



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

WRIT PETITION NO.19236 OF 2018 (GM-RES)

BETWEEN:

SHRI. NAGINCHAND KHINCHA
S/O HUKMICHAND KHINCHA
AGED ABOUT 65 YEARS
R/AT NO.24, 2ND CROSS
SHANKARPURAM
BENGALURU - 560 004.

....PETITIONER

(BY SRI. KIRAN S. JAVALI, SENIOR ADVOCATE FOR
SMT. REVATHI T., ADVOCATE)

AND:

BOARD OF DISCIPLINE
INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
ICAI BHAWAN, PO BOX - 7100
INDIRAPRASTA MARG - 110 002.

...RESPONDENT

(BY SRI. S. SRIRANGA, SENIOR ADVOCATE FOR
SMT. SUMANA NAGANAND & NIDHI GUPTA, ADVOCATES)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA PRAYING TO QUASH THE
IMPUGNED ORDER DATED 10.02.2018 BEARING FILE



NO.PR/180/2013/DD/188/2013/BOD/224/2016 PENDING ON THE FILES OF THE BOARD OF DISCIPLINE, INSTITUTES OF CHARTERED ACCOUNTANTS OF INDIA PASSED BY THE RESPONDENT AT ANNEXURE-A AGAINST THE PETITIONER.

THIS WRIT PETITION HAVING BEEN RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, **E.S. INDIRESH J.**, MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

CAV ORDER

1. In this Writ Petition, the petitioner is assailing the order dated 10.02.2018 (Annexure-A) issued by the Institute of Chartered Accountants of India - respondent herein.
2. It is the case of the petitioner that, the petitioner is a Chartered Accountant having experience of more than four decades. It is further stated that, the CBI has filed charge sheet against the petitioner along with one Mr. Nagaraj, an Income Tax Officer (for short, ITO) under the provisions of the Prevention of Corruption Act, 1988 (for short, 'the PC Act') in Spl. CC. No.130/2013 which is pending consideration before the Special Court of CBI Offences. It is further pleaded in the Writ



Petition that, the petitioner has allegedly collected money from one Mr. A.K. Halim, to be paid as bribe to the said ITO and in this regard, charges were framed against the petitioner and the said Mr. Nagaraj - ITO, under Section 120B of IPC and Sections 7, 8, 13(2) read with Section 13(1)(d) of the PC Act. It is also stated that the charges levelled against the petitioner under Sections 7, 13(2) and 13(1)(d) of the PC Act were dropped subsequently, however, the proceedings continued in respect of the remaining charges levelled against the petitioner. In respect of the dropping of the proceedings as stated above, the respondent herein had filed Criminal Revision Petition No.1040/2014 before this Court, which came to be dismissed on 13.09.2017.

3. It is further stated in the Writ Petition that, the CBI, lodged complaint to the competent authorities, under the provisions of the Chartered Accountants, (Procedure of Investigations of Professional and other Misconducts and Conduct of Cases,) Rules, 2007 (hereinafter referred to as 'the Rules, 2007') as per Annexure-B to the Writ Petition. The allegations made in the complaint at Annexure-B, that the petitioner has collected money from Mr. A.K. Halim as



professional fees, purportedly in violation of the fees structure prescribed under clause 7.7 of Chapter 7 of the Code of Ethics of the Institute of Chartered Accountants of India.

4. It is further stated that, pursuant to the notice issued by the respondent for appearance of the petitioner herein, the Directorate of the respondent formed a prima facie opinion that the petitioner is guilty of "other misconduct" as per Clause (2) of part IV of the First Schedule to the Chartered Accountants Act, 1949 (for short, 'the C.A. Act'), as per Annexure-C to the Writ Petition. Based on the prima-facie opinion formed by the Disciplinary Directorate, an enquiry was initiated against the petitioner, directing the petitioner to file his defence, as per Annexure-D to the Writ Petition. Pursuant to the issuance of Annexure-D, the petitioner has filed application seeking stay of further proceedings by the respondent on the ground that a criminal case in Special Court of CBI is pending consideration on the identical facts and circumstances, and in this regard the petitioner has filed written arguments as per Annexure-F the Writ Petition. However, the petitioner has received notice, as per Annexures-G and H, to participate in the proceedings. It is the grievance of the petitioner that, though the application filed



by the petitioner seeking stay of the proceedings was pending consideration before the respondent, however, the respondent proceeded with the proceedings, and as such, the petitioner filed W.P.No.42659/2017 before this Court, seeking quashing of the disciplinary proceedings initiated by the respondent against the petitioner, based on a prima facie opinion. However, the petitioner withdrew the said Writ Petition, as the respondent - Board of Discipline, proceeded with the matter. Further, the respondent - Board of Discipline, arrived at the conclusion on 10.02.2018 (Annexure-A) holding that the petitioner is guilty of "other misconduct" under the provisions of the Chartered Accountants Act, 1949. Being aggrieved by the same, the petitioner has presented this Writ Petition.

5. I have heard Sri. Kiran S. Javali, learned Senior Counsel on behalf of Smt. Revathi T., learned counsel for the petitioner and Sri. S. Sriranga, learned Senior Counsel appearing on behalf of Smt. Sumana Naganand and Smt. Nidhi Gupta, learned counsel for the respondent.

6. Sri. Kiran S. Javali, learned Senior Counsel appearing for the petitioner contended that, the petitioner is a reputed



Chartered Accountant, practising since 1974 and having unblemished record in the profession of Chartered Accountant. Learned Senior Counsel for the petitioner invited the attention of the Court to the conclusion arrived at by the respondent (Annexure-A), wherein, the petitioner is held guilty of "other misconduct", as per Clause 2 of part IV of the First Schedule to the Chartered Accountants Act, 1949, and further submitted that the said conclusion has caused miscarriage of justice to the petitioner. By inviting the attention of the Court to the notice issued by the respondent (Annexure-G) as well as the complaint dated 16.08.2013, forwarded by the CBI to the respondent as per Annexure-B, at paragraph 5 of the complaint, learned Senior Counsel for the petitioner submitted that the allegations made against the petitioner was with regard to charging exorbitant professional fees, however, the enquiry was conducted against the petitioner allegedly for having indulged in illegal activity of bribing the ITO and therefore, it is contended by the learned Senior Counsel, that the entire enquiry requires to be set aside.

7. It is also argued by the learned Senior Counsel that the petitioner has sought for time to file detailed objections and



also apprised about the pending proceedings in Spl. CC No. 130/2013 before the Special Court of CBI Offences as the facts are identical in nature, however, the said aspect of the matter was not considered by the respondent and accordingly, sought for interference of this Court.

8. It is also argued by the learned Senior Counsel for the petitioner, that the reply filed by the petitioner as to the alleged action was not considered by the respondent - Board in the right perspective, which amounts to violation under the provisions of the Act and therefore, submitted that, the impugned proceedings before the respondent is non est. It is also argued by the learned Senior Counsel for the petitioner, that the entire action of the respondent is based on the complaint of CBI as to charge excessive profession fees, however the enquiry was initiated on the ground that the petitioner is conduit for bribing the ITO officer, in so far as the complaint filed regarding filing of the tax returns for the appropriate financial year, and therefore, sought for interference of this Court. In this regard, learned Senior Counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court in the case of **M PAUL ANTHONY Vs.**



BHARAT GOLD MINES LIMITED AND ANOTHER reported in **(1999) 3 SCC 679** and in the case of **ROOP SINGH NEGI VS. PUNJAB NATIONAL BANK AND OTHERS** reported in **(2009) 2 SCC 570** and argued that, the manner in which the respondent has proceeded with the matter, with an allegation as specified in the complaint by the CBI is totally different from the charges framed against the petitioner in the Departmental proceedings and therefore, sought for interference of this Court.

9. Per contra, Sri. S. Sriranga, learned Senior Counsel for the respondent, invited the attention of the Court to the Order dated 19.08.2024 in W.P.No.42659/2017 and submitted that, this Court has not reserved liberty to the petitioner to challenge the impugned proceedings, and therefore, the Writ Petition is devoid of merits and hit by principles of res judicata.

10. It is also contended by the learned Senior Counsel for the respondent that, the respondent diligently followed the procedure as provided under the Rules, 2007 and the Director (Discipline) has formulated prima facie opinion on 30.09.2016 under Rule 9 (Annexure-C), after following the procedure



contained under Rule 8 of the Rules, 2007, and therefore, it is argued that, no interference is called for in this Writ Petition as the petitioner has acted in violation of the Code of Ethics of the Institute of Chartered Accountants of India and accordingly, sought for dismissal of the Writ Petition. It is further argued by the learned Senior Counsel for the respondent that, the sufficient opportunity were given to the petitioners to file his written submissions, and the impugned order at Annexure-A has been passed after considering the written arguments filed by the petitioner and as such, the respondent has followed the principles of natural justice and therefore, sought for dismissal of the Writ Petition. It is also argued by the learned Senior Counsel for the respondent that, the petitioner is having an efficacious remedy by filling appeal under Section 22G of the Act, to challenge the order of Board of Discipline passed under Clause (2) of part IV of the First Schedule to the C.A. Act read with Section 22 of the C.A. Act, and therefore, the Writ Petition is premature, and requires to be dismissed. In this regard, learned Senior Counsel for the respondent places reliance on the judgment of the Hon'ble Supreme Court in the case of



**UNION OF INDIA AND ANOTHER Vs. KUNISETTY
SATYANARAYANA** reported in **(2006) 12 SCC 28.**

11. Nextly, Sri. Sriranga, learned Senior Counsel for the respondent submitted that, there is no legal bar as to conducting disciplinary proceedings against the petitioner besides the pending criminal proceedings before the Special Court and in this regard, learned Senior Counsel submitted that, as the scope of two proceedings are completely different and independent, and therefore, the outcome of the result in one proceedings does not influence the outcome of the other proceedings and as such, referred to the Judgment of the Hon'ble Supreme Court in the case of **STATE OF RAJASTHAN Vs. B.K. MEENA AND OTHERS** reported in **(1996) 6 SCC 417**. It is also argued by the learned Senior Counsel for the respondent by referring to Rule 8(5) of C.A. Rules, would indicate that it is merely optional and at the discretion of the Director (Discipline) to call for additional documents and same cannot be imposed as a mandatory condition and as the Director (Discipline) with the prima facie opinion dated 30.09.2016 has arrived at the conclusion to hold enquiry against the petitioner and same cannot be challenged before



this Court. Finally it is argued that, as the entire proceedings have been conducted by adhering to the principles of natural justice and as the contention that the complainant does not state that the petitioner had allegedly collected fees that for disproportionate and contrary to Clause 7.7 of Code of Ethics, is misleading and accordingly, sought for dismissal of the Writ Petition.

12. In the light of the submissions made by the learned counsel appearing for the parties, it is not in dispute as to the fact that the petitioner is a Chartered Accountant and Member of the respondent - Institute of Chartered Accountants of India. It is the case of the CBI which has forwarded the complaint filed against the petitioner as forthcoming at Annexure-B, reflected at paragraph No.5 of the complaint, which reads as under:

" 5. During investigation, Sri. Naginchand V.Kincha had stated that he had collected the money from Shri A.K. Halim towards his professional fees. The amount received by him from Shri A.K. Halim is clearly in violation of the fee structure prescribed in Chapter 7.7 of the Code of Ethics (Eleventh Edition issued in January, 2009),



issued by the Institute of Chartered Accountants of
India, for the practising Chartered Accountants."

(emphasis supplied)

13. It is forthcoming in the Disciplinary proceedings initiated against the petitioner in File No.PR/180/2013-DD/188/2013, wherein, at para 1.1 at Annexure-C, it is stated in the facts that, CBI, ACB, Bengaluru, had registered a criminal case against the petitioner and Sri. V. Nagaraj, the then ITO, Ward - 4(3), Bengaluru, based on a written complaint received from Sri. A.K. Halim, alleging demand of bribe of Rs.20,00,000/- by both the above accused in the criminal case for settling his IT dispute.

14. It is also not in dispute that, the petitioner and V.Nagaraj were arrested by the CBI and were released on bail on 10.09.2012. At the time of trap, it is stated that the petitioner admit in writing that he had taken the money on behalf of Sri. V. Nagaraj the ITO. In this regard, Special Case in CC No.130/2013 is pending consideration before the competent Court. It is argued at the Bar that, the matter is set down for arguments, after completion of evidence and in that view of the



matter, I am refraining from making any finding as to the pending criminal case launched against the petitioner.

15. It is pertinent to mention here that, it is the case of CBI that the petitioner has colluded with Sri. V. Nagaraj, the ITO and committed offences punishable under Sections 7, 13(2) read with Section 13(1)(d) of the P.C. Act and charge-sheet has been laid before the competent Criminal Court. However, the complaint of the CBI with the respondent as mentioned at para 12 above, that the petitioner had collected exorbitant professional fee which is contrary to Chapter 7.7 of the Code of Ethics and these two grounds are distinct and one cannot co-related with other and same caused discrepancy as to on what basis .. proceedings initiated against the petitioner and therefore, in the backdrop of these aspects, the entire facts on which the enquiry was initiated under the Act are that, the petitioner has collected exorbitant professional fee from Sri. A.K. Halim is contrary to facts of the case. On the other hand, the perusal of the Annexure-C would indicate that, the allegation of demanding of Rs.20,00,000/- was made by the petitioner and Sri. V. Nagaraj, the then ITO, to close the tax



dispute of the said Sri. A.K. Halim, the complainant. On perusal of the finding recorded by the competent authority at Annexure-C, therein, paragraph No.8 reads as under:

" In view of the above, I am of the prima facie opinion that, in respect of the allegations made out in the instant complaint, the respondent is GUILTY of 'Other Misconduct', falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949."

16. Part-IV of the First Schedule reads as follows:

**Other misconduct in relation to members
of the Institute generally**

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he-

Clause (1): is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months:

The members who are held guilty by a Court of law for an offence punishable upto six months in person are also liable for misconduct.



Clause (2): in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

The Council has been empowered to opine on any action of a member which brings the Institute or profession in disrepute as misconduct.

This Clause, read with Section 22 of the Act, now defines 'Other misconduct, which has been covered under this Part does not limit or abridge in anyway the power conferred or duty cast on the Director (Discipline) under Section 21(1) of the Act to inquire into the conduct of any member of the Institute under any other circumstances."

17. Perusal of the aforementioned provision would indicate that, the case of the petitioner shall come within the purview of Clause (2) of "Other Misconduct". It is also to be noted from the proceedings before the respondent that, the petitioner has sought for stay of the proceedings, however, it is admitted that, no enquiry was made in the proceedings before concluding the proceeding and the respondent passed impugned order at Annexure-A, based on the written arguments filed by the petitioner herein as per Annexure-F, and found that, the petitioner is guilty of "other misconduct". It is also to be reflected from the notice dated 07.07.2017 issued by



the respondent at Annexure-G, for which the petitioner has filed reply as per letter dated 19.09.2017 (Annexure-J to the Writ Petition).

18. Be that as it may be, the petitioner has sought for time as per letter dated 01.10.2013 (Annexure-M) and thereafter written statement was filed on 19.01.2017, however, the respondent - authorities have premeditated to arrive at a conclusion that, the petitioner is guilty of "other misconduct". While issuing notice to conduct alleged proceedings against the petitioner and the complaint lodged by the CBI as per Annexure-B are totally different and distinct and further, the petitioner is unaware about under which proceedings, the petitioner is being questioned by the respondent - Institute. Perusal of Annexure-B and the conclusion arrived at by the respondent as per Annexure-C is totally based on distinct facts and the respondent has failed to establish as to the imputation of charge under which ground against the petitioner. It is settled principle in law that, the delinquent must be aware about the charge framed against him before participating in the enquiry proceedings by the Disciplinary Authority.



At one breath, the perusal of the complaint would indicate that the petitioner has been interrogated for charging excessive fees under the Act and found guilty as per Order dated 10.02.2018 (Annexure-A), and on the other hand, the proceedings communicated with regard to the allegation made against the petitioner that, the petitioner along with one Mr. V. Nagaraj, the then ITO had collected money from Sri. A.K. Halim to pay bribe to the said ITO to settle tax dispute and on that aspect, criminal action was set into motion. In that view of the matter, the complaint refers to an allegation that, the petitioner has collected money from Sri. A.K. Halim as professional fees perforately in violation of fee structure prescribed under Clause 7.7 of Chapter 7 of the Code of Ethics of the respondent - Institute. Therefore, I find force in the submission made by the learned Senior Counsel for the petitioner that, there is discrepancy in imputation of charges as per Annexure-B and the enquiry conducted by the respondent as per the prima facie opinion at Annexure-C, are altogether different and distinct and as such, the entire proceedings conducted by the respondent and arrived at the conclusion to hold the petitioner guilty under



"other misconduct" is misnomer and hereby requires to be set aside in this Writ Petition.

19. However, in so far as the contention of the petitioner in the pleadings that, both the criminal proceedings and the departmental enquiry shall not continue together, however, learned Senior Counsel Sri. Kiran S. Javali, fairly concedes that, there is no impediment for holding both the proceedings together.

20. Nextly, in so far as the contention raised by the learned Senior Counsel for the respondent that, the petitioner has filed W.P.No.42659/2017 before this Court which came to be dismissed as having become infructuous, I have carefully examined the pleadings in the said Writ Petition, wherein the petitioner has sought for quashing the proceedings initiated against the petitioner, however, on account of passing the impugned order at Annexure-A, in which, the petitioner was held guilty of "other misconduct" as per the order dated 10.02.2018, was not questioned before this Court in the earlier Writ Petition in W.P.No.42659/2017, and therefore, I am of the view that, the cause of action are distinct and as such, the



principle of res judicata is not applicable to the facts and circumstances of this case.

21. Though the learned Senior Counsel appearing for the respondent argued that, the petitioner is having an efficacious remedy of filing an appeal under S.22G of the C.A. Act, however, having arrived at a conclusion that the entire departmental proceedings before the respondent is based on disputed facts on record, as per the aforementioned finding at paragraph No.15 by the Board of Discipline at Annexure-A, I am of the view that, relegating the petitioner to approach the appropriate authority is a useless formality. At this stage it is relevant to cite the judgment of Hon'ble Supreme Court in the case of **ALIGARH MUSLIM UNIVERSITY AND OTHERS VS. MANSOOR ALI KHAN** reported in **(2000) 7 SCC 529**, paragraph No.25 reads as under:

"25. The "useless formality" theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been



elaborately considered by this Court in M.C. Mehta [(1999) 6 SCC 237] referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Straughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case."

22. Following the declaration of law made by the Hon'ble Supreme Court in the above case, as the issuance of notice to the petitioner calling upon the petitioner for filing reply or appeal as per Annexure-G is totally in contradict to the case of CBI on facts in their complaint at Annexure-B to the Writ Petition. Therefore, relegating the petitioner to approach the appellate authority, at this stage, cannot be accepted as the



proceedings conducted against the petitioner de-hors the Act and Regulations governing the same.

23. In the result, I pass the following:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The letter dated 16.04.2018 (Annexure-A) at Ref.No. PR-180/13-DD/188/13/BOD/224/2016 and the findings of the Board of Discipline at Ref.No. PR/180/2013/DD/188/2013/BOD/224/2016 dated 10.02.2018, are hereby quashed. The petitioner is exonerated from the alleged enquiry conducted by the respondent - Institute.
- (iii) Pending applications if any, do not survive for consideration.

**SD/-
(E.S.INDIRESH)
JUDGE**

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List No.: 1 Sl No.: 49