

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2645 OF 2013

Dr. R. Kannan	}	Petitioner
versus		
The Institute of Actuaries of India	}	
and Anr.	}	Respondents

Mr. Vishwajeet P. Savant with Mr. Rahul Hakani i/b. Mr. Kirit J. Hakani for the Petitioner.

Mr. Partha Banerjee with Ms. Wardha Khan i/b. M/s. Chandra Legal Associates for Respondent Nos. 1 and 2.

**CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.**

DATED :- JUNE 25, 2015

P.C. :-

This is a Writ Petition under Article 226 of the Constitution of India, challenging the order passed by the Council of the Institute of Actuaries of India, which is covered by the Actuaries Act, 2006. The term 'Actuaries' is defined under section 2 clause (a) of this Act and Chapter II contemplates setting up a institute of Actuaries of India, its incorporation and all its functions. Chapter III provides for Register of members and Chapter IV deals with institution of Disciplinary Committee to deal with cases of misconduct by the members. This is a self contained Code. If action has been taken by the Council and on the basis of a finding of the Disciplinary Committee, then, any member of the Institute, aggrieved by an order of the Council, imposing on him any

of the penalties referred to in section 30, can file an appeal under section 36 of the Actuaries Act, 2006 to the Appellate Authority. The Appellate Authority has been constituted in terms of Chapter V.

2) The Petitioner has been proceeded against and the Council passed an order removing his name from the member's register permanently. This is an order traceable to section 30(b) of the Act. It is expressly made appealable by section (1) of section 36 of the Act.

3) On the earlier occasion, we had inquired from Mr. Savant as to why such an appeal was not filed though this remedy is provided by the Act. It was informed by Mr. Savant on instructions that such an appellate authority as is contemplated by Chapter V has not been constituted and is not functional. However, the Council's Counsel has on instructions stated that the Appellate Authority has indeed been constituted and it is functional. This fact is not disputed by the Petitioner either. We are of the view, on reading of the Act and particularly the appellate provision, that the remedy of Appeal is contemplated and all contentions including raised in the present Petition can be raised during the course of such Appeal. The appellate authority has wide powers and as are enumerated by section 36(2) of the Actuaries Act, 2006. The present case involves an order traceable to section 30(b) and is therefore expressly appealable. The Appeal being a

remedy and complete in all sense, we are of the view that the Writ Petition cannot be entertained. The Petitioner has alternate and equally efficacious remedy of approaching the appellate authority.

4) At this stage, two grounds, which have been pressed by Mr.Savant need to be noticed. He firstly submits that the order passed by the Council and impugned in the Writ Petition is ex-parte order. The Petitioner has been denied opportunity to defend himself. He could not attend the inquiry. Yet the Disciplinary Committee proceeded and passed the impugned order.

5) We have merely noted these contentions, but we are of the clear view that such contentions and such grounds can be raised before the Appellate Authority while challenging the order passed under section 30(b) of the Actuaries Act, 2006. All materials in support thereof and contrary thereto can be placed before the appellate authority. Equally, the argument that the order passed travels beyond the show cause notice also can be raised. We cannot examine them in our limited jurisdiction. We are keeping them open for being raised before the appellate authority.

6) While disposing of the Writ Petition, we must note request of Mr. Savant to continue the ad-interim order passed on 9th April, 2014. That order reads as under:-

“Issue notice to the Respondents, returnable on 16th June, 2014. In the mean time, there shall be ad-interim relief in terms of prayer clause (b).”

7) We are of the view that once the Writ Petition is disposed of as not maintainable and in the face of an alternate and efficacious remedy, then, this order cannot be continued. It is vacated forthwith but with liberty to the Petitioner to seek such relief as is permissible in law, in the Appeal. We keep all contentions of both sides open in that regard.

8) At this stage, Mr. Savant requests that in the event such an Appeal as is referred above and in terms of section 36 of the Act is filed within four weeks from today, the Appellate Authority may not dismiss it on the ground that it is barred by limitation. We find such a request reasonable. The Writ Petition filed in the year 2013 was pending before this Court for some time and is disposed of today. In such circumstances, if Appeal is filed within four weeks from today, the Appellate Authority shall deal with it in accordance with law and shall not dismiss it on the ground that it is barred by limitation.

9) While disposing of the Writ Petition, we once again clarify that we express no opinion on the merits of the charges and the order passed by the Council.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)