$~48

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

\+ **<u>W.P.(C) 7660/2017 & CM 31652/2017</u>**

VIJENDRA SHARMA ..... Petitioner
Through: Mr Pradeep Dahiya, Advocate.

versus

INSTITUTE OF COST ACCOUNTANTS
OF INDIA & ANR ..... Respondents
Through: Mr Prasoon Kalra, Advocae for R-1.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **01.09.2017**

1. The petitioner has filed the present petition, *inter alia*, impugning the orders passed by the Disciplinary Committee on 06.02.2015 and the Appellate Authority on 26.02.2016 (hereafter collectively referred to as impugned order).

2. The petitioner was elected as a member of the Northern India Regional Council (hereafter 'NIRC') during the year 2007-2011 and 2011-2015. He was also appointed as the member of the Central Council of the Institute of Cost and Accounts of India (hereafter 'ICAI') for the year 2015-2019. The controversy involved in the present petition relates to resolution passed by a meeting of the NIRC held on 18.11.2007; in terms of which the Chairman of NIRC was entitled to draw ₹5000/- and other members were entitled to draw ₹4000/- as expenses without production of bills.

3. It is the petitioner's case that he protested against such resolution and, therefore, did not sign the minutes of the meeting held on 18.11.2017. He also claims that he did not sign the minutes of the meeting dated 01.02.2008 confirming the minutes of the meeting held on 18.11.2007.

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

5. 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 Cost and Works Accountants Act, 1959.

6. The Disciplinary Committee passed the impugned order dated 06.02.2015 recording its conclusion that the resolution passed in the meeting 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 as 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 List before another Bench on 10.08.2016, subject to orders of Hon'ble the Judge Incharge (Original Side). Initio since the resolution is in violation of Regulation 132 of Cost and Works Accountants Regulations, 1959 which approved payment of fixed amounts of Rs.5000/- to the Chairman and Rs.4000/- per month to each member of NIRC on a monthly basis without submission of bills.
>
> ii. Letter of caution should be issued to Shri Sanjay Gupta for drawl of money from NIRC on the strength of the resolution dated 18th November 2007.
>
> 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.
>
> iv. The Order stated in (iii) above shall apply mutatis mutandis in respect of all members of Council ofNRC who had drawn money on the basis of the resolution in question.
>
> 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:
>
> vi. The aforesaid decision is to be communicated to all who were members of Council of NIRC during the period 2007-2011."

7. Thereafter, the petitioner received a letter dated 30.03.2015 communicating the extracts of the order passed by the Disciplinary Committee on 06.02.2015.

8. The petitioner preferred an appeal against the said order before the Appellate Authority. In his appeal, the petitioner contended that he was aggrieved as the Disciplinary Committee had awarded the punishment of "*caution and to deposit the exact amount that he has 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 petitioner stated 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 petitioner made a grievance that the other charges made by the petitioner against Mr Sanjay Gupta (the respondent therein) had not been considered by the Disciplinary Committee.

9. Mr Sanjay Gupta, who was arrayed as the respondent before the Appellate Authority raised an objection as to the maintainability of the appeal. It was contended on his behalf that no punitive measure has been imposed on the petitioner and, therefore, the appeal before the Appellate Authority was not maintainable by the petitioner.

10. In his zeal to oppose the challenge to the maintainability of the appeal before the appellate authority, the petitioner insisted that a punitive measure had been imposed on the petitioner; he urged that as all representatives of the Council of NIRC had been informed to desist themselves from passing any resolution in violation of the Cost and Works Accountants Act, 1959 and the Rules / Regulations made thereunder, the same amounted to imposing a punitive measure.

11. The Appellate Authority accepted the above contention advanced on behalf of the petitioner and found that in substance the Disciplinary Committee had censured all members of NIRC as they were responsible for passing a resolution, which was found contrary to regulation 132 of the Regulations. Having concluded so, the Appellate Authority proceeded to further hold that the petitioner could not be given a clean chit as he was a party to passing the said resolution. The petitioner's contention that he had opposed the resolution and had not signed the relevant minutes, was rejected on the ground that no such averments had been made in the complaint or the memorandum of appeal filed before the appellate authority.

12. It is apparent from the above that the issues that arose before the Appellate Authority included the questions, (i) whether the appeal was maintainable; and (ii) whether the petitioner ought to have been censured.

13. A closer examination of the appeal filed by the petitioner clearly indicates that he was dissatisfied with the Disciplinary Committee not examining further charges and the petitioner was not aggrieved by setting aside of the resolution dated 18.11.2007, which according to the petitioner *vindicated his stand*.

14. It does not appear from the plain reading of the impugned order passed by the Disciplinary Committee that any punitive measure had been imposed on the petitioner. However, it was the petitioner's case that the order passed by the Disciplinary Committee must be read in the manner as has been done by the Appellate Authority.

15. The next question to be examined would be whether any punitive

measure was warranted against the petitioner on account of the resolution passed on 18.11.2007. Although the appellate authority had taken note of the petitioner's contention that his stand in respect of the resolution dated 18.11.2007 had been vindicated, the Appellate Authority rejected the petitioner's contention that he was not a party to the resolution and had opposed the same. Both the above stands are mutually destructive. If the petitioner's stand that the resolution was void stood vindicated, it is implicit that he had opposed the resolution. This is also obvious from the fact that the petitioner had filed a complaint alleging the resolution of 18.11.2007 to be contrary to the Regulations.

16. As noticed above, the Appellate Authority had rejected the petitioner's claim for a clean chit in the context of the resolution in question on the ground that there were no pleadings in that regard. If the petitioner's pleadings in his memorandum of appeal was to be strictly followed, it would be apparent that the appeal itself was not be maintainable as the petitioner had not made any grievance in this regard. The only ground urged was referred to in paragraph 5(3) of the Memorandum of Appeal and the said ground concerned the petitioner's grievance that the Disciplinary Committee had overlooked the charge regarding use of NIRC funds for personal benefit. However, having held the petitioner's appeal to be maintainable - thereby accepting that the petitioner's appeal reflected a grievance against the order of the Disciplinary Committee imposing of penalty on the petitioner- it would have been necessary for the Appellate Authority to also read the petitioner's appeal and the nature of his grievance. The only indication in the petitioner's appeal regarding his possible grievance against imposition of

any penalty was that his stand has been vindicated and yet the penalty had been imposed.

17. In this context, it would have been apposite for the Appellate Committee to have also the petitioner to raise additional grounds to articulate his grievance. In the aforesaid context, this Court is of the view that the impugned decision of the Appellate Authority is required to be re-examined and, therefore, the matter is remanded to the Appellate Authority to consider afresh in the light of the observations made hereinabove.

18. This Court is also informed that the respondent before the Appellate Authority has also preferred a petition, which is pending consideration. In this regard, it is clarified that nothing stated herein should be read so as to prejudice the case of any other person including the respondent before the Appellate Authority (Mr Sanjay Gupta).

VIBHU BAKHRU, J

SEPTEMBER 01, 2017
pkv/**RK**