fact that he never represented “M/s Price Waterhouse” designated Auditors for M/s SCSL, he has signed as “Price Waterhouse” and thereby cheated the investors in furtherance of the conspiracy with Sri V. Srinivas (A-3), Sri B. Ramalinga Raju, A-1 and Sri B. Ramaraju (A-2). By virtue of his status as a Statutory Auditor it is incumbent on his part to verify the bank balances and FDRs claimed to be held by M/s SCSL besides other investments, liabilities and sales of the Company before certifying the Statutory Audit Report which forms the basis of Annual Financial Statement of the company. He has knowingly certifies the inflated/forged balance sheets prepared basing on the forged FDRs and other data with regard to the banks and also the status of the sales without making any mandatory independent verifications. The auditors are required to write directly to the banks and obtain confirmation of balances. After obtaining the confirmations they must compare these figures with the figures as appearing in the books of accounts
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	of the company. Sir S. Gopalakrishnan received the confirmations from the banks which are in great variance with the figures provided by the management and appearing in the books of accounts. Despite this glaring discrepancy and having both the confirmations i.e. the original confirmations received from the banks and the forged blank confirmations provided by the other accused, Sri S. Gopalakrishnan in furtherance of the conspiracy, has accepted forged bank confirmations provided by the accused, certified the same and incorporated in the final accounts. He has flouted the prescribed Audit and Assurance Standard number 30 of the Institute of Chartered Accountants of India, thereby facilitated the projection of falsified data in the Annual Financial Statements of the Company continuously. The presentations made by him to the audit committee about the health of the company were misleading and in fact he gave a very good certification regarding the financial discipline and controls available in the company contrary to the reality.
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	As a consideration for his acts in accommodating the accused persons, he has received an exorbitant audit fee from M/s SCSL over and above the market rate which reflects a quid pro quo arrangements. He has consciously overlooked the accounting irregularities committed by M/s SCSL for the past 7 years showing his complicity in the commission of the above said offences and he is liable as a co-conspirator. Letters generated on the letter pads of M/s Price Waterhouse were recovered from the computer systems of M/s SCSL. These letters were supposed to be written by the auditors addressed to the banks seeking confirmations about the balances. Sri S. Gopalakrishnan as part of the conspiracy got these letters generated in the computer systems of M/s SCSL for the purpose of creation of the records which depicts his privy and involvement in the conspiracy. He also made M/s SCSL to generate certain letters addressed to the banks directing the banks to directly inform the auditors. However these letters were generated merely for the purpose of record which shows the role of
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	Sri Gopalakrishnan in the conspiracy this was proved by the GEQD opinion. But for his active cooperation and disregarding the crucial evidence available with him, this fraud would not have taken place for so many years. He affixed his signature on the financial statements as partner of M/s Price Water House the Statutory Auditors for M/s SCSL since the financial year 2001 till 2007. Information Technology General Check was carried out for the first time during financial year 2006-07 by the Head of Information Systems Audit of M/s Price Waterhouse, wherein around 180 deficiencies were found and was communicated to the Audit team with the assertion that the IT systems in existence in M/s SCSL are not fully integrated and are subject to manipulation. It was also suggested that in the light of the above deficiencies, substantial and elaborate examination of the financials should be conducted. In spite of this Sri S. Gopalakrishnan deliberately did not make any extensive changes in the audit plan which clearly establishes his motives and intentions in allowing
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	the fraudulent practices to continue in M/s SCSL. Even though as many as 135 control deficiencies were identified in the integrated audit conducted in accordance with the Standards of the Public Company Accounting Oversight Board which has severe impact on the internal control and financial accounting. He deliberately did not bring these control deficiencies to the notice of the Audit report even though they are material in nature, thereby his privy and active role in the conspiracy is established. The above overt acts of Sri S. Gopalakrishnan reveal the offences punishable u/s 120B r/w 420, 419, 467, 468, 471, 477A of IPC. Shri Talluri Srinivas (A-5) affixed his signature on the financial statements as a partner of M/s Price Waterhouse the Statutory Auditors for M/s. SCSL for the financial year 2007-2008.. Sri Talluri Srinivas continued the legacy of Sri S. Gopalakrishnan (A-4) and he actively took part in the conspiracy hatched by Sri V. Srinivas (A-3), Sri B. Ramalinga Raju (A-1) and Sri B. Ramaraju (A-2).
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	As per the records maintained by the Institute of Chartered Accountants of India, Sri Talluri Srinivas (A-5) is the partner in the firm 'M/s. Price Waterhouse Bangalore' and not in 'M/s. Price Waterhouse'. By affixing his signature on the Audit Reports for and on behalf of M/s. Price Waterhouse he deliberately with the knowledge of its implications and consequences violated the requirements of the Auditing and Assurance Standards (AAS) 28. In the agreement entered into between M/s. SSCL and M/s. Price Waterhouse contrary to the established procedure and practice whereby it is incumbent on the individual partner of the firm to affix his signature as a representative of the Auditor firm authenticating the contents of the report. Sri Talluri Srinivas (A-5) having been aware of the fact that he never represents 'M/s. Price Waterhouse' designated Statutory Auditors for M/s. SCSL has signed as "Price Water House" and thereby cheated the investors in furtherance of the conspiracy with Sri V. Srinivas (A-3), Sri B. Ramalinga Raju (A-1) and Sri B. Ramaraju (A-2).
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	By virtue of Sri Talluri Srinivas (A-6) status as a Statutory Auditor, it is incumbent on his part to verify the bank balances and FDRs claimed to be held by M/s. SCSL besides other investments, liabilities and sales of the company before certifying the statutory Audit Report which forms the basis of Annual Financial Statement of the company. Sri Talluri Srinivas (A-6) has intentionally certified the inflated and forged balance sheets prepared basing on the forged FDRs and other data furnished to him with regard to the banks and also the status of the sales without making any mandatory independent verifications. The auditors are required to write directly to the banks and obtain confirmation of balances. After obtaining the confirmations should compare these figures with the figures as appearing in the books of accounts of the company. Sri Talluri Srinivas (A-6) received the confirmations from the banks which were in great variance with the figures as provided by the management and appearing in the book of accounts. Despite this glaring discrepancy and having both confirmations i.e. the original
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	confirmations from the banks and the forged bank confirmations provided by the other accused. Sri Talluri Srinivas, in furtherance of the conspiracy, has chosen the forged bank confirmations provided by the accused, certified the same and incorporated them in the final accounts. He has flouted the prescribed Audit and Assurance Standards number 30 of the Institute of Chartered Accountants of India, thereby facilitated the projection of falsified data in the Annual Financial Statements of the company continuously. The presentations made by him to the audit committee about the health of the company were misleading and in fact he gave a very good certification regarding the financial discipline and controls available in the company contrary to the reality. In consideration of his acts in accommodating the accused persons, he has received an exorbitant audit fee from M/s SSCL over and above the market rate which reflects a quid pro quo arrangements. The Information Technology General Check was carried out for the first time during the financial
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	year 2006-07 by the Head of the Information Systems Audit of M/s Price Waterhouse, wherein around 180 deficiencies were found and was communicated to the Audit Team with the assertion that the IT systems in existence in M/s. SCSL were not fully integrated and are subject to manipulation. It was also suggested that in the light of the above deficiencies, substantial and elaborate examination of the financials should be conducted. In spite of this, Sir S. Gopalakrishnan deliberately did not make any extensive changes in the audit plan which clearly establishes his motives and intentions in allowing the fraudulent practices to continue in M/s SCSL. Sir Talluri Srinivas has also followed the suit in furtherance of the conspiracy allowed the above deficiencies to continue. Even though as many as 135 control deficiencies were identified in the integrated audit conducted in accordance with the Standards of Public Company Accounting Oversight Board which has severe impact on the internal control and financial accounting. Sri S. Gopalakrishnan continued the trend and deliberately did not
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	bring these control deficiencies to the notice of the Audit Committee and thereby facilitated the continuance of the fraudulent practices unabated. He did not comment on these control deficiencies in his Audit Report even though they are material in nature, thereby his privy and active role in the conspiracy is established. Sri Talluri Srinivas also did not take remedial action and continued the same practices to continue which establishes his role in perpetuating the fraud by the other accused. Sri Talluri Srinivas has consciously overlooked the accounting irregularities committed by M/s. SCSL since 2007 showing his complicity in the commission of the above said offences and he is liable as a co-conspirator. There is a discrepancy with regard to the existence of the Price Waterhouse, Hyderabad as Auditors in the registration with the ICAI, a statutory body. The ICAI has confirmed that Sri Talluri Srinivas is a member 'Price Waterhouse, Bangalore' and not 'Price Waterhouse'. As such the certification of Statutory Audit Reports by such non-member
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	Audit Firms consequently invalidates the Annual Financial Statement of the Company which is a statutory requirement under law to invite investments from the prospective investors. Letters generated on the letter pads of M/s Price Waterhouse were recovered from the computer systems of M/s SCSL. These letters were supposed to be written by the auditors addressed to the banks seeking confirmations of balances. Sri Talluri Srinivas as part of the conspiracy, got these letters generated in the computer systems of M/s. SCSL for the purpose of creation of records which depicts his privy and involvement in the conspiracy. He also made M/s SCSL to generate certain letters addressed to the banks directing the banks to directly inform to the auditors. However, these letters were generated merely for the purpose of record which shows the role of Sri Talluri Srinivas in the conspiracy. But for his active cooperation this would not have taken place for the period since 2007. The above acts of Sri Talluri Srinivas reveal the offences punishable u/s 120B r/w 420, 419,
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	467, 471, 477A of the IPC. Summary has been specified on pages 147 to 149. From the investigation, it is clear that the whole fraud was designed and orchestrated by Shri B. Ramalinga Raju (A-1), Shri B. Ramaraju (A-2) and Shri V. Srinivas (A-3) and they got the same implemented with the active connivance of Shri G. Ramakrishna (A-7), Shri D. Venkatapathi Raju (A-8) and Shri S. Srisailam Chetkuru (A-9). Further Sri G. Gopalakrishnan (A-4) and Shri Talluri Srinivas (A-5) have actively participated in the conspiracy by auditing the fudged balance sheets and certified the same and thereby connived with the other accused. Further Sri. B. Suryanarayana Raju (A-6) has actively participated in the conspiracy by assisting Sri B. Ramalinga Raju (A-1), Sri B. Ramaraju (A-2) in reaping maximum benefit from this fraud and in rotating funds amongst the companies. In view of the above have committed the offences of conspiracy, cheating, cheating by personation, generating forged valuation securities, forging the
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	documents for the purpose of cheating and knowingly using these forged documents as genuine. Further they have falsified the accounts of the company and also caused disappearance of evidence of the offence to screen themselves from legal punishment. Therefore, all the accused are liable for commission of offences punishable under sections 120B r/w 420, 419, 467, 468, 471, 477A and 201 of the Indian Penal Code and substantive offences thereof.
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19. In the course of hearing, Mr. Ramji Srinivasan has also filed the list of witnesses who would be examined in the disciplinary proceedings against the appellants. The said list reads as under:

“LIST OF WITNESSES

**IN THE MATTER OF SHRI S. GOPALAKRISHNAN
AND SHRI S. TALLURI BY THE DISCIPLINARY
COMMITTEE**

1. Concerned official from ICAI
2. Shri A.V.Y. Krishna, CBI, Hyderabad
3. The then Investigating Officer of SEBI

4. Concerned official from Citi Bank, HDFC Bank, ICICI Bank, HSBC Bank, BNP Paribas and Bank of Baroda.
5. The concerned official (Finance Department) of Satyam Computer Services Ltd.
6. The concerned official (Sales Department) of Satyam Computer Services Ltd.
7. Main Partners of Price Waterhouse (FRN)
8. Main Partners of Lovelock & Lewes (FRN)
9. Shri Pulavarthi Siva Prasad, Part of Audit Team
10. Shri Chintapatla Ravindernath, Part of Audit Team
11. Shri Srikant Pola, Part of Audit Team.”

20. Keeping in view the aforesaid factual scenario, we may refer with profit to certain authorities in the field which relate to the role of the Court when a challenge is made to continuation of the disciplinary proceeding or enquiry, when the same person is facing criminal prosecution.

21. In *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr.*, AIR 1999 SC 1416, it has been stated thus:

“13. As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose

decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in the those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance."

22. The aforesaid enunciation of law was made on the backdrop of the principles laid down in *Delhi Cloth and General Mills Ltd. v. Kushal Bhan*, AIR 1960 SC 806, *Tata Oil Mills Co. Ltd. v. Workmen*, AIR 1965 SC 155, *Jang Bahadur Singh v. Baij Nath Tiwari*, AIR 1969 SC

30 and *Kusheshwar Dubey v. M/s. Bharat Coking Coal Ltd.*, AIR 1988 SC

2118. Thereafter, their Lordships referred to the entire case law which was reviewed again in the case of *State of Rajasthan v. B.K. Meena*, (1996) 6 SCC 417. In *B.K. Meena* (supra), their Lordships have opined thus:

“14. It would be evident from the above decision that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that “the defence of the employee in the criminal case may not be prejudiced”. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the

case. The ground indicated in D.C.M. and Tata Oil Mills is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality inspite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not

in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above."

(Emphasis supplied)

23. Analyzing the same, their Lordships in *Capt. M. Paul Anthony* (supra) have observed thus:

"20. This decision has gone two steps further to the earlier decisions by providing:

(1) The 'advisability', 'desirability' or 'propriety' of staying the departmental proceedings "go into the scales while judging the advisability or desirability of staying the disciplinary proceedings" merely as one of the factors which cannot be considered in isolation of other circumstances of the case. But the charges in the criminal case must, in any case, be of a grave and serious nature involving complicated questions of fact and law.

(2) One of the contending considerations would be that the disciplinary enquiry cannot - and should not be

- delayed unduly. If the criminal case is unduly delayed, that may itself be a good ground for going ahead with the disciplinary enquiry even though the disciplinary proceedings were held over at an earlier stage. It would not be in the interests of administration that persons accused of serious misdemeanour should be continued in office indefinitely awaiting the result of criminal proceedings.”

24. After discussing all the decisions in the field, the principles that have been culled out in *Capt. M. Paul Anthony* (supra) read as follows:

“22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched

against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

(Emphasis supplied)

25. In *Annasalai and Anr. v. P. Ganesan and Ors.*, (2008) 1 SCC 650, the Apex Court in paragraph 18 has laid down thus:

"18. Legal position operating in the field is no longer res integra. A departmental proceedings pending a criminal proceedings does not warrant an automatic stay. The superior courts before exercising its discretionary jurisdiction in this regard must take into consideration the fact as to whether the charges as also the evidence in both the proceedings are common and as to whether any complicated question of law is involved in the matter."

Thereafter, their Lordships referred to the earlier decisions in the field and opined thus:

“23. The High Court, unfortunately, although noticed some of the binding precedents of the Court failed to apply the law in its proper perspective. The High Court was not correct in its view in concluding that the stay of the departmental proceedings should be granted in the peculiar facts and circumstances of the case without analyzing and applying the principle of law evolved in the aforementioned decisions. It, therefore, misdirected itself in law. What was necessary to be noticed by the High Court was not only existence of identical facts and the evidence in the matter, it was also required to take into consideration the question as to whether the charges leveled against the delinquent officers, both in the criminal case as also the disciplinary proceedings, were same. Furthermore it was obligatory on the part of the High Court to arrive at a finding that the non-stay of the disciplinary proceedings shall not only prejudice the delinquent officers but the matter also involves a complicated question of law.

24. The standard of proof in a disciplinary proceedings and that in a criminal trial is different. It there are additional charges against the delinquent officers including the charges of damaging the property belonging to the bank which was not the subject matter of allegations in a criminal case, the departmental proceedings should not have been stayed.”

[Emphasis added]

26. In *NOIDA Entrepreneur Association v. NOIDA & Ors.*; JT 2007 (2)

SC 620, the Apex Court has expressed thus:

“12. The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act 1872 (in short the „Evidence Act“). Converse is the case of departmental enquiry. The

enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the department enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.”

[Emphasis supplied]

27. In LPA No.730/2010 (National Insurance Company Ltd. v. Shri Sunil Kumar & Ors.) decided on 29th March, 2011, this Court, after referring to the aforesaid authorities, has stated as follows:

“15. From the aforesaid enunciation of law, it can be stated with certitude that the scope, effect and consequence of a criminal trial and a departmental proceedings are distinct and different. Once the employer has reasonable basis regard being had to the sanctity, stability and the propriety of the administration and to avoid any kind of anarchy or chaos, it may be under an obligation to initiate departmental proceeding and simultaneously a criminal prosecution may be launched against the same delinquent employee. The circumstances should be such that there would be a warrant for directing stay

of the disciplinary proceedings. It needs no special emphasis to state, the onus is on the delinquent employee that serious prejudice would be caused, if the parallel proceedings are allowed to continue. It is well settled in law that the burden of proof in a criminal trial is quite stringent, as an accused is entitled to benefit of doubt and the consequent acquittal, but the test of preponderance of possibilities in departmental proceedings is different. But regard being had to the nature of proof required in the departmental proceedings enquiry, a charged employee may not be entitled to exoneration. Regard must be given to the fact that in the departmental proceeding, the standard of proof is totally different. The cannons of service jurisprudence require that the departmental proceedings are put to an end as expeditiously as possible. The exception carved out is that the delinquent employee should be exposed to grave prejudice and the charges leveled against him should be so grave and involve complex questions of law and fact, so that it is undesirable and apposite to invite an interdiction in exercise of inherent jurisdiction by the Court. As has been stated by their Lordships, there cannot be any hard and fast rule or a strait jacket formulae and it depends upon many a factor and facts of each case."

[Emphasis added]

28. In the case at hand, as is evident, the charges levelled relate to the departmental proceeding under the CA Act as amended from time to time. The said enactment has been enacted to make provisions for the

regulation of the profession of Chartered Accountant and for that purpose to establish the Institute of Chartered Accountants. The purpose of enacting such legislation was to authorize the incorporation by a statute of an autonomous professional body. The body has been conferred the certain responsibilities. No member of the institute is entitled to practise unless he has obtained certificate of practice from the Council. Certain disqualifications have been stipulated in Section 8 of the Act. The legislature confers numerous functions on the Council. The institute has the power to take disciplinary action against the registered Chartered Accountants. The Act also defines professional or other misconduct to include any act or omission provided in the Schedule to the Act. There is a provision for appeal. If the Act and the Schedule appended thereto are appreciated with studied scrutiny, it is quite evident that a legislative endeavour has been made to ensure high standards, confidence and integrity in the profession. Keeping in view, in fiscal matters, responsibility and sanctity attached to accounts, audit and role of a statutory auditor are the fundamental paradigms. The professional conduct stands on a different footing than a delinquent employee facing a

disciplinary enquiry. Keeping the aforesaid in view, it is obligatory on the part of the court to see whether such a proceeding should be interdicted. The submission of learned senior counsel for the appellant which we have reproduced in extenso basically conveys that there is similarity of charges; that there are same witnesses; that the element of prejudice is involved; that if the simultaneous proceedings are continued the appellants accused in criminal trial would be compelled to disclose their defence; that the standard of proof is not the only test; that the impact of verdict in criminal proceeding on the disciplinary authority in case of acquittal would be of great magnitude; and that the direction given by the Supreme Court to conclude the trial by end of July 2011 becomes an additional reason on the part of the institute not to proceed with the enquiry. The submissions, in oppugnation, by the learned senior counsel for the respondents as we have noted hereinbefore are that the charges are absolutely different; that the question of fraud and cheating are not involved in the departmental enquiry; that the witnesses are few in number in the departmental proceeding; that there is a violation of accounting standards by the CA which cannot be gone into in the criminal trial; that they have not

functioned appositely as statutory auditors; that they have not shown due diligence and acted with gross negligence; that they have failed to obtain sufficient information and there has been material departure from the generally accepted procedure of accounting; that the direction for conclusion of trial does not help as there are number of witnesses; that the standard of proof is totally different; and that the conspiracy and other factors are not the matter in the disciplinary proceeding. Quite apart from the above, it is contended that the appellants cannot take shelter under the umbrella that they have stopped practising inasmuch as the institute has no power to suspend their registration. Additionally, it is urged by learned senior counsel that the charges levelled against them do not involve complex questions of law and fact and, hence, it is not desirable to invite an interdiction in exercise of the inherent jurisdiction of this Court.

29. On a perusal of the comparative chart of the charges levelled in the disciplinary proceeding and the chargesheet in the criminal proceeding, the list of witnesses, the nature of enquiry, the purpose of enquiry and arraigning the appellants as accused persons in the criminal case are on a different base. The theory of prejudice that has been canvassed is not to be

routinely inferred. It cannot be held in the obtaining factual matrix, that participation of the applicants in the departmental enquiry would seriously prejudice the defence at the trial in the criminal case. That apart, we are disposed to think that it is not desirable to interdict in the proceeding initiated by the institute. That would be against the public interest since the CA Act has its rigorous technical norms and the Chartered Accountants registered with it are required to function with statutory responsibility. In addition, the charges levelled against the appellants in the departmental proceeding/the proceeding under the Act do not involve grave and complex questions of law.

30. At this juncture, we may note with profit that a contention was canvassed that the appellants shall not be able to participate in the departmental enquiry as the Supreme Court has directed the trial to proceed on day-to-day basis. Mr.Srinivasan, learned senior counsel appearing for the respondents fairly stated that enquiry shall be fixed on such dates which will be suitable and convenient for the Chartered Accountants-appellants and they will not face any kind of difficulty on that score. Learned senior counsel also submitted that, if required, they

will hold the enquiry on non-working days of the court and afford adequate opportunities to them.

31. Regard being had to our aforesaid analysis of the facts and law, we are not inclined to interfere with the order of the learned Single Judge but only direct that the respondents shall proceed with the departmental enquiry keeping in view the convenience of the appellants and affording them adequate opportunity to put forth their case from all spectrums.

32. Consequently, with the aforesaid direction, both the appeals stand dismissed leaving the parties to bear their respective costs.

CHIEF JUSTICE

SANJIV KHANNA, J.

May 30, 2011
Pk/Kapil