

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

Date of Decision: March 08, 2018

+ **W.P.(C) 73/2018**

VIJAY KUMAR GUPTA Petitioner
Through: Mr. Shariq J. Reyaz, Advocate

versus

DIRECTOR (DISCIPLINE), INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA (ICAI) AND ANR.Respondents
Through: Ms. Pooja M. Saigal, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Petitioner is a Chartered Accountant against whom information within the meaning of Rule 7 of *the Chartered Accountants (Procedure of Investigation of Professional and other Misconduct and Conduct of Cases) Rules, 2007* was provided by Serious Fraud Investigation Office (*hereinafter referred to as SFIO*) vide its Communication of 27th April, 2016 (*Annexure-C*), which was followed by a Reminder of 27th February, 2017 (*Annexure-D*) by SFIO to respondent calling upon the Disciplinary Committee of respondent to take timely action against petitioner and four other Chartered Accountants, whose identity was clearly established by SFIO and if it is done, then not only *modus operandi* of these Chartered Accountants would be known, but the identity of other mediators could

be also established. In pursuance of aforesaid Communication from SFIO, a Show-Cause Notice (*Annexure-A*) was sent to petitioner on 6th March, 2017 requiring a reply/explanation regarding petitioner being engaged in money laundering operations with *S.K.Jain* and *V.K.Jain* and other professionals; inflation of Balance-Sheet by rotational transfer of funds amongst the entities controlled by *S.K.Jain/V.K. Jain* and thereby abetting defrauding the National Exchequer to the tune of ₹73 crores. The charge against petitioner also comprised of acting as a mediator in providing accommodation entries in connivance with S.K. Jain and V.K. Jain and placing, layering and integration of unaccounted funds and abetting in arrangement of false Valuation Reports.

2. Petitioner vide Reply of 27th March, 2017 (*Annexure-E colly.*) had admitted that he was in touch with S.K. Jain/V.K. Jain in professional capacity, but denied his involvement in the alleged transactions while asserting that the nature of alleged allegations are vague and baseless. According to petitioner's counsel, not even a single piece of credible evidence or document is forthcoming to establish petitioner's complicity in the transactions in question. Learned counsel for petitioner vehemently submits that the '*prima facie opinion*' discloses utter non-application of mind as it simply reproduces the contents of the SFIO report and no subjective satisfaction has been recorded by the Disciplinary Authority in the impugned '*prima facie opinion*', which renders it illegal. Thus, it is submitted that no case for initiation of disciplinary proceedings on the basis of impugned '*prima facie opinion*' is made out.

3. On the contrary, learned counsel for respondents supports the impugned '*prima facie opinion*' rendered and points out that paragraph

No. 8 thereof deals with each of the allegations and impugned '*prima facie opinion*' does indicate the satisfaction of respondents justifying initiation of disciplinary proceeding against petitioner. It is submitted that in view of the bald denial by petitioner, an opportunity ought to be granted to respondents to lead evidence to show the complicity of petitioner in respect of the transactions in question. Reliance is placed upon Supreme Court's decision in *United Bank of India v. Satyawati Tandon and Ors.*, AIR 2010 SC 3413 to submit that this Court should be circumspect in interfering with the '*prima facie opinion*' as efficacious remedy is available to petitioner to show that no case is made out against petitioner and this can only be done after the evidence is led by the parties.

4. In rebuttal, learned counsel for petitioner places reliance upon Supreme Court's decision in *Mansukhlal Vithaldas Chauhan v. State of Gujarat*, (1997) 7 SCC 622 to submit that before petitioner is departmentally tried, the material on record should *ex facie* disclose the complicity of petitioner and in the absence of any tangible evidence, the initiation of disciplinary proceedings against petitioner is wholly unjustified. It is further pointed out by petitioner's counsel that there is no independent application of mind by first respondent on the Report (*Annexure-B*) as in paragraph No.8.16 of the impugned '*prima facie opinion*', the Disciplinary Authority has proceeded under the assumption that it has to necessarily make out a disciplinary case against petitioner in view of SFIO's report and such opinion cannot be sustained in view of the dictum of Supreme Court in *Mansukhlal Chauhan (supra)*. Attention of this Court is drawn to respondents' Communication of 7th July, 2017

(Annexure A-1 to application for interim relief) which calls upon petitioner to examine whether provisions of *Income Tax Act*, *FEMA*, *Benami Act*, *Prevention of Money Laundering Act* could be made applicable to the period of misconduct in question. Learned counsel for petitioner submits that petitioner cannot be asked to file a written statement in respect of his involvement under the aforesaid provisions as it is beyond the purview of the Show-Cause Notice.

5. Upon hearing and on perusal of impugned '*prima facie opinion*', material on record and the decisions cited, I find that impugned '*prima facie opinion*' meticulously refers to the allegations against petitioner in detail and takes note of petitioner's Reply to Show-Cause Notice and so, it cannot be said that there is non-application of mind by Disciplinary Authority in rendering the '*prima facie opinion*'. The stand taken by petitioner in Reply to the Show-Cause Notice justifies initiation of disciplinary proceedings against him. Merely because respondent-SFIO has sent a Reminder, it would not justify an inference that respondent is bound to initiate disciplinary proceedings against petitioner. Reliance placed by petitioner's counsel upon Supreme Court's decision in *Mansukhlal Chauhan (supra)* is of no assistance as in the instant case, it cannot be said that impugned '*prima facie opinion*' is vitiated by any extraneous consideration nor can it be said that there is no independent application of mind by Disciplinary Authority. By no stretch of imagination it can be said that respondent was under compulsion to initiate disciplinary proceedings against petitioner due to Reminder by SFIO. Supreme Court in *Satyawati Tandon (supra)* has reiterated that in cases having serious financial impact, the courts ought to be extremely

circumspect in exercise of its jurisdiction under Article 226 of *the Constitution of India*. Considering the nature of the allegations levelled against petitioner and his Reply to it, initiation of disciplinary proceedings against petitioner is well justified. Impugned '*prima facie opinion*' though holds petitioner guilty cannot be said to be stigmatic as it is only a *prima facie* opinion and the finding of guilt has to be returned only after the conclusion of the disciplinary proceedings. Impugned '*prima facie opinion*' is clarified to the aforesaid extent while making it clear that jurisdiction of respondent in initiating disciplinary proceedings shall be confined to the Show-Cause Notice and so, petitioner cannot be called upon to give his response in respect of applicability of the provisions of *Income Tax Act, FEMA, Benami Act, Prevention of Money Laundering Act*, etc..

6. With aforesaid clarification, this petition is disposed of while refraining to interfere with impugned '*prima facie opinion*'.

(SUNIL GAUR)
JUDGE

MARCH 08, 2018

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