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

\+ **W.P.(C) 7923/2017**

AMIT KISHORE JAIN ..... Petitioner

Through Mr R. Venkataraman, Advocate with Mr Amit Kishore in person.

versus

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA & ORS ..... Respondent

Through Mr Attin Shankar Rastogi, Advocate for R4.
Mr Naveen Kr Raheja, Advocate for R5.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 08.09.2017

CM 32736/2017

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 7923/2017 & CM 32737/2017

3. The petitioner has filed the present petition, *inter alia*, impugning an order dated 13.05.2017 passed by the Appellate Authority, whereby the respondent No.4's appeal against the orders dated 10.02.2014 and 08.08.2014 of the Board of Discipline was disposed of; the Appellate Authority removed certain findings of the Board of Discipline but the punitive measure of reprimand was sustained.

4. The petitioner claims to be involved in social work and taking up public causes. Respondent no. 4 is a qualified Chartered Accountant and a member of the Institute of the Chartered Accountants of India (ICAI).

5. The petitioner had made a complaint to the ICAI regarding the conduct of respondent no.4. He alleged that although respondent no.4 was holding a Certificate of Practice (hereafter 'the CoP'), he was in full time employment of a group of companies, namely, Bansal Group Companies and is designated as a Chief Financial Controller (CFC). It was further alleged that the respondent no 4 was also a whole time director in two other companies. It was the petitioner's case that since respondent no.4 was a wholetime employee of the Bansal Group of Companies and also a director in tow other companies, he was not eligible to hold a CoP.

6. The allegations made by the petitioner were found to be *prima facie* merited by the Director (Discipline). The Board of Discipline concurred with the same and decided to proceed further. Board of Discipline proceeded to examine the same. Respondent no.4 had contested the aforesaid allegations before the Board of Discipline, ICAI. He also produced a Consultancy Agreement dated 03.04.2007, which was entered into by him with *M/s Naman Buildcon Ltd*. in support of his claim that he was engaged as a consultant and was not an employee of that company. The petitioner alleged that the said agreement was fabricated as according to the petitioner the name of the Naman Buildcon Ltd. had been changed to *Pacific Development Corporation Ltd*. at the time when the said consultancy Agreement was purportedly executed. The petitioner also submitted a certificate from ICICI Bank Ltd. to indicate that Pacific

Development Corporation Ltd was maintaining the account with the bank since 08.12.2005

7. The Board of Discipline also noted that the aforementioned consultancy did not find mention in the pleadings and was executed only in respect of a few companies and not in respect of others. In view of the above, the Board of Discipline passed an order dated 10.02.2014, *inter alia* recording a finding to the effect that the respondent no. 4 had fabricated the Consultancy Agreement much after the petitioner's complaint dated 04.09.2009.

8. The Board of Discipline also came to the conclusion that the record indicated that the respondent no.4 was in employment despite holding a CoP and without seeking the permission of the Council of ICAI and hence had contravened the provisions of Clause 11 of Part-1 of the First Schedule to the Chartered Accountants Act.

9. Thereafter, respondent submitted further documents, which were considered and the Board of Disciple passed an order dated 08.08.2014 under Section 21A sub-section 3 (a,b and c) of the ICAI Act, 1949 to reprimand respondent no.4.

10. The said orders dated 10.02.2014 and 08.08.2014 were carried in appeal before the Appellate Authority. The Appellate Authority examined the allegations and found that the finding that respondent no.4 had fabricated the consultancy agreement was not sustainable. This conclusion was arrived at on the basis of the certificate of a incorporation issued by the Registrar of Companies which conclusively established that the name of

Naman Buildcom Private Limited was changed Pacific Development Corporation Ltd. on 04.05.2007 and the consultancy agreement - which the Board of Discipline had found to be fabricated inter alia on the basis that the name of Naman Buildcon Ltd. had changed - was dated 03.04.2007. Thus, plainly, the agreement could not be doubted on the basis that the name of the party had changed prior to entering into the agreement.

11. In the aforesaid view, the Appellate Authority came to the conclusion that the finding needed to be removed and, accordingly expunged the last finding from the record. However, the Appellate Authority accepted the finding that respondent no.4 was guilty of misconduct as he had taken full employment without the permission of the Council of the ICAI despite holding a CoP.

12. The learned counsel appearing for the petitioner contends that the decision of the Appellate Authority is *ex-facie* erroneous as at one place the Appellate Authority has stated that the finding requires re-examination and yet the Appellate Authority has proceed to remove the said finding. According to the petitioner, the punishment imposed on respondent no.4 ought to have been enhanced since the respondent no.4 was found guilty of fabrication of the consultancy agreement produced before the Board of Discipline.

13. This Court is of the view that the present petition is wholly bereft of any merit. The principal reason why the execution of the consultancy agreement was doubted was that it was executed between respondent no.4 and Naman Buildcom Limited and it was stated that the name of Naman

Buildcom Ltd had changed to Pacific Development Private Limited prior to the date of the said agreement. This doubt could no longer be entertained once the Certificate of the Registrar of Companies had been produced which indicated that the change of name took effect from 04.05.2007, that is, one month after the Consultancy Agreement had been executed. The Appellate Authority thus rightly concluded that the finding that respondent no.4 was guilty of producing fabricated documents should be removed. The statement in the impugned order to the effect that the said finding required re-examination clearly means that the Appellate Authority had decided to re-examine the same. The contention that the Appellate Authority was of the view that the same should be re-examined by the Board of Discipline is a complete misreading of the impugned order.

14. The petitioner claims to be involved in taking up public causes and a reading of the petition also suggests that the petitioner has also taken up the cause against respondent no. 4, without any personal interest. Respondent no. 4 had claimed that the petitioner was pursuing him as he had lost lucrative insurance business from the Bansal group.

15. This Court is also of the view that the present petition is vexatious. The petitioner had not only made a complain but pursued the same before the Board of Discipline; he had thereafter filed a writ petition before this court (WP(C) 855/2015 captioned ***Amit Kishore Jain vs Institute of Chartered Accountants & Ors.***) inter alia seeking enhancement of the punishment meted out to respondent. The said petition was disposed of as with liberty to urge all grounds urged in the said petition before the Appellate Authority. The record indicates that the petitioner had actively

opposed the respondent no 4's appeal before the Appellate Authority and had urged the Appellate Authority to enhance the punishment. This Court finds no reason having reported the facts to the Disciplinary Committee for the petitioner to have pursued the cause against respondent no. 4 in the manner as he has done.

16. In the given circumstances, this Court is of the view that the present petition ought to be dismissed with costs of ₹15,000/-. It is so ordered. The costs shall be paid to the Delhi High Court Legal Service Authority within a period of four weeks from today and the proof of such payment would be furnished to the Registry of this Court. In the event proof of payment of costs is not furnished within a period of six weeks from today, the Registry is directed to place the matter before this Court for further action.

17. The petition is disposed of.

VIBHU BAKHRU, J

SEPTEMBER 08, 2017

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