

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 25.11.2019
Date of Decision: 06.03.2020

+ W.P.(C) 9032/2018

TRIDEEP RAJ BHANDARI

..... Petitioner

Through: Ms.Anu Sura, Mr.Sameer Jain
and Mr.Anant Gupta, Advs.

versus

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

..... Respondent

Through: Ms.Vibhooti Malhotra, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed *inter-alia* praying for the following reliefs:

“a. Issue a writ of mandamus or any other writ of the like nature thereby directing the Respondent to judiciously and expeditiously act on the Complaint No. 230/2014 filed by the Petitioner.

b. Issue a writ of mandamus or any other writ of the like nature thereby directing the Respondent to set aside the impugned order dated 09.04.2018 (P-17) and to adjudicate Complaint No. 230A/2014 in light of the facts and circumstances of the case and while taking into consideration the evidence placed on record by the Petitioner, vide a reasoned order.”

2. At the outset, it is noted that the learned counsel for the petitioner did not make any submissions in relation to the complaint No.PR 230/2014. In the written submissions, it is mentioned that after filing of the present Writ Petition, the said complaint is being adjudicated before the Disciplinary Committee under the Chartered Accountants Act, 1949 (hereinafter referred to as the 'Act'). Therefore, prayer 'a' of the petition is disposed of as not pressed.

3. As far as the prayer 'b' is concerned, the arguments have been confined only to the limited issue as to whether, while closing the complaint against the member, the Board of Discipline appointed under the Act has to communicate the reasons for the same to the complainant.

4. It is the case of the petitioner that the petitioner had invested in the shares of a company called 'First Leasing Company of India Limited'. The Reserve Bank of India (RBI), vide its letter dated 04.09.2013, called upon the Company to recast the Balance Sheet and the Profit and Loss Account for the period ending 31.03.2013 and 30.06.2013, as it was found that the same had overstated assets as well as earnings of the company.

5. The petition further alleges that by a letter dated 04.09.2013, the RBI also observed that an inspection of the Company had revealed that the company had been falsifying its books of accounts and other financial statements over several years, thereby portraying a positive net worth.

6. The RBI also issued a Press Release dated 13.09.2013 *inter-alia* prohibiting the Company from selling, transferring, creating charge or

mortgaging or dealing in any manner with its property and assets without prior written permission of the RBI.

7. It is further alleged that based on a complaint filed by the father of the petitioner, an FIR no.580/2013 has been registered with Police Station: Mahamandir, Jodhpur, Rajasthan.

8. The petitioner filed a complaint bearing Complaint no.230A/2014 with the Institute of Chartered Accountants of India against the Internal Auditors of the Company and a complaint bearing no.230/2014 against the Statutory Auditors of the Company.

9. The complaint, being Complaint no.230A/2014, has been closed by the respondent and its decision has been communicated to the petitioner vide the Impugned Communication dated 09.04.2018. The same reads as under:

“I have been directed to inform you that your Complaint, Written Statement of the Respondent, your Rejoinder and additional documents along with the prima facie opinion formed by the Director (Discipline) under Rule 9(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, were considered by the Board of Discipline, The Board on consideration of the same, concurred with the reasons given against the charge(s) and thus, agreed with the prima facie opinion of the Director that the Respondent is NOT GUILTY of professional misconduct falling within the meaning of Clauses (7),(8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. Accordingly, under Rule 9(3)(a), the Board has passed an order for closure of the aforesaid Complaint. Your above mentioned complaint thus stands closed.”
(Emphasis supplied)

10. The learned counsel for the petitioner, placing reliance on the judgment dated 21.05.2012 of the Kerala High Court in WP (C) Nos. 29211-12/2011, titled ***T.O.Aleyas v. The Institute of Chartered Accountants of India & Ors.***, submits that the respondent was obliged to record and convey the reasons for closing the complaint against the Internal Auditor.

11. On the other hand, the learned counsel for the respondent, placing reliance on the judgment dated 01.08.2019 passed by this Court in WP(C) 8071/2019, titled ***Wholesale Trading Services Pvt. Ltd. v. The Institute of Chartered Accountants of India & Ors.***; and the judgement dated 24.07.2019 passed in WP(C) 9317/2014, titled ***Rajiv Bhatnagar v. The Disciplinary Directorate of the Institute of Chartered Accountants of India (ICAI) & Ors.***, submits that the proceedings before the Disciplinary Committee and the Board of Discipline under the Act are principally between the Institute and its Members; the same cannot be viewed as a private dispute between the complainant and the Chartered Accountant and therefore, reasons for closing the complaint need not be conveyed to the complainant.

12. The learned counsel for the respondent, relying upon the judgments of this Court in ***Dinesh Gupta v. Vishal Chandra Gupta & Anr.***, 2012 SCC OnLine Del 6333 and ***N.C. Bansal v. Board of Discipline of ICAI and Ors.***, MANU/DE/0887/2014, further submits that this Court has held that in proceedings before the Director (Discipline)/Board of Discipline/ Disciplinary Committee, the complainant does not have a right to be personally heard before a decision is taken on the complaint closing such complaint. Placing

reliance on the judgment of the Supreme Court in *Competition Commission of India v. Steel Authority of India & Ors*, MANU/SC/0690/2010, she further submits that the proceedings before the Director (Discipline) are merely inquisitorial in nature and not adjudicatory in nature and therefore, reasons for closing the complaint need not be provided.

13. The learned counsel for the respondent further submits that, in fact, it is not the case of the respondent that reasons are not required to be recorded, but that reasons/*prima facie* opinion is not required to be communicated to the complainant upon closure of the complaint; on a challenge being made to the said decision, the record can be produced before the Court where such challenge is made and in any case, even the complainant can obtain the same under the Right to Information Act, 2005.

14. I have considered the submissions made by the learned counsels for the parties. At the outset, the relevant provisions of the Act need to be noticed.

15. Section 21 of the Act provides for establishment of the Disciplinary Directorate headed by the Director (Discipline) for making investigation with respect to any 'Information' or 'Complaint' received by the Institute. It further prescribes the mode and manner on how the said complaint is to be dealt with. The same is reproduced hereinbelow:

“21. Disciplinary Directorate.- (1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making

investigations in respect of any information or complaint received by it.

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or, as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.”

16. A reading of the above provision would show that where the Director (Discipline) forms a *prima facie* opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline, constituted under Section 21A of the Act and where the Director (Discipline) is of the *prima facie* opinion that the member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules to the Act, he shall place the matter

before the Disciplinary Committee constituted under Section 21B of the Act.

17. Section 21A (4) of the Act provides that where the Director (Discipline) is of the *prima facie* opinion that no case of any professional or other misconduct is made out against the member, the Director (Discipline) shall submit before the Board of Discipline the complaint and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in the case of disagreement, may advise the Director (Discipline) to further investigate the matter. Section 21A(4) is reproduced hereinbelow:

Section 21(A) Board of Discipline

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“(4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in the case of disagreement, may advise the Director (Discipline) to further investigate the matter.”

18. The Central Government has also framed “The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (hereinafter referred to as the ‘Rules’). Rule 3 of the Rules prescribes the procedure for filing of a complaint. Rule 4 of the Rules gives the fee for filing of such complaint, while Rule 5 prescribes the procedure for registration of such complaint.

19. In contradistinction, Rule 7 prescribes the procedure to be followed where only a written information is received. The same is reproduced hereinbelow:

“7.Information.- (1) Any written information containing allegation or allegations against a member or a firm, received in person or by post or courier, by the Directorate, which is in not in Form I under sub-rule (1) of rule 3, shall be, treated as information received under section 21 of the Act and shall be dealt with in accordance with the provisions of these rules.

(2) On receipt of such an Information, the sender of the information, including the Central Government, any State Government or any statutory authority, shall be, in the first instance, asked whether he or it would like to file a complaint in Form I apprising him of, the following information,-

(a) that relatively longer time is taken for disposal of any information than the complaint;

(b) that the person giving information will not have the right to be represented during the investigation or hearing of the case;

(c) that the Institute will be under no obligation to inform the sender the Information of the progress made in respect of the information received under sub-rule (1) including the final orders:

Provided that where the sender of the information is the Central Government, any State Government or any statutory authority , a copy of final order shall be sent to such sender.

(3) An anonymous information received by the Directorate will not be entertained by the Directorate.”

20. A reading of the above would show that the Complainant has been granted a wider right as compared to a mere Informant. An Informant has no right to be represented during the investigation or hearing of the case and the Institute is under no obligation to inform the Informant of the progress made in respect of the information received, including the final order. This is also evident from Rule 11 of the Rules, which provides that only certain provisions relating to complaint would be applicable in relation to the information so received.

21. Rule 8 of the Rules prescribes the procedure to be followed by the Director (Discipline) on receipt of a complaint. The same is reproduced hereinbelow:

“8. Procedure to be followed by Director on a complaint.- (1) The Director or an officer or officers authorized by the Director, within sixty days of the receipt of a complaint under rule 3, shall,-

(a) if the complaint is against an individual member, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to that member at his professional address;

(b) if the complaint is against a firm, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to the firm at the address of its head office, as entered last in the Register of Offices and Firms maintained by the Institute, with a notice calling upon the firm to disclose the name or names of the member or members concerned and to send particulars of acts of commission or omission or a copy of the complaint, as the case may be, to such members:

Provided that while disclosing the name or names of the member or members, the firm shall also send a declaration signed or, as the case may be, jointly signed by the member or members concerned to the effect that he or she or they shall be responsible for answering the complaint and that the particulars of acts of commission or omission or the copy of the complaint sent to the firm by the Director had been duly received by him, her or them.

Explanation. - *A notice to the firm shall be deemed to be a notice to all the members who are partners or employees of that firm as on the date of registration of the complaint.*

(2) A member whose name is disclosed by the firm shall be responsible for answering the complaint such a member was associated, either as partner or employee, with the firm, against which the complaint has been filed, at the time of occurrence of the alleged misconduct:

Provided that if no member, whether erstwhile or present, of the firm, own responsibility for the allegation, or allegation made against the firm, then the firm as a whole shall be responsible for, answering the allegation or allegations and, as such, all the members who were partners or employees of that firm, as on the date of occurrence of the alleged misconduct, shall be responsible for answering the allegation or allegations as contained in the complaint.

(3) A member who has been informed of the complaint filed against him (hereinafter referred to as the respondent shall, within 21 days of the service of a copy of the complaint, or within such additional time, not exceeding thirty days, as may be allowed by the Director, forward to the Director, a written statement in his defence.

(4) On receipt of the written statement, if any, the Director may send a copy thereof to the complainant and the complainant shall, within 21 days of the service of a copy of the written statement, or within such additional time, not exceeding thirty days, as may be allowed by the Director, forward to the Director, his rejoinder on the written statement.

(5) On perusal of the complaint, the respondent's written statement, if any, and rejoinder of the complainant, if any, the Director may call for such additional particulars or documents connected therewith either from the complainant or the respondent or any third party or parties, as he may consider appropriate:

Provided that if no reply is sent by the respondent within the time allowed under sub-rule (3) or by the complainant within the time allowed under sub-rule (4), the Director shall presume that the respondent or the complainant, as the case may be, have nothing further to state and take further action as provided under this Chapter.”

22. Rule 9 of the Rules provides for the examination of the complaint by the Director (Discipline) and reads as under:

“9. Examination of the Complaint.- (1) *The Director shall examine the complaint, written statement, if any, rejoinder, if any, and other additional particulars or documents, if any, and form his prima facie opinion as to whether the member or the firm is guilty or not of any professional or other misconduct or both under the First Schedule or the Second Schedule or both.*

(2) (a) *Where the Director is of the prima facie opinion that,-*

(i) the member or the firm is guilty of any misconduct under the First Schedule, he shall place his opinion along with the complaint and

all other relevant papers before the Board of Discipline;

(ii) the member or the firm is guilty of misconduct under the Second Schedule or both the First and Second Schedules, he shall place his opinion along with the complaint and all other relevant papers before the Committee.

(b) If the Board of Discipline or the Committee, as the case may be, agrees with the prima facie opinion of the Director under clause (a) above, then the Board of Discipline or the Committee may proceed further under Chapter IV or V respectively.

(c) If the Board of Discipline or the Committee, as the case may be, disagrees with the prima facie opinion of the Director under clause (a) above, it shall either close the matter or advise the Director to further investigate the matter.

(3) Where the Director is of the prima facie opinion that the member or the firm is not guilty of any misconduct either under the First Schedule or the Second Schedule, he shall place the matter before the Board of Discipline, and the Board of Discipline, -

(a) if it agrees with such opinion of the Director, shall pass order, for closure.

(b) if it disagrees with such opinion of the Director, then it may either proceed under chapter IV of these rules, if the matter pertains to the First Schedule, or refer the matter to the Committee to proceed under Chapter V of these rules, if the matter pertains to the Second Schedule or both the Schedules, or may advise the Director to further investigate the matter.

(4) The Director shall, after making further investigation as advised by the Board of Discipline under sub-rule (2) or (3) of this rule or by the Committee under sub-rule (2), shall further proceed under this rule.”

23. A reading of the Rule 9(3) would show where the Director (Discipline) is of the *prima facie* opinion that the member or the firm is not guilty of any misconduct, he shall place the matter before the Board of Discipline and the Board of Discipline, if it agrees with such opinion of the Director (Discipline), shall pass the “order” for closure.

24. Rule 14 (1) of the Rules prescribes that the Board of Discipline shall follow the summary disposal procedure for dealing with all cases before it.

25. As noted hereinabove, the issue before this Court is as to whether the respondent is required to communicate reasons for closing the inquiry against its member that has been initiated on a Complaint filed visa-a-vis on an Information received.

26. Rules 7(2)(c) of the Rules provides that where the inquiry is initiated only on an Information, the Institute will be under no obligation to inform the sender of the progress made in respect of the Information received, including the final orders.

27. In terms of Rule 5(7)(a), the “order” of closure of the complaint is passed by the Board of Discipline where the Complainant fails to rectify the defect in the complaint within the time allowed and an “order” for closure is also mandatory under Rule 9(3)(a) where Board

of Discipline agrees with the *prima facie* opinion of the Director (Discipline) that the member is not guilty of any misconduct.

28. Reading the above three provisions together, therefore, it is clear that where the inquiry is initiated on a complaint filed under Rule 3 of the Rules, the Complainant is entitled to receive a copy of the order closing such inquiry against the member. ‘Order’ would necessarily include the reasons for the same. The Rules having themselves created this right in favour of the Complainant, it cannot be accepted that the Complainant would only be supplied with the “Information” of the closure of the complaint.

29. Even otherwise, the duty to assign reasons is one of the essential concomitant of the principles of natural justice. It is not the case of the respondent that the Act or the Rules exempt the Director (Discipline) or the Board of Discipline from recording reasons for the *prima facie* opinion of the member being not guilty of any misconduct. The only defence taken is that such reasons need not be communicated to the Complainant. I cannot agree with the said submission. Ordinarily, the reasons for the order ought to be communicated to the affected person. Whenever the authority is required to record reasons for taking an action, the Authority has to communicate the same to the concerned party. Communication of the reasons to the affected party is essential for the Complainant to know as to why his complaint has been rejected. It also constitutes a safeguard against arbitrariness of the Authority. It would also allow the Complainant to take an informed decision to accept the decision of

the Institute or, if aggrieved, to challenge the same in accordance with law.

30. The respondents, infact, do not claim any privilege over the reasons recorded for the *prima facie* finding of not guilty. Respondent's own case is that such reasons can be obtained by the Complainant under the Right to Information Act, 2005 or could be produced before the Court of Law in answer to such direction of the Court. In light of such submission, the reluctance of the respondent to provide the reasons for its *prima facie* opinion to the Complainant in the first instance itself, while communicating the order of closure of the complaint bears no logic. It merely results in adding further litigation and/or compliance with the procedural formalities without serving any benefit and therefore, cannot be accepted.

31. In ***Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota vs. Shukla and Brothers***, (2010) 4 SCC 785, the Supreme Court held as under:-

“..... The doctrine of audi alteram partem has three basis essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the authority concerned should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This has been uniformly applied by courts in India and abroad.”

32. In *S.N. Mukherjee vs. Union of India*, (1990) 4 SCC 594, the Supreme Court explained the benefit of recording the reasons as under:-

“35. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American courts. An important consideration which has weighed with the court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

36. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or

supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

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39. *The object underlying the rules of natural justice “is to prevent miscarriage of justice” and secure “fair play in action”. As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising*

quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

40. *For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising*

judicial or quasi-judicial functions is required to record the reasons for its decision.”

33. In ***Ajantha Industries and Others vs. Central Board of Direct Taxes, New Delhi and Others***, 1976 (1) SCC 1001 it has been further held that communication of reasons to the affected party is also mandatory.

34. In ***The Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity and Ors.***, (2010) 3 SCC 732, the Supreme Court held as under:-

“31. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice - delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. "The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind.”

35. The Supreme Court in ***Pankaj Garg vs. Meenu Garg and Ors.***, (2013) 3 SCC 246 reiterated the settled position of law that an order which does not contain any reason is no order in the eyes of law.

36. In *Kranti Associates Pvt. Ltd. and Anr. vs. Sh. Masood Ahmed Khan and Ors.*, (2010) 9 SCC 496, the Supreme Court formulated certain principles with respect to the structure of an order thereby enunciating the inevitable requirement of recording of reasons in an order, the same are reproduced hereinunder:-

“47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is

important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”

37. In ***T.O.Aleyas*** (Supra), the Kerala High Court has held that it is mandatory for the Board of Discipline to give reasons for its decision.

38. All the above judgments emphasis the requirement of recording reasons to obviate arbitrary and non-considered decisions even by the administrative authorities. Communication of such reasons to the concerned party is, therefore, essential to achieve this objective of the rule of natural justice. In absence of such communication of reasons, the objective of prescribing a condition for recording reasons may itself fail. It must be held that unless the legislature specifically or by necessary implication exempts the Authority from communicating reasons for its decision, such reasons must be communicated to the affected parties. In the present case, no such exemption is prescribed or can be inferred in the Act.

39. The reliance placed by the respondent on the judgment of this Court in ***Wholesale Trading Services P Ltd.*** (Supra), does not in any manner absolve the respondent of its duty of communicating its order, which would necessarily include the reasons, to the Complainant. In ***Wholesale Trading Services P Ltd.*** (Supra), the Court while considering the challenge to the decision of the Institute to close the complaint, observed as under:-

“27. It is also relevant to note that the proceedings before the Disciplinary Committee/Board of Discipline are in nature of Disciplinary proceedings to ensure that members of ICAI maintain professional standards and do not conduct themselves in a manner which brings disrepute to the profession of Chartered Accountancy. The disciplinary proceeding is principally between ICAI and its members. A complainant merely acts as a relater party that provides

information relating to any misconduct on the part of a Chartered Accountant. Although a complainant has a right to be participate in the proceedings; disciplinary proceedings cannot be viewed as a private dispute between the complainant and the Chartered Accountant. It is also true that in most cases, the complainant may also have suffered on account of professional or other misconduct on the part of a Chartered Accountant; however, that does not change the nature of the disciplinary proceedings.

28. The conduct of ICAI's member (a Chartered Accountant) is to be evaluated by the concerned authorities of ICAI. The object is to ensure that its members measure up to the standards as set by ICAI for continuing as its member. As stated earlier, the matter is, essentially, between ICAI and its members. This is also the rationale for not providing any appellate remedy to the complainant against the decision of the concerned authorities in terms of Section 22G of the Act. This right is only available to an aggrieved Member of ICAI."

40. The above view was reiterated by this Court in its judgment in **Rajiv Bhatnagar** (Supra).

41. The above judgments do not consider the issue of communication of reasons for closure of the complaint to the Complainant.

42. In **Dinesh Gupta** (Supra), the Court was concerned with the plea as to whether the Rules required a personal hearing to be granted to the Complainant. The Court held that looking into the nature of the inquiry, which is merely inquisitorial, there was no requirement of personal hearing being granted to the Complainant. In reaching such

conclusion the Court relied upon the judgment of the Supreme Court in *Competition Commission of India* (Supra).

43. In *N.C. Bansal* (Supra), the Court affirmed that the Rules do not provide for any hearing being granted to the Complainant at the stage of confirming *prima facie* opinion on the guilt of the member. The said judgment again did not deal with the issue of recording reasons for the *prima facie* opinion and communication thereof to the Complainant.

44. In view of the above, it is held that the respondent no. 1 is under an obligation to provide reasons to the complainant for its *prima facie* conclusion of the member being not guilty of any misconduct on the complaint made by a Complainant. At the same time, it is clarified that such reasons need not be elaborate and would not widen the scope of interference of the Courts while exercising powers of judicial review.

45. The present petition is accordingly allowed directing the respondent no. 1 to communicate the reasons for its decision that was communicated to the petitioner vide the Impugned Communication dated 09.04.2018, within a period of two weeks of receipt of this order.

46. There shall be no order as to cost.

NAVIN CHAWLA, J

MARCH 06, 2020/Arya