IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.23841 of 2018
and W.M.P.No.27777 of 2018

S.Karthikeyan ... Petitioner

Versus

1.The Deputy Secretary,
Disciplinary Directorate,
Institute of Chartered Accountants of India,
ICAI Bhawan, Indraprastha Marg,
Post Box No.7100,
New Delhi – 110 002.

2.S.Udayakumar ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the entire records relating to the impugned order passed by the first respondent in his proceedings Ref.No.PR-228/2015-DD/216/2015, dated 05.04.2018 and quash the same.

Party-in-Person: Mr.S.Karthikeyan

For R2 : Mr.P.K.Sabapathi

O R D E R

This Writ Petition has been filed, for the issuance of Writ of Certiorari, to call for the entire records relating to the impugned order passed by the first respondent in his proceedings Ref.No.PR-228/2015-DD/216/2015, dated 05.04.2018 and quash the same.

2.The petitioner appeared Party-in-Person and submitted that he is a member of the Institute of Cost Accountants of India and his wife Komalavalli is one of the Associate Member in Videsh Sanchar Nigam Employees Co-op House Society Limited (herein after referred as 'VSNL'). The VSNL employees society made a request before the VSNL, for allotment of surplus land to its members. In the year 1995, the Government of India approved 32.5 acres of land, to handover to the VSNL Employees Co-operative Society. Thereafter, in the year 2002, the VSNL was privatized as per the policy of Government of India and the company was taken over by TATA group. While so, the Special Officer of the said Co-operative Society without passing any resolution and without getting prior permission from the Registrar of Co-operative Society, constituted a committee consisting of five members and the said committee collected a huge amount from every members by promising that they are going to allot house site and misappropriated a sum of Rs.12 Crores.

3.The petitioner would further submit that some of the members of the society came to know about the corrupt practice of the said committee and when they questioned about the same, the committee members approached the second respondent and obtained a fake financial statement approval, as if the above said committee members collected Rs.12 Crores and the same was duly credited in the society account. Therefore, the petitioner has made a complaint against the second respondent to the first respondent. The first respondent has passed an order dated 05.04.2018, stating that the second respondent was found not guilty of professional misconduct as per the provisions of the Chartered Accountants Act, 1949.

4.Aggrieved over the order passed by the first respondent, the petitioner has filed the present Writ Petition.

5.Per contra, the learned counsel appearing for the second respondent submitted that, against the impugned order, the petitioner has alternative remedy to file an appeal before the Appellate Authority. The petitioner without availing the appeal remedy, has preferred the Writ Petitioner before this Court, which is an abuse of process of law. Therefore, he prayed to dismiss the Writ Petition.

6.Heard the learned counsel for the petitioner as well as the learned counsel for the second respondent and perused the materials available on record.

7.Upon hearing and perusal of the records, it appears that the first respondent - the disciplinary authority of the Institute of Chartered Accountant of India, passed an order 05.04.2018 under Section 21 of the Chartered Accountants Act, 1949 stating that the second respondent was found not guilty of professional misconduct. Against which, the petitioner has filed the present Writ Petition. At this juncture, it would be appropriate to extract the Section 23 G of the Chartered Accountants Act, 1949, which reads as follows:

22G. Appeal to Authority.-

(1) Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub- section (3) of section 21A and sub- section (3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority: Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority, if so authorised by the Council, within ninety days: Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub- section (3) of section 21A and sub- section (3) of section 21B and may-

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;

(c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or

(d) pass such other order as the Authority thinks fit: Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.".

8.A perusal of the above provision, it is clear that an appellate remedy is available for the petitioner. Further, the Director (Discipline) may also can appeal against the decision of the Board of Discipline. The petitioner herein is not aware as to whether any appeal has been preferred by the Director (Discipline) to the Appellate Authority. This Court really surprise, the petitioner, who is the Cost Accountant without knowing the provision of Appeal to authority, has approached this Court, which is an abuse of process of law. Therefore, this Court is of the view that, this Writ Petition deserves to be dismissed with costs.

9.Further, the petitioner has shown so many entries which was not signed by the concerned authority. He produced the document which is said to have obtained from the RTI Act, in the said document, it has been stated the cost of the land as Rs.1,29,89,158/- and the said amount is reflected in the balance sheet. He wanted to say that this amount is not supported by any document and he is not in a position to provide any document. However, all those things cannot be decided in this Writ Petition. The concerned authority can only take disciplinary action against the second respondent, but, the first respondent found that the second respondent is not guilty of professional misconduct.

10.Hence, this Writ Petition is dismissed. No costs. Connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

rst

To:

The Deputy Secretary,
Disciplinary Directorate,
Institute of Chartered Accountants of India,
ICAI Bhawan, Indraprastha Marg,
Post Box No.7100,
New Delhi – 110 002.

+1cc to Mr.P.K.Sabapathi, Advocate Sr.60495

W.P.No.23841 of 2018
and W.M.P.No.27777 of 2018

pl[co]
srg 21/12/2021