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

\+ **W.P.(C) 4040/2011**

NS BHATIA ..... Petitioner

Through: Mr Rajat Aneja, Ms Vandna Aneja and Ms Nisha Sharma, Advocates.

versus

DIRECTOR DISCIPLINE AND ANR ..... Respondents

Through: Mr Rakesh Agarwal and Mr Pulkit Agarwal, Advocates for R-1.
Mr Maroof Ahmad and Mr B.U. Barqi, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **11.12.2017**

1. The petitioner has filed the present petition impugning a communication dated 14.05.2009 (hereafter 'the impugned communication') issued by respondent no.1 communicating the *prima facie* view of the Council of Institute of Chartered Accountants of India (hereafter 'ICAI') that respondent no.2 was not guilty of any professional or other misconduct; in other words, rejecting the petitioner's complaint of misconduct against respondent no.2.

2. The petitioner also impugns the communication dated 27.08.2009 sent by the Senior Executive Officer of the Disciplinary Directorate of ICAI informing the petitioner that there was no provision under the Chartered Accountants Act, 1949 and the Regulations thereunder for review of the

petitioner's complaint by the Council of ICAI.

3. The petitioner claims to be the Secretary General of Mai Kamli Wali Jan Kalyan Charitable Trust, a Society registered under the Societies Registration Act, 1860 (hereafter referred to as "the Society"). The petitioner had filed a complaint dated 19.06.2006 with the ICAI, *inter alia*, claiming that respondent no.2 had been acting as the "statutory auditor" of the Society. It was further alleged that respondent no.2 has been acting without due authority by any authorized office bearer of the Society and respondent no. 2 was never appointed as the "statutory auditor" of the Society by any resolution adopted by the General Body of the Society. The petitioner further claimed that the actions of respondent no.2 in connection with the audit of the accounts pertaining to the Society and its constituents, namely; Mai Kamli Wali Jan Kalyan Charitable Trust, Ram Mandir, Homeopathic Dispensary and Gyan Jyoti Public School was illegal and uncalled for. The petitioner further alleged that respondent no.2 had failed to return the papers, documents and files belonging to the Society despite being called upon to do so.

4. The petitioner claims that one M/s M. Dadu & Associates, Chartered Accountants were appointed as the statutory auditors of the Society and had carried out the audit of accounts up to the financial year 2001-2002 and M/s M. Dadu & Associates were never called upon to issue a No Objection Certificate in favour of any other Chartered Accountant to carry out the audit of the Society for the financial year 2002-2003. The petitioner claims that this establishes that respondent no.2 was guilty of professional misconduct.

5. The complaint made by the petitioner was forwarded to respondent no.2, who filed the written statement countering the allegations made in the complaint. These were forwarded to the petitioner, who then furnished his comments.

6. In accordance with Regulation 12 (11) of the Chartered Accountants Regulations, 1988 as were in force at the material time, the complaint, written statement and the comments furnished by the petitioner were placed before the Council of ICAI. The Council of ICAI was of the, *prima facie*, opinion that respondent no.2 was not guilty of any professional or other misconduct and, accordingly, the petitioner's complaint was not entertained.

7. The petitioner's application for review was also declined as not maintainable.

8. Mr Rajat Aneja, learned counsel appearing for the petitioner earnestly contended that the Council of ICAI had failed to appreciate that respondent no.2 was guilty of professional misconduct as alleged by the petitioner as he had proceeded to audit the accounts of the Society without being appointed as an auditor. Mr Aneja also referred to the Management and Operation Agreement dated 07.02.2001 for the Operation and Management of Mai Kamli Wali Jan Kalyan Charitable Trust Hospital entered into with Pt. Kanhiya Lal Dayawanti Punj Charitable Society (in short 'Kanhiya Lal Society'). He submitted that in terms of the said agreement, Kanhiya Lal Society could have got the accounts of the Hospital audited but there was no authority granted to any person to appoint an auditor for the Society.

9. I have heard learned counsel for the parties.

10. The petitioner has averred in the petition that respondent no.2 had illegally submitted returns on behalf of the Society to the Income Tax Department. The said allegation is clearly unmerited for several reasons. First, respondent no.2 has denied that he has made any returns on behalf of the Society and there is no material to establish this allegation. Second, respondent no.2 is a Chartered Accountant and thus cannot make a return under the Income Tax Act, 1961 (hereafter 'the IT Act'. In terms of Section 140 of the Act, the returns of the Society necessarily have to be signed by its principal officer/a person competent to act on its behalf. And third, no such allegation is made against respondent no.2 in the complaint filed by the petitioner before the ICAI.

11. The principal allegation made in the complaint filed before ICAI was that respondent no.2 had acted as "a statutory auditor". This allegation also remains unsubstantiated as respondent no.2 had clearly stated that he had not acted as a statutory auditor. Respondent no.2 had merely acted as an auditor for purposes of Sections 11 and 12 of the Act. In other words he had furnished a report/certificate to be filed along with the Income Tax Return for the purposes of claiming exemption under Sections 11 and 12 of the Act. The audit report prepared for the purposes of the Act is not the same as an auditor report prepared by the auditor appointed to audit the accounts of an entity.

12. Thus, even if it is accepted that the Society had appointed M/s M. Dadu & Associates as Chartered Accountants to audit their accounts, the same did not preclude the petitioner from being appointed to prepare a report for the purposes of Sections 11 and 12 of the Act.

13. Respondent no.2 has produced a letter dated 02.07.2003 appointing the firm, M/s Srivastava Kumar & Company, as an auditor of the Society for the purposes of Sections 11 and 12 of the Act.

14. The respondent no.2 has also explained that he is an auditor of the Kanhiya Lal Society and in that capacity had also audited the accounts of the Mai Kamli Wali Jan Kalyan Charitable Trust Hospital and Research Centre, which was run by Kanhiya Lal Society.

15. It is also the petitioner's case that one Sh S.N.P. Punj, who was an expert member of the Society had fraudulently obtained certain documents with the object to grab the property of the Society and disputes between the petitioner and Sh S.N.P. Punj are pending in various courts.

16. It appears from the above that the complaint made by the petitioner was occasioned on account of disputes regarding the affairs of the Society.

17. Since the fundamental basis on which the petitioner's complaint is premised is incorrect - that is, that respondent no. 2 had acted as a statutory auditor of the Society - this Court finds no infirmity with the decision of the ICAI in not entertaining the same.

18. Before concluding, it is also necessary to mention that the present petition is also belated and ought to have been dismissed on that ground alone. The impugned communication informing the petitioner that his complaint had been rejected was issued on 14.05.2009, the petitioner's application for review of the said decision was also rejected on 27.08.2009 and the petitioner has filed the present petition almost one-and-a-half-years

thereafter on 15.02.2011.

19. In view of the above, the present petition is dismissed. However, it is clarified that this would not preclude the petitioner from challenging the authority of the person who had appointed respondent no. 2 to audit the accounts of the Society for the purposes of Sections 11 and 12 of the Act.

VIBHU BAKHRU, J

DECEMBER 11, 2017
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