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

+ **W.P.(C) 5680/2015 & CM 10215/2015**

L.N. MALIK

..... Petitioner

Through Mr V.K. Jain, Advocate with Mr Manish Malik, Advocate.

versus

THE INSTITUTE OF CHARTERED
ACCOUNTANTS & ANR

..... Respondents

Through Ms Pooja M. Saigal, Advocate for R1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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12.09.2017

1. The petitioner has filed the present petition, *inter alia*, impugning the report dated 10.02.2014, passed by the Disciplinary Committee of the Institute of Chartered Accountants of India (hereafter 'the ICAI'). The said report was communicated to the petitioner under the cover of the letter dated 09.05.2014.

2. The principal grievance of the petitioner is that the petitioner was not granted an opportunity to cross-examine the complainant. It is stated that initially an opportunity was granted to the petitioner to cross-examine the complainant, however, the petitioner asked for a deferment as he wanted to confront the complainant with other documents. It is stated that the complainant did not appear on the next date of hearing and, therefore, despite the petitioner seeking an opportunity to examine the complainant, he

was denied the opportunity to do so. The petitioner further states that the entire inquiry is vitiated as similar allegations had been inquired into earlier.

3. Ms Saigal, learned counsel appearing for the ICAI states, on instructions, that the impugned report of the Disciplinary Committee may be disregarded and, the Committee shall provide the necessary opportunity to the petitioner to cross-examine the complainant and in the event the complainant does not present himself for cross-examination, the Disciplinary Committee shall proceed in accordance with law. She further requests that the entire proceedings may not be set aside and the evidence recorded earlier may not be disregarded.

4. The learned counsel appearing for the respondents has no objection to the said procedure. Counsel for the petitioner clarifies that the petitioner is not insisting on *de novo* inquiry. He further contends that after the impugned report dated 10.02.2014 was communicated, the petitioner had made a detailed representation raising further issues and the same cannot be foreclosed.

5. In view of the above submissions, the impugned report of the Disciplinary Committee dated 10.02.2014 is set aside. The Disciplinary Committee shall conclude the proceedings after providing the petitioner an opportunity to examine the complainant. If the complainant is not available, the Disciplinary Committee shall proceed in accordance with law. The Committee is not required to re-record the evidence already recorded, however, the question as to the complainant's evidence would not be admissible, if he is not available for cross examination. It is clarified that all contentions of the petitioner are reserved and nothing stated herein shall preclude the petitioner from raising such contentions as may be advised.

6. The petition is disposed of.

SEPTEMBER 12, 2017

pkv

VIBHU BAKHRU, J