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

\+ **W.P.(C) 6284/2016 & CM 25725/2016 (stay), 19385/2017 (impleadment) & Crl M.A.1427/2017**

SANJAY GUPTA ..... Petitioner

Through Mr K. Datta, Mr Rahul Malhotra, Advocates.

versus

VIJENDER SHARMA & ORS ..... Respondents

Through Mr Pardeep Dahiya, Advocate for Respondent No. 1.
Mr Peeyoosh Kalra, Advocate with Ms Sona Babbar, Mr Swati, Advocate and Mr Yashaswini Bindal, Advocate for Respondent No. 2 (Institute of Cost & Works Accountants)

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **26.10.2017**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning the order dated 20.06.2016 passed by the Appellate Authority constituted under the Cost and Works Accountants Act, 1959 (hereafter 'the Act'). The impugned order was passed in an appeal preferred by respondent no.1 (hereafter 'the respondent') against an order dated 06.02.2015 passed by the Disciplinary Committee of The Institute of Cost Accountants of India (hereafter ‘ICWAI’).

2. The petitioner is a member of ICWAI and has also been elected as a

member of the Central Council of ICWAI.

3. At the material time, both the petitioner and the respondent were elected members of Northern India Regional Council (NIRC) of ICWAI. The genesis of the controversy involved can be traced to a resolution passed at a meeting of NIRC held on 18.11.2007. In terms of the said resolution, the Chairman of NIRC was entitled to draw ₹5000/- and other members were entitled to ₹4000/- as expenses without production of bills.

4. It is the respondent's case that he protested against such resolution and therefore, did not sign the minutes of the meeting held on 18.11.2007. He also claims that he did not sign the minutes of the meeting dated 01.02.2008, whereby the minutes of the meeting held on 18.11.2007 were confirmed.

5. The respondent filed a complaint, captioned *Vijender Sharma v. Sh Sanjay Gupta: Complaint No. Com/21-CWA(1)/2009* with the Director (Discipline) of ICWAI, on 06.06.2009.

6. On 23.12.2009, the Director (Discipline) formed a *prima facie* opinion that there was violation of Regulation 132 of The Cost and Works Accountants Regulations, 1959 (hereafter 'the Regulations') and the same fell within the scope of misconduct under Clause (1) of Part-II of the Second Schedule to the Act.

7. Thereafter the Disciplinary Committee passed an order dated 06.02.2015 recording its conclusion that the resolution passed in the meeting of NIRC held on 18.11.2007, whereby payment of ₹5000/- per month and ₹4000/- per month to the Chairman and Members respectively, on account of miscellaneous expenses without submission of bills was approved, was in violation of regulation 132 of the Regulations. Regulation 132 of the Regulations specifically provided that no fund would be applied directly or

indirectly for payment to any member of the Regional Council except for reimbursing them for any expense incurred by them in connection with the business of Regional Council in the Region concerned; and the Disciplinary Committee was of the view that the payment without submission of bills did not qualify as reimbursement as contemplated under the said regulation. Based on the aforesaid conclusion, the Disciplinary Committee passed the following directions:-

> "i. The Resolution dated 18th November 2007 passed by Northern India Regional Council (NIRC) is void ab initio since the resolution is in violation of Regulation 132 of Costand Works Accountants Regulations, 1959 which approved payment of fixed amounts of Rs 5000/- to the Chairman and Rs 4000/- per month to each member ofNIRC on a monthly basis without submission of bills.
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> ii. Letter of caution should be issued to Sh Sanjay Gupta for drawl of money from NIRC on the strength of the resolution dated 18th November 2007.
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> iii. Shri Sanjay Gupta and any other elected member of NIRC who had drawn money on the basis of the resolution dated 18th November 2007 are required to deposit the exact amount that they had drawn on the strength of the resolution dated 18.11.07, with NIRC within a period of 30 days from the date of receipt of the order.
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> iv. The Order stated in (iii) above shall apply mutatis mutandis in respect of all members of Council of NIRC who had drawn money on the basis of the resolution in question.
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> v. All elected representatives of Council of NIRC be informed to desist themselves from passing any such resolution which is in violation of the Cost and Works Accountants Act, 1959 and the rules regulations framed thereunder:
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> vi. The aforesaid decision is to be communicated to all who were members of Council of NIRC during the period 2007-2011."

8. The respondent preferred an appeal against the said order before the Appellate Authority. In his appeal, he contended that he was aggrieved as the Disciplinary Committee had punished him by issuing caution and by directing him to deposit the exact amount that he had drawn on the strength of the resolution dated 18.11.2007, with NIRC within a period of 30 days from the date of the receipt of the order. The respondent claimed that he had not drawn any amount on the strength of the aforementioned resolution. In the context of the resolution dated 18.11.2007, he further stated that "*the stand of the complainant stands vindicated and therefore the appellant is satisfied on this*." However, the respondent made a grievance that the other charges made by the respondent against the petitioner had not been considered by the Disciplinary Committee.

9. The petitioner objected to the maintainability of the appeal filed by the respondent on the ground that no punitive measure had been imposed on the petitioner and, therefore, the appeal filed by him was not maintainable in terms of Section 22E(1) of the Act. The respondent opposed the said contention and insisted that a punitive measure had been imposed on him. The respondent claimed that the direction of the Disciplinary Authority to inform all members of NIRC to desist themselves from passing any resolution which is in violation of the Cost and Works Accountants Act, 1959 and the Rules & Regulations made thereunder, amounted to imposing a punitive measure of reprimand.

10. The Appellate Authority accepted the respondent's contention and by the impugned order held that in substance, the Disciplinary Committee had censured all members of NIRC as they were responsible for passing a resolution contrary to Regulation 132 of the Regulations. The Appellate

Authority further proceeded to hold that even the respondent (on whose complaint, the disciplinary proceedings had commenced) could also not been given a clean chit as he was also a member of NIRC when the offending resolution was passed.

11. Aggrieved by the same, the respondent filed a writ petition - W.P. (C) 7660/2017 captioned *Vijendra Sharma v Institute of Cost Accountants of India & Anr.* - which was disposed of by this Court by an order dated 01.09.2017, remanding the matter to the Appellate Authority to consider afresh in view of the observations made in the order. It is relevant to mention that this Court had on a plain examination of the order dated 06.02.2015 passed by the Disciplinary Committee noted that it did not appear that any punitive measure had been imposed on the respondent (the petitioner therein). However, since it was petitioner's case that a punitive measure had been imposed on him, this issue was not examined any further and the matter was left for the Appellate Authority to consider afresh. This Court also clarified that the order dated 01.09.2017 would not be read so as to prejudice the case of the petitioner.

12. In view of the above, the limited question that falls for consideration of this Court is whether the appeal preferred by the respondent pursuant to which the impugned order has been passed by the Appellate Authority, was maintainable.

13. Section 22E of the Act, which provides for a remedy of an appeal against an order of the Disciplinary Committee reads as under:-

> "22E. Appeal to Authority. – (1) Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section

(3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorised by the Council, within ninety days:

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section 21A and sub-section (3) of section 21B and may-

a) confirm, modify or set aside the order;

b) impose any penalty or set aside, reduce or enhance the penalty imposed by the order;

c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or

d) pass such other order as the Authority thinks fit:"

14. A plain reading of Sub Section (1) of Section 22E of the Act indicates that the remedy of an appeal is only available to a member of the Institute who is aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any penalties referred to in Sub-Section (3) of Section 21A and Sub-Section (3) of Section 21B of the Act. Sub-Section (3) of Section 21A of the Act relates to the penalty that may be imposed by the Board of Discipline and the same is not relevant for the purposes of this petition. Sub-Section (3) of Section 21B relates to the punition that may be imposed by the Disciplinary Committee.

15. Section 21B of the Act is set out below:-

"**21B. Disciplinary Committee.-**(1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

(2) The Disciplinary Committee while considering the cases placed before it, shall follow such procedure as may be specified.

(3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

(a) reprimand the member;

(b) remove the name of the member from the Register permanently or for such period, as it thinks fit;

(c) impose such fine as it may think fit, which may extend to rupees five lakhs.

(4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.

Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court."

16. Thus, the principal question to be addressed is whether the Disciplinary Committee had taken any of the actions as set out in Sub-Section (3) of Section 21B of the Act.

17. According to the petitioner, the Disciplinary Committee had reprimanded all persons of NIRC who were members at the material time.

18. Plain reading of the directions issued by the Disciplinary Committee in its order dated 06.02.2015 does not indicate that the Disciplinary Committee had taken any of the actions as specified under Sub-Section (3) of Section 21B of the Act.

19. The Disciplinary Committee had directed that a letter of caution be issued to the petitioner. *Prima facie***,** this cannot be construed as an action contemplated under Section 21B(3)(a) of the Act. In any event, the petitioner had not preferred an appeal before the Appellate Authority. A plain reading of the directions issued by the Disciplinary Committee clearly indicates that no action of reprimand has been taken by the Disciplinary Committee against the respondent (who was the appellant before the Appellate Authority). The direction "*to inform all council members to desist themselves from passing any resolution in violation of The Cost and Works Accountants Act, 1959 and the Rules & Regulations framed thereunder*" cannot be construed as an action of reprimand under Section 21B (3)(a) of the Act.

20. It is also relevant to mention that Section 21B(2) of the Act enjoins the Disciplinary Committee to follow the procedure as prescribed. Sub-Section (3) of Section 21B of the Act clearly indicates that if the Disciplinary Committee has formed an opinion that a member is guilty of professional or other mis-conduct mentioned in Second Schedule or both, first and the second schedule, it shall afford the concerned member an opportunity to be heard before making an order. This clearly indicates that in the first instance, the Disciplinary Committee must form an opinion that a

member is guilty of professional or other mis-conduct. Thereafter, the Disciplinary Committee must proceed to afford a hearing to the concerned member. In this case, it does not appear that the said procedure was followed.

21. It is also relevant to note that in its appeal before the Appellate Authority, the respondent (appellant before the Appellate Authority) had claimed that the Disciplinary Committee had awarded the punishment of "*caution and to deposit the exact amount that he has drawn on the strength of resolution dated 18.11.2007 with NIRC within a period of 30 days from the date of receipt of the order*" against the respondent. Paragraph 2 of the respondent's appeal is set out below:-

> "2. The complaint against the respondent in this appeal was filed on 6th June, 2009 before the Institute by Shri. Virender Sharma.
> The Institute referred the complaint for enquiry to the disciplinary authority on 6th September, 2010 (as per letter of communication referred to in Form –I). The Disciplinary authority to which the matter was referred has made an order for punishment against the appellate awarding punishment of ***"caution and to deposit the exact amount that he has drawn on the strength of resolution dt. 18-11-2007 with NIRC with in a period of 30 days from the date of receipt of the order***"

22. It is seen from the above that the respondent had in his appeal purportedly extracted a quote from the order passed by the Disciplinary Committee. However, it is seen that the order of the Disciplinary Committee does not read as was claimed by the respondent in his appeal. Thus, the averments made in the appeal preferred by the respondent can - to be most charitable - be described as misleading.

23. In view of the above, this Court is of the view that the appeal filed by the respondent before the Appellate Authority was not maintainable.

24. In view of the above, the impugned order dated 20.06.2016 passed by the Appellate Authority is set aside. All consequential orders passed pursuant thereto are also set aside.

25. The petition alongwith the pending applications are disposed of.

VIBHU BAKHRU, J

OCTOBER 26, 2017
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