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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHARTERED ACCOUNTANT REFERENCE NO.2 OF 2011

Council of the Institute of
Chartered Accounts of India,
Indraprastha Marg,
New Delhi. … Petitioner

Versus

Shri Mahesh Kedia,
14/18 Vithoba Lane,
Vithalwadi, 3rd Floor,
Kalbadevi, Mumbai 400 002. …. Respondent

Mr. A.K. Saxena with Mr. Gautam S. Mehta, Advocate *for the Petitioner.*

CORAM: DHIRAJ SINGH THAKUR &
VALMIKI SA MENEZES, JJ.

Reserved on : 19TH OCTOBER 2022

Pronounced on : 2ND DECEMBER 2022

JUDGMENT : (*Per Valmiki Sa Menezes, J.*)

1. The present Reference Application has been forwarded to this Court in terms of Section 21(5) of the Chartered Accounts Act, 1949 ('the said Act', for short) for passing necessary orders in accordance with the provisions of Section 21(6) of the said Act, with respect to the respondent, a

Chartered Accountant, who was charged with various acts of misconduct referred to in a chargesheet which was inquired into by a Disciplinary Committee instituted under the Chartered Accountants Regulations, 1988.

2. The petitioner, Council of Institute of Chartered Accountants of India, incorporated under the provisions of Section 3 of the said Act, received a letter dated 08.03.2002 along with documents from the Department of Company Affairs, which made allegations against the respondent, arising out of inspection conducted by the said department, under the provisions of Section 209(A) of the Companies Act, 1956 in respect of M/s. Chitrakut Computers Pvt. Ltd. The contents of the said letter dated 08.03.2002 was treated as "information" against M/s. Falod and Khandelwal, Chartered Accountants, of whom the respondent Shri Mahesh Kedia was a partner. The contents of the said letter dated 08.03.2002 were treated as "information" for commencing proceedings under provisions of Section 21 of the Act. It was alleged that the respondent had committed the following acts of misconduct whilst auditing the accounts of the said Company M/s. Chitrakut Computers Pvt. Ltd.:

(a) That the said Company, which is a deemed public limited Company, had advanced various loans without charging interest in contravention of the provision of Section 372-A of the Companies Act and the respondents had not raised any audit objections to this violation;

(b) That there were violations of Part I of Schedule (VI) read with Section 211 of the Companies Act which were not observed by the Auditor/respondent in his report;

(c) That the dividend income of the said Company was accounted for on Receipt Basis in violation of Section 209(3)(b) of the Companies Act when the same ought to be accounted by the Company on ACCRUAL Basis as was required by the Act, without the Auditor raising any objections;

(d) The Company has received unsecured loans without recording the same in the register to be maintained under Section 301 of the Companies Act and the same was not observed by the Auditor;

(e) That the Company had entered into a transaction of sale and purchase of shares in violation of Section 297 of the Companies Act without the same being referred to in the Auditor's report;

(f) That the Company had committed violations of the provision of Section 383-A, 307(7), 217 and 230 of the Companies Act and the Auditor failed to raise queries with regard to the said violations in their report.

3. It is the case of the petitioner that the respondent - firm has not exercised judgment which a Chartered Accountant is required to undertake while auditing the books of accounts and financial statements of the said Company, during the relevant period 1999 and 2000, and for such reason, the petitioner, *prima facie* felt that the respondent had committed professional misconduct falling under clauses (6),(7),(8) and (9) of Part I of the Second Schedule of the said Acts. The information sent by the Department of Company affairs was sent to the respondent - firm vide the petitioner's letter dated 16.12.2004, requesting the firm to disclose the names of its members/partners, who were answerable to the charge of misconduct; the respondent Mahesh Kedia, in his capacity as a member of the accountant - firm answerable to charges submitted his written statement on 23.05.2005 and, thereafter, in accordance with the provisions of Regulation 12(11) of the Chartered Accountants Regulations, 1988, the information contained in the letter dated 08.03.2002 along with the written statement of the respondent was placed before the Council of Chartered Accountants. In its meeting held in May 2005, the Council was *prima facie* of the opinion that the respondent was guilty of professional and/or other misconduct and decided to refer the case to the Disciplinary Committee in terms of the provision of Section 21(1) of the said Act for conducting an inquiry into the charges.

4. The Disciplinary Committee formulated six charges against the respondent which are found listed in detail in its inquiry report dated 03.02.2006.

5. The Disciplinary Committee, on issuing notice to the respondent, conducted a detailed inquiry into the allegations made in the said chargesheet. The inquiry was conducted between 02.08.2005 and 03.02.2006 when the Committee submitted its report to the petitioner Council.

The respondent was present throughout the inquiry and was represented by his Counsel Shri Dilip Seth, a Chartered Accountant. During the course of the inquiry, the respondent led his evidence and presented his case with the assistance of his Counsel. On conclusion of the inquiry and after the respondent made his submissions and arguments on the charges levelled against the respondent the report dated 03.02.2006 submitted by the Disciplinary Committee to the Council was considered by the Council.

6. By the report of the Disciplinary Committee, the respondent was held guilty of professional misconduct of charge no.1 and charge no.4, falling within the meaning of clauses (6),(7),(8) and (9) of Part (I) of the Second Schedule to the said Act. The Disciplinary Committee, in its report, was of the opinion that the respondent was not guilty of charges nos.2,3,5 and 6 of professional misconduct under the said Act.

7. The report of the Disciplinary Committee was also sent to the respondent vide letter dated 29.07.2008, by the petitioner, who was informed that the Council would consider the report of the Disciplinary Committee and called upon the respondent to send his written representation, on the report of the Disciplinary Committee to the Council, and that he may appear before the Council either in person or through a member of the Institute duly authorised by him to make his oral submissions on the disciplinary action contemplated against him.

8. Though the respondent was notified of the meeting scheduled by the Council for consideration of the report of the Disciplinary Committee, it appears that the respondent did not respond to the same and the matter was adjourned from time to time by the Council, for obtaining a written representation from the respondent, to the said report. However, neither the respondent nor his authorised representative appeared thereafter before the Council on any of the subsequent dates set down by the Council for appearance of the respondent. The Council thereafter considered the report of the Disciplinary Committee and decided to accept the report in its 282nd meeting held from 5th to 7th November 2008 and recorded in its Minutes drawn up for the said meeting that it held the respondent guilty of professional misconduct with respect to charge no.1 and charge no.4 falling within the meaning of clause (6),(7),(8) and (9) of Part I of the Second Schedule of the Act. It held the respondent to be not guilty of professional misconduct with respect to charge nos.2,3,5 and 6 falling within the meaning of clause (7) and (8) of Part I of the Second Schedule to the said Act. The Council decided to recommend to this Court that the respondent be reprimanded in terms of clause (a) of sub-section 4 of Section 21 of the said Act. Hence, the present Reference Application under the provisions of Section 21(6) of the said Act was made before us for necessary orders.

9. Notice was issued to the respondent and though served none put in appearance. Learned Counsel for the petitioner Shri A.K. Saxena took us through the record of the Disciplinary proceedings and through the extract from the Minutes of the meeting of the Council wherein it has recorded its conclusions and concurrence with the findings contained in the report of the Disciplinary Committee. We have also perused the report of the Disciplinary Committee wherein the evidence and documents produced during the course of the disciplinary proceedings have been discussed and deliberated upon, resulting in the Disciplinary Committee arriving at its findings, holding the respondent guilty of professional misconduct under charge no.1 and charge no.4 and exonerating the respondent of all other charges.

10. On perusing the record of the disciplinary proceedings, we find that the respondent has fully participated in the said proceedings and was represented therein by his Counsel, a fellow Chartered Accountant. The record of the disciplinary proceedings also bears that the respondent was given every opportunity to consider all documents forming part of the record of the proceedings, on the basis of which the allegations of misconduct were levelled against him under the said Act. In our opinion, the principles of natural justice were fully complied with during the course of the conduct of the disciplinary proceedings and all opportunity was given to the respondent to defend himself of a charges levelled against him. From the perusal of the record, it does not appear that the respondent has raised any objection regarding any procedural irregularity or violation of the principles of natural justice. We, therefore, conclude that the procedure followed in conducting the inquiry was fair and proper and in consonance with all norms of procedure required to be followed under the Act and regulations framed thereunder, whilst conducting the disciplinary inquiry.

11. On going through the report of the findings of the Disciplinary Committee, we are of the opinion that the Disciplinary Committee has considered in great detail, the evidence before it, on each charge levelled against the respondent and has on consideration of all that evidence arrived at a conclusion of guilt of the respondent at charge no.1 and charge no.4. The Disciplinary Committee has made detailed reference to the submissions of the respondent on each of the charges and has given due consideration to these submissions, and arrived at its conclusions based upon specific material produced in evidence. We do not find any perversity in the findings arrived at by the Disciplinary Committee on each of the charges, as the same are based upon acceptable evidence and on a correct assessment of the same.

12. We have also examined the deliberations of the Council recorded in its Minutes of the 282nd meeting held from 5th to 7th November 2008, on the report of the Disciplinary Committee; the Council has considered the report and on discussion of its contents has decided to accept the report of the Disciplinary Committee and held the respondent guilty of professional misconduct with respect to charges no.1 and 4 and not guilty of professional misconduct with respect to charges no.2,3,5 & 6, deciding to recommend to this Court that respondent be reprimanded.

We have also considered the relevant provisions of Section 21 of the said Act, which reads as under:

> ***"21. Procedure in inquiries relating to misconduct of members of Institute***—

(1) Where on receipt of information by, or of a complaint made to, it, the Council is prima facie of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee, and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed, and shall report the result of its inquiry to the Council.

(2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed or the complaint shall be dismissed, as the case may be.

(3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record a finding accordingly and shall proceed in the manner laid down in the succeeding sub-sections.

(4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely:-

(a) reprimand the member;

(b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit:

Provided that where it appears to the Council that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in clause (a) or clause (b), but shall forward the case to the High Court with its recommendations thereon.

(5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is misconduct other than any such misconduct as is referred to in

sub-section (4), it shall forward the case to the High Court with its recommendations thereon.

(6) On receipt of any case under sub-section (4) or sub-section (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the Council and to the Central Government, and shall afford such member, the Council and the Central Government an opportunity of being heard, and may thereafter make any of the following orders, namely:-

(a) direct that the proceedings be filed, or dismiss the complaint, as the case may be;

(b) reprimand the member;

(c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit;

(d) refer the case to the Council for further inquiry and report.

(7) ...

(8) ...”

13. Sub-section (1) of Section 21 of the Act requires the Council to come to a *prima facie* opinion that any member of the Institute is guilty of professional misconduct or other misconduct before making a reference of the case to the Disciplinary Committee who shall thereupon hold an inquiry in the prescribed manner and shall report result of its inquiry to the Council. Sub-section (3) of the said provision requires that, after consideration of such report if the Council finds the member of the Institute guilty of any professional or any other misconduct, it shall record a finding accordingly and shall proceed in terms of the provisions of sub-section 4 of Section 21, calling upon the member to appear before it and afford the member an opportunity of being heard, before any further orders are passed. In terms of Sub-section 4, after giving the member an opportunity of being heard, the Council may reprimand the member or it may remove the name of the member from the register for such period not exceeding five years as the Council thinks fit; if the Council is of the opinion that the case is one in which the name of the member ought to be removed for a period exceeding five years or permanently, it shall make such order and forward the case to the High Court with its recommendations.

14. On considering the record of the entire case of the respondent, we find that there is due compliance with all the above provisions of the Act. We are also of the opinion that the severity of the charges no.1 and 4 of which the respondent has been held guilty of, have been dealt with adequately by imposing a reprimand on the respondent. In our opinion this is not a fit case for imposing a harsher punishment of removal of the name of the respondent from the register maintained under the provisions of the Act, as the punishment imposed on him of reprimand, meets the ends of justice and is proportional to the act of misconduct proved against him.

15. Considering the above, we deem it fit to reprimand the respondent.

16. Accordingly, the Application/Reference is disposed of in the above terms.

VALMIKI SA MENEZES, J. **DHIRAJ SINGH THAKUR, J.**