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

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Date of Decision: 31.07.2013

+ W.P.(C) 4840/2013

MAHENDRA KUMAR MAHAJAN

..... Petitioner

Through: Ms Vibha Mahajan Seth, Adv.

versus

ICAI

..... Respondent

Through: Mr Rakesh Agarwal and Mr Pulkit Agarwal,
Advs.

**CORAM:
HON'BLE MR. JUSTICE V.K.JAIN**

JUDGMENT

V.K.JAIN, J. (ORAL)

1. The petitioner before this Court was enrolled as a member of the respondent-Institute of Chartered Accountant of India (ICAI). Pursuant to a complaint received against him, the Disciplinary Committee of ICAI found the petitioner guilty of misconduct and vide order dated 01.02.2012, the Disciplinary Committee ordered removal of the name of the petitioner from the Register of Members, for a period of one year. Being aggrieved from the order passed by the Disciplinary Committee of ICAI, the petitioner preferred an appeal which came to be dismissed by the Appellate Authority vide order dated 17.07.2012. The petitioner then preferred a writ petition, challenging the orders passed by the Disciplinary Committee as well as the order passed by the Appellate Authority. Vide order dated 14.08.2012, this Court reduced the term of removal of the name of the petitioner from the Register of Members from one year to six months. Vide letter

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dated 28.02.2013, the petitioner, claiming that the period of six months was over, sought restoration of his name back in the Register of Members. This was followed by various reminders to ICAI. The petitioner also deposited the fee towards restoration of his name to the Register of Members. Vide notification dated 25.07.2013, the respondent-ICAI notified that the name of the petitioner shall stand removed from the Register of Members for a period of six months with effect from 01.08.2013. Being aggrieved from the aforesaid notification, the petitioner is before this Court by way of this writ petition.

2. The contention of the learned counsel for the petitioner is that since the penalty is modified by this Court has already been undergone by the petitioner, the notification dated 25.07.2013 is liable to be quashed and the name of the petitioner needs to be restored to the Register of Members. Per contra, the contention of the learned counsel for the respondent that the petitioner has not undergone the penalty, which would start operating only with effect from 01.08.2013 when the name of the petitioner shall stand removed from the Register of Members.

3. Regulation 18 of ICAI Regulations, to the extent it is relevant, provides that the removal of a member's name from the Register shall be notified in the Gazette of India and shall also be communicated in writing to him. It further provides that the Council may, on an application in the appropriate Form, received in this behalf from a member whose name has been removed from the Register, restore his name, if he is otherwise eligible to such membership. Regulation 20 of the aforesaid Regulations provides that restoration of a member's name to the Register shall be notified in the Gazette of India and shall also be communicated in writing to him.

4. A careful perusal of the aforesaid order dated 01.02.2012 would show that the Disciplinary Committee, by virtue of that order, ordered removal of the name of the petitioner from the Register of Members for a period of one year. The said order by itself did not remove the name of the petitioner from the Register of

Members and was required to be executed by the office of ICAI. The penalty awarded to the petitioner, therefore, begins to operate only from the date his name is actually removed from the Register of Members. The order passed by the Disciplinary Committee did not have the effect of disqualifying the petitioner from practicing as a Chartered Accountant. He would stand disqualified from practising as a Chartered Accountant only from the date his name is actually removed from the Register of Members, in execution of the order passed by the Disciplinary Committee. This, according to the learned counsel for the respondent, has always been the understanding and interpretation of ICAI and I see no good reason for not accepting the interpretation given by the respondent so long as the order is to be operating from the date of notification. In fact, in his application filed under Section 151 of CPC filed in the early writ petition, seeking stay of the operation of the order dated 01.02.2012, the petitioner himself stated as under:-

“3. The Petitioner, however, submits that to the best of his knowledge in pursuance to the order dated 01.02.2012 as well as dated 17.07.2012 dismissing his appeal, the necessary notification as to the date on which the order of 01.02.2012 shall come into operation is yet to be decided and issued by the Respondent No. 1/ICAI. That, however, in case the operation of the impugned order of 01.02.2012 is not stayed, pending the present Writ Petition, the Petitioner shall suffer an irreparable loss & injury which cannot be compensated in terms of money.”

In view of the stand taken by the petitioner in the aforesaid application, it is not open to him to now say that the order dated 01.02.2012 came into operation, the moment it was passed. The understanding of the petitioner thus was that the order becomes operative only on issue of notification in terms of Regulation 18 of ICAI Regulations.

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5. The petitioner submitted an application to the PIO of ICAI under Right to Information Act, seeking information as to whether his name has been restored to the Register of Members and if not, the reasons thereof. It was clearly stated in the reply sent to him that he would be eligible to get his name restored after six months from the date mentioned in the removal notification in the Gazette. Thus, it has been the consistent stand of the respondent that the order imposing penalty of removal of the name from the Register of Members comes into force only from the effective date, indicated in the Gazette Notification issued under Section 18 of ICAI Regulations.

6. Considering the order passed by the Disciplinary Authority, which was not interfered by this Court, except to the extent of reducing the period of removal from one year to six months, I am of the considered view that the said order comes into force only from the date it is notified in the Gazette and not from the date on which it is passed. However, in my view, the respondent, while publishing the Gazette Notification in terms of Regulation 18 cannot make the removal effective from a future date. The removal comes into force the moment the Gazette Notification under Regulation 18 of ICAI Regulations is published. Therefore, the penalty imposed upon the petitioner became operational on 25.07.2013.

7. During the course of arguments, the learned counsel for the petitioner referred to the decision of Supreme Court in Rajinder Singh v. State of Haryana and others AIR 2005 SC 504. The Apex Court in that case was concerned with interpretation of Section 4 of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act. Under Section 4(1) of the said Act provides that an area becomes a controlled area by the Government declaring it to be so by a notification under the said provision. Sub-section (2) of the said Section provides that the Government shall cause the contents of the declaration under sub-section (1) to be published in newspapers. The contention of the appellants before

Supreme Court was that so long as the declaration notified in the Gazette Notification is not followed by a publication of the contents of that declaration in two language newspapers, the declaration of the controlled area does not come into force and consequently, the area could not be deemed to be a controlled area. The High Court held that it was not possible to accept the contention that the delayed publication of the declaration under sub-section (2) of Section 4 would affect the declaration under sub-section (1). The Court rejected the contention that the declaration under sub-section (1) remained inchoate for want of publication in newspapers. The Apex Court did not interfere with the view taken by the High Court in this regard and also held that Section 5(1) and 7(1) of the said Act spoke only of publication of notification under sub-section (1) and not the publication of contents of the declaration in terms of sub-section (2) of Section 4 of the Development Act and, therefore, the requirement of sub-section (2) was not mandatory. The aforesaid decision has no applicability to the case before this Court, considering the nature of the order passed by the Disciplinary Authority and the interpretation of the said order given by the respondent as also by the petitioner in his application under Section 151 of CPC in the earlier writ petition filed by him.

8. For the reasons stated hereinabove, the writ petition stands disposed of with the direction that the order of removal of the petitioner from the Register of Members shall become operative with effect from 25.07.2013, the date on which notification under Regulation 18 was issued by the respondent.

V.K. JAIN, J

JULY 31, 2013

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From cm no. 14840/12 for
clarification of order dt 21/7/12
judgment.

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 4840/2013

MAHENDRA KUMAR MAHAJAN
Through: None.

..... Petitioner

versus

ICAI

..... Respondent

Through: Mr. Rakesh Agarwal & Mr. Pulkit Agarwal,
Advs.

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

ORDER

10.12.2013

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CM No.14840/2013 (for clarification of order dated 31.7.2013)

Vide order dated 31.7.2013, this Court *inter alia* held as under:

"2. The contention of the learned counsel for the petitioner is that since the penalty is modified by this Court has already been undergone by the petitioner, the notification dated 25.07.2013 is liable to be quashed and the name of the petitioner needs to be restored to the Register of Members. Per contra, the contention of the learned counsel for the respondent that the petitioner has not undergone the penalty, which would start operating only with effect from 01.08.2013 when the name of the petitioner shall stand removed from the Register of Members.

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6. Considering the order passed by the Disciplinary Authority, which was not interfered by this Court, except to the extent of reducing the period of removal from one year to six months, I am of the considered view that the said order comes into force only

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from the date it is notified in the Gazette and not from the date on which it is passed. However, in my view, the respondent, while publishing the Gazette Notification in terms of Regulation 18 cannot make the removal effective from a future date. The removal comes into force the moment the Gazette Notification under Regulation 18 of ICAI Regulations is published. Therefore, the penalty imposed upon the petitioner became operational on 25.07.2013.

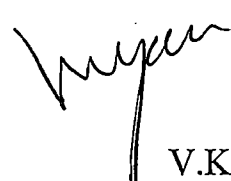
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8. For the reasons stated hereinabove, the writ petition stands disposed of with the direction that the order of removal of the petitioner from the Register of Members shall become operative with effect from 25.07.2013, the date on which notification under Regulation 18 was issued by the respondent."

It would, thus, be seen that the aforesaid order dated 31.7.2013 proceeded on the basis that the Notification, removing the name of the petitioner, was issued on 25.7.2013. The contention of the respondent-Institute of Chartered Accountants of India is that the Notification came to be published only on 1.8.2013 and the communication dated 25.7.2013 was only a letter to the petitioner informing him that the period of removal of his name from the register of members had been reduced from one year to six months. It was also stated in the said letter that a copy of the Notification for removal of the name of the petitioner from the register of members for a period of six months was being published in the Official Gazette of India extraordinary. The copy enclosed to the said communication was also dated 25.7.2013. However, as would be evident from the Gazette Notification, it came to be published in the Official Gazette only on 1.8.2013. Since I have taken a view that the order removing the name of the petitioner from the

register of members comes into force from the date it is notified in the Gazette and not from the date on which it is passed, it is quite clear that the said removal came into force on 1.8.2013. Ordered accordingly.

The application stands disposed of.



V.K. JAIN, J.

DECEMBER 10, 2013

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