IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.12.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.24647 of 2010 &
MP.No.1 to 3 of 2010 & 1 of 2011

V.Venkata Siva Kumar ... Petitioner

Vs

1.The Institute of Chartered Accountants of India,
"ICAI Bhawan", Indraprastha Marg, Rep. by its Chairman,
Post Box No.7100, New Delhi – 110 002.

2.The Disciplinary Committee,
Council of Institute of Chartered Accountants of India,
Rep. by its Chairman,
"ICAI Bhawan", Indraprastha Marg,
Post Box No.7100, New Delhi 110 002. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the decision of the 1st respondent dated 05.05.2010 and the subsequent communication of the same sent to the petitioner through a letter bearing No.25-CA(94)/2004-fin dated 27.08.2010 and quash the same as being arbitrary, illegal and direct the 1st respondent to dismiss the complaint against the petitioner as per the provisions of Section 21 of the Act.

For Petitioner : Mr.Venkata Siva Kumar
[Party-in-Person]

For Respondents : Mr.Krishna Srinivasan
for M/s.S.S.Ramasubramiam & Asso. - R1

No appearance - R2

ORDER

The petitioner has enrolled with the Institute of Chartered Accountants of India (R1/Institute), in the year 1990. His career as a Chartered Accountant has evidently been extremely chequered and there have been acrimonious exchanges between himself and the Institute owing to a newsletter brought out by this petitioner, though not published by him, by name of 'Sharp CA Student'.

2.That apart, the petitioner is also seen to have been vociferous in his disapproval in regard to the manner in which the Institute is conducting his affairs. Suffice it to say, without delving into the details, that disciplinary proceedings were initiated by R2, the disciplinary committee of the Institute, that have culminated in impugned order dated 05.05.2010 communicated to the petitioner under cover of letter dated 27.08.2010.

3. Section 21 of the Act regulates the procedure that is to be followed by the Institute in the conduct of the disciplinary proceedings and reads as follows:

"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."

4. The impugned order is bifurcated into two limbs. In respect of the allegation of professional misconduct falling within the ambit of Clause 11 of Part-I of Schedule-I of the Chartered Accountants Act, 1949 (in short 'Act') (charges as set out in para No.23 of the report of the disciplinary committee dated 02.02.2009), the Council has proceeded on the basis that the petitioner must be heard in terms of Section 21(4) of the Act, prior to proceeding further in the matter.

5.In the above circumstances, I find no cause to intervene on this aspect of the matter. Suffice it to say that, in proceeding further with the matter, the petitioner shall be heard by the Council and a decision taken by it, uninfluenced by any of the events that have transpired prior thereto in the matter, and in accordance with law.

6.To facilitate this process, seeing as this matter is pending before this Court from 2010 onwards, the hearing will commence on 23.12.2022 at 10.30 A.M., or an alternate date proximate to the aforementioned date to be intimated to petitioner. The mode of hearing, whether by video conferencing, will be decided by the parties based upon mutual convenience.

7.As far as the second limb of the impugned order is concerned, that is, the allegation of professional mis-conduct with respect to 'other mis-conduct' qua Sections 21 and 22 of the Act (per charges in paragraph Nos.23.1 & 23.2 of the report of the disciplinary committee), the Council has decided to recommend to the High Court that the name of the respondent be removed from the Register of members, for a period of three years.

8. This recommendation is as per Section 21(5) of the Act read with Appendix X Rules relating to cases under the Chartered Accountants Act, 1949 to the Madras High Court Appellate Side Rules, 1965.

9. Interim stay of the impugned has been granted by this Court on 01.11.2010. The stay as regards the first portion of the impugned order is vacated to enable the conduct of proceedings as per paragraph 6 above. The interim stay granted will continue in regard to the recommendation made, till,

and subject to, a decision being taken by the Council as regards the 1st portion of the impugned order.

10. Incidentally, the petitioner brings to the notice of the Court in the course of the hearing today, that he has enrolled in the Bar and hence does not hold a Certificate of Practice as a chartered accountant, any further. He may bring this to the notice of the Council at the hearing fixed on 23.12.2022.

11. This writ petition is disposed in the aforesaid terms. No costs. Consequently, connected miscellaneous petitions are closed.

kbs **12.12.2022**

Index : Yes
Speaking Order

To

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Dr.ANITA SUMANTH, J.

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