IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-06-2015

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.14049 of 2015
and
M.P.No.1 of 2015

R.Raghunandan .. Petitioner

vs

1.The Disciplinary Directorate
Institute of Chartered Accountants of India
ICAI Bhawan, PO Box No.7100
Indraprastha Marg
New Delhi 110 002

2. The Director,
The Board of Discipline
Institute of Chartered Accountants of India
ICAI Bhawan, PO Boc No.7100
Indraprastha Marg
New Delhi 110 002

3.M/s.Ozone Projects Pvt. Ltd.,
Represented by its Managing Director
S.Vasudevan
Old No.32, New No.63, G.N. Chetty Road
T.Nagar, Chennai 600 017 .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the order passed by the second respondent dated 5.2.2014, in File No.PR-35/2013-DD-53/13 and quashing the same as null and void as Contrary to law, facts and equity and consequently declaring the petitioner not guilty of misconduct.

For Petitioner : Mr.R.Raghunandan
(Party-in-person)

For Respondent : Mr.Krishna Srinivas
for M/s.Ramasubramaniam
Associates for RR1 & 2

Mr.V.Kuberan
for M/s.Rank Associates for R3

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.The petitioner claims that he was a practising Chartered Accountant, who stopped practice in the year 1990, and he is also one of the shareholders of M/s.Krishna Tiles and Potteries Ltd., and the said company had sold 42 acres and 53 cents of land in Koyambedu Village, Chennai, vide registered sale deed dated 2.3.2006, (Document No.981 of 2006) in favour of the third respondent. The sale made by the said company is the subject matter of very many litigations filed before various forums.

3.The petitioner would further state that the third respondent has filed a suit in C.S.No.626 of 2009, on the file of this Court, and pending disposal of the said suit, filed O.A.No.1 of 2012 praying for an order of ad-interim injunction restraining the petitioner herein from communicating with bankers, investors, customers and statutory authorities questioning the right, tile and interest of the third respondent in relation to the said lands. The petitioner has also filed his counter affidavit and also made ready, an additional affidavit dated 8.2.2012, seeking permission of the Court to file the same.

4.According to the petitioner, though the said affidavit was served on the learned Counsel for the third respondent, it was not filed before this Court. The petitioner would further state that O.A.No.1 of 2012 came to be disposed of on 14.2.2012, without taking on file the additional affidavit dated 8.2.2012. Subsequently, the third respondent, on going through the contents of the additional affidavit dated 8.2.2012, lodged the complaint alleging professional misconduct, before the Institute of Chartered Accountants of India.

5.The Board of Discipline, the second respondent herein, constituted under Section 21A of the Chartered Accountants (Amendment) Act, 2006, on going through the materials and after giving an opportunity to the petitioner, who is arrayed as respondent therein, to file his version, recorded a prima facie opinion, which is extracted below:-

> "7.2 The statement of the Respondent under affidavit dated 8th February, 2012 given before the High Court of Judicature at Madras, which is under question is as under:-
>
> > "3. I further submit that I did not disclose certain vital/sensitive/ confidential facts/documents against the application filed by the plaintiff due to the inherent nature of the confidentiality/secrecy and my very sensitive nature of my professional assignment with Central Vigilance Commission, New Delhi who fixed formal appointment for me with Indian Bank and Indian Overseas Bank, Chairman's Office to investigate and give confidential diligence review of reimbursement of loans and advances to Ozone Projects Pvt. Ltd., besides giving true full material disclosures on the sustainability and the marketability of the subject property under dispute belonging to me and my family members."
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> 7.3 In this regard the Central Vigilance Commission vide its letter dated 3rd September, 2012 informed, "that neither the Central Vigilance Commission nor Indian Bank has given any professional assignment to Shri Raghunandanan as claimed by him in the affidavit filed in the court. This seems to be an act of wrong submissions before the Hon'ble Court."
>
> 7.4 Thus, it is confirmed by the Central Vigilance Commission that the claim made in the affidavit of the Respondent was wrong. The said act of the Respondent has brought disrepute to the profession of the Chartered Accountants since the society bestows faith and confidence in the profession of the Chartered Accountancy.
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> 8. In view of the above, I am of the prima facie opinion that 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 [as amended by the Chartered Accountants (Amendment) Act, 2006]. "

6.Subsequently, the first respondent has issued a notice dated 25.2.2015, to the petitioner calling upon him to substantiate his case orally or by producing appropriate evidence and it has also been indicated therein, that if the petitioner wants to place reliance on any document, he is requested to send copies of the same duly initialed and indexed, by 3.3.2015 and produce the original documents for verification before the Board of Discipline at the time of hearing. It has been further indicated in the said communication, that either the petitioner or his authorised representative, can also appear subject to certain dress code.

7.Originally, the petitioner was represented by Mr.P.J.Rishikesh, learned Counsel, and when the matter is listed today, the said learned Counsel has filed a memo withdrawing his appearance, and the said memo has been taken on record.

8.The petitioner has appeared as party-in-person and made a submission that he has filed his written statement vide e-mail dated 31.3.2015, and thereafter, has received an important and vital document viz. the report submitted by Truth Labs in File No.TLC/QD/021/2015 dated 30.3.2015, and it was also sent to the first respondent on 6.4.2015, by e-mail and courier and in all fairness, the second respondent Board shall take into account the said vital document also before arriving at their findings.

9.The petitioner/party-in-person would further submit that he may also likely to file additional documents before this Court in the form of additional typed-set of documents.

10.The Court heard the submissions of Mr.Krishna Srinivas, learned Counsel, who accepted notice on behalf of the respondents 1 and 2, and Mr.V.Kuberan, learned Counsel, who accepted notice on behalf of the third respondent, who is the complainant, also.

11.The primordial grievance expressed by the petitioner/party-in-person, is that the report dated 30.3.2015, given by Truth Labs, is a very important and vital document, which would further substantiate his defence, and therefore, it shall also be taken into consideration by the second respondent Board before it arrives at a finding.

12.Mr.Krishna Srinivas, learned Counsel appearing for the respondents 1 and 2, would submit that orders have been reserved and in the event of this Court issuing direction to the respondents 1 and 2 to take into consideration the report of the Truth Labs dated 30.3.2015, they have no objection.

13.Mr.V.Kuberan, learned Counsel appearing for the third respondent, would submit that since the report of the Truth Labs dated 30.3.2015, forms part of the typed-set of documents filed in this writ petition, he has no serious objection for the said document being taken into consideration by the respondents 1 and 2.

14.In view of the above submissions, this Court is of the view that there may not be any impediment for the second respondent Board to consider the report submitted by the Truth Labs dated 30.3.2015.

15.In the result, the writ petition is disposed of and the second respondent is directed to take into consideration the report dated 30.3.2015, given by the Truth Labs, also and pass orders in accordance with law as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CSIII)

True Copy

Sub-Assistant Registrar

nsv
To:
1.The Disciplinary Directorate
Institute of Chartered Accountants of India
ICAI Bhawan, PO Box No.7100
Indraprastha Marg, New Delhi 110 002

2. The Director,
The Board of Discipline
Institute of Chartered Accountants of India
ICAI Bhawan, PO Boc No.7100
Indraprastha Marg
New Delhi 110 002

+1 cc to M/s.Rank Associates Counsel for 3rd respondent Sr.No.27015

W.P.No.14049 of 2015

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