

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.2121 OF 2006

ORDER:

The case of the petitioners' is that a complaint dated 13.06.2013, under Section 21 of the Chartered Accountants Act, 1949, (for short 'the Act') was given to the 1st respondent against the second respondent stating that the first petitioner is a Company by name Inchem Inc, a Company incorporated under the laws of United States of America in the State of New York having its Head Office in New York. The second petitioner is the President and Chief Executive officer of the 1st petitioner-Company and a non-resident Indian, settled in New York, USA, since 1969. The petitioners are the shareholders of the 3rd respondent-Company Doctors Organic Chemicals Ltd., Venkatarayapuram, Tanuku of West Godavari District. The 4th respondent, who was the Managing Director of the 3rd respondent Company, entered into shareholders agreement on 10.10.1995 for financing the operations of the 3rd respondent-Company. The 1st petitioner, an overseas Corporate body of NRIs, invested Rs.5.68 crores in the 3rd respondent Company and also gave a loan of Rs.70 lakhs to the 3rd respondent-Company, relying on the shareholders agreement and statements, promises and assurances of the 4th respondent. The 3rd respondent-Company ran into cash losses on account of mis-management and diversion of funds by 4th respondent, for which a Company Petition bearing CP No.51 of 1999 under Sections 397 and 398 of the Companies Act, 1956, was filed. Meanwhile, the Industrial Development Bank of India (IDBI), as a prime lender, ordered a Special Investigative Audit (SIA), based on

petitioners' complaint, a local auditor, the respondent No.2 from Mumbai was appointed by the IDBI for conducting SIA. Pursuant thereto, the 2nd respondent met the petitioners at Hyderabad, obtained information/clarifications and submitted report dated 20.12.2000 to the Company Law Board.

2. Further complaint of the petitioners, thereafter, the 2nd respondent again submitted a supplementary report, accepting the one sided, concocted and forged explanation and documents submitted by R-4, contrary to the first report, to water-down the effect and clarity of findings/facts and figures of the first respondent, to serve the needs and benefits of the fourth respondent. The discrepancies therein are very high in the supplementary report with that of the first SIA report. The second respondent submitted supplementary report without actually going to the 3rd respondent-Company for verifying the explanations and documents.

3. The 1st respondent filed counter affidavit stating that The Institute of Chartered Accountants of India (hereinafter referred to as 'Institute') is the creation of the Act. The management and affairs of the Institute are vested in the Council. The function of the Institute is to regulate the profession of the Chartered Accountants. The Institute is also empowered to take action against its members for any mis-conduct as contemplated in the Act and the Regulations framed thereunder. The complaint of the second petitioner against the second respondent was received by the 1st respondent and was dealt with according to the procedure prescribed under Section 21 of the Act and

Regulation 12 (11) of the Chartered Accountants Regulations, 1988 (hereinafter referred to as 'Regulations').

4. As per Section 21 of the Act, the Council, at its consideration of the complaint, if found, *prima facie*, opinion that any member of the Institute has been guilty of any professional or other mis-conduct as specified in the first schedule, the Council shall refer the case to the Disciplinary Committee (hereinafter referred to as 'Committee') and the Committee shall thereupon on enquiry as contemplated in the Regulation 12 (11) of Regulations, 1988, which deals with the complaints and enquiry relating to the mis-conduct of the members. The copy of the complaint shall be sent to the member against whom the complaint is made, for his written statement, the complainant will be given opportunity for re-joinder, if any, and seeks respondents' comments on the complainant's re-joinder along with other documents. Thereafter, the Council on consideration of the entire record before it, if forms *prima facie* opinion that there is no case against the member, accordingly, the papers relating to the case will be filed by the Council and the same will be informed to the complainant and the respondent. Otherwise, if it is found *prima facie* that the member is guilty of the mis-conduct, the Council shall cause an enquiry to be made into the matter by the Committee. The Committee, for the proved mis-conduct, can order (a) reprimand the member (b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit. If it appears to the Council that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order

referred to in clause (a) or (b), it shall forward the case to the High Court for its recommendations thereon.

5. Thereafter, the jurisdictional High Court on receipt of the case shall follow the procedure as contemplated in sub-section 6 of Section 21 of the Act. It contemplates that:

(6) On receipt of any case under sub-Section (4) or sub-section (5), the high Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the Council and to the Central Government, and shall afford such member, the Council and the Central Government an opportunity of being heard, and may thereafter make any of the following orders, namely:-

- (a) direct that the proceedings be filed, or dismiss the complaint, as the case may be;
- (b) reprimand the member;
- (c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit;
- (d) refer the case to the Council for further inquiry and report.

6. As per the provisions of the Act and Regulation 12 (11) of the Regulations, the complaint made by petitioner No.2, the written statement submitted by respondent No.2, the rejoinder of the petitioner to the said written statement and the comments of the respondent No.2 with respect to the rejoinder together with documents available on record were considered by the Council at its 252nd Meeting held from 6th to 8th July, 2005, at New Delhi. After considering the entire material on record, the Council was *prima facie* of the opinion that the second respondent was not guilty of any professional or other mis-conduct.

7. The petitioners sought for review of the decision of the 2nd respondent-Council, taken on the complaint of the petitioner, First respondent-Council states that the provisions of the Act do not provide for review of any decision taken by the Council. Accordingly, the 1st respondent vide its letter dated 22.11.2005 informed to the petitioner that there is no provision for review of its decision and personal hearing is not envisaged under Regulation 12 (11). With regard to the request of the petitioner for providing a copy of the Minutes, proceedings of the meeting held by the 1st respondent Council, it is stated that the decision of the Council had already been communicated to the petitioner.

8. At the stage of framing *prima facie* opinion by the 1st respondent-Council, there is no provision in the Act and Regulations to pass a speaking order. From a mere passing of non-speaking order, it could not be said that the decision of the first respondent-Council does not conform to the requirements of a free and fair enquiry or due appreciation of evidence on record and thus it could not be said that it amounts to violation of principles of natural justice, impugned order is arbitrary, smacks of non-application of mind, no basis for the decision and the non-consideration.

9. Heard Sri B.Sri Ram Reddy, learned counsel for the petitioners, Sri C.V.Rajeev Reddy, learned counsel for the 1st respondent-Institute and Sri P.R.Prasad learned counsel for the 2nd respondent.

10. The counsel for the petitioners, during the course of arguments, raised the following two contentions and prayed to allow the writ petition:-

(a) Firstly, the IDBI, being the prime lender of the 3rd respondent, ordered for Special Investigative Audit (SIA), basing on the complaint of the petitioners and appointed local auditors i.e., 2nd respondent herein for conducting the SIA, shunning the plea of the petitioners to appoint a reputed international firm of auditors at the cost of the petitioners for SIA and 2nd respondent with connivance of 3rd and 4th respondents, all of a sudden, submitted a supplementary report accepting unilaterally one-sided, concocted and forged explanations and documents submitted by the 4th respondent on his behalf and on behalf of the 3rd respondent and thereby committed professional misconduct; and

(b) Secondly, the 1st respondent-Institute has not considered petitioners' objections in proper perspective and formed *prima facie* opinion that 2nd respondent was not guilty of any professional or other misconduct, which is against the principles of natural justice and contrary to the evidence on record. In support of his contentions, the learned counsel for the petitioners relied on the judgment of the Gujarat High Court in **CA Rajesh V.Dudhwala vs. Disciplinary Committee**¹. The decision relied does not support the contention of the petitioners that wherein the chartered accountant was found guilty and punished by the Council, against which the Chartered Accountant filed petitions unsuccessfully. In that case, neither the 1st respondent had power to review the

¹ 2013 SCC OnLine Guj 1549

decision nor procedure is dealt with which should in consonance of principles of natural justice.

11. On the other hand, Sri C.V.Rajeev Reddy, learned counsel for respondent No.1 while reiterating the relevant provisions of the Act and the Regulations, as stated in the counter, vehemently argued that there is no procedural irregularity or illegality as alleged by the petitioners and the Institute has strictly in consonance with the provisions of the Act and Regulations, formed a *prima facie* opinion that the 2nd respondent had not committed any professional or other misconduct in order to punish him. The request of the petitioner for review of the matter was rejected by the 1st respondent as there is no provision in the Act. When there is no power of review conferred by the Statute, the authority is not empowered to review the decision taken. Hence, the request for review is not maintainable. In support of his contentions, he relied on the judgments in ***Bussa Overseas and Properties Private Limited and another vs. Union of India and another***², ***M/s.Phoenix Arc Private Limited vs. The Court of the Hon'ble Chief Metropolitan Magistrate and others***³, ***Kalabharati Advertising vs. Hemant Vimalnath Narichania and others***⁴ and ***Patel Narshi Thakershi and others vs. Shri Pradyumansinghi***⁵, wherein it was held that the power to review is not an inherent power, it must be conferred by law either specifically or by implication of law.

² (2016) 4 SCC 696

³ 2016 SCC OnLine Hyd 148

⁴ (2010) 9 SCC 437

⁵ (1971) 3 SCC 844

12. Sri P.R.Prasad, learned counsel for the 2nd respondent, argued that the writ petition itself is misconceived since the prayer in the writ petition is only to recall the impugned order of the 1st respondent but no other consequential relief is prayed. Further, he argued that this Court has no territorial jurisdiction to try the matter since the 1st respondent-Inchem Inc Company is situated at USA, therefore this Court lacks jurisdiction. Further, the learned counsel vehemently argued that the SIA report is an independent audit report in order to express an opinion of the standalone financial statements of the Company to the IDBI and 2nd respondent has nothing to do with the further action. The 1st respondent Institute carryout its function from New Delhi. The 2nd respondent whose conduct is being enquired into, carries on business or at his principal place of business at the commencement of the enquiry is at Mumbai. In support of his contention, he relied on the judgments in **S.Gopal Reddy vs. The Union Government of India**⁶ and **Kamineni Satish Babu vs. Brig.30 Inf. B.D.E. Mukhyalaya**⁷ wherein it was held that the authorities who had taken decision and persons against whom the action is taken are residing out side jurisdiction of the Court, the Court has no jurisdiction to entertain the writ petition against them.

13. In the facts and circumstances of the case and submission of the counsel, in considered view of this Court, Section 21 of the Chartered Accountants (Amendment) Act, 1959, contemplates the Procedure to be followed in inquiries relating to

⁶ 1988 (2) ALT D.B. 98

⁷ MANU/AP/0380/1998

misconduct of members of the Institute, where on receipt of information/complaint made to it, the Council is of opinion that any member of the Institute is guilty of misconduct which, if proved, will render him unfit to be a member of the Institute, or where a complaint against the Member is made by or on behalf of the Central Government, the Council shall cause an enquiry, to be held in such manner as may be prescribed, and the findings of the Council shall be forwarded to the High Court. On receipt of such finding, the High Court shall fix a date for hearing of the case, after due notice to the member of the Institute and also the Central Government, and shall afford such member, the Council and the Central Government an opportunity of being heard before passing the orders. Thereafter, the High Court may pass final orders on the case or refer it back to the Council for further inquiry and on receipt of the finding after such inquiry, deal with the case and pass final orders thereon. Further, in a case where it appears to the High Court that transfer of case pending before it to another High Court would meet the ends of justice, it may so transfer the case, subject to such conditions, if any, as it thinks fit to impose, and the High Court to which such case is transferred shall deal with it as if the finding of the Council relating to case had been forwarded to it.

14. In this context, the High Court means the highest civil court of appeal, not including the Supreme Court, to which the Council forwards its findings, exercising jurisdiction in the area in which the person whose conduct is being inquired into carries on business, or has his principal place of business at the commencement of the inquiry. Further, if the findings of the

Council relates to two or more members of the Institute have to be forwarded by the Council to different High Courts, the Central Government shall determine which of the High Courts shall hear the cases against all the members.

15. When such is the procedure contemplated under the provisions of the Act, the High Court which has the territorial jurisdiction to deal with the complaint against the member of the Institute for misconduct is based on the place of business or principal place of business at the commencement of the enquiry alone would decide the jurisdiction of the Court.

16. That being so, filing of the writ petition before the High Court of Judicature at Hyderabad, which has no jurisdiction to hear the reference made by the Council, as the member, against whom the complaint is filed, is not carrying business in general or has his principal place of business at the commencement of the enquiry within the territorial jurisdiction of this Court. In my considered view the writ petition against the Council, located at New Delhi, and member, who carries his business and had his principal place of business at Mumbai, is not maintainable against the order dated 26.08.2005 passed by the 1st respondent Council, in case No.25-CA(28)/2004 wherein the Council found no *prima facie* case against the 2nd respondent.

17. Accordingly, the Writ Petition is dismissed holding that the High Court of Judicature at Hyderabad has no jurisdiction to entertain the writ petition.

18. Miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

M.GANGA RAO, J

29th December, 2017

Note : L.R. copy to be marked.

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