

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

Date of Decision: 3rd February, 2014.

+ LPA No.105/2014

N.C. BANSAL

..... Appellant

Through: Mr. Sameer Bhatnagar, Adv.

Versus

BOARD OF DISCIPLINE OF ICAI & ORS Respondents

Through: None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This intra court appeal impugns the judgment dated 28th November, 2013 of the learned Single Judge of this Court of dismissal of WP(C) No. 1043/2013 filed by the appellant. The said writ petition was filed by the appellant seeking a direction to the respondent, Board of Discipline of Institute of Chartered Accountants of India to carry out and expedite investigation into the complaint filed by the appellant and to submit an appropriate report before the Court.

2. The appellant had filed a complaint dated 20th June, 2008 with the Secretary, Institute of Chartered Accountants of India, New Delhi to take disciplinary action against one Mr. Manoj Kumar Gupta, Chartered Accountant.

3. It is not in dispute that the said complaint, in accordance with the Chartered Accountants Act 1949, was considered by the Director (Discipline) of the said Institute, who called for the reply of the said Mr. Manoj Kumar Gupta to the complaint and furnished a copy of the said reply to the appellant/complainant and the appellant/complainant submitted his comments/rejoinder on the said response of Shri Manoj Kumar Gupta. It is also not in dispute that the Director (Discipline) of the respondent Institute, on the basis of the said material before him, formed a *prima facie* opinion that the said Mr. Manoj Kumar Gupta was not guilty of any professional misconduct as alleged by the appellant. A detailed report running into as many as 13 pages, also containing the reasons for the opinion formed, was submitted by the Director (Discipline) of the Institute before the Board of Discipline of the Institute constituted under Section 21A of the Act. It is yet further not in dispute that the Board of Discipline of the respondent Institute, in its meeting held on 4th October, 2011 considered the said report of the Director (Discipline) and, concurred with the same and ordered the closure of the case/complaint.

4. It is thus not as if the complaint of the appellant was not considered by the Institute. However the Institute, after considering the same as per its procedure, found no merit therein. The relief claimed by the appellant in the

writ petition thus of directing the Institute to look into the complaint was misconceived.

5. From a reading of the judgment of the learned Single Judge it appears that the grievance urged by the appellant before the learned Single Judge was, that no opportunity of hearing had been given to the appellant complainant before the Director (Discipline) of the Institute formed a *prima facie* opinion that there was no misconduct committed by Mr. Manoj Kumar Gupta. The learned Single Judge in this regard has held that neither the Act nor the Chartered Accountant (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules 2007 provide for such opportunity of hearing to be given and in any case this Court in judgment dated 12th October, 2012 in WP(C) 6470/2012 titled ***Dinesh Gupta Vs. Shri Vishal Chandra Gupta*** confirmed in judgment dated 20th December, 2012 in LPA No.843/2012 preferred thereagainst has held that calling for the comments of the complainant to the response of the alleged delinquent member is enough compliance with principles of natural justice and no opportunity of oral hearing is required to be given. Accordingly, the learned Single Judge did not accept the contention of the appellant that the decision of the Institute to not take any action on the complaint and close the same was violative of the principles of natural justice and held that the said decision did not require any interference.

6. The counsel for the appellant, before us, has not found any error in the reasoning given by the learned Single Judge. He has however argued that since the appellant in the writ petition had sought writ of mandamus, the scope whereof is very wide, extending to prevent failure of justice in a wide variety of cases and since in the present case injustice had been done, this Court should intervene.

7. We are unable to agree. The relief claimed in the writ petition, though in the form of a mandamus, was really of a writ of certiorari interfering with the decision reached by the Board of Discipline of the Institute that there was no merit in the complaint by the appellant of misconduct against Mr. Manoj Kumar Gupta and to close the said complaint. It is not the case of the appellant before us that there was any error in following the prescribed procedure in disposing of the complaint. Though the appellant before the learned Single Judge had argued that there was an error in procedure for the reason of the appellant having not been given an opportunity of hearing by the Director (Discipline) of the respondent Institute but in the face of the judgment dated 20th December, 2012 of the Division Bench of this Court in LPA 843/2012 *supra*, the counsel for the appellant has not pursued the said aspect. He has also not been able to show any other error in procedure followed by the Institute in dealing with the complaint filed by the appellant.

8. The Division Bench of this Court in judgment *supra* has clearly held, (i) that the Rules do not provide for any hearing; (ii) that the said Rules have to be examined in the context of the situation with which they deal; (iii) the complaints dealt thereunder are of professional misconduct; (iv) that the Institute in its concern to maintain high standards in the profession of Chartered Accountants, has provided for in-house mechanism of inquiry; (v) that the role of the Director (Discipline) is merely inquisitorial and the stage of consideration of the complaint by the Director (Discipline) is intended to prevent the members of the Institute from being harassed by being required to undergo the entire adjudicatory process qua each complaint which may be made against them. In fact, the Division Bench had relied on an earlier judgment, also of the Division Bench of this Court, in ***R.K. Sharma Vs. Institute of Chartered Accountants of India*** 44 (1991) DLT 298 also holding that at the stage of forming the *prima facie* opinion there is no requirement to frame any formal charges and formation of any *prima facie* opinion cannot be challenged on the ground that the member complained against had not been informed of the charges on which inquiry was proposed to be held. A host of other judgments were also referred by the Division Bench to conclude that the complainant has a right only to make a complaint and it is upto the Institute to, in accordance with Rules and Regulations, deal with the said complaints.

9. The counsel for the appellant wants us to enter into the fora of the merits of the *prima facie* findings of the Director (Discipline) to form an opinion that no case of misconduct is made out. That, we are afraid, is beyond the scope of the writ jurisdiction which we are exercising, the scope whereof is to ensure that there is no error in the decision making process and not to interfere as an appellant authority in the decision so arrived at by the concerned disciplinary authority/body of the Institute.

10. There is thus no merit in the appeal which is dismissed. No costs.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

FEBRUARY 3rd, 2014.

M..