

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

+ **Chartered Accountants Reference No.2/2009**

% **Date of Decision: 28.03.2011**

Council of the Institute of Chartered Accountants of India **Petitioner**

Through: Mr.Rakesh Agarwal with Mr.Pulkit
Agarwal, Advocates

Versus

Shri Manoj Kumar Sachdeva and Another **RESPONDENTS**

Through: None.

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

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| 1. | Whether reporters of 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 |

M.L. MEHTA, J. (ORAL)

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1. None appears for the respondent nor has the counter affidavit been filed by the respondent. The respondent is, therefore, proceeded *ex parte*. Now, we proceed to decide the matter

finally on the basis of arguments advanced by the counsel for the petitioner and the material available on record.

2. This is a reference under Section 21(5) of the Chartered Accountants Act, 1949 (hereinafter referred to as “the Act”). This reference has been made by the Council of Institute of Chartered Accountants of India (hereinafter referred to as “the Council”). The respondent has been a qualified Chartered Accountant at all material times. He was on the professional assignment of conducting the regular inspection of the Oriental Bank of Commerce, Rajpur, Vrindaban, Mathura, for the year ending on 31st March, 1998. The respondent reported for his assignment on this Branch in mid August 1998. A complaint was made by the Manager, Oriental Bank of Commerce, Rajpur, Mathura (hereinafter referred to as “the complainant”) with the Council regarding the professional and other misconduct of the respondent during his assignment. It was alleged that the respondent within a few days of his taking the assignment opened two current accounts – one in the name of M/s.Gauri Fin Vest Pvt. Ltd. (hereinafter referred to “M/s.Gauri”) and second in the name and style of M/s.M.K. Sachdeva & Associates – both having the same address, i.e., 108, Sunehri Bagh Apartments, Plot No.15, Sector 13, Rohini, New Delhi-110085. The charges

against the respondent proceeded alleging that he represented himself to be the Principal Director of M/s.Gauri and assured the complainant Bank of good business and balances. He also made a representation that he was Director in a Cooperative Bank at Delhi and assured that an amount of about Rs.5.00 crores would be deposited with the complainant bank. The respondent persuaded the complainant to allow cheque discount limit of Rs.5.00 lakhs to M/s.Gauri, for which he also offered equitable mortgage of immovable property of agricultural land standing in the name of one Kewal Krishan by delivering the original title deeds. On inquiry made by the complainant, it came to be known that the valuation report of the said immovable property was made by the father-in-law of the respondent and was manipulated by him dishonestly and fraudulently to cause undue loss to the complainant bank. On 26th August, 1998 and 30th August, 1998, the respondent presented cheques of Rs.50,000/- and Rs.4.75 lakhs each of Indian Overseas Bank purported to be issued by M/s.Indian Remedies Ltd. and requested the complainant to discount the same. Both the cheques on presentation, however, got dishonoured on account of "insufficient funds". When informed about the same, the respondent issued another cheque of Rs.5.50 lakh of the same bank in favour of M/s.Gauri, which cheque on presentation was

returned unpaid for the same reason. It was alleged that the respondent kept assuring the complainant to adjust the accounts. However, he gave a cheque on 30th October, 1998 which was also returned dishonoured. Ultimately, two cheques of Rs.30,000/- and Rs.50,000/- were issued by the respondent from the account of M/s.Gauri in favour of his two accounts in their Branch, but these were also returned dishonoured with the reasons "insufficient funds". On repeated contacts, the respondent issued nine cheques of Rs.50,000/- each towards repayment of M/s.Gauri, but all these cheques were also returned for the same reason. Ultimately, criminal complaint under Section 138 of the Negotiable Instruments Act was lodged against him, which was stated to be pending in the courts at Mathura. It was also alleged that respondent also got a car loan of Rs.1.6 lakhs from the complainant by submitting fake and fabricated registration certificate. Based on these allegations, the Council issued notice to the respondent calling upon him to file written statement. Getting no response, a reminder was sent, but without any response. The Council being *prima facie* of the view that the respondent was guilty of professional and other misconduct, proceeded to cause an inquiry to be made into the matter by the Disciplinary Committee.

3. Before the Disciplinary Committee also, respondent did not appear. However, he sent a letter for adjournment. Since the respondent did not appear on the adjourned date as well, the matter was proceeded ex parte against him. The Disciplinary Committee after following the required procedure and perusing the submissions of the complainant as also the documents, submitted its report on 2nd February, 2005. The Committee found the respondent guilty of “other misconduct” under Section 22 of the Act, however, did not find him guilty of professional misconduct within the meaning of clause 11 of Part 1 of the First Schedule of the Act. The copy of the report of the Disciplinary Committee was forwarded to the parties with the information that the report was to be considered by the Council. They were also requested to give written representations, if any, and also to appear in person or through any authorised representative. The parties were further informed vide Council’s letter on 3rd May, 2006 that the report of the Disciplinary Committee would be considered by the Council on 21st June, 2006 and they were requested to send their written representation, if any, and if they so desire, to appear in person or through authorised representative. The complainant submitted written representation on the report of the Disciplinary Committee. The respondent did not submit any representation nor appeared

before the Council. The Council on consideration of the report of the Disciplinary Authority along with the written representation of the complainant decided to accept the report of the Disciplinary Committee and held the respondent guilty of misconduct as noted above. In respect of the guilt of “other misconduct”, the Council has recommended to this Court that the name of respondent be removed from Register of Members for a period of three years.

4. This is how the reference has come to this court for consideration of the recommendation of the council under Section 21(5) of the Act. From the record of the present proceedings, it is seen that the respondent was served notice for appearance on 7th September, 2010, but none appeared for him in this Court. However, his counsel, Ms.M. Singh, appeared on 7th September, 2010 and filed *vakalatnama*. Counter affidavit, if any, was directed to be filed within four weeks. On that date, it was also ordered that the respondent shall remain present in the Court on the next date, i.e., 24th November, 2011. On 24th November, 2011, neither the respondent nor anyone else appeared on his behalf. The counter affidavit was also not filed. The matter was adjourned for 28th March, 2011. On this date also, none appeared for the respondent. The matter was finally heard.

5. From the averments of the complainant, as have been noted above, it would be seen that the respondent, who was a professional Chartered Accountant, was engaged by Oriental Bank of Commerce for conducting regular inspection of this bank. He misused his position by persuading the complainant to discount various cheques on the false assurances. Not only that, he also persuaded the complainant bank to get car loan by presenting forged and fabricated registration certificate. All that the respondent did in his position as Chartered Accountant was beyond the realm of his duties as Chartered Accountant and were all centered towards defrauding and cheating the complainant bank by deceitful representations. All his activities right from the inception of his assignment were focused towards making gains to himself and losses to the complainant bank by various acts of cheating, forgery, fraud, mis-representation, etc. In fact, the respondent succeeded in his nefarious acts. The Disciplinary Committee gave him sufficient opportunity to controvert this, but the respondent has deliberately not chosen to participate in the proceedings before the Disciplinary Committee and the Council. Even after the report of the Disciplinary Committee, respondent did not choose to send any representation not only that he did not appear in person he did

not choose to file any counter affidavit in the case before us also. The respondent seems to have nothing to controvert the allegations against him. From all this, we are of the considered view that the Disciplinary Authority was right in holding the respondent guilty of other misconduct under Section 22 read with Section 21 of the Act. Keeping in view the nature and gravity of the misconduct, we are in agreement with the punishment awarded to the respondent by the Council.

6. Hence, for all these reasons, the reference made by the Council for removal of the respondent from Register of Members for a period of three years is hereby approved. Ordered accordingly.

**M.L.MEHTA
(JUDGE)**

MARCH 28, 2011
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**A.K. SIKRI
(JUDGE)**